

# Holdsworth Avenue: The City of Sydney’s “Road to Nowhere”

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## ABSTRACT

*This paper outlines the cadastral history of Holdsworth Avenue, Rushcutters Bay, in the City of Sydney. It includes an investigation into its status as a road, some interesting challenges that we encountered with the neighbours, and the ultimate resolution of those challenges, providing the best possible solution for the City of Sydney and its residents. Holdsworth Avenue is a short (approximately 100 m long) road section linking Elizabeth Bay Road with Rushcutters Bay Park. In 2016, it was the focus of a ‘David vs. Goliath’ battle between the City of Sydney Council and an adjoining landowner, who was attempting to claim a portion of the road via adverse possession. The matter was highly political, with councillors, residents and local media getting involved, so a sensitive approach was required by City of Sydney staff. The main question we had to resolve was whether the contested portion was actually part of a road or not. The solution involved a variety of professionals at the City of Sydney, including legal, property and survey people, and incorporated investigating the history of the land, an extensive survey investigation and ultimately the registration of a formal plan of dedication to end all doubt. Ultimately, the claim of adverse possession was refuted, and the land was ‘returned’ to the people of the City of Sydney. Subsequent landscaping works have enhanced the amenity and use of the space, providing benefit for ‘the many’, not just ‘the few’.*

**KEYWORDS:** Road definition, road dedication, adverse possession, cadastral, history.

## 1 INTRODUCTION

Roads in the City of Sydney local government area have a long history and, because of this, have been dedicated or modified by many different methods, including:

- By acceptance under common law.
- Under Act 4 William 4.
- Under the Sydney Corporation Act 1879.
- Under the Local Government Act 1919.
- Under the Roads Act 1993.

Establishing the ownership of roads can be complicated. There are numerous road owners and operators, including:

- The City of Sydney.
- Transport for NSW.
- Place Management NSW.
- Transurban.
- Centennial Park & Moore Park Trust.

In addition to the main road owners, there are many private roads, dunny lanes etc. that are either formed and privately operated (e.g. within newer industrial or residential estates) or are legacy items from private subdivisions, often part of a deceased estate. The City of Sydney even has an ‘underwater’ road (Harber Street, Alexandria) and a caged, underground carpark road (Griffin Place, Glebe) (Figures 1 & 2).

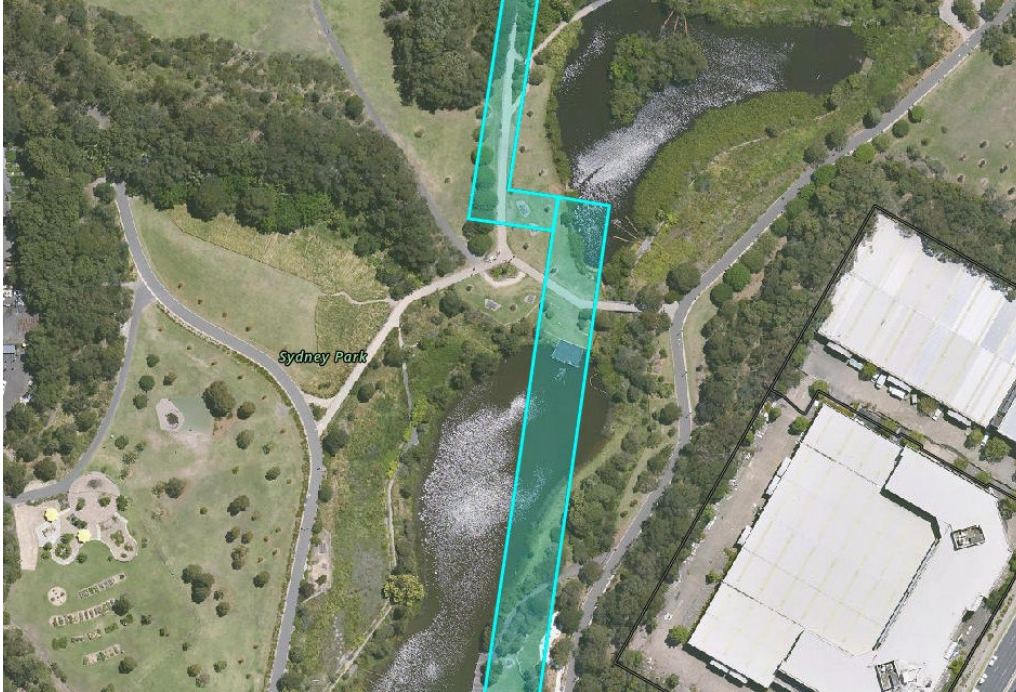


Figure 1: Harber Street, Alexandria – Sydney’s ‘underwater’ road.

