

POSTAL ADDRESS: PO BOX 1807
STRAWBERRY HILLS NSW 2012
LEVEL 5 17 RANDLE STREET
SURRY HILLS NSW 2010
TELEPHONE (02) 9212 4655
FACSIMILE (02) 9212 5254

Title Report

on

71 – 79 Macquarie Street Sydney

Prepared by

**Mark Andrew
Registered Surveyor**

26 May 2011

Ref.: 110324-01.11

This report is an overview of the boundaries, easements, leases, rights and obligations of the subject site and the adjoining properties. The report will refer to annexes at the back of this report. The report does not investigate existing zoning or planning constraints only rights and obligations noted on title and is an update of my report dated 14/10/2008 (Ref: 080717.01.08)

A. The Site

- The subject property is all the land in Certificate of Title No. 1/202431 (Annexure A) being Lot 1 in Deposited Plan D.P.202431 of which a copy is attached (Annexure B) and highlighted in yellow.
- The property has a surveyed land area of 890.1m² and is unlimited in height and depth.
- Erected on the land is a multistorey concrete, brick and glass office building known as the "Amatil Building" 71-79 Macquarie Street, Sydney.
- The property has two street frontages. The first being 39.535 metres to Macquarie Street and the second being 46.07 metres to Circular Quay East. These are as surveyed dimensions being slightly different to title. Both these streets are public roads under the Roads Act 1993.
- The property is bounded to the North by the "Quay Grand" residential apartment building (SP 58857).
- The property is bounded to the South by the City Circle Railway line and the Cahill Expressway and pedestrian stairs part of which overhangs the subject property.
The parcels being Lot 2 DP 202431 and Lots 1+2 DP 1092161 are owned by Rail Corp NSW.
- No investigation of a lease for land below adjoining Macquarie Street has been carried out. However any land below Macquarie Street would be a lease from Sydney Council.
- An overall Site Plan is shown on Annexure G.

B. Easements and Covenants affecting the subject property

- Easement for overhang H804494

This easement affects Lot 1 to allow the existing overhanging structures associated with the Cahill Expressway and Pedestrian Stairs to Macquarie Street at the South and of the subject property the right to remain over the boundary.

The total encroachment is about 5.7 metres into the subject property from the South boundary. (The area is coloured blue on Annexure C).

– **Covenant H804494**

In conjunction with the above easement this covenant prevents any structure being built within the site of the easement above R.L. 11.64 Australian Height Datum. This prevents any structure being built around the overhang, thus preventing effective maintenance.

- A sewer runs below the south – east corner of the property. No easement is shown on the title as it has Sydney Water rights.

C. Leases affecting the subject property

– **6447615**

Lease to Energy Australia of a substratum located on level 2 below the expressway and stairs. (see Annexure D).

Note: Caveats from Telstra and 3GIS Pty Ltd are noted on the title.

D. Quay Grand

Back in the mid 90's during the redevelopment of the property between the "Amatil Building" and the Opera House known as the East Circular Quay redevelopment, the following boundary adjustments were made.

- Circular Quay East roadway from the North boundary of "Amatil" right through to Macquarie Street was closed as a public road and became Lot 1 D.P. 845642
- It was then agreed between the owners of the lots along Macquarie Street adjacent to the closed road that this Lot and their Lots would be subdivided so that the development lots would be extended out into the Circular Quay East roadway by about 11 metres. This effectively gave each development Lot a depth of 27 metres from Macquarie Street and a closer frontage to Circular Quay foreshore. Each development Lot was also given access to a long term lease of land below Macquarie Street of about 4 metres.
- In return all land above R.L. 46.7 (for Quay Grand) being Lot 6 D.P. 848731 was given back to Council and the Commonwealth thus preventing any development above this level. Quay Grand parapet (RL 46.64) is currently just below this level.
- Also a colonnade at the Circular Quay promenade level being Lot 1 D.P. 848731 was also given back to council. This colonnade is 6 metres wide and 6.2 metres high from the promenade level.

A copy of D.P. 861206 (Annexure E) is attached, showing in section, Lots 1 and 6.

Quay Grand was constructed in the later 90's on Lot 122 D.P. 861206 (Annexure E). The building has four levels of Basement Parking below Circular Quay level with an entrance off East Circular Quay roadway adjacent to the "Amatil Building". The below ground car park utilises the leased land below Macquarie Street.

