

Our Ref: 0063/13lt2

14 February 2014

Marian Pate
NSW Department of Planning and Infrastructure
PO Box 39
SYDNEY 2001

Dear Marian,

**RE: SUTHERLAND DRAFT LEP REVIEW
291 WOOLLOOWARE ROAD, BURRANEER**

We advise that we act on behalf of the owner of the above property and have been instructed to make a submission to be included as part of the independent review of the Draft Sutherland Shire LEP 2013. In accordance with the terms of reference set out by the Minister for Planning and Infrastructure, this submission relates to a site that was included in Mayoral Minute No. 6/13-14 dated 29 July 2013.

As conveyed to the Panel during recent Public Hearing sessions, it is critical that a distinction is made between matters referred to in the Mayoral Minute of 29 July 2013 as to whether they were matters supported by Council's professional staff following submissions made on the initial public exhibition period or were changes instigated by the Mayor. We note that in relation to this submission, the Mayoral Minute was consistent with the recommendations of staff contained in their report relating to the first round of exhibition.

By way of background, Planning Ingenuity made a submission in relation to the first exhibited LEP to correct an error with the electronic mapping of the foreshore building line under the Draft SSLEP 2013. The error was as a result of the historically incorrect mean high watermark at the subject site which is used to determine a 20m setback to restrict development (foreshore building line). Our client had the mean high watermark at the property officially redefined with the NSW Department of Lands to correct the long standing error of an early Deposited Plan that had been duplicated over time.

Due to Council's methodology of determining the foreshore building line from the mean high watermark, the corrected foreshore building line provided very little benefit at the site. This was due to a clearly incorrect mean high watermark of the adjoining property which ultimately influences the foreshore building line at the subject site. Our submission noted that the adjoining mean high watermark was also incorrectly defined. Due to time limitations, our client was unable to seek a redefinition of the adjoining mean high watermark. The request as part of the initially exhibited LEP sought that Council apply discretion and amend the foreshore building line to reflect the corrected mean high watermark at the subject site and an assumed mean high watermark of the adjoining property. The detailed submission is attached to this letter.

Staff was supportive of our request to amend the foreshore building line in relation to the subject site, however, did not support the full extent of the request as the adjoining mean high watermark had not been officially redefined. The Council report made the following recommendation:

“ It is recommended that the FBL be amended in relation to the current corrected MHWM. However, it is noted that in order to maintain a FBL contiguous with that on adjoining properties, the variation will be minor.”

As discussed, the subject site was mentioned in the Mayoral Minute as follows:

“ v. Foreshore Building Line and Foreshore Area as indicated on the Foreshore Building Line Map be amended in relation to the:
- corrected cadastre for properties along Grays Point Road, Grays Point;
- corrected cadastre at Ilma Ave, Kangaroo Point (DP 8822);
- current corrected MHWM at 291 Woollooware Road, Burraneer (Lot 1 DP 1161808).”

The changes to the Draft LEP, as exhibited in the second round, were therefore made as a result of thorough analysis and the request by Planning Ingenuity in their submission on behalf of the land owner. The request was considered by professional Council staff and was partially supported. The site was included in the Mayoral Minute to reinforce the views of staff.

A meeting was held between the property owner and the Manager of Council's Environmental Planning Unit to discuss minor benefit gained on the property due to the relocated foreshore building line. The benefit gained was clearly not reflective of the change to the historically incorrect mean high watermark. The property owner was advised by the Manager of Council's Environmental Planning Unit to seek a formal redefinition of the mean high watermark of the adjoining property for Council to support the originally requested foreshore building line.

The property owner has lodged an application to have the mean high watermark of the adjoining property officially redefined with the NSW Department of Lands. We have also received confirmation by the Surveyor that he is confident that the redefinition will proceed without amendment.

A submission was made in relation to the second exhibited LEP seeking an amendment as originally sought on the basis of the redefined mean high watermark on our client's site and the impending redefinition of the adjoining property. A copy of the submission in relation to the second exhibited LEP is attached to this letter.

We anticipate that professional staff will be in support of our request in relation to the second exhibited LEP, however, we do not have the benefit of the staff report that deals with the second exhibited version of the LEP. We therefore ask that the Panel endorse our request to modify the foreshore building line on the subject site to recognise the historically incorrect mean high watermark on the subject site and the adjoining property.

Should you wish to discuss any of the above, please feel free to contact the undersigned.

Yours faithfully,
Planning Ingenuity Pty Ltd



Jeff Mead
DIRECTOR



ANNEXURE A

COPY OF INITIAL SUBMISSION ON DRAFT SUTHERLAND LEP 2013

Our Ref: 0063/13lt2
Council Ref: LP/03/79340

16 September 2013

General Manager
Sutherland Shire Council
Locked Bag 17
SUTHERLAND NSW 1499

Attention: Environmental Planning Unit

**SUBMISSION ON THE DRAFT SUTHERLAND LEP 2013
No. 291 WOOLLOOWARE ROAD, BURRANEER**

INTRODUCTION / BACKGROUND

We refer to the *Draft Sutherland Shire LEP (SSLEP) 2013* which is currently being re-exhibited subsequent to amendments to an earlier exhibited draft, and pursuant to Council's resolution of 29 July 2013. We write to advise that we act on behalf of the owner of No. 291 Woollooware Road, Burraneer and have been instructed to make a submission on the Draft LEP in relation to the second round of public consultation which concludes on 17 September 2013. This submission is therefore to be read in conjunction with the original submission dated 30 April 2013 (copy attached).

The mean high water mark (MHWM) on the subject property was redefined by The NSW Crown Lands Division on 4 May 2012. The Report tendered in support of the redefinition application highlights that the MHWM has not altered in a lateral direction due to the unaltered vertical and natural rock face and notes that the MHWM has been incorrectly defined since 23 October 1906.

The original submission sought that Council identify the foreshore building line on the subject site on the basis of the redefined MHWM. The submission sought to avoid duplication of the historically incorrect *deemed* MHWM which determined the location of the FBL under SSLEP 2006.

The original submission relied on an assumed MHWM in relation to the adjoining property at No. 289 Woollooware Road which also appeared to be incorrectly identified. The incorrect MHWM on the adjoining property impacted on the foreshore building line in respect of our client's property due to Council's infinite arc methodology of identifying the FBL from the MHWM (Figure 3).

The application of the assumed MHWM was done on the basis of a series of educated assumptions including historic aerial photographs and visible evidence provided in photographs. However, due to time limitations a surveyor was unable to qualify our initial assumptions (as detailed in our original submission dated 30 April 2013) of the likely original MHWM on 289 Woollooware Road.

Council accepted the request of the original submission and acknowledged the redefined MHWM in relation to the subject site. However, in relation to No. 289 Woollooware Road it was concluded that:

" *The submission argues that the natural rocky foreshore would continue onto 289 Woollooware Road. Given that the foreshore in this area is significantly disturbed, the location of the original MHWM is difficult to determine. Furthermore, the adjoining lot has not been redefined and as such*

the location of the MHWL cannot be accurately located. As such, while a variation on 291 Woollooware Rd is supported, this cannot be continued along 289 as MHWL has not been redefined."

We note the current (incorrect) MHWL location for 289 Woollooware Road would essentially nullify any material benefit gained to our client's property as it creates an increase in the setback of the FBL on our client's property. This is demonstrated by Figure 1 which identifies the original FBL under DSSLEP 2013 in Blue and the amended FBL in red as adopted by Council on 29 July 2013.