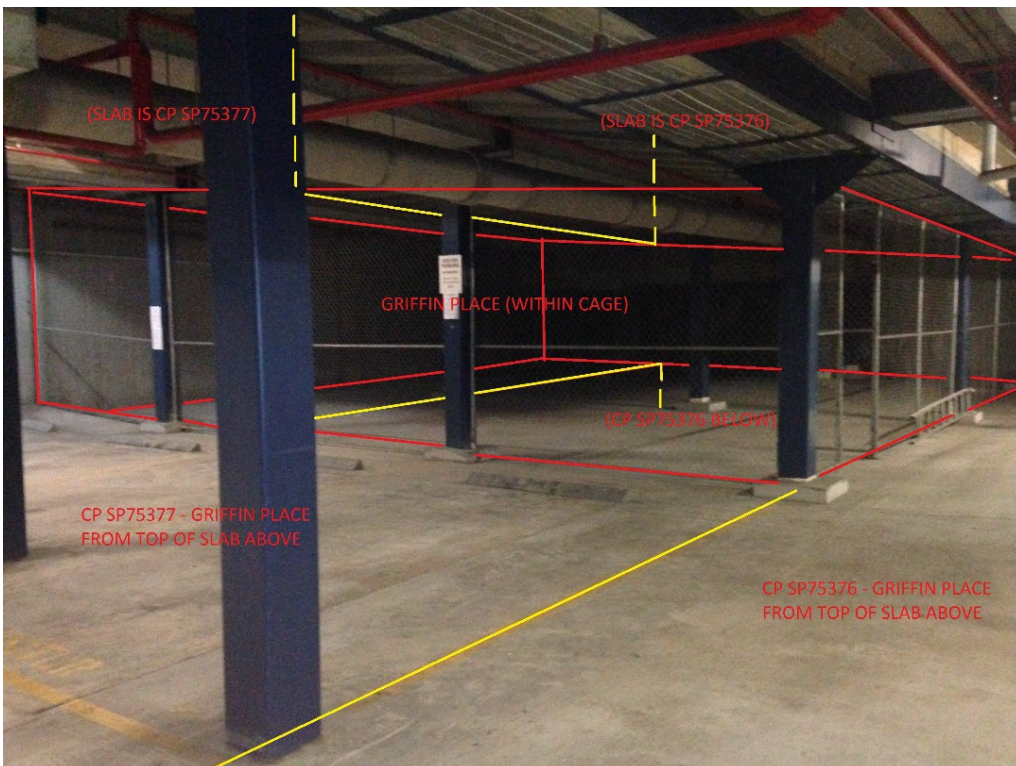


Figure 2: Part of Griffin Place, Glebe.

The subject of this paper is Holdsworth Avenue in Rushcutters Bay – the City of Sydney’s “road to nowhere”. It presents the history of the road, how and why we got involved, the survey investigation and the ultimate resolution.

## 2 HOLDSWORTH AVENUE – A ROAD IS BORN

Holdsworth Avenue is in the harbourside suburb of Rushcutters Bay. It is short (under 100 m end-to-end) and consists of 70 m of formed bitumen carriageway running south from Elizabeth Bay Road before terminating at Rushcutters Bay Park in an old, steep flight of stairs.

The land on which it sits is part of an original grant of 54 acres to Alexander McLeay (also spelt Macleay or MacLeay – see Australian Dictionary of Biography, 1967) dated 19 October 1831 (Figure 3). McLeay was an influential early public servant, at one time holding the post of Colonial Secretary of New South Wales, and later nominated to the NSW Legislative and Executive Council. He was also a notable entomologist, and his scientific collection still forms part of the University of Sydney’s Chau Chak Wing Museum (Macleay Collection). He also built and lived in Elizabeth Bay House (which is also now a museum) on the granted land.