The building then rises 15 levels above Circular Quay level and includes retail and residential units.

The Quay Grand Building and owners are party with Council in a Management Statement registered on title that governs the relationship between the Quay Grand building and the Lot 1 colonnade on Circular Quay level.

There is nothing in this statement that affects the "Amatil Building".

Under the terms of Section 88b instrument (Annexure F) lodged with Strata Plan 58857 (Quay Grand) the Owner's Corporation has been burdened by a Positive Covenant that benefits Sydney Council.

The terms of the Positive Covenant refers to a "Breakthrough Deed" dated 15/6/96 entered into by the then owners of the Quay Grand land and Council.

Although we have not yet been able to get a copy of this Deed it seems apparent that if the "Amatil Building" was redeveloped to include the current road then the car park entrance to Quay Grand would be sealed and that the access to its car parks would be through the new building on No 71-79 being the subject property.

This Positive Covenant binds the Owner's Corporation to this Deed and prevents any works being done at the basement breakthrough point.

- I have not discovered any restrictions on title relating to Glazed Panels on the Quay Grand Building and no further easements or restrictions affecting the subject site.

E. Summary

- The "Amatil Building" is on Lot 1 D.P. 202431
- The existing expressway encroaches over the boundary but is covered by an easement.
- The adjoining Macquarie Street and Circular Quay East are public roads administered by Council.
- The land to the south is owned by Rail Corp.
- The "Amatil Building" has a height of about 66 metres A.H.D.

- Future redevelopment of the "Amatil building" site is burdened by a "Breakthrough Deed" to give access to car park in the adjoining Quay Grand building.
- There are no apparent restrictions on title governing glazed panels on Quay Grand.
- Lot 6 D.P. 848731 is the land above Quay Grand (R.L. 46.7) is owned by Council and the Commonwealth jointly.
- Lot 1 D.P. 848731 being the Colonnade on Circular Quay level is owned by Council.
- Quay Grand is a Strata Plan number 58857.
- Part of the new SHFA Lot will encroach into the 27 metre zone on Circular Quay East, as shown in the attached diagram.

Mark J Andrew
Director / Registered Surveyor
Denny Linker & Co

26 May 2011
Ref: 110324-02.11

Mirvac Projects Pty Ltd
Level 26,
60 Margaret St
Sydney NSW 2000

Attention: Nicole Vince

RE: 71 Macquarie Street, Sydney – Land Ownership and Control

Dear Nicole,

Further to instructions regarding the above property and adjacent land and road ownership and control we advise the following.

Please refer to the attached coloured annexures:

- A.** The land to the west of the site is shown as Circular Quay Street East, coloured **yellow** on the plan is public road.

City of Sydney Council has confirmed that the road is under their control and jurisdiction.

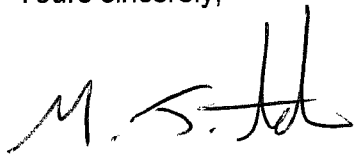
- B.** The land coloured **blue**, being Lot 11 DP 847490 is part of the existing promenade. This land is owned by Sydney Harbour Foreshore Authority (SHFA) and is under their control.

The title has a notation that "the land is a public reserve" with the meaning of Part 5 Crown Lands Act 1989 and is subject to the provisions of that Act (particularly Section 102).

- C.** The land coloured **pink** being Lot 3 DP 818565 is land below the railway and Cahill Expressway is owned and controlled by the SHFA.
- D.** The land coloured **green** being Lot 2 DP 787933 does not have a title but is Crown Land public reserve controlled by the SHFA.
- E.** The land coloured **purple** is owned by Rail Corporation.
- F.** The land coloured **orange** is owned by City of Sydney Council including the promenade below SP 58857.
- G.** The land **hatched black** is City of Sydney Council road that is the subject of a draft Deposited Plan to transfer ownership to SHFA. Note that at the north – east corner it encroaches into the 27 metre zone.

If you require any further clarification regarding the above matter please do not hesitate to contact me at this office.

Yours sincerely,








A handwritten signature in black ink, appearing to read 'M. Andrew', written in a cursive style.

