

A Council Surveyor's Story

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ABSTRACT

A council surveyor can be called upon to do a varied and wide range of services for all departments within a local council, in addition to the normal duties of a surveyor. This includes performing duties involving various Acts, e.g. Local Government Act 1919 and 1993, Native Title Act 1993, Roads Act 1993, Land Acquisition (Just Terms Compensation) Act 1991, Conveyancing Act 1919, Real Property Act 1900, and the Surveying and Spatial Information Act 2002. Some of the services performed may assist other council surveyors to perform some specialist services for their own councils if drawn upon to complete related tasks. This paper outlines the author's story of the different services provided in a career spanning some 30 years employed at Cessnock City Council and Port Stephens Council. It focuses on two cadastral case studies dealing with specialised tasks of council surveyors: Firstly, to establish as a public road an existing physical road traversing a public reserve that is classified as community land without the need to change the classification. Secondly, to research and classify existing drainage structures passing through private property not covered by an easement under section 59A of the Local Government Act 1993 (giving councils the power to install and repair water supply, sewerage and stormwater drainage pipes on private land without an easement) and provide a surveyor's report determining their status. It is shown that a council surveyor has a crucial and varied role within local government, as Hallman expressed it: "A surveyor is a judge in the field."

KEYWORDS: *Cadastral, council surveyor, public road, drainage structures, legislation.*

1 INTRODUCTION

Working as a council surveyor, the main duties included either performing or organising the daily survey requirements for Council, from engineering surveys to acquisition surveys and others. Additional requirements came from all departments that could be related to professional advice, problem solving from past approvals or action. At Cessnock City Council, road status and accesses were a part of the requirements, and at Port Stephens Council drainage issues were on the radar.

This paper focuses on two cadastral case studies dealing with specialised tasks of council surveyors. The first case study enables the process for the creation of a public road without the drawn-out procedure normally used, the main outcome being the hassle-free creation of an existing formed public road that passes through community land.

The second case study deals with Council drainage structures passing through private property, without the creation of an easement, which has its drawbacks. This is clearly shown by section 59A of the Local Government Act 1919 and 1993 (giving councils the power to install and repair water supply, sewerage and stormwater drainage pipes on private land without an

easement) where certain criterial and circumstances are required to exist. In both cases, research of legislation and legal advice was required to obtain the desired results for Council.

2 ESTABLISHING A PUBLIC ROAD THROUGH A PUBLIC RESERVE

Council can find that for the road network it may construct a formed road through a public reserve that is designated community land. To create this formed road as a public road, it was previously necessary to change the status of that part of the land where the formed road passes through to operational land via a lengthy process.

Instead, the following simple process can be used to easily dedicate this land:

- Prepare a business paper to Council for the dedication.
- Perform a survey of the land required to be dedicated.
- Obtain a subdivision certificate.
- Lodge the plan with a dedication statement and surveyor's report.

This is much easier and quicker compared to the original process, with the key feature being that the dedication is made under the Roads Act 1993. It does not contravene other legislation and is acceptable development. The required process is outlined in the following sections.

2.1 Case Study

The task was to establish as a public road an existing physical road traversing a public reserve that is classified as community land without the need to change the classification. In this case, the constructed physical road was Kinross Street (Figures 1 & 2).



Figure 1: Constructed physical road.