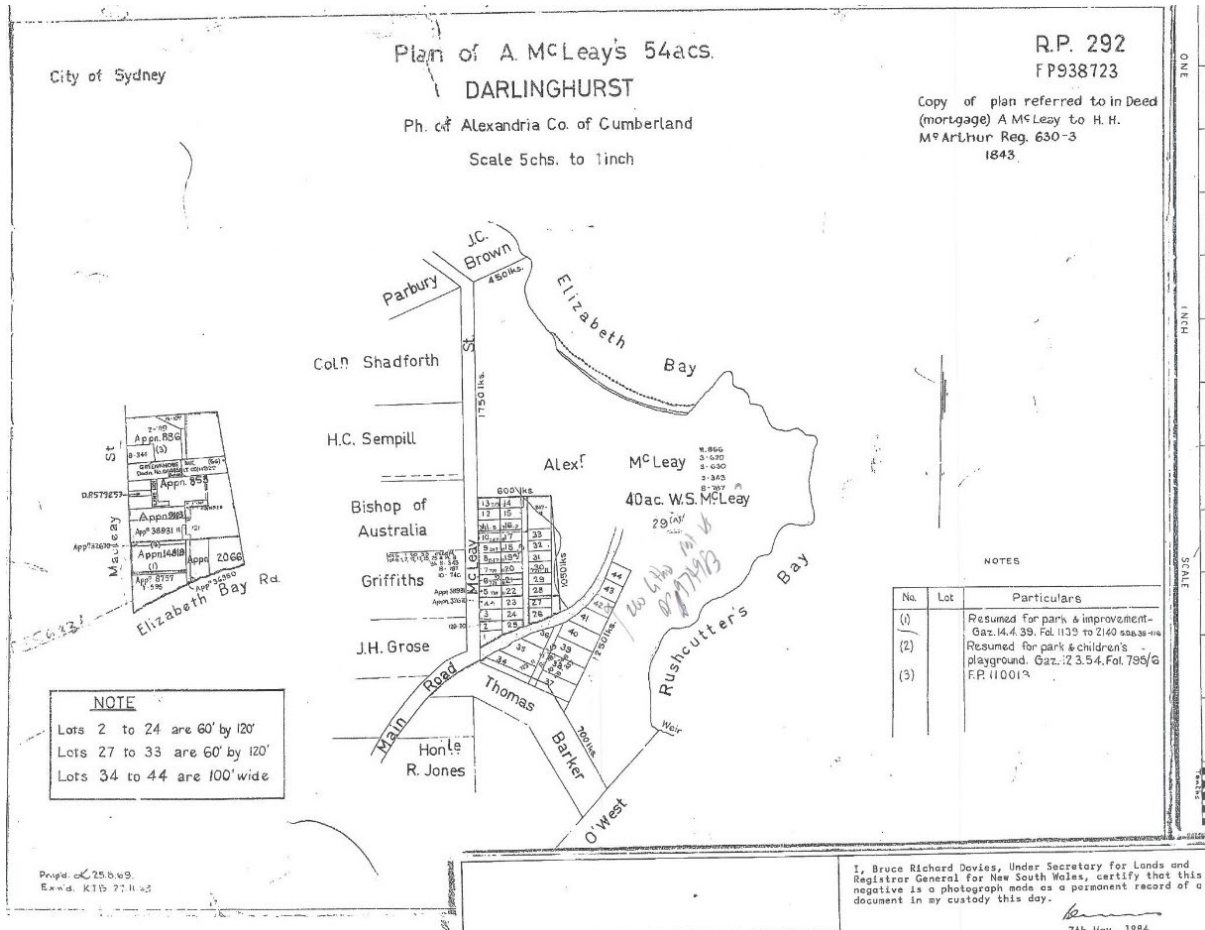


Figure 3: DP928723 showing McLeay’s 54 acres.

As happens, the original grant was subdivided and sold off or leased over the years. The first hard evidence of the existence of Holdsworth Avenue appeared in early 1876, where it was noted on a dealing as “Reserved Road” (Figure 4). This date is important, as will be discussed in the next section.

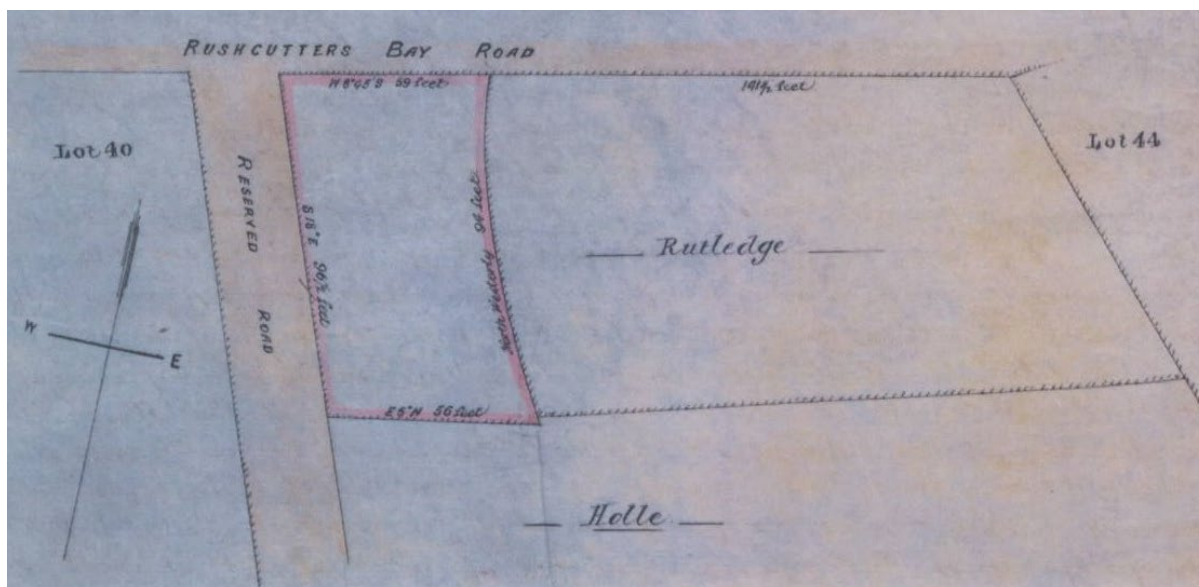


Figure 4: Plan attached to dealing Book 156 No. 791.

### 3 THE SYDNEY CORPORATION ACT 1879 NO. 27A

#### 3.1 History

By the early 1800s, the City of Sydney was expanding rapidly, but development was not occurring in an orderly manner. To introduce a degree of control, the government passed several acts to regulate building, water reticulation and drainage, lighting, the police force, use of public land, and so on.

Many of these acts also specifically addressed matters related to surveying, roads and property boundary matters, including:

- Alignment of Sydney Streets Act 1834 No. 25A.
- Sydney Streets Alignment Act 1835 No. 14A.
- Sydney Surveyor Act 1837 No. 2A.
- Sydney City Incorporation Act 1842 No. 10A.
- Several incarnations of the Sydney Corporation Act (and amendments) between 1846 and 1940.

All of these are accessible online and are an interesting insight into the development of planning controls in Sydney.

#### 3.2 Why is the Sydney Corporation Act 1879 so Important to Surveyors?

The Sydney Corporation Act 1879 No. 27A (NSW Legislation, 2024a) addressed many aspects of the functions of the council, including the constitution of the council, appointment of council officers, roads, water, health, sewerage and revenue – all the things you would expect of local government.

Although it was not the first act to regulate the use and formation of roads, for surveyors working in the City of Sydney, Part V (relating to the regulation of public ways) was significant and included several notable clauses:

- Clause 69 – mandating a minimum road width of 66’ and minimum lane or alley width of 20’.
- Clause 88 – outlining specifications for new roads, including the need to gazette the footpath and carriageway widths. This clause also allowed the council to declare a footpath width from “the curb-stone or exterior edge of the footpath”, within which it was unlawful to erect any building.
- Clause 89 – stating that, in relation to any building line in Sydney, every curb-stone as laid down at the date of the act, was lawfully laid. This is the clause that effectively aligned many of the city streets that existed at that time.

But the most important clause in relation to this project was (Figure 5):

- Clause 67 – vesting all public ways “now or hereafter formed” in the council, together with full power to widen, level, divert, extend, construct, improve, maintain, repair and order them.

#### PART V.

##### *Powers of Council for regulation of Public Ways.*

Public ways vested  
in Council.

