

STATEMENT OF ENVIRONMENTAL EFFECTS

Proposed Dwelling
House

40 Pine Street, Manly

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40 Pine Street, Manly



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1 Introduction

This statement has been prepared in support of a Development Application proposing the construction of a dwelling house and the implementation of an integrated landscape regime on the existing vacant allotment.

We note that an application proposing the construction of a dwelling house on the subject allotment was the subject of Land and Environment Court proceedings in the matter of *Goarin v Manly Council [2014] NSWLEC 1108* with the application ultimately refused by the Court on the basis of the visual impact of the proposed 2 storey building form as viewed from the adjacent walkway, the inadequacy of landscaping within the rear setback, unacceptable quantum of usable private open space, accessibility and wayfinding for emergency services and inadequate information in relation to the availability of water and sewerage facilities, stormwater disposal and construction management.

This application represents a comprehensive, measured and resolved response to the concerns raised by the Court in its assessment and determination of the previous application and the matters arising discussed during formal pre-DA discussions with Council PLM 2021/0247.

This submission demonstrates that the proposed dwelling has been appropriately designed having regard to the constraints and opportunities associated with the sites small size, geometry and topography with the adoption of a single storey building form ensuring no inappropriate or jarring visual impacts as viewed from the public domain or unacceptable residential amenity impacts in terms of views, privacy or solar access. The proposed landscape response will ensure that the dwelling sits within a landscape setting. This application is accompanied by confirmation as to the ability for emergency services to locate the property and to provide appropriately for the servicing of the allotment in terms of water and sewerage, waste collection and stormwater disposal and a Statutory Declaration from the owner of the subject property confirming the inability to obtain a stormwater easement over the downstream properties (Attachment 1). In addition to the Statement of Environmental Effects, the following also accompanies the application:

- Architectural plans prepared by Carlisle Architects
- Boundary Identification Survey prepared by Stutchbury Jaques Pty Limited
- Landscape Plan prepared by Melissa Wilson Landscape Architects
- Stormwater and erosion and sediment control plans prepared by Structterre Consulting
- Geotechnical Report by White Geotechnical
- Arboricultural Impact Assessment prepared by Bluegum Tree Care and Consultancy
- Construction Management Plan prepared by Carlisle Architects
- Waste Management Plan prepared by Carlisle Architects
- BASIX certificate
- Sydney Water servicing confirmation letter (Attachment 2)

- Correspondence from New South Wales Ambulance in relation to the provision of a location access note in their call and dispatch system (Attachment 3)
- Correspondence from myBins confirming a wheel out and wheel in service to Kangaroo Street (Attachment 4)

In preparation of this document, consideration has been given to the following statutory planning regime:

- Environmental Planning and Assessment Act, 1979,
- Manly Local Environmental Plan 2013, and
- Manly Development Control Plan 2013

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- This application represents a comprehensive, measured and resolved response to the concerns raised by the Court in its assessment and determination of the previous application in the matters discussed during formal pre-DA discussions with Council PLM 2021/0247. The site is assessed as suitable for the proposal, having regard to the relevant land use and planning requirements.
- The proposal will not give rise to any unacceptable streetscape or residential amenity impacts.
- The variations proposed to the front, side and rear boundary setback, total open space and carparking provisions contained within Manly Development Control Plan have been acknowledged and appropriately justified having regard to the objectives of the controls and the constraints imposed by the size, geometry and location of the site. Strict compliance has been found to be both unreasonable and unnecessary given the overall design quality of the development and the consistency of the proposal with the objectives of the applicable controls.

2 Site Analysis

2.1 Site Description and Location

The subject property is legally described as Lot 5, DP 939161, No. 40 Pine Street, Manly. The site is generally rectangular in shape having frontage and address to the unmade section of Pine Street of 12.19 metres, variable depth of between 8.165 and 8.145 metres and an area of 99.4m². A public pathway extending from Pine Street to Berkely Street is located adjacent to the frontage of the property with another pathway also extending from adjacent to the property to Kangaroo Street.

The site is vacant and consists of a grassed area, rocky outcrops, a number of trees and a stone retaining wall located adjacent to its northern boundary. The site falls approximately 2 metres across its surface in a northerly direction. The site has pedestrian access via the public walkway located within the unmade section of Pine Street but no vehicular access. The site characteristics are depicted in Figures 1, 2 and 3 below and over page.