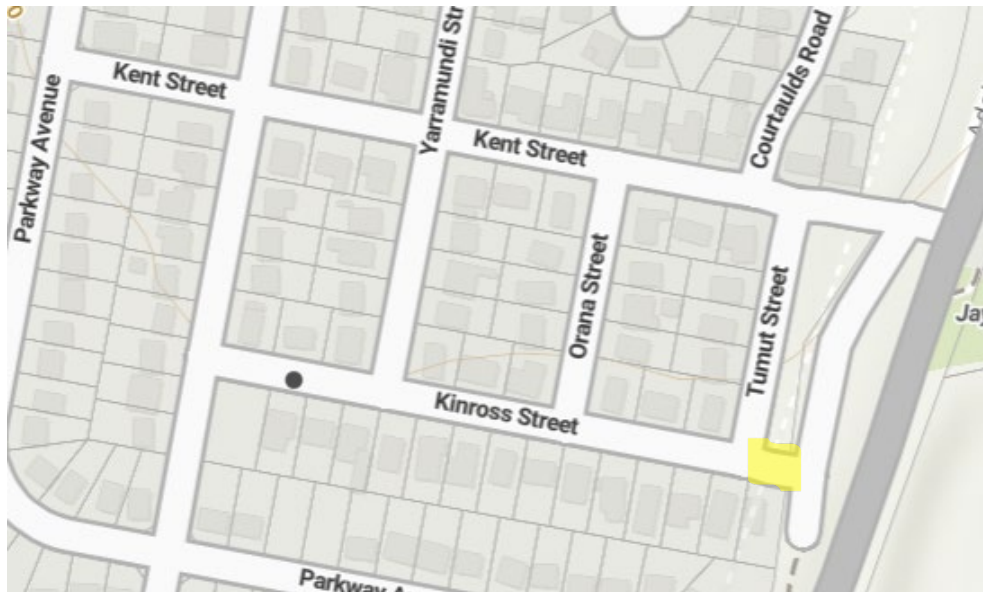


Figure 2: Location of constructed physical road highlighted, with Greenhill Park to the north.

2.2 Process and Procedure

Council cannot delegate any dealings in land (property or interest). Section 377 of the Local Government Act 1993 states (NSW Legislation, 2025a):

- (1) A council may, by resolution, delegate to the general manager or any other person or body (not including another employee of the council) any of the functions of the council under this or any other Act, other than the following--
- (h) the compulsory acquisition, purchase, sale, exchange or surrender of any land or other property (but not including the sale of items of plant or equipment).

As land is not defined by the Local Government Act 1993 (LGA), it can be defined through schedule 4 of the Interpretation Act 1987 as follows (NSW Legislation, 2025b):

“◀ land ▶” includes messuages, tenements and hereditaments, corporeal and incorporeal, of any tenure or description, and whatever may be the estate or interest therein.

2.2.1 Prepare Business Paper

According to the LGA, a business paper is required to have council approval to the dedication of part of council land as public road. The location of the land to be dedicated in this case study is shown in Figure 3. Public roads can be formalised under the Roads Act 1993 (NSW Legislation, 2025c).

When submitted to Council for approval, the business paper should include the wording:
“This Plan of Road Opening will formalise Kinross Street as a public road under Section 9(1) of the Roads Act 1993.”

In addition, the following recommendations should be included:

“Recommendation is that Council:

Endorses the survey plan dedicating a section of an existing and constructed road as a dedicated public road upon registration of the Plan of Road Opening over Lot 61 DP24067.

Grants authority for Council’s seal to be affixed to the Plan of Road Opening and any other documents required by NSW Land Registry Services (LRS).”

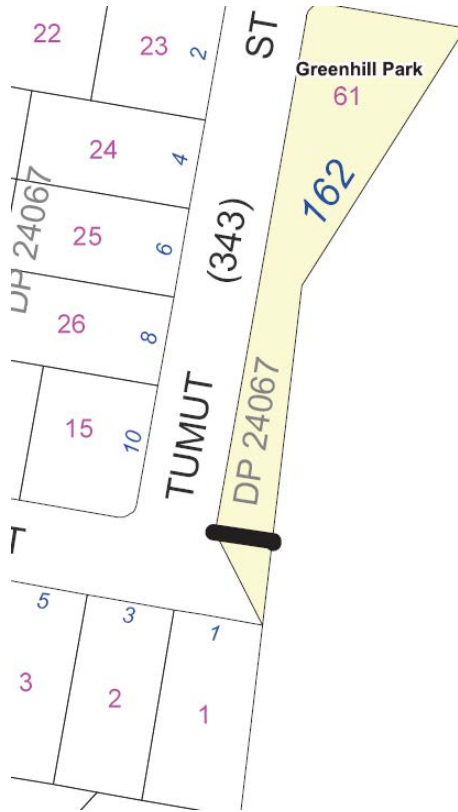


Figure 3: Greenhill Park community land.