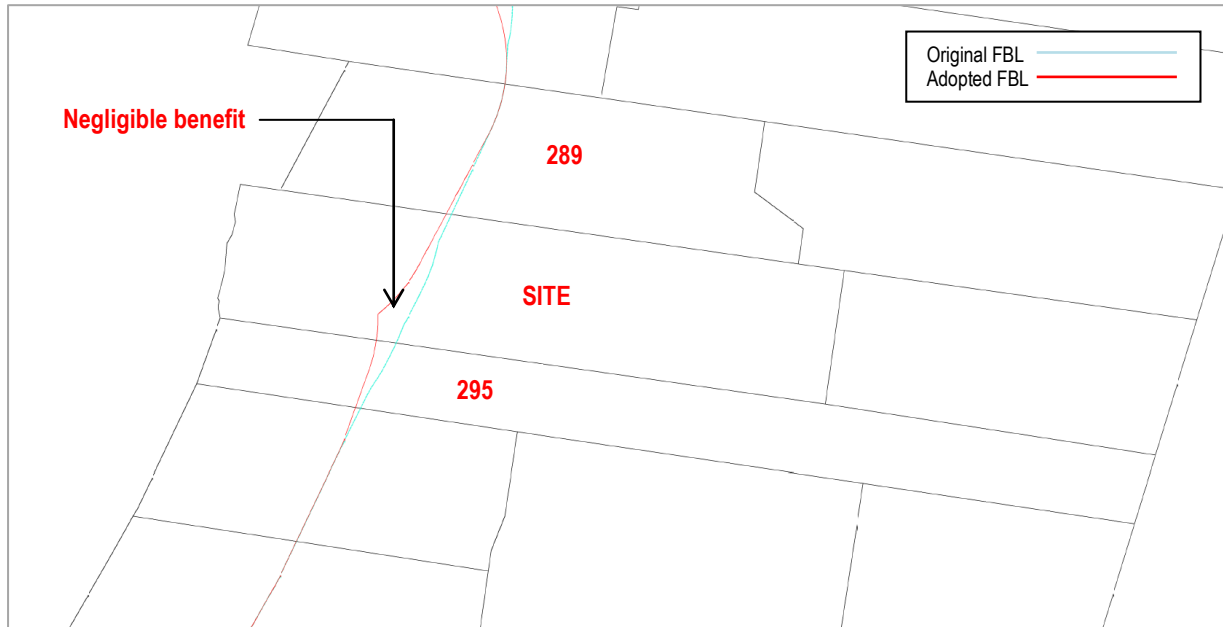


Figure 1: FBL based on redefined MHWL of the subject site only

A meeting was held between our client and the Manager of the Environmental Planning Unit explaining the impediment to our client's property based on the inaccurate MHWL in relation to No. 289 Woollooware Road. Our client was advised by the Manager of the Environmental Planning Unit to apply to The NSW Crown Lands Division for the redefinition of the MHWL in relation to No. 289 Woollooware Road as this would provide sufficient basis for Council to rely on the original MHWL of 289 Woollooware Road as indicated. Due to clear time constraints of having the redefinition application determined by the close of the Draft LEP exhibition period, our client was advised that a plan of redefinition prepared by a registered surveyor and an undertaking that the redefinition application was in the process of being submitted to The NSW Crown Lands Division would provide sufficient basis for Council to support the relocation of the FBL as requested.

A land surveyor (P.J.Baker & Associates) has subsequently been engaged by our client. Provided with this submission is a Plan of Redefinition and a covering letter from the surveyor in relation to No. 289 Woollooware Road.

REQUEST / JUSTIFICATION

In light of the above, it is requested that the DSSLEP 2013 Foreshore Building Line maps be amended to reflect the redefined MHWL on the subject site and the Plan of Redefinition prepared by P.J.Baker & Associates in relation to No. 289 Woollooware Road.

We confirm that our Client is in the process of applying to The NSW Crown Lands Division, in conjunction with the land owner, for a formal redefinition of the MHW in relation to 289 Woollooware Road. Provided as supporting documents to this submission are:

1. A Plan of Redefinition of the MHW in relation to 289 Woollooware Road;
2. A letter from P.J.Baker & Associates confirming the intent to apply for a redefinition and noting that they are *confident that our plan once completed will proceed to registration without alteration*; and
3. A letter of endorsement from the property owner of 289 Woollooware Road.

The requested FBL based on the redefined MHW at 291 Woollooware Road and the Plan of Redefinition to be submitted to The NSW Crown Lands Division in relation to No. 289 Woollooware Road is indicated in red in Figure 2. Also provided at Figure 3 is the application of the infinite arc methodology in the form requested.

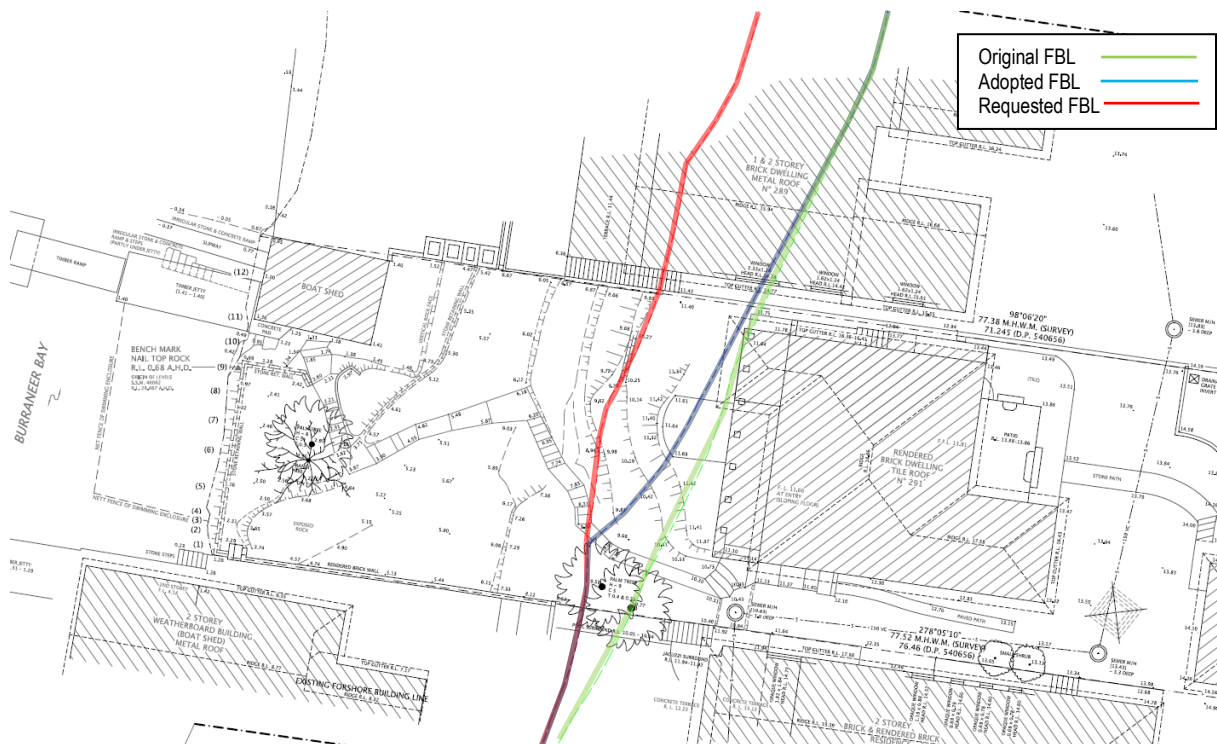


Figure 2: Requested FBL indicated in Red in relation to the original and adopted FBLs

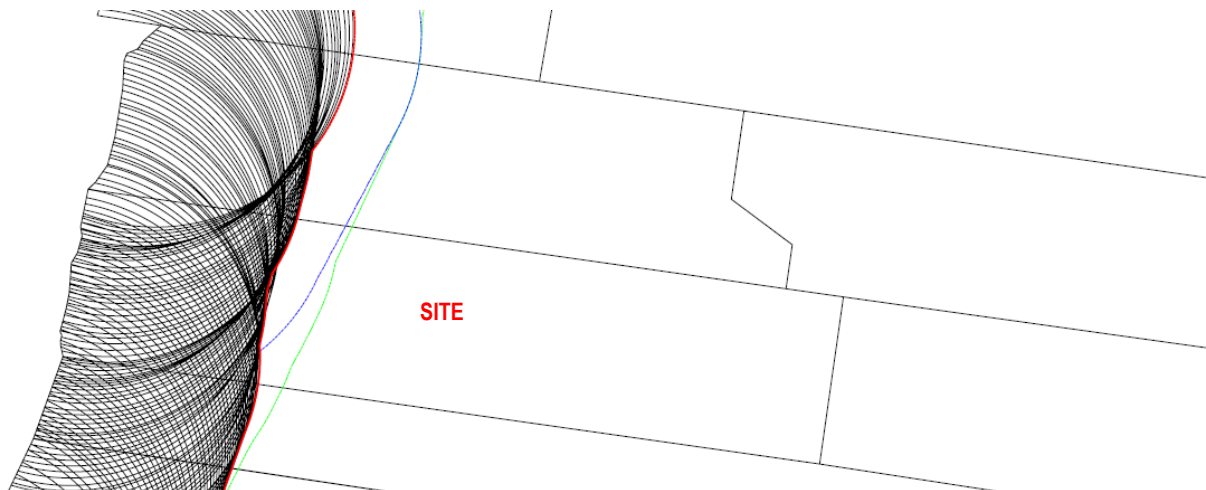


Figure 3: Infinite arc methodology

In the original submission on the DSSLEP 2013 relating to the subject property, Council's attention was drawn to the inaccurate MHWL that was historically relied upon and subsequent inaccurate FBL in relation to the subject site. A plan of redefinition was provided as evidence and was accepted by Council to be sufficient to support the requested relocation of the FBL in relation to the subject site.

This submission provides the further evidence required by Council (as requested by the Manager of EPU) to support the requested FBL. We acknowledge that Council has not historically supported relocation of the FBL based on redefinitions of the MHWL where a property has been the subject of a reclamation. However, despite the foreshore area of No. 289 being partially reclaimed, it is stated in the attached letter provided by P.J.Baker that:

" *It is my contention that the **physical location** of the western boundary (i.e. MHWL of Burraneer Bay) has not changed substantially in a lateral direction since time immemorial and that the title dimensions are in error.*"

We therefore contend that the line indicated on the plan of redefinition is representative of the original MHWL and that the current MHWL is incorrect.