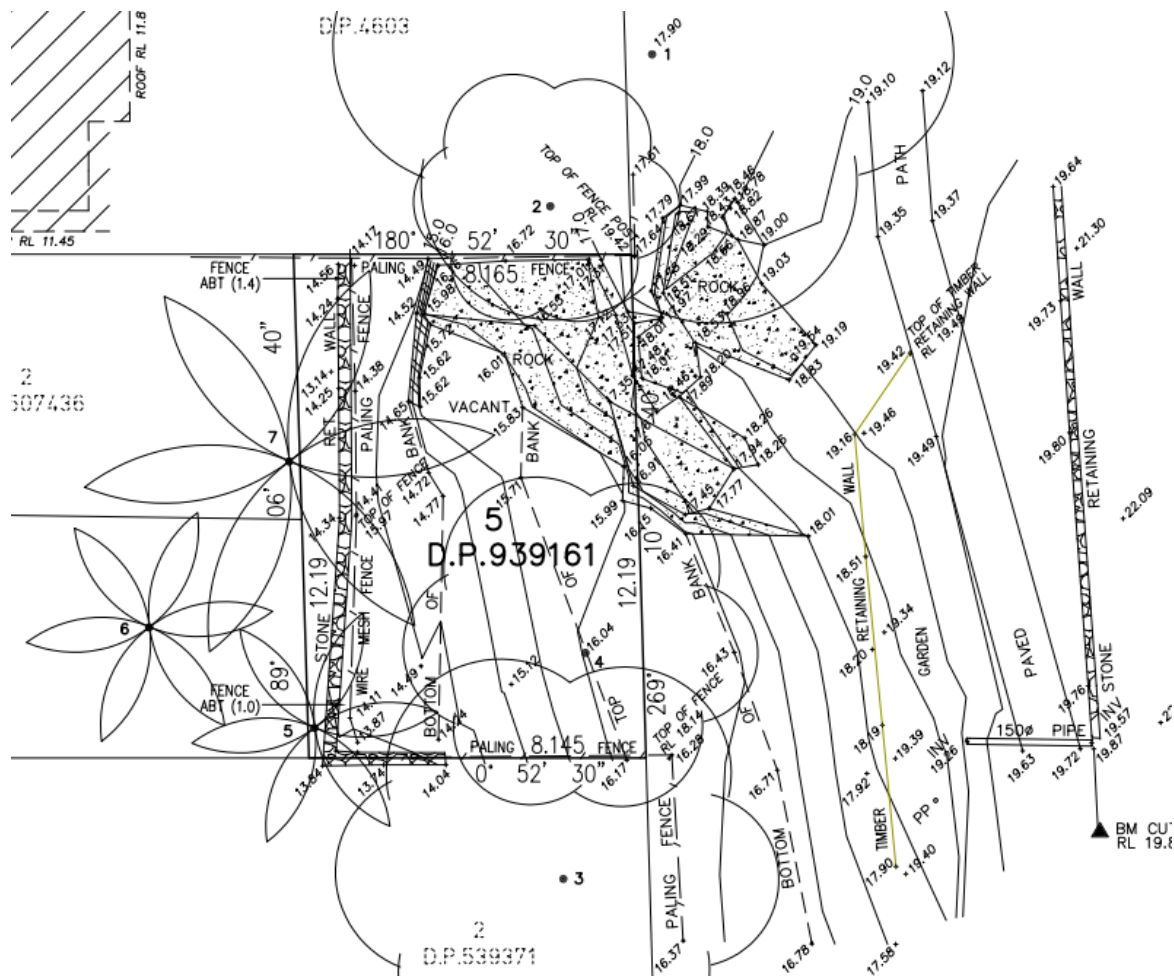


Figure 1 - Survey extract



Figure 2 - Aerial site/location photograph (Source: SIX Maps)



Figure 3 - Subject property as viewed from the Pine Street frontage

The immediately adjoining properties to the rear of the site, No's 7, 9 11 and 13 Pacific Parade, are occupied by detached and semi-detached dwellings with frontage and address to Pacific Parade. The properties to the south of the site are located on the opposite high side of the Pine Street walkway and are occupied by a 4 storey residential apartment building and 2 storey detached dwelling houses.

3 Description of Development

3.1 Details of the Proposed Development

The application proposes the construction of a dwelling house and the implementation of an integrated landscape regime on the existing vacant allotment, as depicted on plans DA-01(A) to DA-08(A) and DA-10(A) prepared by Carlisle Architects.

The resultant single storey dwelling has been designed to sit low into the site whilst also sitting lightly on the land utilising pier construction which enables footings to be hand dug as necessary to prevent unacceptable tree impacts as detailed within the accompanying Arboricultural Impact Assessment prepared by Bluegum Tree Care and Consultancy. The resultant floor plate provides for a 49m² one (1) bedroom dwelling house with bathroom and laundry facilities and access to external private open space and a bin storage area located adjacent to the frontage of the property.

The application does propose the removal of Tree 6 being an undesirable Cocos Palm with the balance of the trees located on the property and on the immediately adjoining land protected in accordance with the recommendations contained within the accompanying Arboricultural Impact Assessment. Such tree removal is appropriately compensated for through the implementation of the enhanced site landscape regime as depicted on the accompanying plans prepared by Melissa Wilson Landscape Architects with such works also involving access and landscape works within the adjacent road reserve.

The acceptability of the proposed excavation is detailed within the accompanying geotechnical report prepared by White Geotechnical with stormwater disposed of via the proposed OSD and level spreader system noting that downstream property owners are not prepared to grant an easement for the disposal of stormwater. A Statutory Declaration signed by the owner of the subject property confirming the inability to obtain a stormwater easement over the downstream properties is at Attachment 1.

4 Statutory Planning Framework

The following section of the report will assess the proposed development having regard to the statutory planning framework and matters for consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act, 1979 as amended. Those matters which are required to be addressed are outlined, and any steps to mitigate against any potential environmental impacts are discussed below.

4.1 Manly Local Environmental Plan 2013

4.1.1 Zoning and Permissibility

The subject site is Zoned R1 General Residential. The objectives of R1 General Residential zone are as follows:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Dwelling houses are permissible with consent in the R1 zone and the works relate to a new dwelling. As such, the works are permissible with consent and consistent with the zone objectives in that they provide for the housing needs of the community in a small compact and affordable housing form.

4.1.2 Floor Space Ratio

Pursuant to clause 4.4 in the LEP, the site has a maximum floor space ratio (FSR) control calculated at 0.6:1. The objectives of the FSR control are as follows:

- a) *to ensure the bulk and scale of development is consistent with the existing and desired Streetscape character,*
- b) *to control building density and bulk in relation to a site area to ensure that development does not obscure important landscape and townscape features,*
- c) *to maintain an appropriate visual relationship between new development and the existing character and landscape of the area,*
- d) *to minimise adverse environmental impacts on the use or enjoyment of adjoining land and the public domain,*
- e) *to provide for the viability of business zones and encourage the development, expansion and diversity of business activities that will contribute to economic growth, the retention of local services and employment opportunities in local centres.*

The proposed gross floor area, as defined, is calculated at 49m² which represents a compliant FSR of 0.49:1. The GFA calculation is depicted on plan DA-02(A). As the proposal satisfies the numerical control it is also deemed to comply with the associated objectives. Accordingly, there is no statutory impediment to the granting of consent.

