



Report to General Manager

Attachments:
Nil

SUBJECT: 101-111 Willoughby Road, Crows Nest – Release of Easements within Lot 20 Deposited Plan 1208836 (Previously known as part Zig Zag Lane)

AUTHOR: Risha Joseph, Property Officer

ENDORSED BY: Duncan Mitchell, Director Engineering and Property Services

EXECUTIVE SUMMARY:

The report relates to the release of easements within Lot 20 in Deposited Plan 1208836 (previously known as part Zig Zag Lane). Following the approval of a Planning Proposal and Voluntary Planning Agreement lodged by Coles Group Property Development Ltd for 101-111 Willoughby Road, Crows Nest in 2012, Council approved both the closure of Zig Zag Lane and its subsequent sale to Coles Group Property Development Ltd.

Voluntary Planning Agreement AK661081F was registered on 16 August 2016 against the Title of the land and the sale of Zig Zag Lane to Coles Group Property Development Ltd settled on 24 November 2016.

As the Voluntary Planning Agreement required Coles to substantially redevelop Zig Zag Lane, it is unlikely that the laneway could accommodate the easements which Council created upon the closure of Zig Zag Lane within Deposited Plan 20/1208836.

It is therefore necessary to release these easements against the Title of the land and create new easements upon registration of the Plan of Subdivision and Consolidation as approved under Development Application 126/18.

FINANCIAL IMPLICATIONS:

Nil in relation to this report.

RECOMMENDATION:

- 1. THAT** Council grant consent to release the existing easements within Lot 20 Deposited Plan 1208836.
 - 2. THAT** all easements cited in Figure 7 be created and registered against the Title of the Land.
 - 3. THAT** Council hereby authorises its Official Seal to be affixed to the Plan of Subdivision and Consolidation, as well as all other legal instruments necessary to effect the registration of the easements.
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LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction: 2. Our Built Infrastructure

Outcome: 2.1 Infrastructure and assets meet community needs

BACKGROUND

No. 101-111 Willoughby Road, Crows Nest was purchased by the Coles Group Property Development Ltd (Coles) in 2011. In 2012 Coles approached Council with a concept proposal which included a draft Planning Proposal compiled by City Plan Services, and a draft Voluntary Planning Agreement (VPA) compiled by Allens & Linklaters on behalf of themselves. The proposal demonstrated their intentions in relation to the proposed re-development of 101-111 Willoughby Road, Crows Nest, which included the purchase and use of a portion of the adjoining Zig Zag Lane.

The Voluntary Planning Agreement proposed, in part, that:

1. Coles Group Property Development Ltd (Coles) construct a publicly accessible plaza of approximately 415m² fronting Willoughby Road.
2. Coles redevelop the adjoining portion of Zig Zag Lane to include a dedicated public walkway separated from the roadway.
3. Coles construct and operate a public carpark for a minimum of 140 cars with 2 hours free parking.
4. Coles make a monetary contribution to Council.
5. Coles purchase the adjoining portion of Zig Zag Lane.

On 19 August 2013, Council considered its position on the sale and closure of Zig Zag Lane and resolved to commence the road closure process, and forward the Planning Proposal to the Minister to receive gateway determination.

On 2 December 2013, Council resolved:

1. THAT Council forward the Planning Proposal to the Minister for Planning in order to receive a Gateway Determination in accordance with the Section 56 (now Section 3.34) of the Environmental Planning and Assessment Act 1979.

2. THAT the draft Voluntary Planning Agreement between North Sydney Council and Coles Group Property Development Ltd be exhibited concurrently with the Planning Proposal conditional on it receiving Gateway Determination.

On 9 December 2013, Council considered a further report on the terms of the proposed closure and sale of the portion of Zig Zag Lane to 101-111 Willoughby Road and resolved in part:

1. THAT Council formalise the closure and sale of a portion of Zig Zag Lane to the owners of 101-111 Willoughby Road, Crows Nest.

2. THAT the new owner relocates all the existing services located within Zig Zag Lane which would be compromised by the proposed development.