As previously noted and accepted by Council, the continuity of development along the foreshore has been interrupted. We contend that the built form impacts arising out of the requested FBL will be minimal due to the absence of a clearly defined setback to the waterway and the fact that No. 289 Woollooware Road contains a dwelling which projects significantly further forward than any dwelling could on the subject site with the proposed FBL.

In addition, the environmental impacts of modification to the draft FBL will be minimal as the increased building footprint on the site would not affect any significant vegetation and would enable the dwelling to extend over the existing rock formation without any significant disturbance.

CONCLUSION

We thank you for the opportunity to comment on Council's Draft LEP. For the reasons outlined in this submission, it is our view that the foreshore building line maps of DSSLEP 2013 should be amended to reflect a 20m setback from the redefined MHWL on the subject property and the Plan of Redefinition relating to No. 289 Woollooware Road.

We note that the effects of the requested FBL will have no significant built form or environmental impacts and we therefore respectfully request that the FBL be amended on the DSSLEP 2013 FBL maps as requested. We trust that this submission is self explanatory, however, should you require any further clarification, please do not hesitate to contact our office.

Yours faithfully,

Planning Ingenuity Pty Ltd



Jeff Mead
DIRECTOR



ATTACHMENTS A

ORIGINAL SUBMISSION DATED 30 APRIL 2013

Our Ref: 0063/13lt1
Council Ref: LP/03/252376

30 April 2013

General Manager
Sutherland Shire Council
Locked Bag 17
SUTHERLAND NSW 1499

Attention: *Environmental Planning Unit,*

**SUBMISSION ON THE DRAFT SUTHERLAND LEP 2013
NO. 291 WOOLLOOWARE ROAD, BURRANEER**

INTRODUCTION

We refer to the *Draft Sutherland Shire LEP (DSSLEP) 2013* which is on exhibition from 19 March to 1 May, 2013. We act on behalf of the owner of the subject site and have been instructed to make a submission in relation to the Draft LEP to request that Council amend the foreshore building line map in respect of the subject site.

We understand that it is Council's intent to simplify the foreshore controls under DSSLEP 2013 by providing a foreshore building line as marked on a map. However, as stated in the *Foreshore Building Line Fact Sheet*, the location of the FBL under DSSLEP 2013 is identified as if it was determined by survey utilising the definition of the FBL under SSLEP 2006. As such, the location of the FBL under DSSLEP 2013 relies on a setback from the *deemed mean high water mark* under SSLEP 2006 (mean high water mark as at 24 April 1980).

The MHWL on the subject site was redefined on 4 May 2012 and in a submission to the Crown Lands Division of NSW, P.J Baker & Associates confirmed that the MHWL was incorrectly defined in the title documents dated 23 October 1906. The report states that an unaltered natural rock face demarcates the correct MHWL. The redefinition application was sufficient to satisfy the Crown Lands Division of NSW and provides sound evidence that the MHWL has historically been identified incorrectly on the subject site.

The Draft SSLEP 2013 has duplicated the incorrectly identified MHWL in the location of the proposed FBL. The MHWL identified in this submission has been accepted by the Crown Lands Division and reflects the correct mean high water mark as at 24 April 1980, that is, the true *deemed mean high water mark*. The redefined MHWL should therefore be relied upon in relation to the foreshore building line of DSSLEP 2013 as opposed to the historically incorrect *deemed mean high water mark*.

In addition, we note that the foreshore area of the adjoining property to the north (289 Woollooware Road) has been altered by development in the past. The result of which is a significant step in the MHWL from the subject site to the adjoining northern property which effectively sterilises a large area of our client's site for development. This submission requests that Council consider the likely continuation of the original MHWL on the adjoining property when determining the correct FBL on the subject site. The subject site represents a typical situation where a site specific approach is required to

the identification of the FBL as to insist on strict interpretation of the adjoining MHWL would defeat the objective and purpose of correcting the long term error in the MHWL on the subject site.

We note that the adjoining site to the north has been developed under a previous planning regime and the existing dwelling projects significantly further forward than the proposed FBL. The built form impacts likely from future development on the subject site would therefore be reasonable and consistent with the objectives of Clause 6.2 of DSSLEP 2006.

The subject site and history of development along the immediate foreshore also presents a strong case in favour of Council extending the provisions of 4.6 – *Exceptions to Development Standards* to the variation of foreshore building line controls of Clause 6.2 as doing so would allow more reasonable and merit driven outcomes relating to foreshore development.

SITE & LOCATION

The subject site is known as No. 291 Woollooware Road, Burraneer and is legally defined as Lot 1 in DP1161808. The site is an internal allotment, located on the western side of Woollooware Road extending to the waterfront of Burraneer Bay (Figure 1).

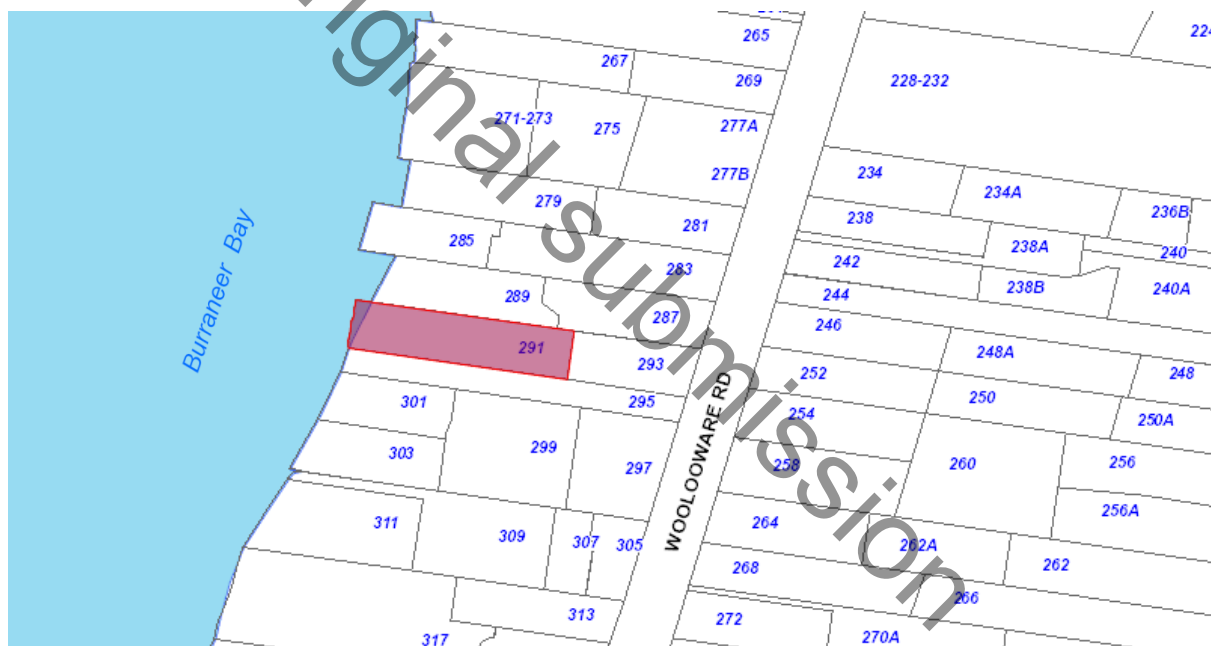


Figure 1: Site Location

The subject site is occupied by an existing dwelling house with a detached garage. A boatshed is located forward of the foreshore building line and landward of the MHWL. A jetty, ramp and pontoon are located forward of the mean high water mark (Figure 2).



Figure 2: Aerial photograph of the site

The lot boundaries and location of the MHW as redefined are indicated in Figure 3.

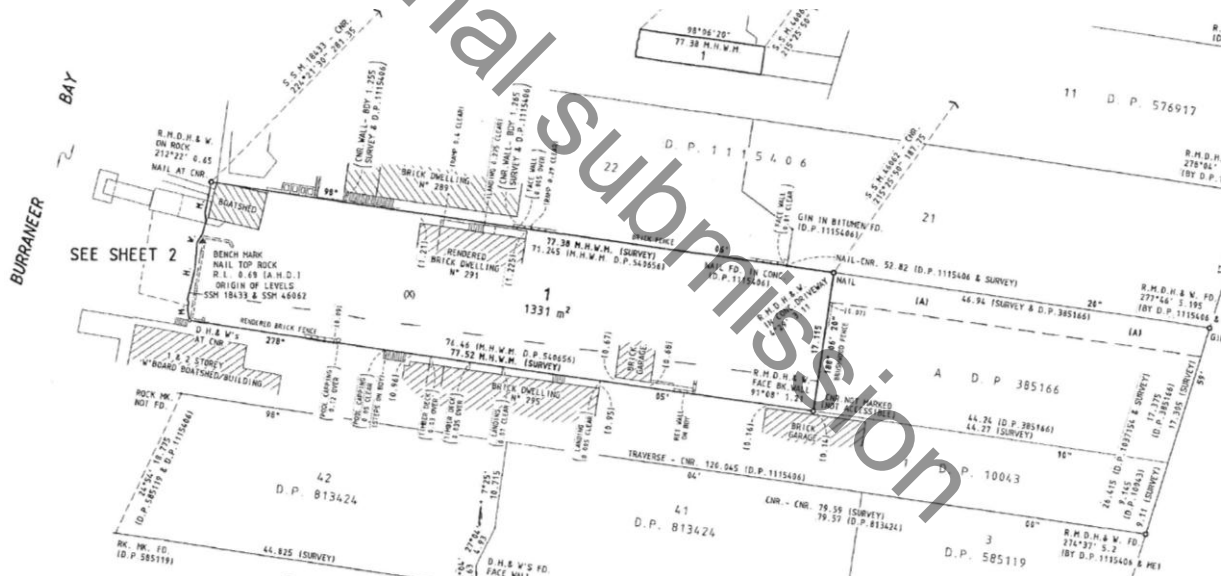


Figure 3: Lot dimensions as per DP1161808

The site contains no significant trees and the existing dwelling is situated at the top of an existing rock formation which adopts a fall towards the waterway.