4.1.3 Height of Buildings

Pursuant to clause 4.3 in the LEP the max building height shall not exceed 8.5 metres. The objectives of the control are as follows:

- a) *to provide for building heights and roof forms that are consistent with the topographic landscape, prevailing building height and desired future Streetscape character in the locality,*
- b) *to control the bulk and scale of buildings,*
- c) *to minimise disruption to the following:*
 - i. *views to nearby residential development from public spaces (including the harbour and foreshores),*
 - ii. *views from nearby residential development to public spaces (including the harbour and foreshores),*
 - iii. *views between public spaces (including the harbour and foreshores),*
- d) *to provide solar access to public and private open spaces and maintain adequate sunlight access to private open spaces and to habitable rooms of adjacent dwellings,*
- e) *to ensure the height and bulk of any proposed building or structure in a recreation or environmental protection zone has regard to existing vegetation and topography and any other aspect that might conflict with bushland and surrounding land uses.*

Building height is defined as follows:

building height (or height of building) means the vertical distance between ground level (existing) and the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like

Ground level existing is defined as follows:

ground level (existing) means the existing level of a site at any point.

It has been determined that the proposed single storey dwelling house has a maximum height above ground level (existing) of 6.27 metres being well below the 8.5 metre height standard and approximately 1.2 metres above the height of the adjacent public pathway. This is depicted in the plan extract at Figure 4 over page.

As the proposal complies with the numerical standard it is also “deemed to comply” with the associated objectives.

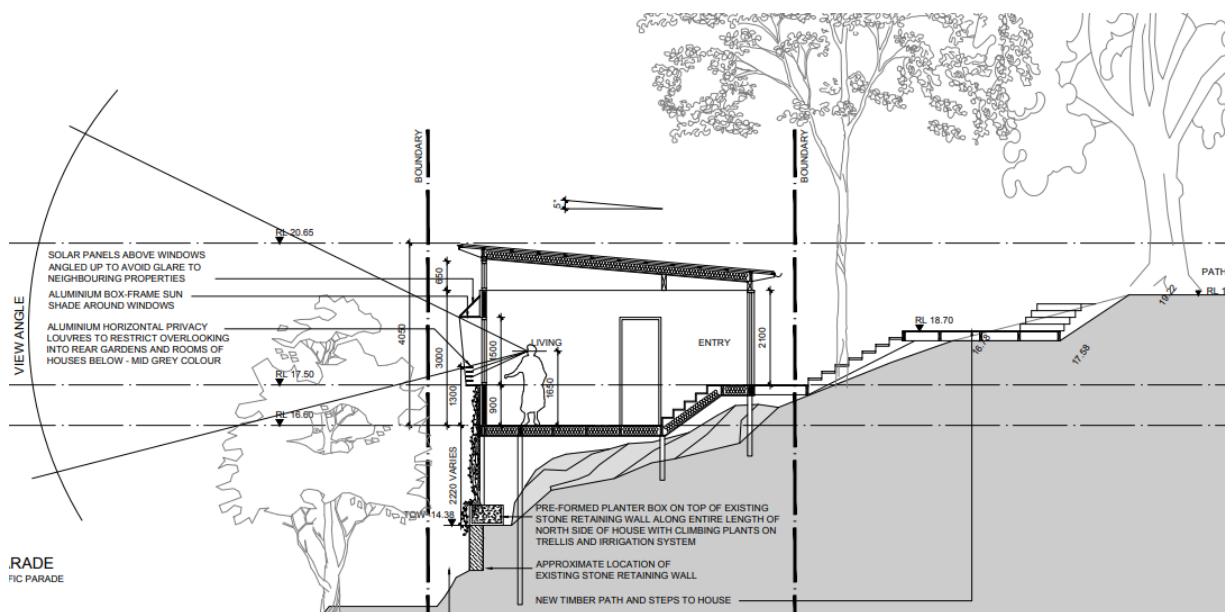


Figure 4 - Section AA plan extract (DA-04(A)) showing the relative height of the proposed development to ground level (existing) and the adjacent public pathway

4.1.4 Acid Sulfate Soils

Pursuant to clause 6.1 of the LEP the objective is to ensure that development does not disturb expose or drain acid sulfate soils and cause environmental damage. The subject site is mapped as being within class 4 and 5 acid sulfate soils as depicted in Figure 5 below. We confirm that the works are not more than 2 metres below the natural ground surface and are not works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface. Accordingly, no further investigation is necessary.

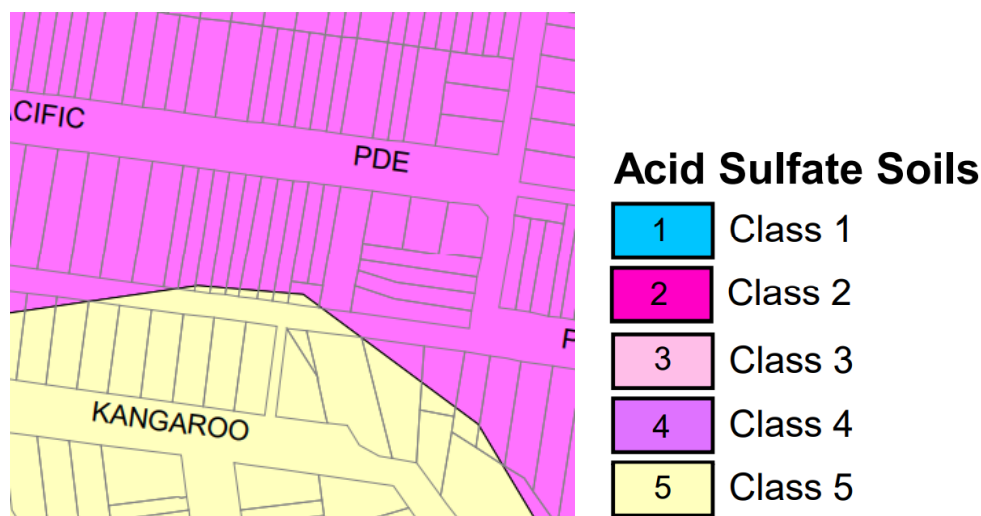


Figure 5 - Acid sulphate soils map extract MLEP

4.1.5 Earthworks

Pursuant to clause 6.2(3) of MLEP, before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters -

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The application is accompanied by a geotechnical report prepared by White Geotechnical which at Section 9 contains the following geotechnical summary:

The proposed development is suitable for the site. No geotechnical hazards will be created by the completion of the proposed development provided it is carried out in accordance with the requirements of this report and good engineering and building practice.