3. THAT all Positive Covenants and easements cited in Schedule 1 of the Draft VPA be registered against the title of the land.

4. THAT an easement in gross be created in favour of Council permitting public access to the Open Space Plaza Area.

5. THAT all costs associated with the closure and sale of Zig Zag Lane, including the creation and registration of Positive Covenants and easements that form part of the road to be closed, the Public Car Park and Open Plaza area, be borne by the new owners.

6. THAT delegated authority be granted to the General Manager to finalise the terms and conditions of the road closure and sale to the adjoining owner.

7. THAT Council hereby authorises its Official Seal to be affixed to the all legal instruments necessary to effect the road closure and sale under the signature of the Mayor and the General Manager.

CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

The sustainability implications were considered and reported on during the initiation phase of this project.

DETAIL

Road Closure Plan 20/1208836

Lot 20 in Deposited Plan 1208836 (Refer to Figure 2), relating to the closure of Zig Zag Lane was registered on 18 June 2015 and its closure was constituted by publication in Government Gazette No. 57 dated 10 July 2015.

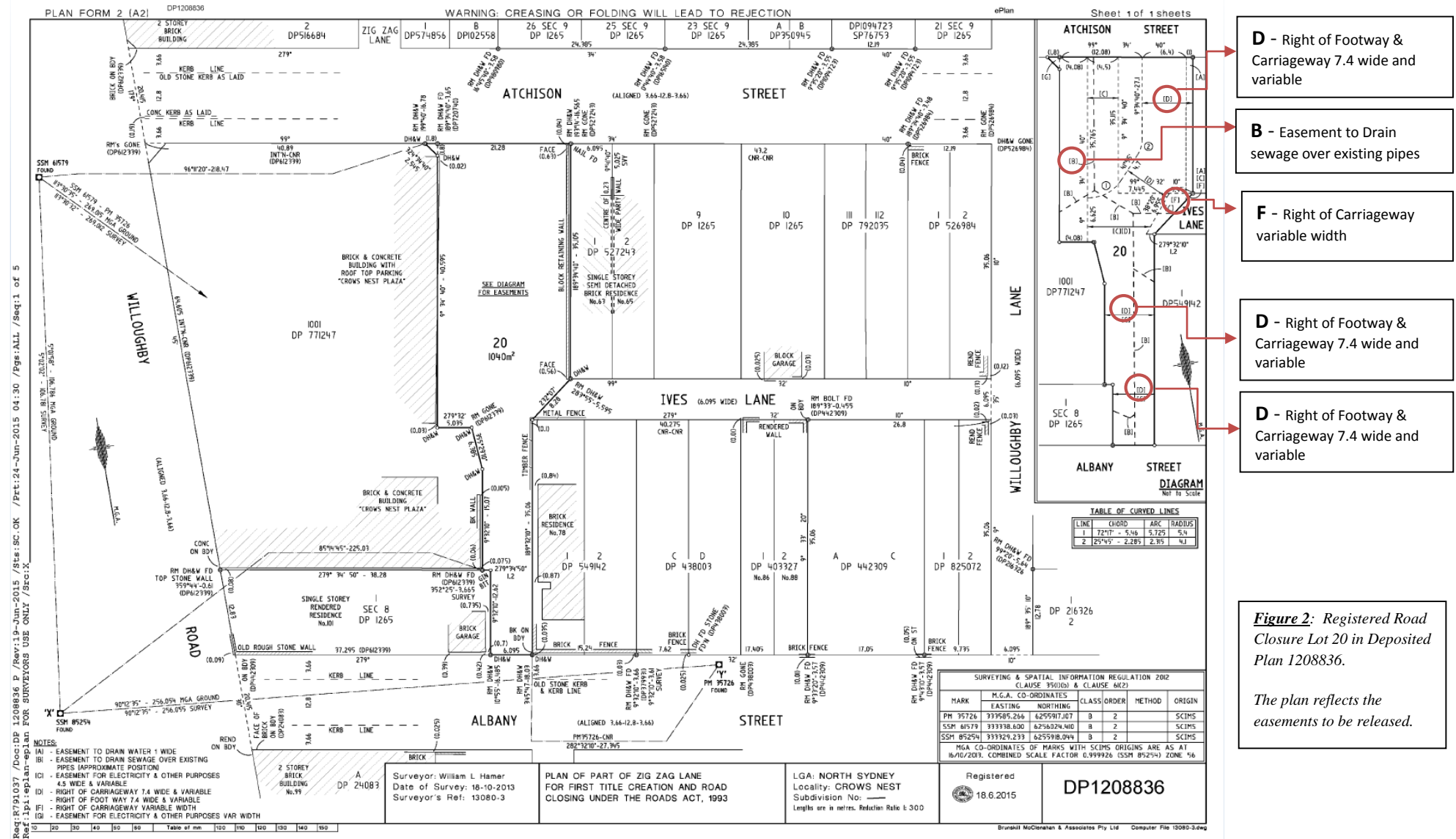
The closure of this portion of Zig Zag Lane was subject to numerous easements. The easements are outlined in Figure 1, below.