67. All public ways in the City of Sydney now or hereafter formed shall be vested in the Council who shall have full power to alter widen level divert extend construct improve maintain repair and order such public ways and the footpaths thereof and to carry off any water mud or filth therefrom by means of sewers channels or drains or otherwise subject to the provisions of this Act and any by-laws made by the Council in that behalf But no public way shall be opened altered widened diverted or extended or the width or the footpath thereof fixed or altered until the approval thereto of the Governor shall have been obtained and notice of such approval shall have been published in the *Gazette*.

Figure 5: Part V clause 67 of the Sydney Corporation Act 1879 No. 27A (NSW Legislation, 2024a).

## 4 OLD LAWS AND A NEW PROBLEM

### 4.1 Background

As mentioned earlier, the northern part of Holdsworth Avenue is a fully formed and functioning carriageway, whilst the southern part is steep and ends in a set of stairs, rock outcroppings and vegetation that had been largely left to its own devices. During the 2000s, the owners of 10 Evans Road (SP6849) had several building applications approved for additions and modifications to the property, noting that all three units were in the one ownership. At some point in time they also decided to improve the amenity of the common property backyard, by adding some paving, terraced gardens and new fencing. The only problem was that they were not authorised to do so, and a large part of their improvements (approximately 50%) was built over Holdsworth Avenue.

In 2009, a survey contracted by the City of Sydney as part of a planned upgrade to Rushcutters Bay Park identified the encroachment, and on 24 December 2009 the City issued a ‘Notice of Intention to Give an Order’ under section 132 of the Local Government Act for the removal of the encroachment. In 2011, Byrne & Associates were contracted to provide an identification and detail survey of the stair area, revealing that the encroachment encompassed approximately

25 m<sup>2</sup> of Holdsworth Avenue (Figure 6). This was estimated to be worth between \$200,000 and \$275,000 based on the 2015 land values as published by the Valuer General.

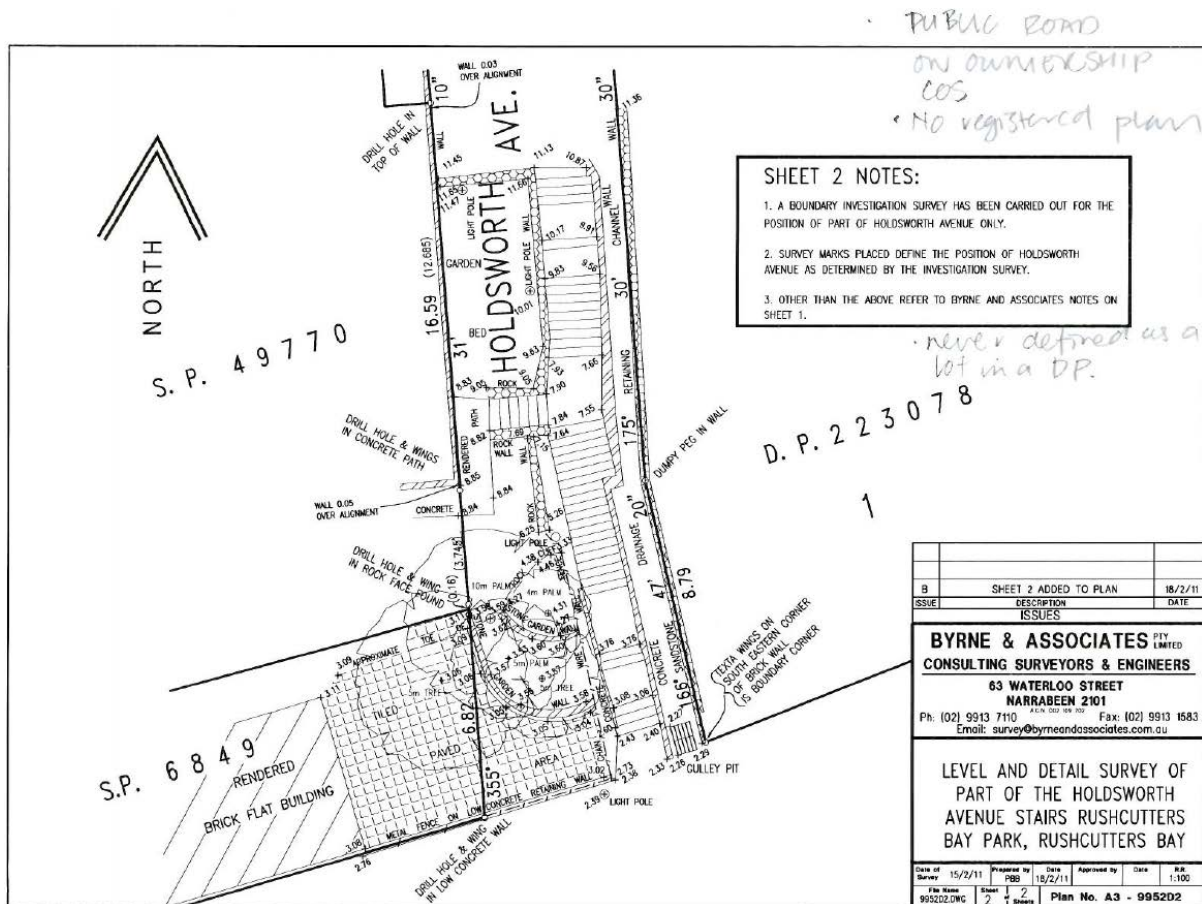


Figure 6: Identification and detail survey by Byrne & Associates (used with permission).