In relation to the applicable considerations, we note the following:

- (a) the development is unlikely to disrupt, or detrimental effect, drainage patterns and soil stability in the locality of the development,*
- (b) the development is unlikely to result in any unacceptable impact on the future use or redevelopment of land,*
- (c) the fill or the soil to be excavated, or both, from the land is unlikely to be contaminated given its long-established residential use,*
- (d) the proposed earthworks will not give rise to adverse impacts on the amenity of adjoining properties in terms of stability or vibration provided the recommendations within the accompanying geotechnical report are followed,*
- (e) no fill material will be imported onto the site,*
- (f) the excavation works are unlikely to disturb relics however this could be dealt with by an appropriately worded condition of consent,*

- (g) the revised excavation is not located within proximity of any waterway, drinking water catchment or environmentally sensitive area and to that extent is unlikely to give rise to any adverse impacts, and
- (h) no objection is raised to an appropriately worded condition requiring compliance with the recommendations contained within the accompanying geotechnical report.

On the basis of the above analysis the consent authority can be satisfied that these provisions are achieved.

4.1.6 Essential services

Pursuant to clause 6.12(1) of MLEP development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required —

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

In relation to the provision of essential services we respond as follows:

- (a) *the supply of water,*

Response: This application is a company by a Sydney Water servicing confirmation letter a copy of which is at Attachment 2. This correspondence confirms approval for an extension of the Sydney Water service asset to the subject site. This provision is satisfied.

- (b) *the supply of electricity,*

Response: We confirm that the supply of electricity is available to the site. This will be confirmed through Councils standard Ausgrid referral. This provision is satisfied.

- (c) *the disposal and management of sewage,*

Response: We confirm that a 150mm diameter cast-iron sewage pipe services the subject property as detailed within the accompanying Construction Management Plan with a photograph of the sewer connection point at Figure 6 over page. This provision is satisfied.

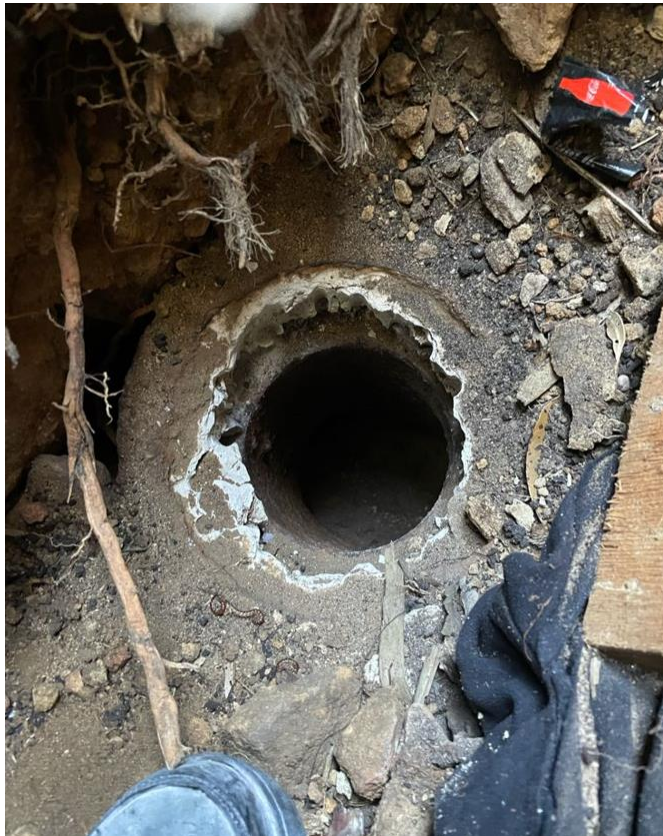


Figure 6 - Photograph of sewer connection point

d) stormwater drainage or on-site conservation,

Response: Stormwater will be disposed of via the proposed OSD and level spreader system noting that downstream property owners are not prepared to grant an easement for the disposal of stormwater. This provision is satisfied.

(e) suitable vehicular access.

Response: There is currently no vehicular access available to the subject property and no ability to provide vehicular access as a component of the proposed development. Many dwellings in the vicinity do not have car parking facilities. Council have promoted a car share policy. This is an economical and environmentally friendly alternative to owning a car. Good public transport is located at the eastern end of Pine Street adjacent to Pittwater Road. and a "Go Get" car pod is located at the western end of Pine Street adjacent to the stair access that leads to 40 Pine Street.

That said, the correspondence at Attachment 3 from New South Wales Ambulance and confirms that a location access note is able to be registered against the property in their call and dispatch system. Further, the correspondence at Attachment 4 from myBins confirms a wheel out and wheel in service will be provided to Kangaroo Street to cater for the needs of future occupants, should it be necessary, depending on their level of mobility. In this regard, Council will undertake their waste collection from Kangaroo Street. This provision is satisfied.

4.2 Manly Development Control Plan 2013

The relevant provisions of the Manly Development Control Plan 2013 in relation the proposed works are detailed as follows:

Control	Requirement	Proposed	Compliance
Streetscapes and Townscapes 3.1	<p>To minimise any negative visual impact of walls, fences and carparking on the street frontage.</p> <p>To ensure development generally viewed from the street complements the identified streetscape.</p> <p>To encourage soft landscape alternatives when front fences and walls may not be appropriate.</p> <p>To ensure that all parking provision is designed and sited to respond to and respect the prevailing townscape.</p> <p>To assist in maintaining the character of the locality.</p> <p>To recognise the importance of pedestrian movements and townscape design in the strengthening and promotion of retail centres.</p>	<p>The single storey presentation of the dwelling to the unformed section of Pine Street and its immediate built form context which includes 2 storey detached dwelling houses and a 4 storey residential flat building located on the southern side of the road reserve will ensure that proposed dwelling will not be perceived as inappropriate or jarring in a streetscape context and to that extent compatible with its context. The proposal will coexist in harmony with surrounding development.</p> <p>A landscape plan has been provided which includes perimeter planting and within the front setback to ensure the dwelling will sit within a landscaped setting. The landscaping proposed will also soften and screen the built form.</p> <p>The siting of the proposed dwelling relative to the adjacent pathway will ensure that pedestrian movements are not compromised.</p>	Yes