No. of the Item shown in the intention panel on the Plan	Identity of easement, profit à prendre, restriction on the use of land or positive covenant to be created and referred to in the Plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement to Drain Water 1 wide [A]	20	North Sydney Council
2	Easement to Drain sewage over existing pipes [B]	20	Sydney Water Corporation Limited ABN 49 776 225 038
3	Easement for Electricity and Other Purposes 4.5 wide and variable [C]	20	Ausgrid ABN 67 505 337 385
4	Right of Carriageway 7.4 wide and variable [D]	20	North Sydney Council
5	Right of Footway 7.4 wide and variable [D]	20	North Sydney Council
6	Right of Carriageway variable width [F]	20	North Sydney Council
7	Easement for Electricity and other Purposes variable width [G]	20	Ausgrid ABN 67 505 337 385

Figure 1: Existing Section 88B Instrument registered against DP 20/1208836

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(5)



D - Right of Footway & Carriageway 7.4 wide and variable

B - Easement to Drain sewage over existing pipes

F - Right of Carriageway variable width

D - Right of Footway & Carriageway 7.4 wide and variable

D - Right of Footway & Carriageway 7.4 wide and variable

Figure 2: Registered Road Closure Lot 20 in Deposited Plan 1208836.

 The plan reflects the easements to be released.

Registration of Voluntary Planning Agreement and Sale of Zig Zag Lane

Voluntary Planning Agreement AK661081F was registered on 16 August 2016 against the Title of the land and the sale of Zig Zag Lane to Coles Group Property Development Ltd settled on 24 November 2016.

Development Applications

On 8 June 2016, the then East Region Joint Regional Planning Panel as consent authority approved DA No. 327/15 to construct a 4-6 storey mixed use building, including a supermarket, public plaza and public carpark at 101-111 Willoughby Road, and a portion of Zig Zag Lane, Crows Nest, subject to conditions. In part, Conditions G22 & G23 relating to the creation of Easements and Positive Covenants were to be registered against the title of the land before the issue of an Occupation Certificate.

On 25 May 2018, Council determined DA 126/18 which proposed a subdivision of approved mixed use development into 2 x Torrens Title Stratum lots on the Land described as 101-111 Willoughby Rd, Crows Nest under delegated authority by granting consent subject to the following conditions relating to the easements to be created as approved under Section G22 and 23 of DA 327/15.

Condition J7(b) of DA 126/18 provides the following in part:

“J7 - A Section 88E Instrument pursuant to the Conveyancing Act 1919 in registrable form and one (1) copy are to be submitted with the application for a subdivision Certificate. The final Plan of Subdivision and Section 88E instrument are to provide for:

(b) As referred to in the Planning Agreement in association with Development Consent No. 327/15 and registered on title as AK661081F, and as indicated in Schedules 1,2,3,4 and 5 of this document.”