#### 4.2 So, How Did We Get Involved?

Over the following years, there were numerous actions, counteractions and correspondence back and forth over the encroachment. Meanwhile, the City of Sydney continued with plans to upgrade this portion of Holdsworth Avenue. Finally, in 2015, the City of Sydney served notice on the owners of 10 Evans Road for them to completely remove and dispose of the encroaching structures. In response to this notice, the owners engaged a solicitor and, on their advice, proceeded with an application for adverse possession with Land and Property Information (LPI, now DCS Spatial Services), claiming that they and previous owners had continuously occupied the site since the 1950s.

It now got hot politically, with pressure from residents, lawyers, councillors and even the local media, who portrayed it as a ‘David vs. Goliath’ battle and likened it to the plight of the Kerrigan family in the movie ‘The Castle’. All work on the project was stopped, pending the resolution of this new complication. The City of Sydney was compelled to respond rapidly, and so a working group consisting of legal, property and survey professionals was assembled to formulate a response.

### 4.3 Where to Start?

Under NSW law, adverse possession is not permitted against the Crown (this includes Local Government Authorities) in cases of land “*set out as road under any Act*” or “*dedicated under any Act for a public purpose*” (NSW Land Registry Services, 2024).

As the City of Sydney believed that the disputed land was part of Holdsworth Avenue, the first step was clearly to establish its status, to which end we engaged an external title search. The search concluded that:

- Documentary title to the road was vested in James William Macarthur Onslow (deceased).
- There had been no formal resumption or dedication of the road to council.
- However, dedication may have occurred outside the control of LPI by other means, i.e. by the “spending of public monies” or “through use by the public as road”.

As the search results were inconclusive, the task now distilled into establishing whether dedication had occurred “by other means”.

### 4.4 Is It a Road?

This initiated a large amount of research. The City of Sydney compiled as much evidence as possible about Holdsworth Avenue, tracing the history of the site from the original grant, through the first mention of it in the aforementioned dealing (Book 156 No. 791), through numerous published maps, sales lithographs, engineering plans and so on.

The following summary details this historical timeline:

- 19/10/1831: Contained within original grant of Portion 229 (54 acres) to Alexander Macleay.
- 01/02/1848: Contained within 40 acres of the original grant conveyed to William Sharp Macleay (Conveyance Book 8 No. 277).
- Circa 1850-1870: Contained within Lot 41 of “Elizabeth Bay Estate 1<sup>st</sup> Subdivision” of William Sharp Macleay’s 40-acre estate (now DP939367).
- 16/06/1873: Lot 41 included in lease to Robert Hills (Lease Book 138 No. 972).
- 07/01/1876: Northern portion of Holdsworth Avenue shown as “Reserved Road” in Lease Book 156 No. 791. Also referred to in Sub Lease Book 156 No. 595. Both deeds purport to create a “Right of Way” over a reserved road 20 feet wide, which would have expired, with the lease, in 1972.
- 01/08/1879: Under Part V of the Sydney Corporation Act 1879, all “public ways ... now or hereafter formed” are vested in the council. Public way is defined as “*Any road, highway, street, square, lane, court, alley or other public thoroughfare or place, whether the same be in actual use or not.*”
- Circa 1885: Site of Holdsworth Avenue noted (unnamed) in the Atlas of the Suburbs of Sydney (Figure 7).
- 22/04/1892: The fee simple of the original grant of Portion 229 vested in James William Macarthur Onslow forever.
- 20/08/1902: Under Part VIII of the Sydney Corporation Act 1902, all “public ways ... now or hereafter formed” are vested in the council. Public way is defined as “*Any road, highway, street, square, lane, court, alley or other public thoroughfare or place, whether the same be in actual use or not.*” The Sydney Corporation Act 1879 is repealed by this Act.

- 11/11/1909: Holdsworth Avenue depicted on sale lithograph (S7C-144\_1). The plan shows the stairs that remain in situ today, together with the first widening of Holdsworth Lane at Rushcutters Bay Park (Figure 8).
- 30/11/1915: Holdsworth Avenue depicted on sale lithograph (S7C-144\_2). The plan shows kerbing laid within the formation and a fencing encroachment. However, the stairs are omitted from this plan (Figure 9).

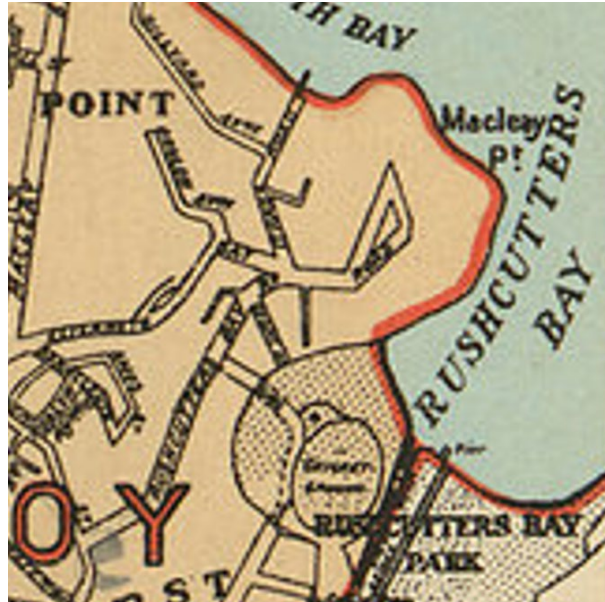


Figure 7: Excerpt of an 1885 map of the City of Sydney, showing Holdsworth Avenue (centre).