Control	Requirement	Proposed	Compliance
	To minimise negative visual impact, in particular at the arterial road entry points into the Council area and the former Manly Council area, so as to promote townscape qualities.	Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191, I have formed the considered opinion that most observers would not find the proposed development by virtue of its height and scale, offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.	
Landscaping Design 3.3.1	<p>To encourage appropriate tree planting and maintenance of existing vegetation.</p> <p>To retain and augment important landscape features and vegetation remnant populations of native flora and fauna.</p>	<p>This application is accompanied by a landscape plan prepared by Melissa Wilson Landscape Architects which details the enhancement of landscaping on the site with a range of treatments proposed. Plantings around the perimeter of the site and within the adjacent road reserve to soften and screen the building as viewed in the round.</p> <p>Particular attention has been given to retaining the significant trees on the site including the adoption of a lightweight pier type construction.</p>	Yes

Control	Requirement	Proposed	Compliance
Preservation of Trees 3.3.2 Footpath Tree Planting 3.3.3	<p>To protect and enhance the urban forest of the Northern Beaches.</p> <p>To protect and enhance the scenic value and character that trees and/or bushland vegetation provide.</p>	<p>The existing large gum tree and rock outcrops on the site are retained. The proposed dwelling is suspended delicately above the natural ground level on small posts thereby maintaining the existing land form. The area between the public footpath and the site is to be retained as native landscaping which provides a natural landscaped buffer between the footpath and the proposed dwelling. provided to the sides and north side of the dwelling.</p> <p>The application does propose the removal of Tree 6 being an undesirable Cocos Palm with the balance of the trees located on the property and on the immediately adjoining land protected in accordance with the recommendations contained within the accompanying Arboricultural Impact Assessment.</p> <p>Such tree removal is appropriately compensated for through the implementation of the enhanced site landscape regime as depicted on the accompanying plans prepared by Melissa Wilson Landscape Architects with such works also involving access and landscape works within the adjacent road reserve.</p>	Yes

Control	Requirement	Proposed	Compliance
Sunlight Access and Overshadowing 3.4.1	<p>New development (including alterations and additions) must not eliminate more than one third of the existing sunlight accessing the private open space of adjacent properties from 9am to 3pm at the winter solstice (21 June); or</p> <p>Where there is no winter sunlight available to open space of adjacent properties from 9am to 3pm, the calculations for the purposes of sunlight will relate to the equinox in March and September from 9am to 3pm.</p> <p>Given the orientation of the site at least 2 hours of solar access is to be maintained to the windows or glazed doors to living rooms of adjacent properties between 9am and 3pm on 21st of June</p>	<p>The accompanying shadow diagrams (DA-08(A)) demonstrate that the development will not cast shadow onto any principal living or primary open space area of surrounding development between 9am and 3pm on 21st June. Accordingly, these provisions are satisfied.</p>	Yes
Privacy and Security 3.4.2	<p>To minimise loss of privacy to adjacent and nearby development by:</p> <ul style="list-style-type: none"> appropriate design for privacy (both 	<p>The proposal has appropriately considered the amenity of neighbours with regard to privacy.</p> <p>The juxtaposition of the proposal to surrounding development will ensure the</p>	Yes

Control	Requirement	Proposed	Compliance
	<p>acoustical and visual) including screening between closely spaced buildings;</p> <ul style="list-style-type: none"> mitigating direct viewing between windows and/or outdoor living areas of adjacent buildings. <p>To increase privacy without compromising access to light and air. To balance outlook and views from habitable rooms and private open space.</p> <p>To encourage awareness of neighbourhood security.</p>	<p>maintenance of an appropriate level of visual privacy between adjoining development. That said, externally mounted horizontal privacy louvres have been provided to the north facing windows to a height of 1.3 metres above finished floor level to prevent direct downward views into the rear yards of numbers 9 and 11 Pacific Parade as depicted in Figure 4.</p> <p>We note that in the LEC Judgement, Commissioner Brown states at cl 41:</p> <p><i>"I am satisfied that appropriate measures could be included in the design of the building to minimise any potential overlooking".</i></p> <p>The proposal is well-behaved and neighbourly in relation to the privacy outcomes designed into the development.</p>	
Maintenance of Views	<p>The proposal is to provide for view sharing.</p>	<p>Having inspected the site and its immediate surrounds we are satisfied that the proposed building, by virtue of its height and siting, will not give rise to any public or private view affectation.</p>	Yes

Control	Requirement	Proposed	Compliance
Stormwater Management 3.7	<p>To manage urban stormwater within its natural catchments and within the development site without degrading water quality of the catchments or cause erosion and sedimentation.</p> <p>To manage construction sites to prevent environmental impacts from stormwater and protect downstream properties from flooding and stormwater inundation.</p>	<p>Stormwater will be disposed of via the proposed OSD and level spreader system noting that downstream property owners are not prepared to grant an easement for the disposal of stormwater.</p>	<p>Yes</p>
Waste Management 3.8	<p>All development that is, or includes, demolition and/or construction, must comply with the appropriate sections of the Waste Management Guidelines and all relevant Development Applications must be accompanied by a Waste Management Plan.</p>	<p>The application is accompanied by a waste management plan prepared by the project Architect with an integrated bin storage area provided adjacent to the frontage of the property.</p> <p>The correspondence at Attachment 4 from myBins confirms a wheel out and wheel in service will be provided to Kangaroo Street to cater for the needs of future occupants, should it be necessary, depending on their level of mobility. In this regard, Council will undertake their waste collection from Kangaroo Street.</p>	<p>Yes</p>