Plan of Subdivision and Consolidation

A new Plan of Subdivision and Consolidation is to be lodged at the offices of the Land Registry Services for registration. This plan will comprise the easements outlined in the Voluntary Planning Agreement AK661081F and will also fulfill conditions G22 and 23 of the Development Consent relating to Development Application 327/15 and Development Consent J7 of Development Application 126/18.

Purpose of this Report

The purpose of this report is to obtain approval following a request from attorneys Colin, Biggers & Paisley representing Coles, to release some of the existing easements within Lot 20 in Deposited Plan 1208836 (Refer to Figure 2) to enable the subdivision and consolidation approved under Development Application 126/18 to proceed. Only Council has the authority to release, vary or modify these easements.

Easements to be released and creation of new easements as approved under Development Application 126/18

Tabled below in Figure 3 are the easements to be released. Refer to the illustration in Figure 2.

Figure 3 also identifies the new easements which are to be created to replace the easements that are being released.

Figure 4 illustrates the new easements which are to be created in accordance with DA 126/18.

Easements to be released and the creation of new easements

Easements to be released (Refer to Figure 2)				Easements to be created (Refer to Figure 4)	
No. of the Item shown in the intention panel on the Plan	Identity of easement or profit à prendre, restriction on the use of land or positive covenant to be created and referred to in the Plan	Existing Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities	Easements to be created and/or released	Comments
1	Easement to Drain sewage over existing pipes [B]	20	Sydney Water Corporation Limited ABN 49 776 225 038	To be released and not be re-created	Refer to Figure 8 - Letter from Sydney Water consenting to the release of the easement
2	Right of Carriageway 7.4 wide and variable [D]	20	North Sydney Council	To be created as (A) as per Figure 4	Refer to Figure 7 for details relating to all the new easements to be created
3	Right of Footway 7.4 wide and variable [D]	20	North Sydney Council	To be created as (H) as per Figure 4	Refer to Figure 7 for details relating to all the new easements to be created
4	Right of Carriageway variable width [F]	20	North Sydney Council	To be created as (I) as per Figure 4	Refer to Figure 7 for details relating to all the new easements to be created