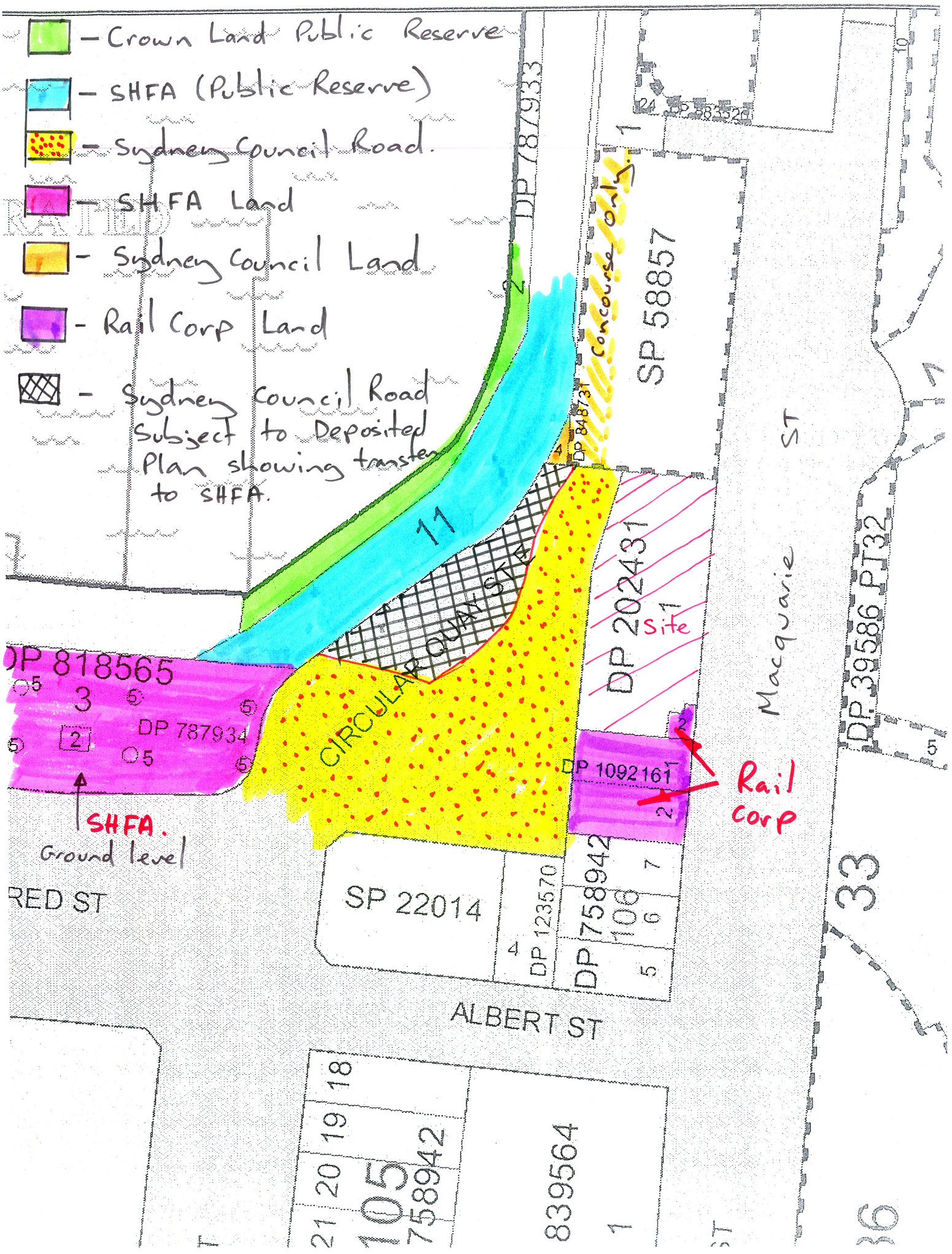
MARK ANDREW
Director
Denny Linker & Co

Requested Parcel : Lot 1 DP 1092161

.GA : SYDNEY

Parish : ST JAMES

-  - Crown Land Public Reserve
-  - SHFA (Public Reserve)
-  - Sydney Council Road.
-  - SHFA Land
-  - Sydney Council Land
-  - Rail Corp Land
-  - Sydney Council Road Subject to Deposited Plan showing transfer to SHFA.