Control	Requirement	Proposed	Compliance
Number of Storeys 4.1.2.2	2 storeys	The proposal provides for a single storey streetscape presentation.	Yes
Wall Height 4.1.2.1	7 metres	The single storey proposal complies with the wall height control	Yes
FSR 4.1.3	0.6:1	0.49:1	Yes
Street Front Setbacks	<p>Road Front setbacks must relate to the front building line of neighbouring properties and the prevailing building lines in the immediate vicinity.</p> <p>That said, clause 4.1.4.6 requires a 6 metre setback from the common boundary with the adjacent RE1 Public Recreation zoned land.</p>	<p>The proposal incorporates a variable front setback of between 900mm and 3 metres as depicted on the plans.</p> <p>We note that the PLM notes contain the following commentary:</p> <p><i>The front and rear setback non-compliances indicated are unavoidable if development is to be permitted on this site and the proposal is considered to satisfy the applicable objectives of each clause in lieu of the numerical non-compliance.</i></p>	<p>No</p> <p>Variations acceptable on merit</p>

Control	Requirement	Proposed	Compliance
		<p>In relation to the associated objectives we are satisfied that the front setbacks provide appropriately for privacy, do not give rise to any adverse impacts in relation to light, sunshine or air movement, do not give rise to any public or private view affectation, will not be perceived as inappropriate or jarring in a streetscape context given the single storey nature of the proposal and its height relative to the adjacent public pathway and will have no impact in relation to traffic or parking.</p> <p>That is, the proposal satisfies the objectives of the control notwithstanding the numerical non-compliance proposed. Strict compliance is unreasonable and unnecessary.</p>	
Side and Setbacks 4.1.4.2	1/3 of wall height to side boundaries and 8 metres to rear boundary.	<p>The proposal incorporates minimum side and rear boundary setbacks of 900mm which comply with the BCA provisions.</p> <p>Whilst not compliant with the 1/3rd wall height setback control we note that the PLM notes contain the following commentary:</p>	<p>No</p> <p>Variations acceptable on merit</p>

Control	Requirement	Proposed	Compliance
		<p><i>The side setbacks are also considered to be adequate in order to provide for a reasonable internal living space for the proposed dwelling. In each particular instance, and due to the modest scale of the dwelling, the impact to all surrounding properties (including the public domain to the south) is minimised and acceptable</i></p> <p>In relation to the associated objectives we are satisfied that the side boundary setbacks provide appropriately for privacy, do not give rise to any adverse impacts in relation to light, sunshine or air movement, do not give rise to any public or private view affectation, will not be perceived as inappropriate or jarring in a streetscape context given the single storey nature of the proposal and its height relative to the adjacent public pathway and will have no impact in relation to traffic or parking.</p> <p>That is, the proposal satisfies the objectives of the control notwithstanding the numerical non-compliance proposed. Strict compliance is unreasonable and unnecessary.</p>	

Control	Requirement	Proposed	Compliance
Open Space and Landscaping	<p>55% Open Space (54.5sqm)</p> <p>35% or required Open Space as Soft Landscaping (19sqm)</p> <p>The definition of Total Open Space requires a minimum horizontal dimension of at least 3 metres in any direction and a minimum unbroken area of 12m².</p>	<p>The proposal does not provide any Total Open Space as defined given the dimensional requirements of such area however does, setting aside the dimension requirements, provide 47 m² of Total Open Space representing 47% of the site area. We also confirm that 33m² of the site area is available for soft landscape treatments representing 60.5% of the required total open space. This quantum is well in excess of the minimum 35% requirement</p> <p>Whilst not compliant with the Total Open Space requirement we note that the PLM notes contain the following commentary:</p> <p><i>As noted earlier, given the small area of the site, the design and scale of the proposed dwelling is considered to be adequate.</i></p> <p><i>The provision of total open space is limited although, as discussed at the meeting, the provision of landscaped area could be increased through the replacement of the deck at the southwestern half of the dwelling (which is currently depicted as surrounding the tree) with soft landscaping (i.e. the removal of this part of the deck in its entirety).</i></p>	<p>No (Total open space)</p> <p>Acceptable on merit given soft landscaping compliance is achieved</p> <p>Yes</p> <p>Soft landscaping satisfied</p>

Control	Requirement	Proposed	Compliance
		<p>In this regard, the previously proposed decking has been removed from around the tree located adjacent to the front boundary of the property providing for a significant increase in both total open space and landscaped area to the point where the area of the site available for soft landscape treatments is well in excess of the minimum required by the control.</p> <p>We also note that the proposed dwelling is suspended above the natural ground level on poles. This maintains the entire site as soft landscaping (apart from the existing rock outcrop).</p> <p>Shade tolerant plants will grow under the house and the whole site is available for water absorption. Screening plants are proposed along the north side boundary.</p> <p>It has been demonstrated that the proposal satisfies the objectives of the control notwithstanding the numerical non-compliance proposed. Strict compliance is unreasonable and unnecessary.</p>	

Control	Requirement	Proposed	Compliance
Parking, Vehicular Access and Loading 4.1.6	<p>The design and location of all garages, carports or hardstand areas must minimise their visual impact on the streetscape and neighbouring properties and maintain the desired character of the locality.</p> <p>the maximum width of any garage, carport or hardstand area is not to exceed a width equal to 50 percent of the frontage, up to a maximum width of 6.2m.</p>	<p>There is currently no vehicular access available to the subject property and no ability to provide vehicular access as a component of the proposed development.</p> <p>Many dwellings in the vicinity do not have car parking facilities. Council have promoted a car share policy. This is an economical and environmentally friendly alternative to owning a car. Good public transport is located at the eastern end of Pine Street adjacent to Pittwater Road. and a “Go Get” car pod is located at the western end of Pine Street adjacent to the stair access that leads to subject site.</p> <p>That said, the correspondence at Attachment 3 from New South Wales Ambulance and confirms that a location access note is able to be registered against the property in their call and dispatch system.</p>	<p>No</p> <p>Acceptable on merit</p>

Control	Requirement	Proposed	Compliance
		<p>Further, the correspondence at Attachment 4 from myBins confirms a wheel out and wheel in service will be provided to Kangaroo Street to cater for the needs of future occupants, should it be necessary, depending on their level of mobility. In this regard, Council will undertake their waste collection from Kangaroo Street. This provision is satisfied.</p> <p>Finally, we note that Council raised no concern in relation to the inability to provide off-street carparking on this site as contained within the PLM meeting minutes.</p>	
Development on Sloping Sites 4.1.8	<p>To ensure that Council and the community are aware of, and appropriately respond to all identified potential landslip & subsidence hazards.</p>	<p>A geotechnical report prepared by White Geotechnical has been provided with regard to the excavation proposed to accommodate the development.</p>	Yes