Figure 3: Release of Existing Easements

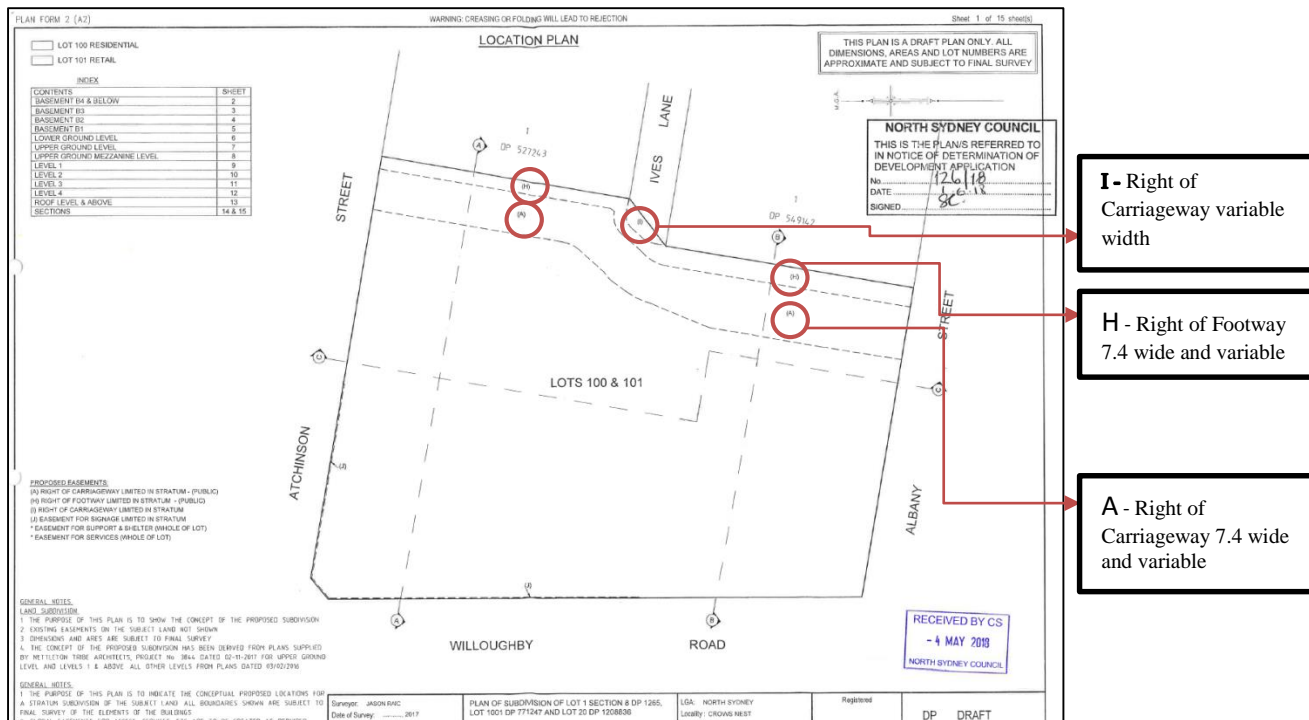


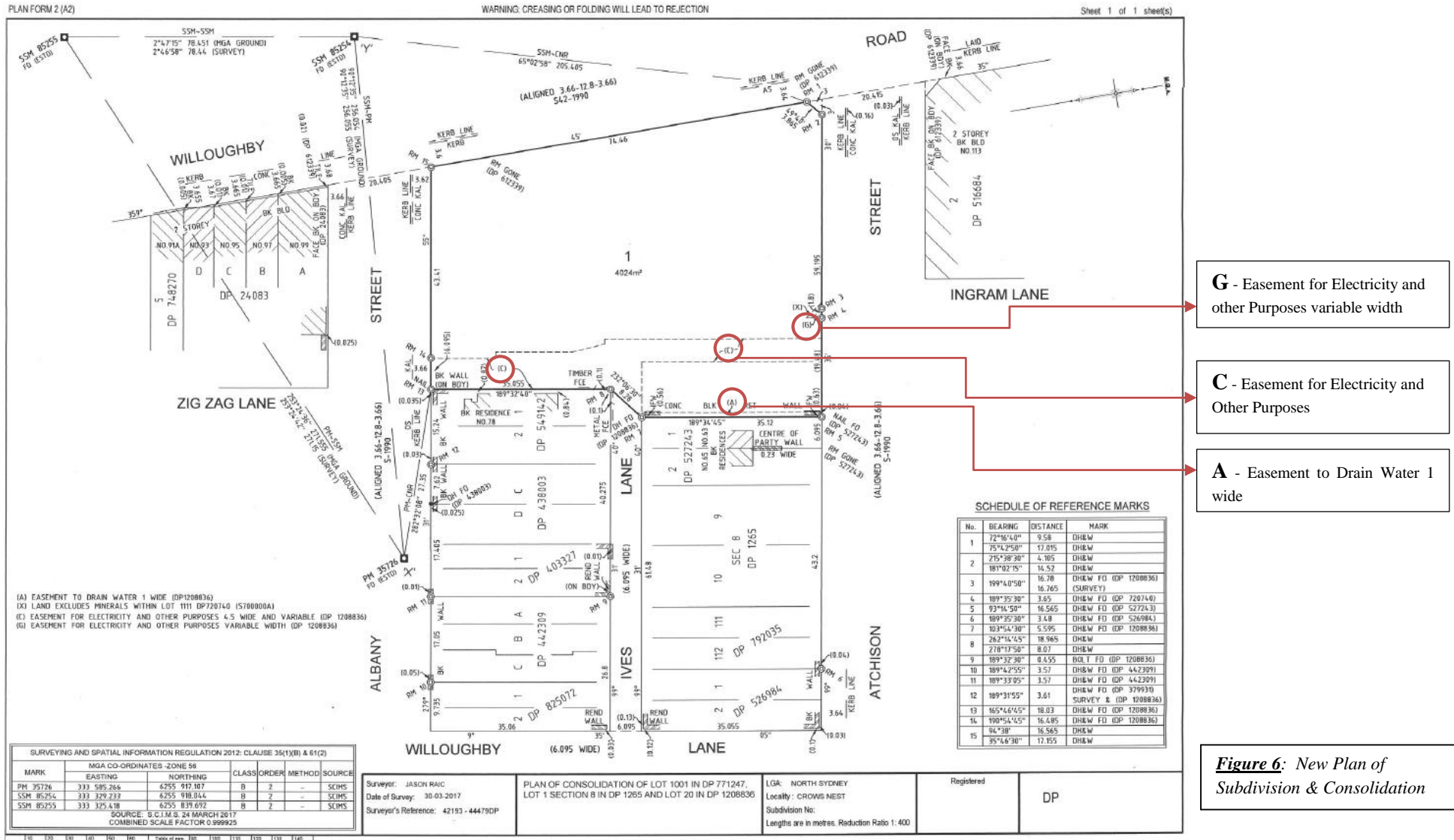
Figure 4: New Easements approved by Planning – North Sydney Council

