
From: Rebecca McKenzie
Sent: 31/01/2022 6:25:04 PM
To: Council Northernbeaches Mailbox
Cc: Matthew McKenzie
Subject: Submission - DA 2021/2590 - 40 Pine Street Manly
Attachments: Objection to 40 Pine Street DA - 9 Pacific Parade - 31 Jan 2022.pdf;

Hi council team,

Please see the attached submission on this DA. Thanks.

Regards,
Rebecca McKenzie

9 Pacific Parade,
Manly,
NSW 2095

**Northern Beaches Council
Planning Department**

31 January 2022

Dear Sirs,

Objection – DA 2021/2590 – 40 Pine Street, Manly

We own and live at 9 Pacific Parade, Manly. We are writing to object to DA 2021/2590 – the proposal to build a house on the plot known as 40 Pine Street, Manly.

The plot in question is a 99 sqm patch of rocky ground on top of a steep cliff, 10 metres directly above our house. In our view - supported by decisions of the Council, MIAP and the NSW Land and Environment Court on the previous DA in 2013/14 - the block is wholly unsuitable to build a house on.

We refer to our previous objection letters from 9 April 2013 and 2 April 2014, copies of which are attached for ease of reference. Most of the objections have not been addressed in this latest proposal.

To reiterate our main concerns –

1. **Safety** - the whole area is steep and rocky, and there have been significant landslips in the area in the past (see our 2014 letter). We are concerned for our safety and that of our property, both during construction work and longer-term. No geotechnical investigation on our land (which is directly downhill of the site) has been done. It is not clear that the applicant's geotechnical advisers have been informed of previous landslip issues in the immediately surrounding area.

2. **Property boundary** - the plans show the proposed house encroaching onto land that is currently inside our back fence. The stone wall and upper terrace area have been inside the back fence of 9 Pacific Parade for at least several decades, possibly since the original subdivision in the early 1900s. The owners of 9 Pacific Parade have had exclusive use of that strip of land, and we have always used it as part of our own property. We understand that we may well have a case to claim ownership of that portion of land, on the basis of adverse possession at common law. There has been no discussion with us around moving the fence in the over 12 years since we have been living here.

3. **Access** - access to the block is pedestrian-only, via three steep walkways/sets of stairs. This causes potential issues for:

- access to the house generally for residents and visitors;
- waste collection; and
- access for fire, ambulance and other emergency services.

Fire is a particular concern, since the property is in a natural green corridor, and any fire would potentially spread very quickly, with no way for the fire brigade to get access. This is a public interest concern for the whole area.

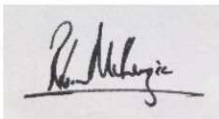
4. **Stormwater** - it does not appear to us that adequate arrangements have been made for disposal of stormwater. This directly affects our property, as we are immediately downhill of the site, and it is a safety issue. The applicant's own geotechnical report recommends that stormwater be piped via an easement to the street below – we are not prepared to grant such an easement over our land, and we are not satisfied that the alternative proposal of a pit to store water run-off will be either adequate or safe. As noted above, no geotechnical investigation has been done on our (downhill) side of our boundary.

5. **Screening and tree removal** – the application seems to rely on screening being planted in our back garden, on a terraced area that is solid rock. Nor have we been consulted about the large, old palm tree which is a significant feature at the back of our garden, and which would certainly be impacted by any construction, and the location of which does not seem to be accurate on the plans.

6. **Effects on our quality of life** - if this development goes ahead, we will lose a significant amount of the privacy that we currently enjoy. There is no setback at the rear on the boundary with our land, which surely cannot be compliant with planning regulations. As noted above, there is no way that adequate screening can be planted on the 40 Pine St side of the boundary. We will also lose the use of the terrace at the top of our back garden, which is a quiet haven and a key feature of our property. The whole proposed development is about the size of a small studio apartment or hotel room, and we are concerned that it will only ever be used as a short-term rental or Air B&B.

In summary, this is a block of land that simply should not be built on, ever. No-one knows why the block was sub-divided from 9 and 11 Pacific Parade over 100 years ago, but it is not appropriate for development. We support the calls of others for the council to re-acquire and re-zone the block.

We would be pleased to assist the Council with access to 9 Pacific Parade, or any further information we can provide, as required.