Control	Requirement	Proposed	Compliance
	<p>To provide a framework and procedure for identification, analysis, assessment, treatment and monitoring of landslip and subsidence risk and ensure that there is sufficient information to consider and determine DAs on land which may be subject to slope instability.</p> <p>To encourage development and construction this is compatible with the landslip hazard and to reduce the risk and costs of landslip and subsidence to existing areas.</p>		

4.3 Matters for Consideration Pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 as Amended

The following matters are to be taken into consideration when assessing an application pursuant to section 4.15 of the Environmental Planning and Assessment Act 1979 (as amended). Guidelines (in *italic*) to help identify the issues to be considered have been prepared by the Department of Planning and Environment. The relevant issues are:

(i) The provision of any planning instrument

The proposal is permissible and generally in conformity with the General, Development Type and Locality Specific Controls contained within Manly Development Control Plan.

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent.

(ii) Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

N/A

(iii) Any development control plan

Manly DCP applies with the applicable provisions addressed in detail within this report.

(iiia) Any Planning Agreement that has been entered into under section 7.4 or any draft planning agreement that a developer has offered to enter into under Section 7.4, and

N/A

(iv) The Regulations (to the extent that they prescribe matters for the purposes of this paragraph), and

N/A

(v) Any Coastal Zone Management Plan (within the meaning of the Coastal Protection Act 1979)

N/A

(b) The likely impacts of that development, including environmental impacts on both the natural and built environments and social and economic impacts in the locality,

Context and Setting

i. What is the relationship to the region and local context in terms of:

- *The scenic qualities and features of the landscape*
- *The character and amenity of the locality and Streetscape*
- *The scale, bulk, height, mass, form, character, density and design of development in the locality*
- *The previous and existing land uses and activities in the locality*

The proposed dwelling is entirely commensurate with that established by adjoining development and development generally within the sites visual catchment with no adverse residential amenity impacts in terms of views, privacy or overshadowing.

ii. What are the potential impacts on adjacent properties in terms of:

- *Relationship and compatibility of adjacent land uses?*
- *sunlight access (overshadowing)*
- *visual and acoustic privacy*
- *views and vistas*
- *edge conditions such as boundary treatments and fencing*

These matters have been discussed in detail earlier in this report. The works have been designed such that potential impacts are minimal and within the scope of the built form controls.

Access, transport and traffic:

Would the development provide accessibility and transport management measures for vehicles, pedestrians, bicycles and the disabled within the development and locality, and what impacts would occur on:

- *Travel Demand*
- *dependency on motor vehicles*
- *traffic generation and the capacity of the local and arterial road network*
- *public transport availability and use (including freight rail where relevant)*
- *conflicts within and between transport modes*
- *Traffic management schemes*
- *Vehicular parking spaces*

These matters have been addressed in detail within this submission. The proposal will not result in any unmanageable increase in travel demand with the site appropriately located in relation to public transport.

Public Domain

The proposed development will have no adverse impact on the public domain.

Utilities

The ability to appropriately service the proposed development has been addressed in detail within the body of this report.

Flora and Fauna

Landscaping proposed will improve the biodiversity of the site and provide additional habitat for local fauna.

Waste Collection

Normal domestic waste collection applies to the proposed dwelling as detailed within the accompanying waste management plan.

Natural hazards

N/A

Economic Impact in the locality

The proposed development will not have any significant impact on economic factors within the area notwithstanding that it will generate additional employment opportunities through the construction period with respect to the proposed works.

Site Design and Internal Design

Is the development design sensitive to environmental considerations and site attributes including:

- *size, shape and design of allotments*
- *The proportion of site covered by buildings*
- *the position of buildings*
- *the size (bulk, height, mass), form, appearance and design of buildings*
- *the amount, location, design, use and management of private and communal open space*
- *Landscaping*

These matters have been discussed in detail earlier in this report. The potential impacts are minimal and within the scope of the general principles, desired future character and built form controls.

How would the development affect the health and safety of the occupants in terms of:

- *lighting, ventilation and insulation*
- *building fire risk – prevention and suppression*
- *building materials and finishes*
- *a common wall structure and design*
- *access and facilities for the disabled*
- *likely compliance with the Building Code of Australia*

The proposed development will comply with the provisions of the Building Code of Australia as required by Clause 98 of the Environmental Planning and Assessment Regulation 2000. There will be no detrimental effects on the occupants through the building design which will achieve the relevant standards pertaining to health and safety.

Construction

- *What would be the impacts of construction activities in terms of:*
- *The environmental planning issues listed above*
- *Site safety*

The application is accompanied by a Construction Management Plan prepared by the project Architect detailing the proposed construction methodology having regard to available site access. Development will be carried out in accordance with the provisions of the Protection of the Environment Operations Act 1997. Normal site safety measures and procedures will ensure that no site safety or environmental impacts will arise during construction.

(c) The suitability of the site for the development

- *Does the proposal fit in the locality*
- *Are the constraints posed by adjacent development prohibitive*
- *Would development lead to unmanageable transport demands and are there adequate transport facilities in the area*
- *Are utilities and services available to the site adequate for the development*
- *Are the site attributes conducive to development*

The site is located in an established residential area. The adjacent development does not impose any unusual or impossible development constraints. The proposed development will not cause excessive or unmanageable levels of transport demand.

As detailed within this report the site is capable of accommodating a dwelling house which will not give rise to unacceptable streetscape or residential amenity impacts and to that extent the site is suitable for the proposed development.

(d) Any submissions received in accordance with this act or regulations

It is envisaged that Council will appropriately consider any submissions received during the notification period.

(e) The public interest

The architect has responded to the client brief to provide for a dwelling of design merit that provides a high level of amenity for the future occupants whilst appropriately addressing the sites setting and maintaining the amenity of the nearby residential properties. The development will provide a quality built form outcome on the site.