Easements which are to remain on Title

The following existing easements, (extracted from Figure 1), will remain on Title and does not need to be re-created. This is illustrated on **Figure 6**.

No. of the Item shown in the intention panel on the Plan	Identity of easement, profit à prendre, restriction on the use of land or positive covenant to be created and referred to in the Plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Easement to Drain Water 1 wide [A]	20	North Sydney Council
3	Easement for Electricity and Other Purposes 4.5 wide and variable [C]	20	Ausgrid ABN 67 505 337 385
7	Easement for Electricity and other Purposes variable width [G]	20	Ausgrid ABN 67 505 337 385

Figure 5: Existing Easements which will not be released and will remain on Title.



G - Easement for Electricity and other Purposes variable width

C - Easement for Electricity and Other Purposes

A - Easement to Drain Water 1 wide

Figure 6: New Plan of Subdivision & Consolidation

The following easements will form part of the new Section 88B instrument which will be registered against the new Plan of Subdivision and Consolidation on the Title of the land. The area coloured **GREY** are the easements to be created following its release from Deposited Plan 20/1208836.

No. of the Item shown in the intention panel on the Plan	Identity of easement, profit a prendre, restriction on the use of land or positive covenant to be created and referred to in the Plan	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Right of Carriageway Limited in Stratum (A)	101	North Sydney Council
2	Right of Carriageway Limited in Stratum (B)	101	100
3	Easement to Use Fire Stairs	100	101
4	Easement to Use Lift Limited in Stratum (D)	100	101
5	Right of Footway Limited in Stratum (E)	101	100
6	Easement for Public Access	101	North Sydney Council
7	Covenant for Public Open Space	101	North Sydney Council
8	Right of Footway Limited in Stratum (H)	101	North Sydney Council
9	Right of Carriageway Limited in Stratum (I)	101	North Sydney Council
10	Easement for Signage Limited in Stratum (J)	101	100
11	Easement for Loading Dock Limited in Stratum (K)	101	100
12	Easement for Support and Shelter (Whole of the Lot)	101 100	100 101
13	Easement for Services (Whole of the Lot)	101 100	100 101
14	Covenant for Public Access to Car Parking (L)	101	North Sydney Council
15	Restriction on the Use of Land	TBA	North Sydney Council
16	Positive Covenant	TBA	North Sydney Council

Figure 7: New easements to be created in accordance with the Voluntary Planning Agreement AK661081F