Development on the surrounding properties comprises a range of multi-level dwellings with associated swimming pools located forward of the FBL. In addition, a number of boatsheds and watercraft facilities are located forward of the mean high water mark.

Development in the immediate area is not defined by a consistent setback to the waterway as No. 289 Woollooware Road and No. 301 Woollooware Road contain dwellings that project significantly further forward (seaward) than the dwelling on the subject site.

BACKGROUND

The subject site is a waterfront property and is burdened by a 20m foreshore building pursuant to SSLEP 2006. The current LEP identifies a 20m foreshore building line, measured from the *deemed mean high water mark* which is defined as follows:

“ **deemed mean high water mark**, in relation to land, means the mean high water mark, or high water mark, as shown on any plan relating to that land that was registered with the Registrar-General on or before 24 April 1980, being a plan that was current at that date.”

Planning Ingenuity notes that there has been significant confusion and debate in relation to *deemed mean high watermarks* on several properties in the Sutherland Shire. Planning Ingenuity has had dealings with a number of properties where the MHWL has been incorrectly defined on plans registered with the Registrar General on or before 24 April 1980. We contend that the subject site is a specific case whereby the *deemed mean high water mark* has been incorrectly defined in the past resulting in an incorrect FBL under SSLEP 2006.

Our contention that the *deemed mean high water mark* for the property is incorrectly defined is based on an application made by our client to The NSW Crown Lands Division seeking a redefinition of the MHWL. In a Report prepared P.J Baker & Associates to be submitted with the application to redefine the MHWL (attached to this submission), it was noted that:

“ the mean high water mark of the site has not altered substantially in a lateral direction since time immemorial. The physical location of the MHWL is bounded by an **unaltered vertical and natural rock face**, and that the dimensions shown on the title diagram are in error.”

The proposed redefinition of the MHWL was accepted by The NSW Crown Lands Division on 4 May 2012 and the correct location of the MHWL is provided on the Plan of Redefinition of Lot 1 in DP1161808 attached to this submission. The Report tendered in support of the redefinition application highlights that the MHWL has not altered in a lateral direction due to the unaltered vertical and natural rock face and notes that the MHWL has been incorrectly defined since 23 October 1906. As such, the *deemed mean high water mark* on the site cannot be relied on to be correct.

It is the intention of the Draft LEP to simplify the complexity of foreshore development by removing reference to a *deemed mean high water mark* and adopting a map identifying a foreshore building line. However, as noted in the *foreshore building line Fact Sheet* forming part of the DSSLEP 2013 exhibition documents, the location of the foreshore building line under DSSLEP 2013 *will be determined by survey using the definition of the foreshore building line under SSLEP 2006*, that is, by reference to the *deemed mean high water mark*.

The Draft LEP relies on an incorrect *deemed mean high water mark* and the FBL should therefore be amended to reflect the correct MHWL as redefined. It is also noted that the foreshore area of the adjoining property to the north (No. 289 Woollooware Road) has been altered in the past to accommodate a dwelling circa 1940 and subsequently a swimming pool circa 1975. The altered foreshore area, and consequent MHWL that has been adopted by Council which does not reflect the original or natural conditions of that site, unreasonably impacts on the foreshore building line of the subject site when strictly applied.

Due to the extent of modifications on the adjoining property it is difficult to accurately identify the original MHWL for the site, however, as noted in the attachment provided by PJ Baker and Associates on 29 April 2013:

“ During extensive investigation of the location of MHW for the preparation of D.P.1161808 (redefinition of the property boundaries of No 291), I formed the opinion that it is highly likely that the MHW continued across Number 289 Woollooware Road South in this position.”

In addition, an educated assumption on the location of the original MHW of the adjoining property can be made on the basis of Council's historical aerial photographs, particularly the 1930 image as indicated in Figure 4:

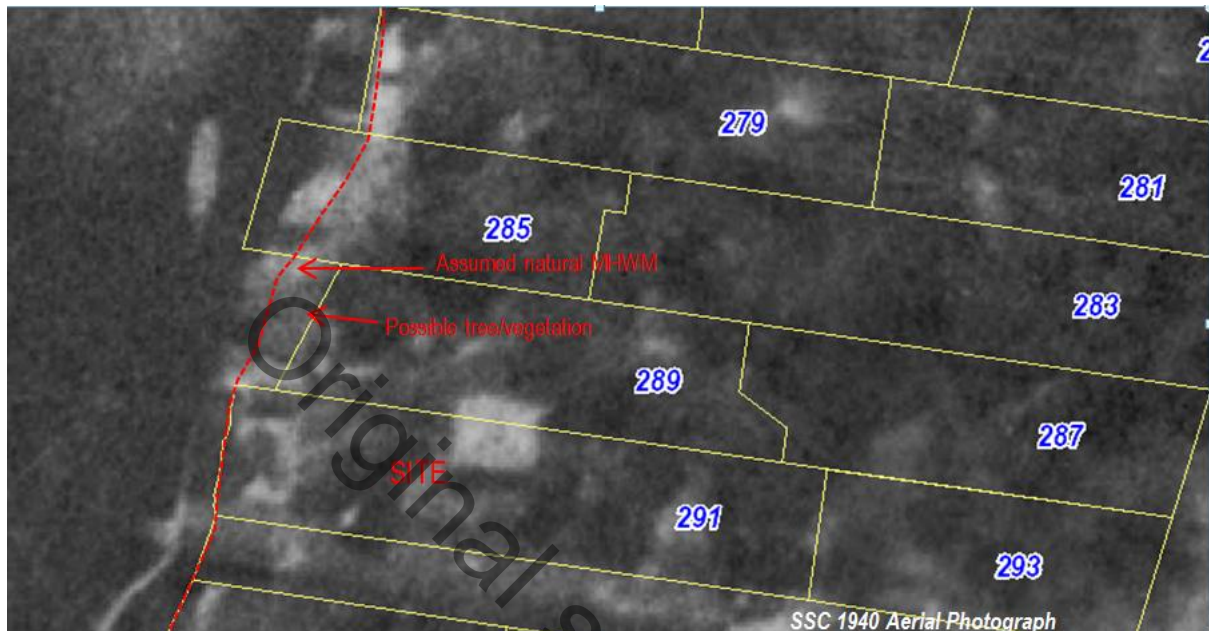


Figure 4: Assumed historic pattern of the MHW

The 1930 aerial photograph on Council's website indicates the location of what appears to be a tree on the foreshore of the adjoining property. This provides further basis to assume that the original foreshore continued from the subject site rather than the currently assumed step in the MHW.

In addition, the photograph in Figure 5 was taken prior to the slab being poured for the existing boatshed on the subject site. The photograph provides a clear indication that the natural rock formation extended northwards at the same level as the rock on the subject site, providing further basis for an educated assumption of the location of the original MHW of the adjoining northern property.

We accept that further survey work may be required in relation to establishing a more accurate location of the original mean high watermark and our client is willing to undertake such works as deemed necessary by Council.

We understand that Council opposes recognition of redefinitions of MHWs when reclamations have progressively occurred, however, the subject site can be clearly distinguished from a redefinition resulting from a reclamation as evidenced in the report prepared by P.J Baker & Associates. The adjoining property, has however, been the subject of substantial alterations of the foreshore area and it would be unreasonable to insist that the alterations of the adjoining foreshore area could affect the location of the foreshore building line of the subject site.