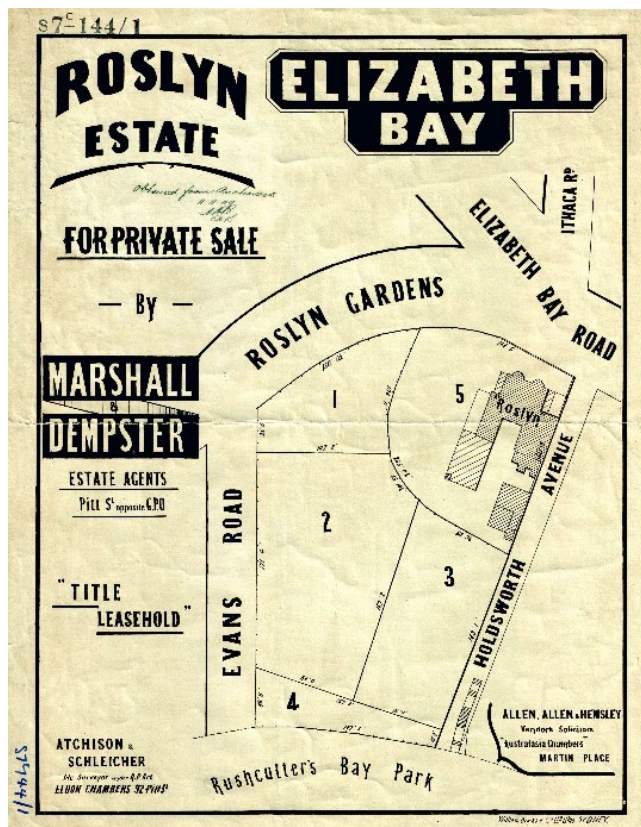


Figure 8: Sale lithograph (S7C-144\_1).



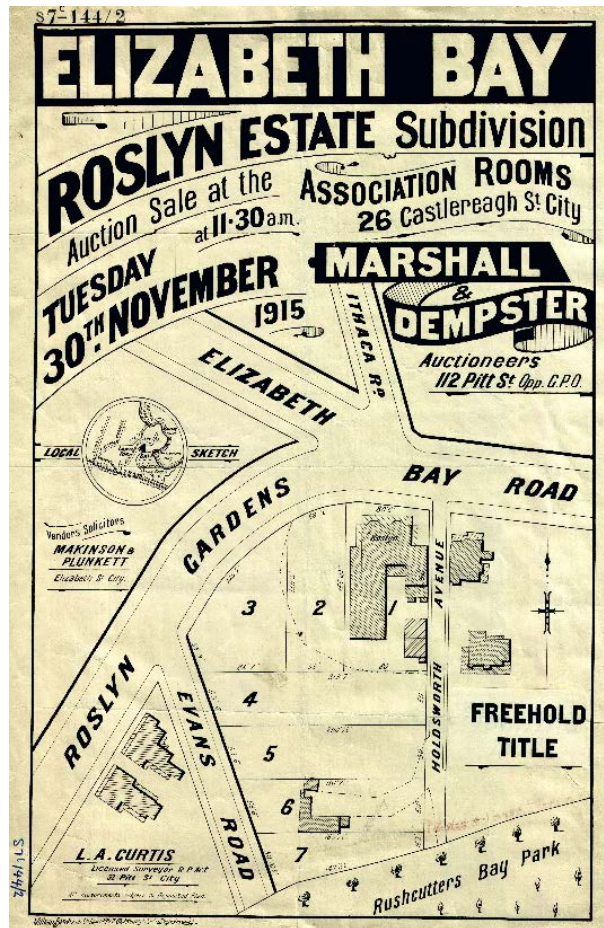


Figure 9: Sale lithograph (S7C-144\_2).

- 01/07/1920: Under the Local Government Act 1919, all roads in existence at this date vested in the local council (presumed to also include the City of Sydney).
- 22/12/1932: Under Part VIII of the Sydney Corporation Act 1932 (NSW Legislation, 2024b), all “public ways ... now or hereafter formed” are vested in the council. Public way is defined as “Any road, highway, street, square, lane, court, alley or other public thoroughfare or place, whether the same be in actual use or not.” The Sydney Corporation Act 1902 is repealed by this Act.
- 03/09/1948: Sydney Corporation Act 1932 repealed by Local Government (Areas) Act 1948, save as to the status of any road.
- 1974: Variable width road widening in DP577484.
- 1980: 1.525 m road widening with splays in DP616213.
- 1994: 1.525 m road widening (in stratum) in DP848463.

This historical timeline was presented to the legal team to help them make the case with LPI that Holdsworth Avenue was indeed a road.

#### 4.5 And the Winner Is?

The City of Sydney’s case was that there was sufficient evidence that Holdsworth Avenue existed at least in part in 1876, and therefore at the time of the Sydney Corporation Act 1879. Part 7-7 of Hallmann (2007) states that “Public roads in the City of Sydney were “vested” in the council by the 1879 Act but it was held by the Privy Council in *Municipal Council of Sydney v. Young (1898)* that the vesting under that statute gave the council no title to the streets beyond

what was necessary to carry out its duties under the Act. However, an estate in fee simple was vested in Council in 1935 – see section 76B of the Sydney Corporation Act 1932.” Notably, the 1932 Act defines “public way” as “Any road, highway, street, square, lane, court, alley or other public thoroughfare or place, whether the same be in actual use or not.”

Ultimately, LPI agreed that Holdsworth Avenue had been vested in the council as road by the 1879 Act, and that subsequent additions and modifications (as shown on the historical plans) were also included as road under one or more of the subsequent acts, and the adverse possession claim was formally rejected.

## 5 EPILOGUE

In 2016, the City of Sydney’s surveyors were asked to prepare a Deposited Plan (DP) dedicating it to the public, therefore formalising the position and status of Holdsworth Avenue as road. Due to the age of the area and the three road widenings in the latter 20<sup>th</sup> century, this became a challenging task and ultimately involved defining (in addition to Holdsworth Avenue itself):

- Elizabeth Bay Road.
- Roslyn Gardens.
- Evans Road.
- The northern boundary of Rushcutters Bay Park.