Yours faithfully,

Matthew and Rebecca McKenzie

9 Pacific Parade
Manly
NSW 2095

General Manager
Manly Council
PO Box 82
Manly NSW 1655

By hand and email: records@manly.nsw.gov.au

9th April 2013

Dear Sir,

Submission re DA no. 60/2013 – 40 Pine Street Manly

We own and live at 9 Pacific Parade Manly. Having inspected the plans and reviewed the accompanying information, we are writing to set out our objections to the proposed development at 40 Pine Street Manly under DA no. 60/2013.

Our specific concerns include:

1. **Property boundaries:** the DA indicates that the proposed new house would be built on an 'existing retaining wall'. That wall is inside our back fence. A number of the plans also refer to a 'relocated fence', indicating that the DA proposes moving our back fence and extending into our property.

We have not had any contact from the applicant about this.

We have not consented to any movement of our fence or encroachment on our land. If this proposal progresses we will need to get legal advice, but our intention would be to dispute any challenge to the existing boundaries of our property.

Photographs 1 and 2 show the positioning of the existing wall relative to our fence.

2. **Safety/landslide risk:** we very surprised that the geotechnical report rates the risks of damage caused by a landslide as 'low'. The area behind the south side of Pacific Parade is very steep and generally known to be unstable. We understand that no. 13 Pacific Parade has experienced mud-slides in their garden very recently. If there was a landslide, either caused by the building works or the new building generally, the consequences for our house and garden could be very severe.

The geotechnical report (para 3.1.1) states that there was only 'a very limited inspection' of nos 9 and 11 Pacific Parade. At no stage has anyone sought or had access to our property for this purpose, and we believe the 'inspection' must therefore have been limited to looking over our back fence.

We would have thought that a thorough investigation of our property would be needed before forming a view as to the risks of a landslide occurring on it, and we strongly feel that further assessment is needed in this area.

3. **Privacy/overlooking:** our house and garden are very private. The plans show several windows and a deck/balcony that would face northwards over our house and would overlook not only our back garden, but into our back courtyard (which is our main summer living area) and into the main sitting room area inside our house.

Photographs 3 and 4 show the view from roughly ground floor/deck level of the proposed new building, and shows the actual view that the occupants would have into the back of our house.

We do not believe that the proposed screening trees will solve this problem. In particular, the site for the 'dense screening tree' in the north east corner of the site is the solid rock courtyard in our back garden. The small amount of soil in the tiny flowerbed bordering the courtyard will not support the shrubs that we have in there, let alone a tree. Photograph 5 shows our currently bare back fence, where we have been unsuccessful at planting anything into this poor soil.

We object to the positioning of the building close to our rear boundary as well as any balconies and windows along the north and east side of the building.

4. **Our back terrace:** at the top of our back garden is a flat, private terrace area. This is shown in photograph 6.

If the proposed house is built as per the plans, we will lose most of that space with the movement of the fence. Even if the house were to be built wholly outside our fence, it would still be right next to, and overlooking, this courtyard, and we would no longer be able to sit there with any privacy. The proposed development will essentially make this space unusable.

5. **Trees and wildlife:** the proposal involves knocking down a mature eucalypt tree that is currently a habitat for kookaburras and other wildlife, as well as removal of two other trees. We are concerned that this will have a negative impact on the Pine Street 'green corridor' as well as ground water.

We are also concerned that removal of these trees will add to the risks of erosion and landslip, as identified in the geotechnical report.

Not shown in the plans is a large squat palm tree inside our garden. This can be seen in photograph 2. The plans do not say anything about removing this tree, but since it is right on the line of the proposed 'relocated fence', it seems to us that its retention is not compatible with the proposed development.

This tree is a significant feature of our garden, provides integral support to the rockwork and we oppose its removal.

6. **Size of site:** 40 Pine Street is an extremely small block. We are concerned that this site is far too small to build a building of any size on, let alone a two storey house. We are concerned that accepting this application could set a dangerous precedent and lead to a row of buildings along the Pine Street reserve, which would completely change the character of the neighbourhood.

7. **Ratio of house to land:** we are concerned that the proposed house is too big for the size of the site. It comes almost right up to the boundaries on all sides, as well as extends above a council imposed upper building line. As noted above in our point 1, it appears to extend onto our property on the northern side.
8. **Access:** there is no road access to the site. We are concerned that in the case of, say, a fire in the proposed new house, emergency services would not be able to get to the site, which could put our property at risk.
9. **Stormwater:** one of the proposed options for dealing with stormwater flow involves the creation of an easement to allow water to flow off through our property (section 9.2 of the statement of environmental effects).