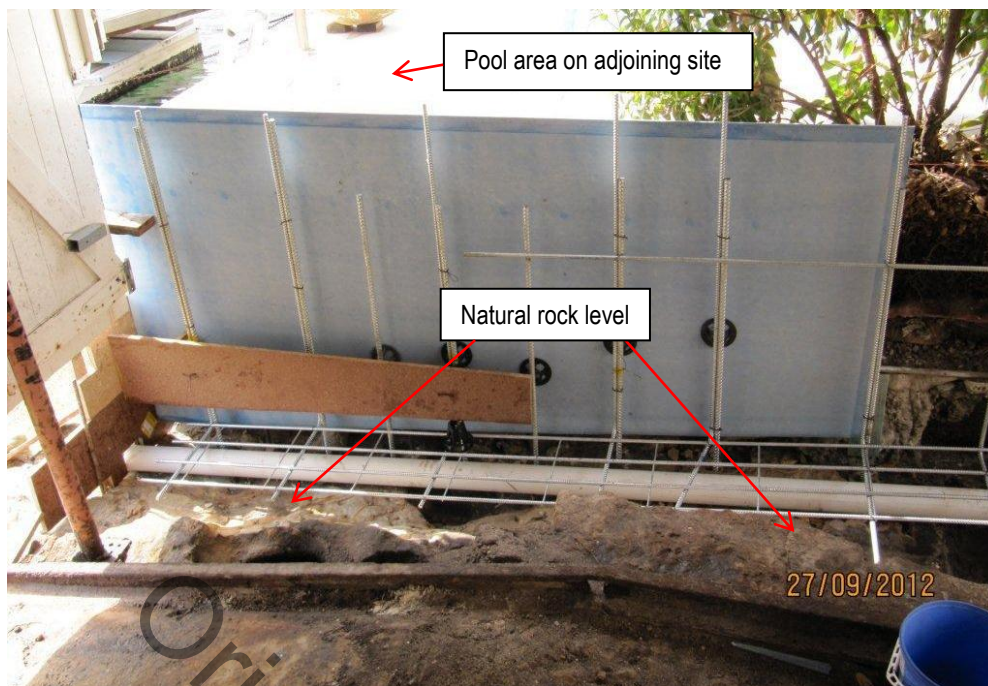


Figure 5: Indication of the original land formation of the adjoining property

THE REQUEST

In light of the above, it is requested that the DSSLEP 2013 Foreshore Building Line maps are amended to reflect a 20m setback from the correct *mean high water mark*. In determining the most appropriate location of the FBL we have employed Council's methodology for measuring the FBL relying on an infinite 20m arc measured from the redefined MHWM and the assumed MHWM of the adjoining northern property as indicated in Figure 6. Figure 7 provides an indication of the FBL under the Draft LEP and the FBL requested on our client's behalf.

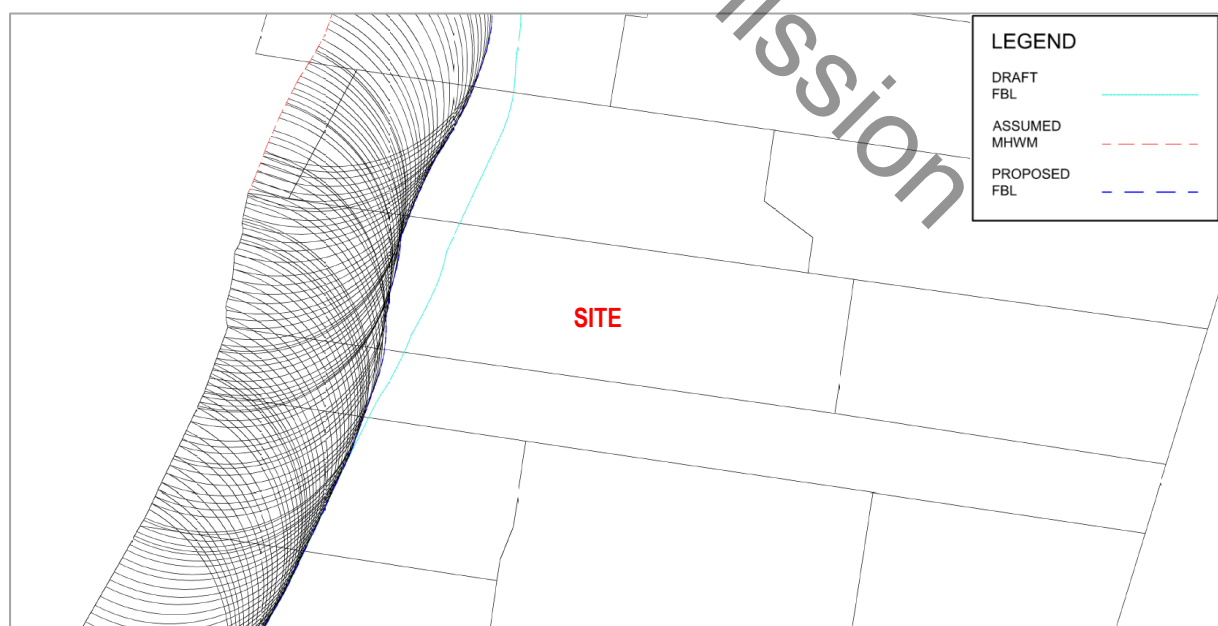


Figure 6: Arc methodology used to inform proposed FBL

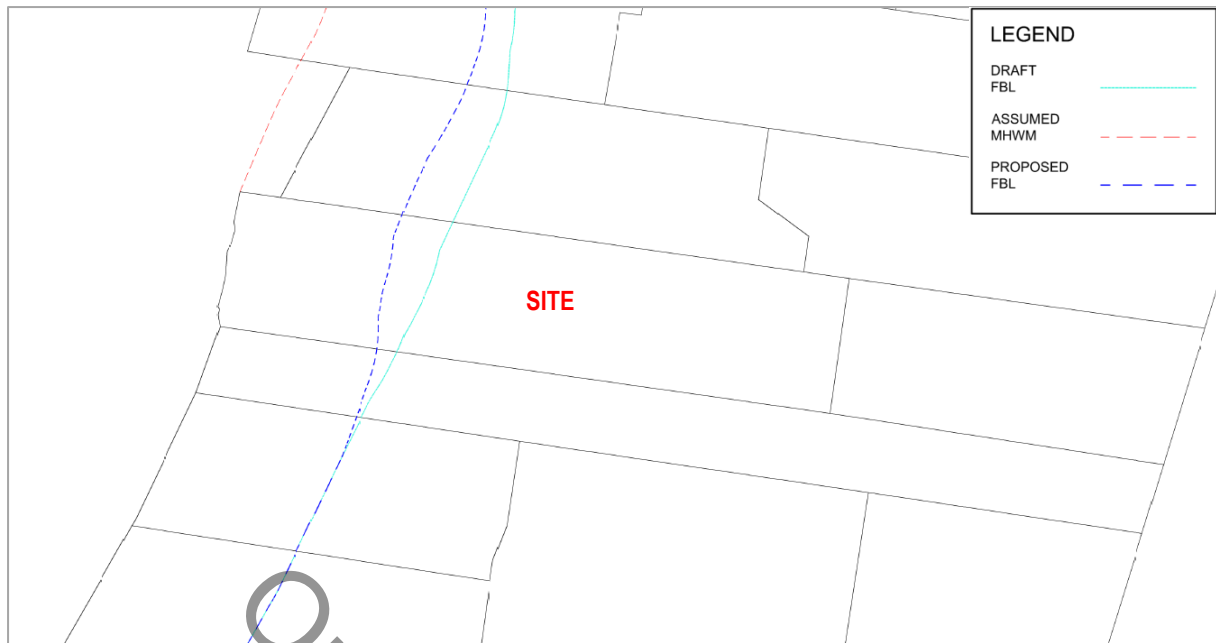


Figure 7: Existing and proposed FBL

If Council does not support the submissions made, and forms the opinion that the FBL is to be determined applying a strict interpretation of the MHWM on the subject site and the adjoining northern property, we request that at the very least, Council incorporate the FBL based on the existing location of the MHWM on the adjoining northern property as indicated in Figure 8.