2.2.2 Perform Survey and Prepare Plan for Registration

Figure 4 shows part of the registered Deposited Plan. It must have the Council seal and appropriate signatures as the landowner and include the following dedication statement: “It is intended to dedicate the extension of Kinross Street as public road.”

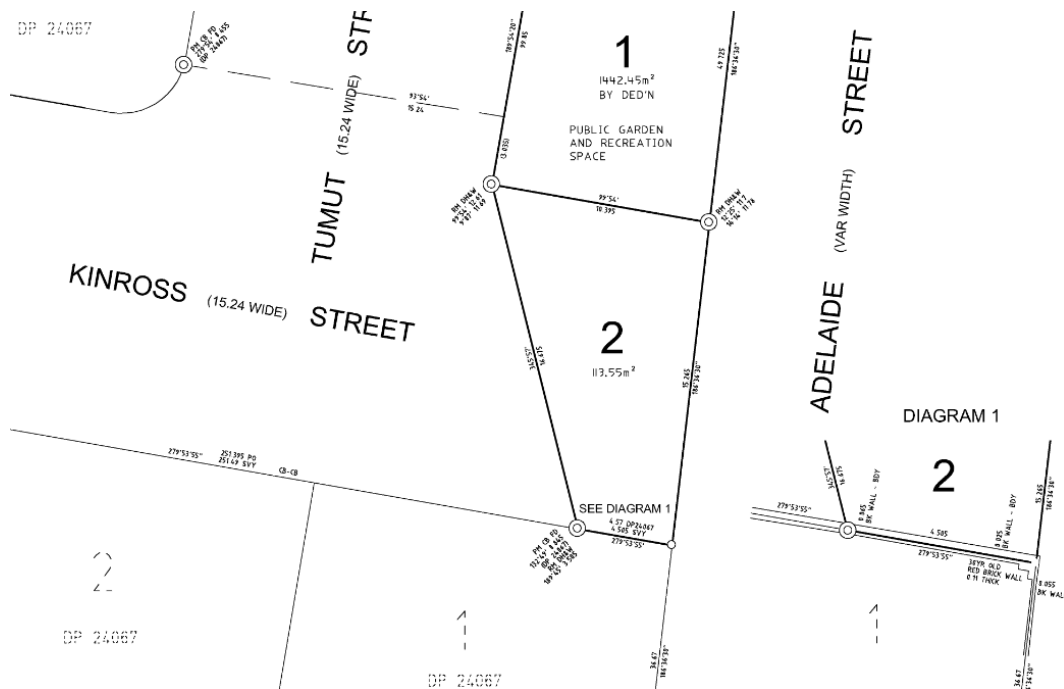


Figure 4: Excerpt of the Deposited Plan.

2.2.3 Obtain Subdivision Certificate, Council Seal and Signatures

The next step is to lodge with Council an Exempt Development Application for a Subdivision Certificate. The subdivision certificate is to be issued on the basis that the subdivision is exempt development under clause 2.75(f) of the council's State Environmental Planning Policy (SEPP).

Section 9(1) of the Roads Act 1993 states: "A person may open a public road by causing a ... or other plan that bears a statement of intention to dedicate specified land as a public road (including a temporary public road) to be registered in the office of the Registrar-General."

This does not contravene section 47F of the LGA, which was intended to prevent council opening a road over community land by the process available under the Conveyancing Act, in accordance with section 9 of the Roads Act, as section 47F of the LGA does apply to the opening through dedication via section 10 of the Roads Act.

2.2.4 Lodge Plan with NSW Land Registry Services

Council as the registered proprietor of the subject land and under section 22 of the Local Government Act 1993 has the functions conferred or imposed on it by or under the Roads Act 1993. It is intended to survey and declare the existing constructed road (currently located on the public garden and recreation space) a dedicated public road upon registration of the plan and granted authority for Council's seal to be affixed to the plan of dedication.

The plan can then be submitted to NSW Land Registry Services (LRS) with a report explaining that it does not contravene section 47F of the LGA (see section 2.2.3) and the business paper.