This would not be acceptable to us from the perspective of our own property.

Also, we are concerned there are already more than enough problems with stormwater along Pacific Parade and in Balgowlah Road at the far end, without adding to the flow of water.

If you need any clarification, or if we can provide any further information to assist the council in assessing this matter, please let us know.

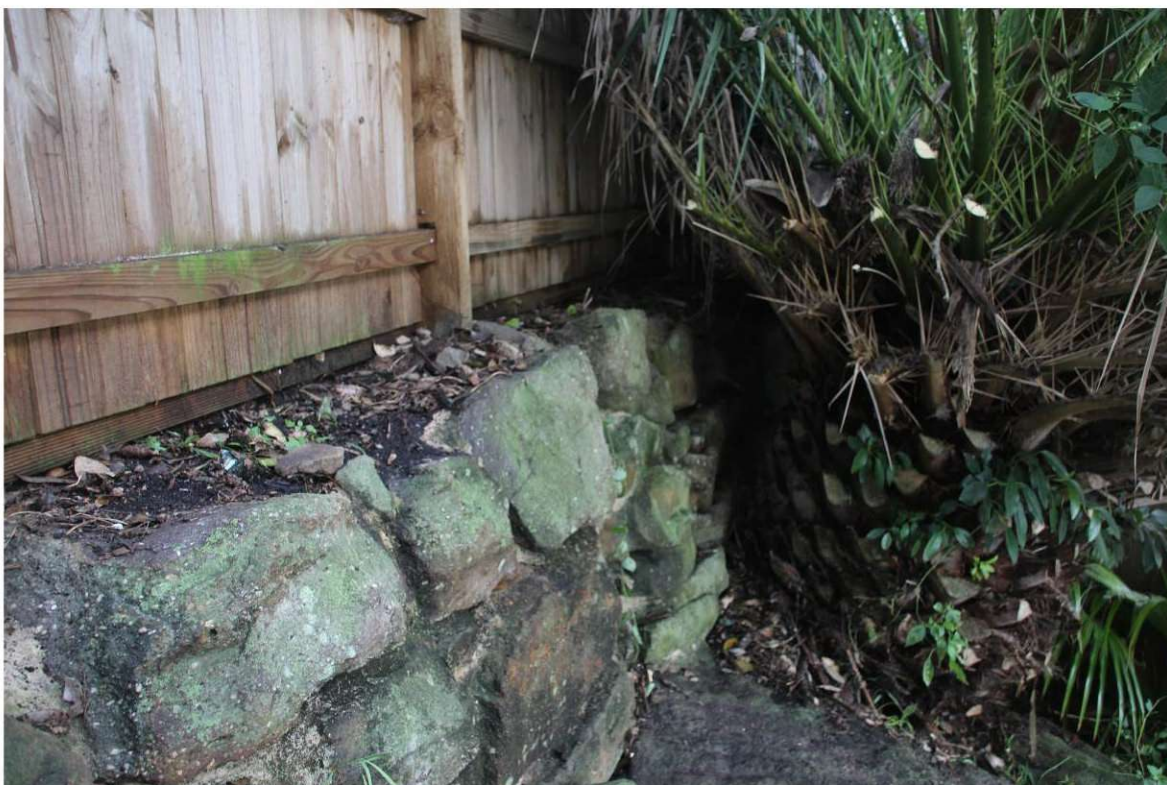
Yours faithfully,

Rebecca McKenzie (nee Sadleir) and Matthew McKenzie





Photograph 1 – Existing wall and back fence facing East (taken from inside 9 Pacific Parade)



Photograph 2 - Existing wall and back fence facing West (taken from inside 9 Pacific Parade)



Photograph 3 – View from ground floor/deck level of proposed new house into 9 Pacific Parade



Photograph 4 – View from ground floor/deck level of proposed new house into 9 Pacific Parade



Photograph 5 – Back fence exposed where plants have limited success in growing



Photograph 6 – Back terrace area of 9 Pacific Parade

9 Pacific Parade
Manly
NSW 2095

General Manager
Manly Council
PO Box 82
Manly NSW 1655

By email: records@manly.nsw.gov.au

2 April 2014

Dear Sir,

Submission re s82A application – DA no. 60/2013 – 40 Pine Street Manly

We own and live at 9 Pacific Parade in Manly. We are writing to object to the s82A application in relation to the plot of land referred to as 40 Pine Street.