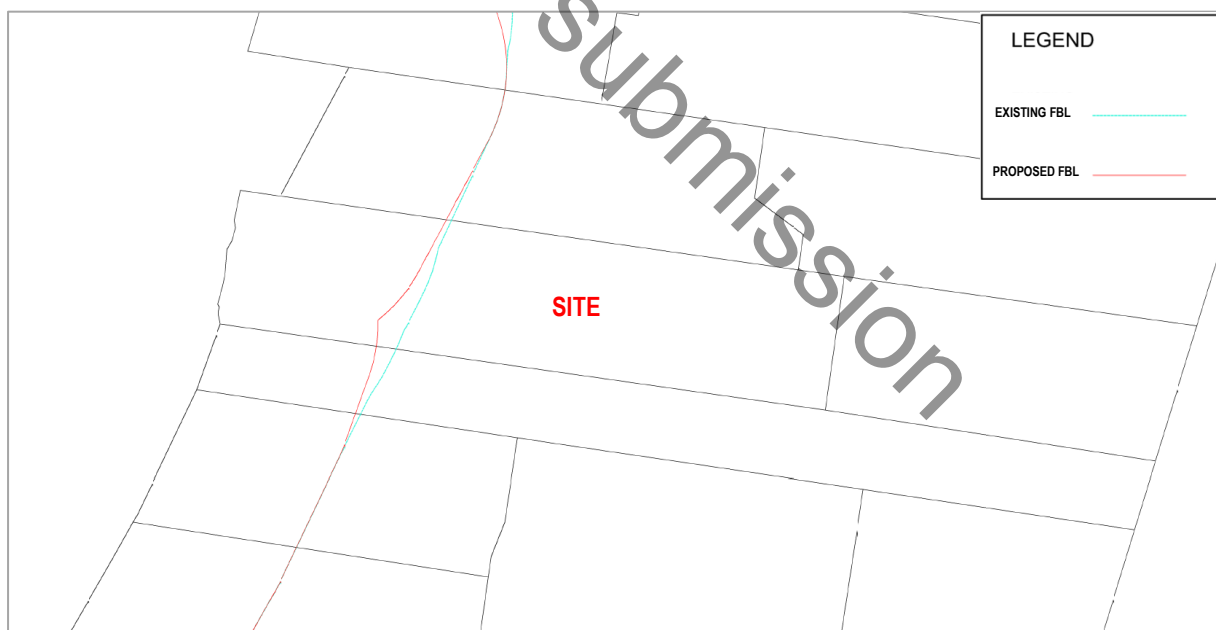


Figure 8: FBL based on strict interpretation of the adjoining MHWM

The request to amend the mean high water mark on the subject site is consistent with Council's extension of the E4 – Environmental Living zone under the Draft LEP 2013 as indicated in Figure 5.

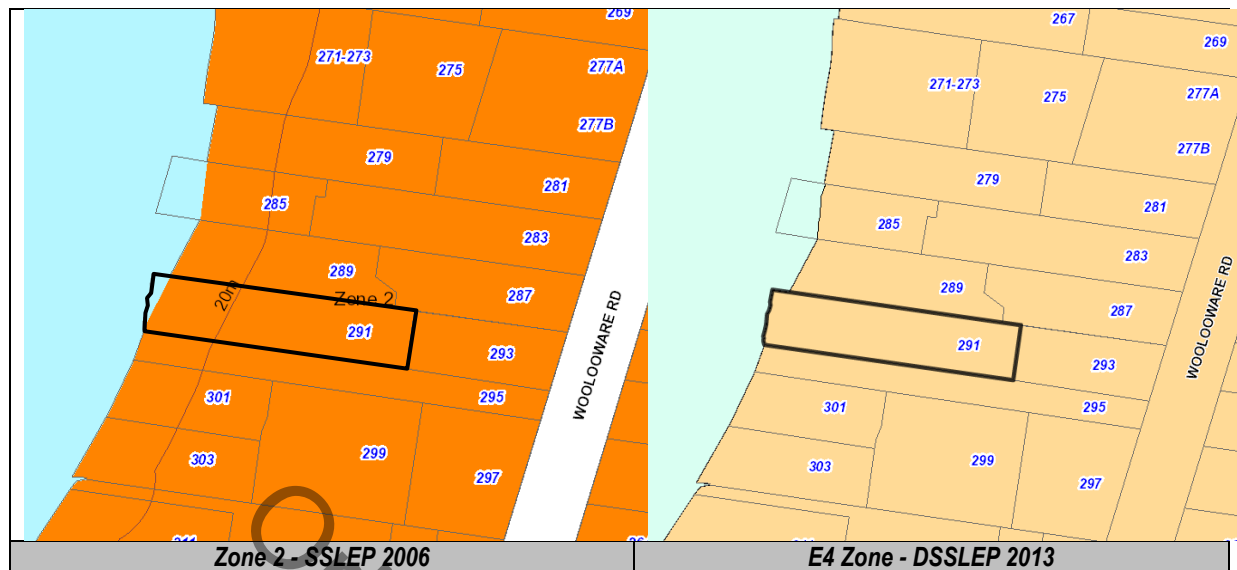


Figure 9: Extension of the residential zone under DSSLEP 2013

We note that the built form impacts arising out of the redefined FBL, in either case will be minimal due to the absence of a clearly defined setback to the waterway and the fact that the adjoining northern property contains a dwelling which projects significantly further forward than any dwelling could on the subject site with the proposed FBL.

In addition, the environmental impacts of modification to the draft FBL will be minimal as the increased building footprint on the site would not affect any significant vegetation and would enable the dwelling to extend over the existing rock formation without any significant disturbance.

Finally, we contend that the subject site represents a typical situation of discontinuity in building setbacks in relation to the foreshore. This situation represents a case in favour of extending the provisions of Clause 4.6 *Exceptions to Development Standards* to Clause 6.2 relating to foreshore building lines. In doing so, Council will provide flexibility in the application of the Clause to ensure that merit decisions inform appropriate development of the foreshore area in response to context so far as development complies with the Clause objectives.

CONCLUSION

We thank you for the opportunity to comment on Council's Draft LEP. For the reasons outlined in this submission, it is our view that the foreshore building line maps of DSSLEP 2013 should be amended to reflect a 20m setback from the redefined MHWM rather than the historically incorrect *deemed mean high water mark* which is used to inform the location of the draft FBL. In addition, due to the history of development on the foreshore area of the adjoining site to the north we believe that a site specific approach should be applied to the consideration of an appropriate FBL on the subject site. If Council does not accept these submissions, we would however expect that at the very least Council incorporate the FBL based on a strict interpretation of the adjoining MHWM.

We note that the effects of the requested FBL, in each case will have no significant built form or environmental impacts and we therefore respectfully request that the FBL be amended on the DSSLEP 2013 FBL maps to reflect the correct MHWM in relation to the subject site and the assumed MHWM of


the adjoining northern property. We trust that this submission is self explanatory, however, should you require any further clarification, please do not hesitate to contact our office.

Yours faithfully,
Planning Ingenuity Pty Ltd



Jeff Mead
DIRECTOR

Original submission



Original submission

ATTACHMENTS

1. DETERMINATION OF MHWM BOUNDARY AND SURVEYOR'S LETTER
2. REDEFINED MHWM ON LOT 1 IN DP1161808
3. LETTER FROM P.J.BAKER & ASSOCIATES

Doc. No: 12/052216

Mr Peter Baker
P.J.Baker & Associates
PO Box 363
Baulkham Hills NSW 2153

Friday, 4 May 2012

Dear Sir

In response to your application to redetermine the position of the mean high water mark boundary of the Burraneer Bay, at Burraneer, the Crown Lands Division has completed an investigation and the redetermination has been approved with the Division having no opposing claim.

To ensure records correlate and inform subsequent users of the plan into the future that the location of water boundary has the approval of the Minister for Lands, at the date of signature, please add the following statement to the "Signatures, Seals and Statements" panel on the left of the plan administration sheet:

"The Minister administering the Crown Lands Act, 1989 in accordance with Part 2, Division 5 of the *Surveying Regulation* 2006 and Section 55N of the *Coastal Protection Act* 1979 approves the determination of the Mean High Water Mark boundary as shown hereon. Department of Lands file 11/13781 on 29/03/2012"

To progress the title amendment action, please lodge the attached endorsed plan administration sheet with the original plan with Land & Property Information Division to enable checking and charting to be undertaken.

Yours sincerely



Peter Ragen
Senior Registered Surveyor
Crown Lands Division
Land & Property Management Authority

NOWRA OFFICE
Level 1
5 O'Keefe Ave
Nowra NSW 2541

PO Box 307
Nowra NSW 2541
Ph 4428 9121
ABN 33 537 762 019 | www.lpma.nsw.gov.au

Report for M.H.W.M. determination approval in accordance with Surveying and Spatial Regulation 2006 Division 5 Clause 48(3)

This report is to be read in conjunction with and accompanied by a plan of survey prepared by this firm and having the PPN of D.P. 1161808.

The purpose of D.P.1161808 is to redefine the boundaries of Lot 1 D.P.540656, in the Parish of Sutherland, County of Cumberland and Local Government Area of Sutherland Shire. D.P.540656 is the current title diagram for the Torrens Title Folio register 1/540656.

The instruction to prepare a plan of redefinition was given by my client, when during the course of carrying out a detail survey of the subject land and the sourcing of available material thereto it became apparent that there were serious discrepancies between the title dimensions and what appears to be available on the ground. (copies of all the evidence obtained during the course of this survey are attached at the rear of this report together with explanations pertaining to each document)

This property is known as Number 291 Woollooware Road South, having access to said road via a Right of Carriageway 3.66 wide created by transfer number F960750 and bounded on the west by the waters of Burraneer Bay.

It is my contention that the position of M.H.W.M. has not altered substantially in a lateral direction since time immemorial. The physical location of MHW M is bounded by an **unaltered vertical and natural rock face**, and that the dimensions shown on the title diagram are in error.

The subject parcel of land was originally included in a grant of One Hundred and Sixty Five acres dated 25th March 1865 to James Wilson. The grant document (65/54) does not contain a description by admeasurement but generally describes the bounds of the parcel by reference to "being bounded on the west by the high water line of Burraneer Bay."