3 LOCAL GOVERNMENT ACT SECTION 59A STORMWATER DRAINAGE WORKS

Many NSW councils have historic drainage structures running through private property without a designated easement. The legislation was enacted retrospectively to allow the drainage structures to remain without the creation of an easement as the cost for councils would be enormous to obtain easements and pay compensation.

This type of right over a parcel of land cannot be shown on title and can only be shown internally to council staff through certificates issued by Council with the investigation for the sale of land through the transfer process. A system was developed where Port Stephens Council's Geographic Information System (GIS) has a designated layer showing such drainage rights with a link to a surveyor's report or some other documentation providing evidence of the existence of these rights (Figure 5).

Chapter 6, Part 3, Division 2, Section 59A of the LGA provides:

59A Ownership of water supply, sewerage and stormwater drainage works

- (1) Subject to this Division, a council is the owner of all works of water supply, sewerage and stormwater drainage installed in or on land by the council (whether or not the land is owned by the council).
- (2) A council may operate, repair, replace, maintain, remove, extend, expand, connect, disconnect, improve or do any other things that are necessary or appropriate to any of its works to ensure that, in the opinion of the council, the works are used in an efficient manner for the purposes for which the works were installed.

(3) The provisions of this section have effect despite anything contained in section 42 of the Real Property Act 1900.