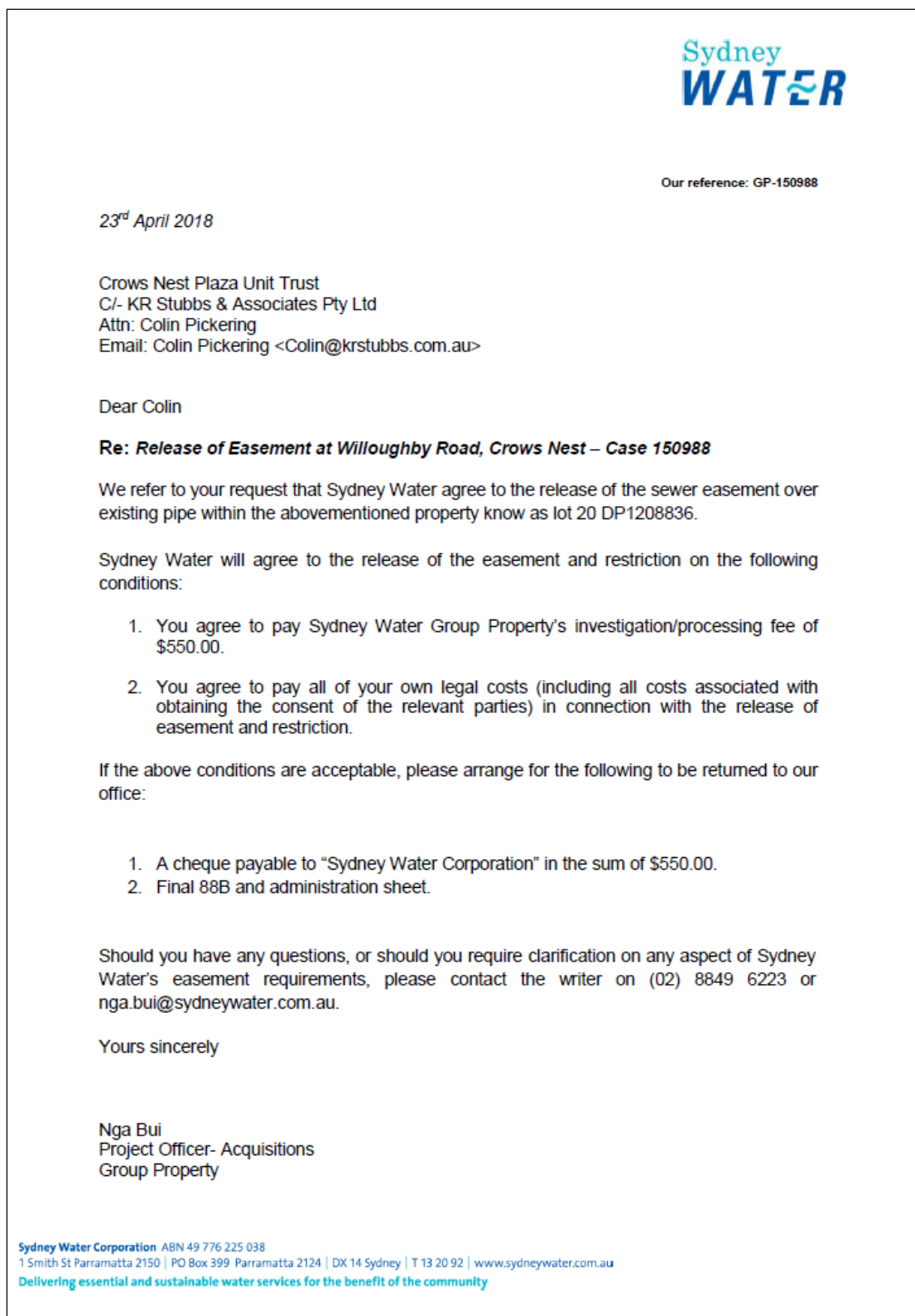


Figure 8: Confirmation from Sydney Water to the release the "Easement to Drain sewage over existing pipes [B]" as outlined in Figure 3.

Conclusion

It is important to note that part of the easements is being released as the Voluntary Planning Agreement requires Coles to substantially redevelop the then Zig Zag Lane, and the laneway, in its current form is unlikely to accommodate the existing easements once the development is complete.

Therefore, the Voluntary Planning Agreement provided flexibility for the property owner to create new easements upon registration of the Plan of Subdivision and Consolidation.