The original Crown Portion survey of this parcel being Number 804-690 (copy attached) is largely illegible and as a consequence of little evidentiary value. Ad Medium Aquae provisions have not and will not apply to this parcel, and the provision of a 100 foot Reserve was cancelled by reference to papers E.B. 03/515 dated 19th December 1906.

Burraneer Bay is a body of water which in this instance forms the western edge of a narrow peninsular of land standing between Burraneer Bay and Gunnamatta Bay on the east, leading from and generally north of Port Hacking.

Burraneer Bay is subject to tidal variation, and the consent Authority is the Land and Property Management Authority.

If accepted, the redefinition of the boundaries will result in an additional 60 square metres (approx) being added to the legal description of the subject parcel.

It is my contention that the **physical location** of the western boundary (i.e. MHW of Burraneer Bay) has not changed and that the title dimensions are in error.

The locality of the subject parcel is located within the Coastal Protection Zone.

This is not a question of Accretion or Erosion and the provisions of Sec 55 of the Coastal Protection Act 1979 do not apply in this instance.

Public access to Burraneer Bay is not affected by this redefinition as it has never been available to this particular parcel.

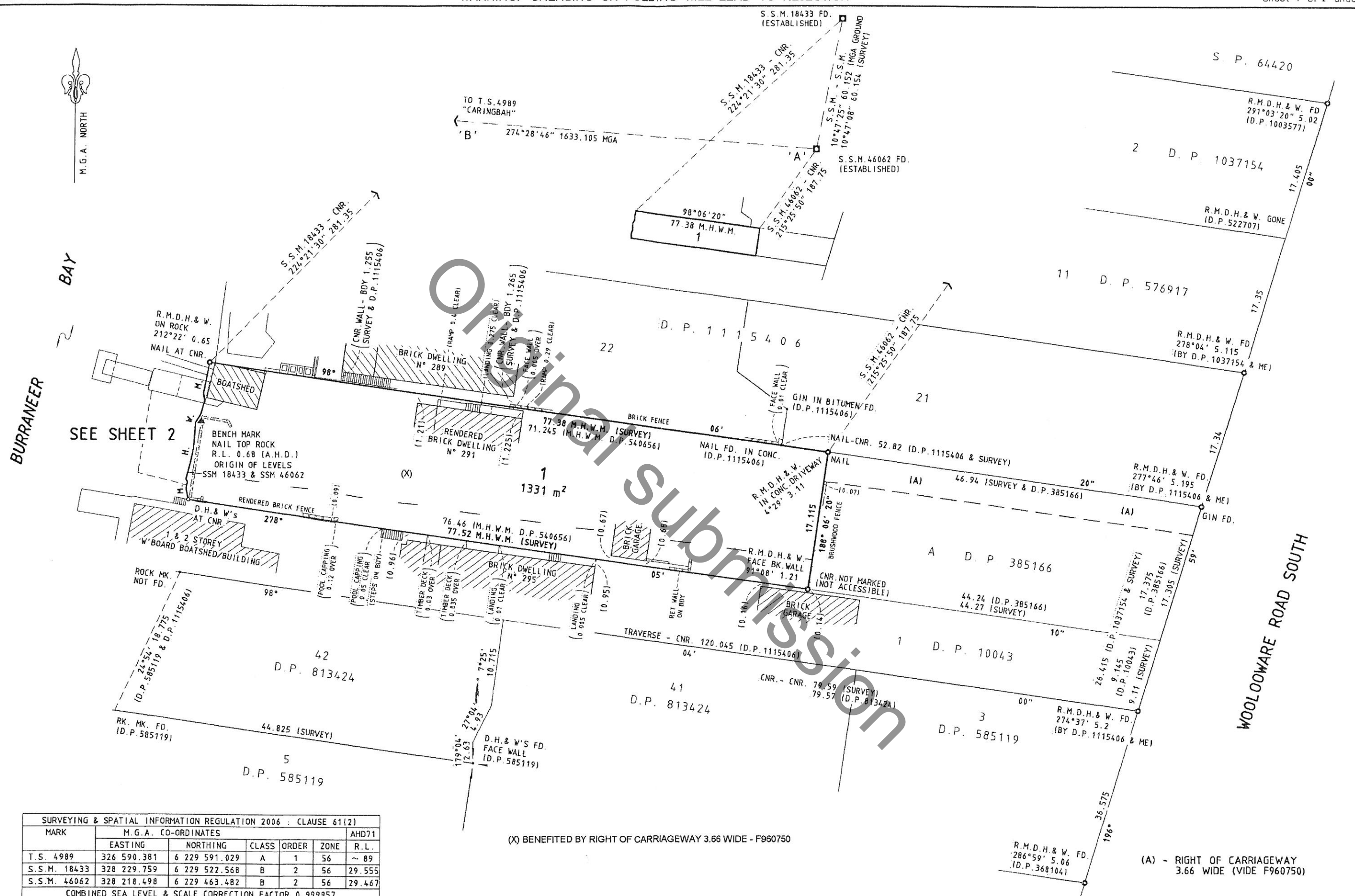
X Title dimensions (vide D.P.540656) for this parcel of land have been derived from a compiled plan of consolidation of Lot B D.P.383201 and Part Lot B D.P.385166 dated 1st May 1960. D.P.385166 has in turn been compiled from information shown in D.P.4871 dated 23rd October 1906. The western boundary (MHW of Burraneer Bay) of the subject parcel (and others) was originally defined by survey in 1906. It is my contention that the position of MHW as defined by measurements shown in D.P. 4871 are in error and the information contained therein has been carried through subsequent plans incorrectly.

There have been numerous recent plans of subdivision prepared in the vicinity of the subject parcel. D.P.1115406 whose southern boundary is coincident with the northern boundary of the subject parcel has defined the western limit of the land by deduction, (i.e. he has compiled the dimension) and in my opinion has merely carried the dimension error inherent in previous plans through to his more recent survey.

There are numerous modern plans of survey existing having their eastern boundary bounded by Woollooware Road South road reserve. The fixation of this road reserve boundary and the direction of the northern and southern boundaries of the subject parcel is easily accomplished by carrying out standard survey procedures within the constraints of the Surveying and Spatial Information Regulation 2006.

The fixation of M.H.W.M. and hence the distance from the westernmost limit of the land and the Woollooware Road South road reserve was obtained by use of the following:

- 1) Information was obtained from Manly Hydraulics Laboratory (MHL) on the 12th November 2010 as to their best current Australian Height Datum (AHD) value for Mean High Water Level and was computed to be + 0.565 m A.H.D.
- 2) A closed differential level run was carried out from the state survey grid using two State Survey Marks, namely SSM 46062 and SSM 18433 with values obtained from the SCIMS website (see attached values) and a reduced level of +0.565 m A.H.D. was transferred down to the vertical rock face at waters edge.
- 3) Tide charts were consulted for the month of November 2010, observations were made and the physical location of High Tide was marked by placement of nails at various locations along the subject boundary as per this method.





P.J.BAKER & ASSOCIATES
LAND & ENGINEERING SURVEYORS

ABN 56 279 095 950

PETER J. BAKER

B. Surv., M.I.S. (Aust.)
REGISTERED SURVEYOR

ALL CORRESPONDENCE TO:

**PO Box 363,
Baulkham Hills NSW 2153**

Unit 15 / 9 Seven Hills Rd,
Baulkham Hills NSW 2153
Telephone (02) 9688 6024
Facsimile: (02) 9688 6025

Mr Bill Zervos
291 Woollooware Road South
Burraneer
NSW 2230

29th April 2013

Dear Sir,

During extensive investigation of the location of MHWM for the preparation of D.P.1161808 (redefinition of the property boundaries of No 291), I formed the opinion that it is highly likely that the MHWM continued across Number 289 Woollooware Road South in this position.

It is not possible to locate the former position of MHWM due to extensive construction upon this property in recent years.