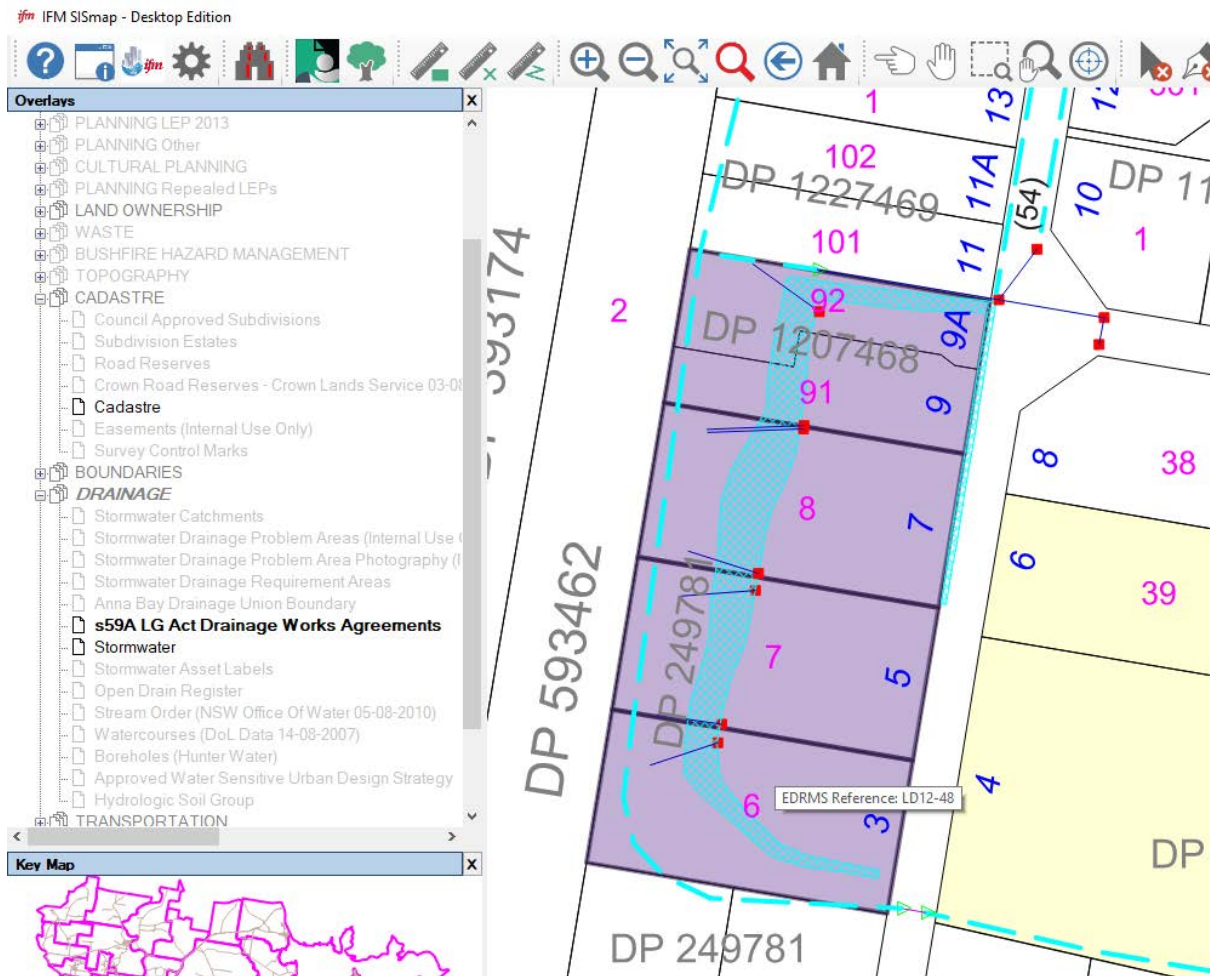


Figure 5: Example of the GIS 59A layer.

Council has more rights under 59A than that with an easement. Council is the owner of all works of stormwater drainage if it was installed in or on land by Council, and Council records the need to establish that the works of stormwater drainage were installed in or on the land by Council.

Councils that rely on section 59A may wish to consider noting the existence of underground works on certificates under section 10.7 of the Environmental Planning & Assessment Act 1979 or through Dial Before You Dig (now Before You Dig Australia). This would help protect drainage assets. Also, no compensation is payable for the existence of the works, nor is an easement required.

Surveyors would have seen plans of proposed drainage easements on old Deposited Plans. If Council were to utilise this proposed easement and carries out works (pipes or even open drains) at a cost to council (can be paying council staff or using council plant), then this constitutes a section 59A drainage structure.

3.1 Case Study

The task was to research and classify existing drainage structures passing through private property not covered by an easement under section 59A of the Local Government Act 1993 and provide a surveyor's report determining their status. In this case study, plans for a new 2-story dwelling were lodged with Council for Lot 1 and the drainage pipe running through the property was not shown on the lodged plans (Figure 6). The application was approved by Council without reference to requirements for the pipe drainage. The author is unsure whether the drainage was shown in the GIS as shown in Figure 6 at the time of assessment.



Figure 6: Example of the GIS drainage layer, showing drainage through Lot 1.

During construction, the stormwater pipeline was exposed running along the southern boundary, and the building was found to be too close to the drainage. Consequently, the foundations had to be redesigned (at Council's cost). Council decided to increase the pipe size at the time of building construction due to future limitations of access once the building was constructed.

The property owners insisted that no easement should be created but agreed that the new works were section 59A stormwater drainage works and signed an agreement to acknowledge that. Hence a new GIS layer was created (see Figure 5) and has become an important layer for investigation before approvals or design works. The layer also links the record system with evidence of the section 59A report of agreement.

This case highlights the need for the 59A layer and the importance for complete investigation before approval and/or works are conducted. The layer has proven important to most sections of Council.

The following is an example from the surveyor's report:

"I have researched and investigated Council records, had conversations and meetings with Council staff together with the current property owner, supervised surveys and made site

inspections regarding the stormwater drainage installed on the property Lot X in Deposited Plan XXXXXX and known as XXXXXXXXXXXXXXXXXXXXXXXXXX in the Local Government Area of Port Stephens, Parish of Tomaree and County of Gloucester.

The purpose of the research and investigation was to document and prove the determination that the stormwater drainage within the subject property was installed by Council or at Council's expense. The results from the research and investigation are reported as follows:

I have conducted inspections and made surveys of the subject property and I find installed thereon stormwater drainage pipes on the subject property along the southern boundary.

Council proposed to obtain a drainage easement over the subject property by agreement with the property owners, but agreement was not reached. Council does not at this juncture require an easement to be registered on the title documents of the subject land. But it is acknowledged by Council and the owners that the proposed stormwater drainage and works fall under the provisions of Section 59A Local Government Act 1993 (Figure 7).”