We believe that MIAP made the correct decision in relation to the original development application, we do not believe the reasons for that rejection have been overcome by this new proposal, and we strongly urge that this application be rejected.

The new proposal does not adequately address the points raised in our objection letter to the council of 9 April 2013, and we repeat all of the objections raised in that letter.

First, we want to focus on one area in particular, which is the risk to us of a landslip resulting from the proposed new house (both during construction and more generally). We are very seriously concerned that the applicants have not done enough to investigate or address this issue. We are genuinely worried that a landslip could kill or injure one of us or our visitors or neighbours, or at least cause significant damage. Our concerns are based on the following:

1. The plot in question has never been built on and any development could change the already questionable integrity of the area.
2. It is directly above our house and garden. Any slippage of rock, earth or debris from the building site or the property would inevitably tumble down onto our land. Given how steep the slope is, even a relatively minor slip could potentially cause damage to our garden, our outside living area and our house, and put our personal safety at risk. A major landslip would be catastrophic.
3. Either omitted, not known or overlooked by the application are two events within the last 18 months, which heighten our awareness of the fragility of the ground behind our property and as a result of which we are now more concerned for the integrity of the area behind our property.

The two significant landslip issues in the direct vicinity of the proposed new house were:

- 3.1. There was a large mudslide in the garden of number 13 Pacific Parade (immediately adjacent to the 40 Pine Street plot) which I understand resulted in considerable damage to the kitchen and required major works to shore up the cliff face in their garden.

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- 3.2. In the second half of 2013, there was also a landslip towards the eastern end of the Pine Street walkway. That landslip was so serious that the council considered it too dangerous to access the area, and closed off that entire walkway (from Pine Street to the east and west and Kangaroo Street to the south) for a period of many weeks whilst repair work was undertaken. We attach a photograph of the closed walkway with council signage. If this house were to be built and the same thing were to occur, the applicants would be completely cut off from access to any street, around. The collapse of the wall next to the steps came about after vegetation was removed followed by heavy rain.
4. The geotechnical report filed with the application is dated March 2013, and states that the actual inspection of the property took place on 5 June 2012. Had the inspection been done more recently, I do not believe the consultants could possibly have concluded as they did (in section 3.2.4 of the report) that "there doesn't appear to be any signs of recent significant instability on this or adjacent properties.". That this revised proposal does not even mention the recent landslip issues in the immediate area of the property gives me great concern, as it is indicative of the applicants' lack of proper investigation and assessment of the risks.
 5. As we said in our previous letter, at no stage have the geotechnical consultants asked for or been given access to 9 Pacific Parade. Leaving aside boundary issues, we do not see how the applicants can have adequately established that the ground that is directly downhill and to the north of the plot (including the crumbling stone wall that appears in the plans) is suitable to have a house built right next to and above it. They cannot have done so, because they have not had access to the area to investigate it, and the report itself states that it was based on a 'very limited inspection' of 9 Pacific Parade. Surely if you want to build for the first time in an area halfway down a very steep hill that is obviously highly unstable, it is obvious that there needs to be an investigation of the entire slope, particularly the land below the new building, and not just the small plot on which it will physically sit.
 6. The proposal seems confused as to how much excavation of the bedrock is now proposed. The application contains a number of statements such as:
 - "It does not include ... Excavation of Rock Outcrops [*unless for BCA compliance*];
 - "*Minimise excavation...*";
 - "Existing rock outcrops ...retained, *unless approved otherwise*";
 - "footings ... will be hand dug *where practicable, to reduce 'mechanical excavation'*" (emphasis added). I do not see how the applicants can have adequately considered the landslip implications, when the applicants' own documents are unclear as to how much excavation will actually be needed to build the house and meet the building requirements.
 7. The geotechnical report was produced before the new plans were drawn up, so the geotechnical consultants cannot have considered the plans now in front of the council. The Foundation and Sediment Control Plan filed with the application states "pole layout to be confirmed by the Geotech and Structural engineers", so it is not even clear exactly where the poles that support the house will be positioned. How can we be comfortable that the landslip risks have been properly assessed in those circumstances?
 8. The preferred proposal for connecting the property to the sewer line would appear to involve more excavation of the Pine Street reserve to the West of the property (top of page 14 of the

application). This would be behind no. 13 where there has already been a major mudslide. No assessment of the implications of that additional excavation appears to have been done. The alternative seems to be to connect to the sewer via 9 Pacific Parade, which presumably would involve tunnelling through our garden directly below the building site. That would potentially compromise our gardens and is not acceptable to us.