Yours Faithfully,
Peter Baker



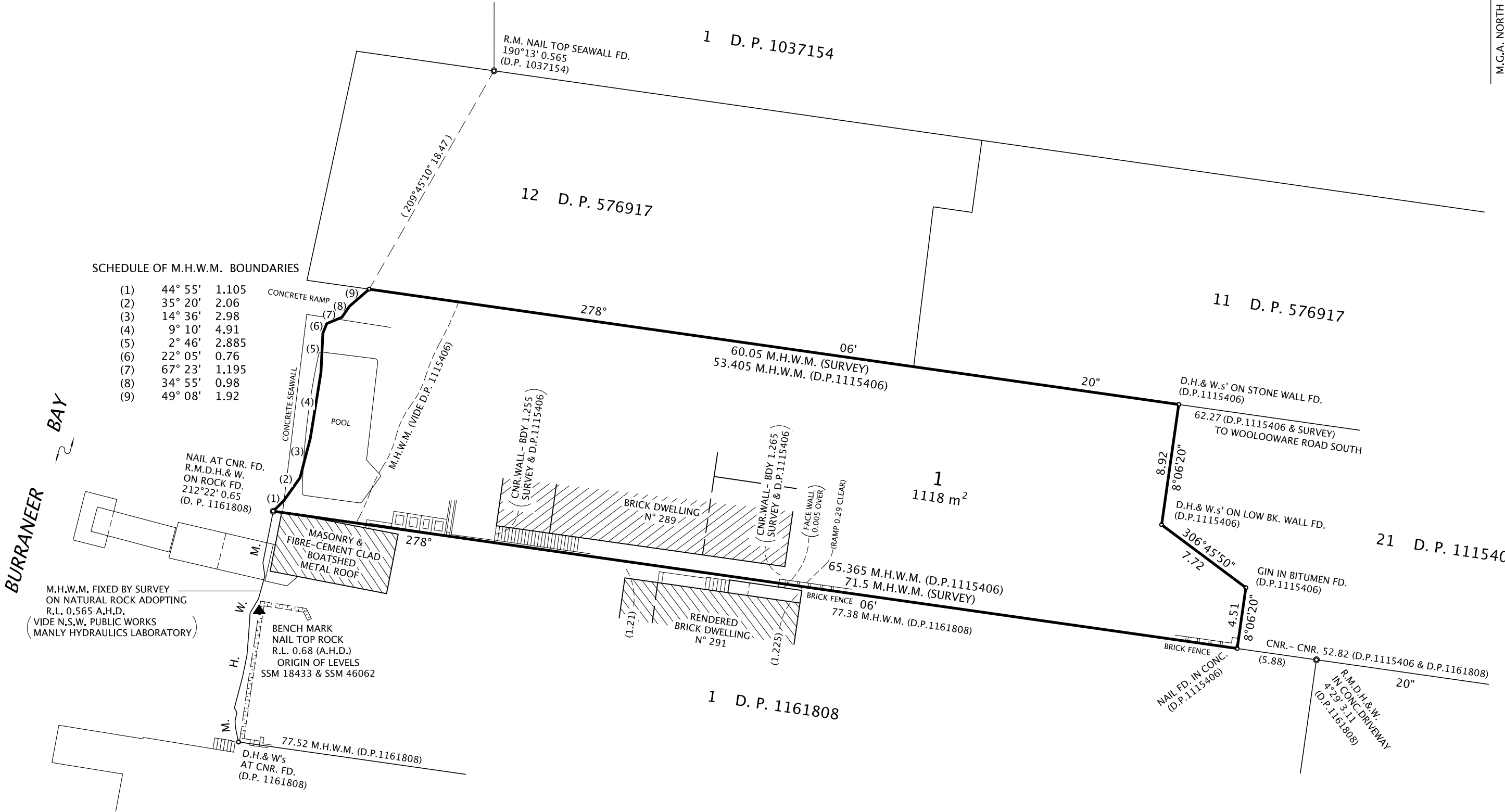
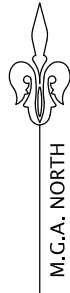
ATTACHMENTS B

PLAN OF REDEFINITION PREPARED BY P.J.BAKER AND ASSOCIATES



(1)	44° 55'	1.105
(2)	35° 20'	2.06
(3)	14° 36'	2.98
(4)	9° 10'	4.91
(5)	2° 46'	2.885
(6)	22° 05'	0.76
(7)	67° 23'	1.195
(8)	34° 55'	0.98
(9)	49° 08'	1.92

Lengths are in metres. Reduction Ratio 1 : 200

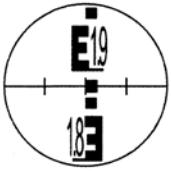


Surveyor: PETER JOHN BAKER	PLAN OF REDEFINITION OF LOT 22 IN D.P. 1115406	LGA: SUTHERLAND SHIRE	Registered	
Date of Survey: 2 SEPTEMBER 2013		Locality: BURRANEER		
Surveyor's Ref: 139-DP		Subdivision No:		
		Lengths are in metres. Reduction Ratio 1 : 200		



ATTACHMENTS C

LETTER FROM P.J.BAKER & ASSOCIATES



P.J.BAKER & ASSOCIATES
LAND & ENGINEERING SURVEYORS
ABN 56 279 095 950

PETER J. BAKER
B. Surv., M.I.S. (Aust.)
REGISTERED SURVEYOR

ALL CORRESPONDENCE TO:
PO Box 363,
Baulkham Hills NSW 2153

Unit 15 / 9 Seven Hills Rd,
Baulkham Hills NSW 2153
Telephone(02) 9688 6024
Facsimile: (02) 9688 6025

The General Manager
Sutherland Shire Council
4 – 20 Eton Street
Sutherland , N.S.W. 2232

Dear Sir,

Please be advised that this firm is currently in the process of preparing a plan of survey to redefine the boundaries of Lot 22 D.P.1115406 (know as Number 289 Woollooware Road South, Burraneer) in accordance with the provisions of the Surveying and Spatial Information Regulation 2012.

Your attention is drawn to the redefinition of the location of Mean High Water Mark, the position of which will serve to move the location thereof westerly by 6.135 metres on the southern boundary and 6.645 on the northern boundary. The position of MHWM as shown on D.P.1115406 is shown as a broken line on the accompanying sketch. The position of MHWM shown on the accompanying sketch as a series of short lines 1-9,(being that location we have determined by observation, measurement and information supplied by the Manly Hydraulics Laboratory) is that which we believe will be accepted by the The Minister Administering the Crown Lands Act 1989 and will allow the plan to proceed to registration.

It is my contention that the **physical location** of the western boundary (i.e. MHWM of Burraneer Bay) has not changed substantially in a lateral direction since time immemorial and that the title dimensions are in error.

Current title dimensions (vide D.P. 1115406) for this parcel of land have been mathematically derived (not by measurement) from a plan of subdivision of Lot 1 & 2 D.P.408483 dated 14th August 1957. D.P.408483 has in turn been derived from information shown in D.P.4871 dated 23rd October 1906. The western boundary (MHWM Burraneer Bay) of the subject parcel (and others) was originally defined by survey in 1906. It is my contention that the position of MHWM as defined by measurements shown in D.P. 4871 are in error and the information contained therein has been carried through subsequent plans incorrectly.

The location of MHWM on the southern boundary of our plan is co-incident with that point shown on D.P.1161808, being on the northern boundary of the Lot immediately south of the subject property. This property (Number 291) was subject to a recent exhaustive survey and redetermination of MHWM which was accepted by the Minister and the titles office and duly placed on the public record (9/7/2012) and issue of a new title based on what is believed to be the correct location and dimensions.

We are confident that our plan once completed will proceed to registration without alteration.



ATTACHMENTS D

LETTER OF OWNER'S ENDORSEMENT 289 WOOLLOOWARE ROAD

16 September 2013

General Manager

Sutherland Shire Council

Locked Bag 17

SUTHERLAND NSW 1499

Attention : Environmental Planning Unit,

Re : Redefinition – 289 Woollooware Rd Burraneer

This letter is to confirm that Bill Zervos of 291 Woollooware Rd Burraneer has our permission to engage a Land Surveyor (P . J. Baker and Associates) to prepare a plan seeking a redefinition of the M.H.W.M at the above address . The plan once completed will be lodged to the NSW Crown Lands Division for approval of the redetermination of the mean high water mark.

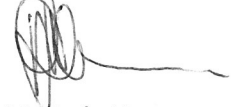
Signed



Greg Henson

Owner

Signed



Melinda Henson

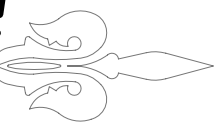
Owner



ATTACHMENTS E

SURVEY WITH PROPOSED FBL

M.G.A. NORTH



SHEET 2 ADJOINS



SCHEDULE OF M.H.W.M. BOUNDARIES			
(1)	348° 27'	1.14	
(2)	357° 15'	0.445	
(3)	12° 47'	0.615	
(4)	332° 07'	0.40	
(5)	14° 43'	2.385	
(6)	11° 38'	1.595	
(7)	4° 25'	1.625	
(8)	3° 46'	1.48	
(9)	30° 47'	1.22	
(10)	15° 26'	1.73	
(11)	351° 34'	0.975	
(12)	11° 22'	3.865	

(A) - RIGHT OF CARRIAGEWAY 3.66 WIDE
(WIDE F960750)

PROJECT:
PLAN SHOWING LEVELS & DETAIL OVER AND NEAR
LOT 1 D.P. 540656
AT N° 291 WOOLLOWARE ROAD, BURRANEER

PRINCIPAL: MR. BILL ZERVOS
SCALE: 1:100
L.C.A. SUTHERLAND
DATE: 9 NOVEMBER 2010
DRAWN: M.K.
CHECKED: P.B.

P. J. BAKER & ASSOCIATES
LAND & ENGINEERING SURVEYORS
ALL MAIL TO P.O. BOX 363 BAUKHAM HILLS 2153
TELEPHONE: (02) 9688 6024 FAX: (02) 9688 6025

DWG. No. 1
SHEET No. 1
OF 2 SHEETS
OUR REF. 111110