The result was DP1217417, titled a “Plan of Dedication of Holdsworth Avenue being part of the lands described in Book 489 No. 253 as public road” (Figure 10). For those that are interested in the definition, the accompanying survey report is included in the Appendix.

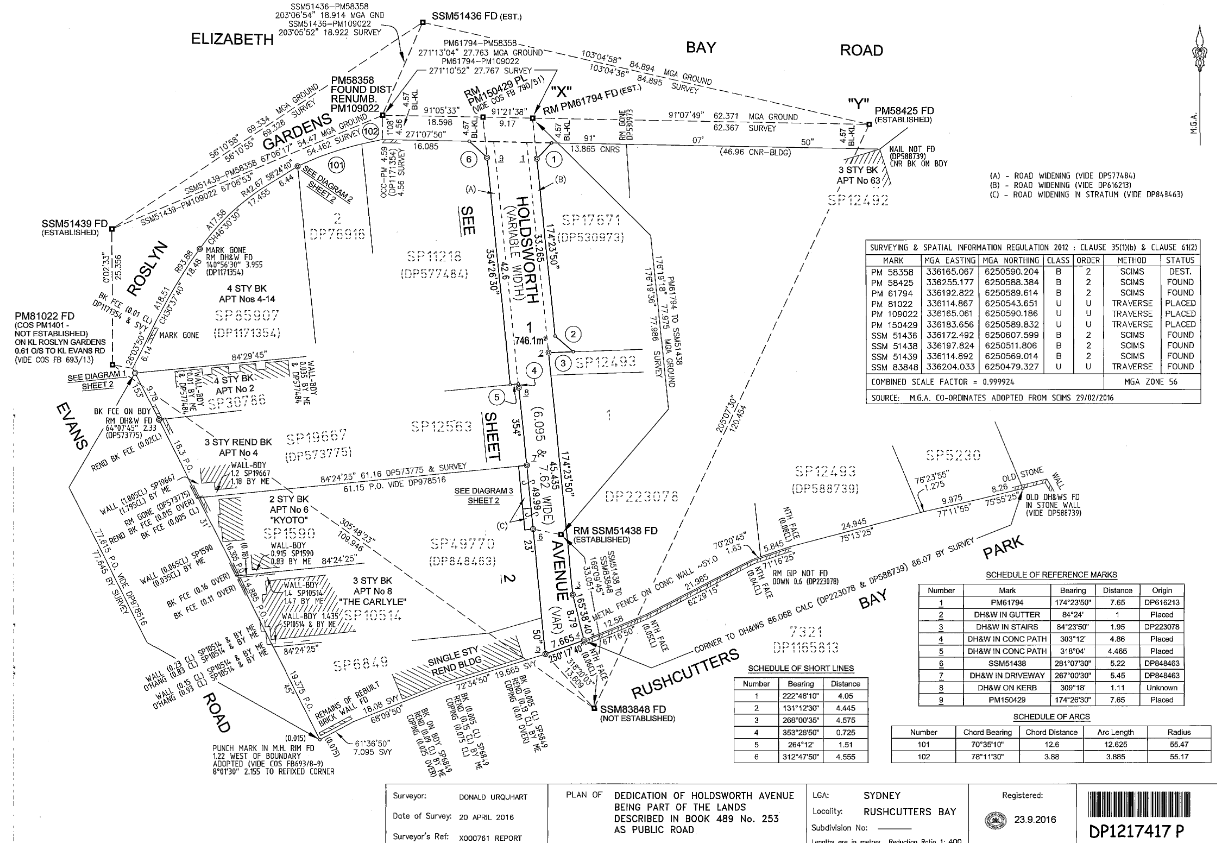


Figure 10: Sheet one of DP1217417.

The City of Sydney eventually completed the remediation and landscaping works as planned. The result is a marked improved in the safety and utility of the area (Figure 11).



Figure 11: Holdsworth Avenue stairs from Rushcutters Bay Park (2024).

## 6 CONCLUDING REMARKS

This paper has provided an overview of one of the many property anomalies found each year within the City of Sydney. It has outlined the cadastral history of Holdsworth Avenue, Rushcutters Bay, the investigation into its status as a road, interesting challenges encountered with the neighbours, and the ultimate resolution of those challenges, providing the best possible solution for the City of Sydney and its residents. This example reinforces the importance of undertaking solid, comprehensive research and the significance of even historical and long-since repealed legislation.

## REFERENCES

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## APPENDIX: SURVEY REPORT ACCOMPANYING DP1217417

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22 April 2016

Our Ref: X000761 Report  
File No: X000761

The Plan and Title Advisor  
Land and Property Information  
GPO Box 15  
Sydney NSW 2001

Dear Sir/Madam

### Survey Report on Deposited Plan 1217417

#### Background

Our searchers have determined that the documentary title for Holdsworth Avenue remains comprised in disentailing deed Book 489 No. 253.

It appears to have been formed wholly within and parallel to the western boundary of Lot 41 of the Elizabeth Bay Estate plan (DP939367) and is also shown abutting the western edge of the Roslyn Estate plan (DP978516).

The intended width appears to be 6.095m (20') and variable as shown on DP223078 and by scale from DP978516. The variable portion is also reflected in DP978516.