4 CONCLUDING REMARKS

A council surveyor can be called upon to do a varied and wide range of services for all departments within a local council, in addition to the normal duties of a surveyor. This includes performing duties involving various Acts, e.g. Local Government Act 1919 and 1993, Native Title Act 1993, Roads Act 1993, Land Acquisition (Just Terms Compensation) Act 1991, Conveyancing Act 1919, Real Property Act 1900, and the Surveying and Spatial Information Act 2002. Some of the services performed may assist other council surveyors to perform some specialist services for their own councils if drawn upon to complete related tasks.

This paper has outlined the author’s story of some of the different services provided in a career spanning some 30 years employed at Cessnock City Council and Port Stephens Council. It has focused on two cadastral case studies. Both the process to establish as a public road an existing physical road traversing a public reserve classified as community land without the need to change the classification and the task to research and classify existing drainage structures passing through private property not covered by an easement under section 59A of the Local Government Act 1993 are important to Council and the functions of a Council Registered Surveyor. There are many other different duties that a council surveyor is called upon, which may be presented at another time.

PERMIT TO ENTER

This agreement is between the property owner of [REDACTED] being [REDACTED] (hereinafter called “the Owners”), and the employees or contractors of Port Stephens Council (hereinafter called “Council”) and refers to the work within the above noted property.

1. The Owners hereby grant permission for Council to enter the land to undertake works for the purpose of replace an existing stormwater pipe.
2. These works shall only commence once the site is safe to undertake works and there is sufficient room on the property for Council to undertake the proposed works. Sufficient room may include the demolition and removal of the existing dwelling. Council will require at least an 8m clear zone from the southern boundary.
3. The Owners shall provide Council with a minimum 2 weeks notice that the property is ready for the proposed works to commence.
4. Council has its own Public Liability Insurance.
5. Council shall commence works, weather permitting, within 1 weeks of the property being safe and having sufficient room.
6. The proposed works include, but is not limited to,
 - a. excavation of material and stormwater pipe to expose a trench;
 - b. placement of bedding material at the bottom of the trench;
 - c. placement of new proposed pipe; and
 - d. backfill trench with compacted suitable material to a level similar to existing surface level.
7. The pipe is to not be more than 0.9m wide from the adjacent property boundary.
8. The pipe shall have the same invert level as the existing pipe.
9. Unwanted suitable excavated material created from the proposed works shall be placed adjacent to the Owners property on Council western land adjacent. The objective being to alleviate any potential for proud landforms (topography) as may encourage pooling on the property or on adjoining land and create correct surface water drainage. These levels will be placed in discussion with the Owner.
10. Council would not deny the Owners the opportunity to utilise the Council drainage infrastructure void to emplace the Owners stormwater pipes.
11. The existing inspection pits located on the Owners property and on the Council Western land will be removed and not replaced.
12. Council does not at this juncture require an easement to be registered on the title documents of the subject land. But it is acknowledge by Council and the Owners that the proposed stormwater drainage and works fall under the provisions of Section 59A Local Government Act 1993.
13. The Owners shall formally notify the proposed builder of the new dwelling that there is a pipe on the property and the builder shall not damage the new pipe and drainage system.
14. Council shall organise Telstra and Sewer correspond with new ground level.
15. Photos of the kerb and gutter shall be taken by Council prior the commencement of works.
16. Proposed outlet design is shown below and the top of the pit shall be level with the proposed ground level with the option of placing a raised grate which is normally 150mm above the ground surface level.

Figure 7: Example of permit to enter (agreement).

REFERENCES

- NSW Legislation (2025a) Local Government Act 1993, <https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-030> (accessed Mar 2025).
- NSW Legislation (2025b) Interpretation Act 1987, <https://legislation.nsw.gov.au/view/whole/html/inforce/current/act-1987-015> (accessed Mar 2025).
- NSW Legislation (2025c) Roads Act 1993, <https://legislation.nsw.gov.au/view/html/inforce/current/act-1993-033> (accessed Mar 2025).