Other issues that we still have with the recent proposal include:

- a) The plans still show a deck (deck 2) and windows that overlook our garden and living area. It is not possible for any planting to conceal this deck or windows as the area in front of the entire building is steep sloping rock. Our concerns in relation to our own privacy remain.
- b) The proposed building is a two storey high structure, located above and directly behind our raised back fence, which makes it highly visible from all parts our back yard and living areas. The proposed floor level is roughly in line with the top of the back fence, which results in a roughly 6 metre high building further projecting up above our back fence. This is a huge impact on our outlook and spoiling of our leafy rear outlook
- c) The building is located unreasonably close and above the fence and boundary, which considering its elevated position should have an increased set back, in this instance.
- d) Sound generated from the building during construction and once built would be too unreasonable and would make it quite uncomfortable for us. We feel that we would not be able to continue to enjoy our private comfort of our home
- e) The location of the proposed building is highly visible from Pacific Parade, and is directly behind our 100 plus year old building and is not in keeping with the streetscape or building type. We understand that Pacific Parade is known to retain character features of the local area and this should be a consideration for acceptability (or not) of this development.
- f) How is this elderly couple going to cope with walking up and down the steep and sometimes slippery stairways to access their house, especially in the dark and in the wet?
- g) What if one of them needs a wheelchair in the future? All of the three access pathways have stairs. The property would be totally inaccessible to anyone without full mobility and a reasonable level of fitness.
- h) What if they need an ambulance? How would paramedics access the property with a wheeled gurney and other equipment they might need? Won't that put the couple themselves, and paramedics, at risk?
- i) If there is a fire on the property, how would the fire brigade get access? At the very least it must surely take longer for them to get there than it would to a normal property with street access, which could put the occupants, the house, and the surrounding neighbours at greater risk. Given the very unusual nature and location of this proposal, I think it would be appropriate for the applicants (or the council) to obtain specific advice from a fire brigade expert on the fire hazard implications of building on this plot.
- j) Where and how will they put their rubbish and recycling bins out for collection? I (Rebecca) am in my early 40s and reasonably fit, and I doubt I could wrestle a full bin either up to

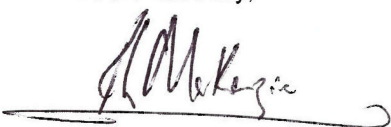
Kangaroo Street or down to either end of Pine Street (not to mention inconvenience to others using the public reserve).

- k) Even if the applicants themselves do not wish to have a car, there is no guarantee that future owners would not want to have one or two cars. We do not believe the parking concerns have been addressed by the new proposal.
- l) The proposal does not address the stormwater concerns raised by us and many of the other objectors.
- m) The erecting of a private residence with a natural corridor, will impinge onto common areas and detract from the natural environment.
- n) What could be gained by cutting down several large and established trees, with no suitable or appropriate replanting planned?
- o) Wouldn't the application impose considerable and disproportionate (thus unreasonable) cost to the community via upgrades and ongoing required maintenance of services (power, water, gas etc.) to support this one off development of a highly isolated site?
- p) Lastly and we think most simply, just because the property was subdivided (for reasons unknown) more than 100 years ago, it does not have any credible right to be developed. The plot has a separate title and is zoned residential, but that alone does not give the applicants a right to breach current planning controls and ignore building guidelines to be allowed to build on it now

In summary, frankly, this is just not a property that is suitable for everyday living, especially for elderly people. It is too small, too inaccessible and too dangerous to live or build on, particularly in breach of the local planning rules and basic common sense.

We would be happy to provide further information or assistance to the council, including access to 9 Pacific Parade, if that would be helpful.

Yours faithfully,



Rebecca and Matthew McKenzie

rebecca.j.mckenzie@gmail.com matt@artis-consulting.com.au

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0450 030 990

Photograph – Eastern end of Pine Street walkway closed off by Manly Council in July 2013 due to landslip