There have been three subsequent road widenings:

- DP577484 (1974) – variable width road widening
- DP616213 (1980) – 1.525m (5') widening plus splay corner at Elizabeth Bay Road and SP12493
- DP848463 (1994) – 1.525m widening (in stratum)

#### Alignment of Evans Road

Marks adopted for alignment in Evans Road were City of Sydney PM1401 (now PM81022) at Roslyn Gardens (set at 0.61m (2') west of the eastern kerb line vide CoS FB693/13) and the punch mark found on a sewer manhole in Rushcutters Bay Park (set at 1.22m (4') from both the kerb line and building alignment in CoS FB693/8).

The fix is supported by the RM DH&W found at the northern boundary of Lot 4 in DP573775, occupations generally and wall to boundary offsets on Strata Plans 19667 and 10514 (as noted on the face of the plan).

I adopted the RM for the sideways fix and this was generally supported by wall to boundary offsets shown on Strata Plans in the street, most notably the southern building wall on SP10514. This left close to P.O. distance between the RM and boundary derived from this wall offset. The P.O. frontage was then used on the prolongation to refix the southwestern corner of SP6849.

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### **Alignment of Elizabeth Bay Road**

Marks adopted for alignment in Elizabeth Bay Road (east of Holdsworth Avenue) were PM61794 (formerly CoS PM1834 vide FB790/51) and PM58425 (formerly CoS PM1404 vide FB693/35). These marks were placed by City Surveyors for the alignment of Elizabeth Bay Road at 0.915m (3') north of the southern kerb line. The fix was supported by the offset to the corner of the old brick building at No.63 Elizabeth Bay Road and the old stone kerb as laid at Holdsworth Avenue.

It was determined that PM58538 (formerly CoS PM1403 vide FB693/34) at Roslyn Gardens had been disturbed. There have been significant kerb and footpath works in the vicinity of the mark which could have contributed to the disturbance. Supporting evidence for this assumption included discrepancies in a number of SCIMS connections (shown on the plan), the wall offset shown in DP1171354 (4.59m in the DP and 4.56m by me) together with connections to the original mark as shown in CoS FB790/51. On the advice of LPI staff, PM58538 was reported destroyed and the pin re-referenced and renumbered PM109022.

A new permanent mark (PM150429) was established at 0.915m north of the southern kerb line of Elizabeth Bay Road and on the western alignment of Holdsworth Avenue (as widened) using the geometry in CoS FB790/51. The alignment of Elizabeth Bay Road, west of Holdsworth Avenue, is as per CoS FB 790/15 and DP577484.

### **Alignment of Roslyn Gardens**

As a result of the previously mentioned construction works, all boundary marks shown on DP1171354 have been destroyed, together with the RM DH&W in Gutter off the westernmost corner of this plan.

To determine the Roslyn Gardens alignment, the terminals of Evans Road and Elizabeth Bay Road were re-fixed from their respective alignments and a P.O. adjustment executed. This resulted in good agreement with wall offsets and the RM DH&W in gutter in the middle of Lot 1 DP1171354, but resulted in the re-referencing of marks at the northernmost corner of Lot 1. P.O. distance remains across the frontage of DP1171354.

### **Alignment of Holdsworth Avenue (Eastern alignment)**

The eastern alignment of Holdsworth Avenue was determined using PM61794 (1.525m east of the original alignment as shown on DP616213) and the RM DH&W in DP223078 found on the stairs at the southern end of Holdsworth Avenue. This was supported by several occupations/offsets including the face of the old stone wall and brick unit building shown on DP223078.

The road widening between Elizabeth Bay Road and SP12493 was held as being 1.525m (5') from this line, which resulted in minor discrepancies with wall & building offsets shown on DP616213, but good agreement with the depth to the old two storey brick residence 'Kia-Ora' as shown on DP530973.

The remains of an old brick wall, believed to have been at the corner of the "concrete drainage apron" shown on DP223078 and DP848463 was found at Rushcutters Bay Park and adopted. This resulted in P.O. depth from the angle to the Park and a 0'6"20" (16mm) angular discrepancy with DP223078.

### **Alignment of Holdsworth Avenue (Western alignment)**

The western alignment of Holdsworth Avenue was determined using the eastern alignment and a P.O. width (vide DP223078) of 6.095m (20'). This resulted in good agreement with occupations, RMs and the fixes shown on DP577484, SP11218 and DP848463. This was further supported by the discovery of a drill hole & wings at the intersection of Holdsworth Avenue with Rushcutters Bay Park when marking the boundaries, leaving P.O. frontage across SP6849 from the southern boundary of SP49770 to the Park.

The 1.525m (5') road widening from DP577484 has resulted in Holdsworth Avenue being variable width from Elizabeth Bay Road to SP12563 and this geometry has been retained in my plan.

### **Rushcutters Bay Park Boundary**

The boundary of Rushcutters Bay Park between Evans Road and Holdsworth Avenue was determined by holding the southern terminals of Evans Road & Holdsworth Avenue fixed (see above) and executing a P.O. adjustment. This resulted in a minor shortage in the depth of SP6849 (approximately 50mm).

The boundary of Rushcutters Bay Park between Holdsworth Avenue and SP5230 was determined by adopting the corner of the old brick wall at Holdsworth Avenue (see above) and the drill hole and wings found at the south east corner of SP5230 (as shown on DP588739). P.O. distance (from DP223078 & DP588739) was found to exist, however there was no other supporting evidence (it is believed that the RM GIP shown at the south eastern corner of DP223078 was destroyed when the new concrete wall was built).

### **Conclusion**

I believe the fix shown on my plan accurately reflects the original position and width of Holdsworth Avenue and subsequent road widenings.

If you have any further questions regarding the definition on my plan, please contact me on 0467 739 754 or at [durquhart@cityofsydney.nsw.gov.au](mailto:durquhart@cityofsydney.nsw.gov.au).

Yours faithfully,



Don Urquhart  
Principal Surveyor  
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