'Annexure F'

INSTRUMENT SETTING OUT TERMS OF EASEMENTS, PROFITS À PRENDRE AND RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT, 1919

SP 58857

(Sheet 4 of 9 Sheets)

Lengths are in metres

Subdivision of Lot 122 DP 861206

<p>* 9. Identity of easement, profit a prendre, restriction or positive covenant ninthly referred to in the abovementioned plan</p>	<p>Positive Covenant</p>
<p>Schedule of Lots, etc affected</p>	
<p>Lot Burdened Common Property</p>	<p>Authority Benefited Sydney City Council</p>

<p>10. Identity of easement, profit a prendre, restriction or positive covenant tenthly referred to in the abovementioned plan</p>	<p>Restriction on Use of Land</p>
--	-----------------------------------

Schedule of Lots, etc affected

<p>Lot Burdened Every Lot</p>	<p>Lot Benefited Every other Lot</p>
-----------------------------------	--

<p>11. Identity of easement, profit a prendre, restriction or positive covenant eleventhly referred to in the abovementioned plan</p>	<p>Restriction on Use of Land</p>
---	-----------------------------------

Schedule of Lots, etc affected

<p>Lot Burdened Common Property</p>	<p>Authority Benefited Sydney City Council</p>
---	--

PART 2

1. Terms of easement, profit a prendre, restriction or positive covenant firstly referred to in the abovementioned plan.

(a) The owner of the lot benefited may:

- (i) by any reasonable means pass across the lot burdened, but only within the site of this easement, to get to or from the area shown as "(h)" on the plan;
- (ii) do anything reasonably necessary for that purpose, including
 - entering the lot burdened; and
 - taking anything on to the lot burdened.

Gleesonally
Council Authorised Person

Adrian J. Green *Sup* *Jay* *Boughton*

Annexure F

INSTRUMENT SETTING OUT TERMS OF EASEMENTS, PROFITS À PRENDRE AND RESTRICTIONS ON THE USE OF LAND AND POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT, 1919

SP 58857

(Sheet 6 of 9 Sheets)

Lengths are in metres

Subdivision of Lot 122 DP 861206

Easement for electricity service being a service defined in and an easement the subject of section 8AB of the Strata Schemes (Freehold Development) Act, 1973 (as amended).

7. Terms of easement, profit a prendre, restrictions or positive covenant seventhly referred to in the abovementioned plan.

Easement for conditioned air service being a service defined in and an easement the subject of section 8AB of the Strata Schemes (Freehold Development) Act, 1973 (as amended).

8. Terms of easement, profit a prendre, restrictions or positive covenant eighthly referred to in the abovementioned plan.

Easement for television or radio impulses or signals service being a service defined in and an easement the subject of section 8AB of the Strata Schemes (Freehold Development) Act, 1973 (as amended).

9. Terms of easement, profit a prendre, restrictions or positive covenant ninthly referred to in the abovementioned plan.

The owner of the lot burdened hereby covenants with Council, a prescribed authority within the meaning of section 88E(1) of the Conveyancing Act 1919, that the owner of the lot burdened must:

- (a) if requested by Council enter into the Novated Breakthrough Deed for the proper control, management and administration of the common property;
- (b) not grant any exclusive or privilege rights for that part or parts of the common property where exclusive or privilege rights will prevent the owner of the lot burdened from promptly complying with the terms of a notice served under clause 2 of the Breakthrough Deed as applied by the Novated Breakthrough Deed.

"Breakthrough Deed" means the deed dated 15 August 1996 entered into between Sydney City Council, Perpetual Trustee Company Limited, Mirvac Projects Pty Limited and others relating to, amongst other things, the connection of the basement levels within the Building with basements of the adjoining site at 71-79 Macquarie Street and to remove the vehicular entrance to East Circular Quay within the Building.

"Building" means the building constructed within the Land.

"Council" means the Council of the City of Sydney.

"Novated Breakthrough Deed" means the Breakthrough Deed as novated to, and accordingly, between Council and the owner of the lot burdened.

G:\RMKATBA\733452.SAM:22/01

G. Connolly
Council Authorised Person

Adrian Green *Scott Jay* *Benjamin*