It is considered that the public interest is best served in providing certainty in the planning process through encouraging development of good design that satisfies the outcomes and controls contained within the adopted legislative framework. Accordingly, approval of the development would be in the public interest.

5 Conclusion

The subject application proposing the construction of a dwelling house on the subject allotment was the subject of Land and Environment Court proceedings in the matter of *Goarin v Manly Council [2014] NSWLEC 1108* with the application ultimately refused by the Court on the basis of the visual impact of the proposed 2 storey building form as viewed from the adjacent walkway, the inadequacy of landscaping within the rear setback, unacceptable quantum of usable private open space, accessibility and wayfinding for emergency services and inadequate information in relation to the availability of water and sewerage facilities, stormwater disposal and construction management.

This application represents a comprehensive, measured and resolved response to the concerns raised by the Court in its assessment and determination of the previous application and the matters arising discussed during formal pre-DA discussions with Council PLM 2021/0247.

This submission demonstrates that the proposed dwelling has been appropriately designed having regard to the constraints and opportunities associated with the sites small size, geometry and topography with the adoption of a single storey building form ensuring no inappropriate or jarring visual impacts as viewed from the public domain or unacceptable residential amenity impacts in terms of views, privacy or solar access. The proposed landscape response will ensure that the dwelling sits within a landscape setting. This application is accompanied by confirmation as to the ability for emergency services to locate the property and to provide appropriately for the servicing of the allotment in terms of water and sewerage, waste collection and stormwater disposal and a Statutory Declaration from the owner of the subject property confirming the inability to obtain a stormwater easement over the downstream properties (Attachment 1).

The proposal succeeds when assessed against the Heads of Consideration pursuant to section 4.15 of the Environmental Planning and Assessment Act, 1979 as amended. It is considered that the application, the subject of this document, is appropriate on merit and is worthy of the granting of development consent for the following reasons:

- This application represents a comprehensive, measured and resolved response to the concerns raised by the Court in its assessment and determination of the previous application in the matters discussed during formal pre-DA discussions with Council PLM 2021/0247. The site is assessed as suitable for the proposal, having regard to the relevant land use and planning requirements.
- The proposal will not give rise to any unacceptable streetscape or residential amenity impacts.

- The variations proposed to the front, side and rear boundary setback, total open space and carparking provisions contained within Manly Development Control Plan have been acknowledged and appropriately justified having regard to the objectives of the controls and the constraints imposed by the size, geometry and location of the site. Strict compliance has been found to be both unreasonable and unnecessary given the overall design quality of the development and the consistency of the proposal with the objectives of the applicable controls.

Attachment 1

Statutory Declaration confirming inability to obtain stormwater easement
over downstream properties

Statutory Declaration OATHS ACT 1900, NSW, EIGHTH SCHEDULE

I, JAMES FREDERICK BELL, do solemnly and sincerely declare that
[name of declarant]

I am the owner of 40 Pine Street Manly NSW 2095. I have requested an easement to drain stormwater, from the owners of 9 and 11 Pacific Parade Manly NSW 2095, from my property. Both owners have refused my request for an easement.

and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1900.

Declared at: Manly on 6/12/2021
[place] [date]
[Signature]
[signature of declarant]

in the presence of an authorised witness, who states:

I, Olive Vehikite, a Justice of Peace NSW,
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it: [* please cross out any text that does not apply]

1. "I saw the face of the person ~~OR I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification¹ for not removing the covering, and~~
2. "I have known the person for at least 12 months ~~OR I have confirmed the person's identity using an identification document and the document I relied on was~~ _____

[Signature]
[signature of authorised witness]

[describe identification document relied on]
6/12/2021
[date]

¹ The only "special justification" for not removing a face covering is a legitimate medical reason (at September 2020)
Olive Vehikite
A Justice of the Peace in and for
the State of New South Wales
Reg. No. 184435

Attachment 2

Sydney Water servicing confirmation letter



Case Number: **191590**

July 14, 2021

James Frederick
c/- MGP BUILDING & INFRASTRUCTURE SERVICE PL

**Letter of conditions
For adjustment/deviation/extension of a Sydney Water asset**

Applicant: James Frederick
Your reference: 2021-0180
Property location: 40 PINE ST, Manly
Your application date: May 19, 2021

Dear Applicant

Your application at the above location is approved provided you do the following things:

1. You must enter into an agreement with us in the form of the enclosed Deed.
2. You must engage your current or another authorised Water Servicing Coordinator (WSC) to manage the design and construction of the required works to Sydney Water's standards and procedures. Before you engage another WSC you must write and tell us.

You'll find a list of WSC's at [Listed providers](#) on our website. WSC will give you a quote or information about costs for services/ works including our costs.

The WSC generally will be the single point of contact between you and us. They can answer most questions you might have about our process and charges.

3. After you engage a WSC, you, and your accredited Developer Infrastructure Providers (Providers) will need to sign and lodge both copies of the enclosed Deed with your nominated WSC. After we've signed the documents, one copy will be returned to the WSC.

The Deed sets out for this project:

- your responsibilities
- our responsibilities; and
- the Provider's responsibilities.

You must do all the things that we ask you to do in that Deed.

If we don't receive the signed Deed for our signing by July 14, 2022 you will need to re-apply (and pay another application fee).

Note: The WSC must be fully authorised by us for the whole time of the Deed.

4. If you need to enter a neighbouring property, you must have the written permission of the relevant property owners and tenants. You must use our **Permission to Enter** form(s) for this. You can get copies of these forms from your WSC or our website. Your WSC can also negotiate on your behalf.

Please make sure that you address all the items on the form(s) including payment of compensation and whether there are other ways of designing and constructing that could avoid or reduce their impacts. You will be responsible for all costs of mediation involved in resolving any disputes. Please allow enough time for entry issues to be resolved.

5. You must not start work on the existing main or the proposed adjustment/deviation/extension until we've advised your WSC. This includes the placement of any temporary pipework. Before you can do this pipework, you must engage your WSC to lodge an application that must include appropriate temporary pipework detail as well as the design of the proposed deviation/adjustment/extension.

We'll then assess both designs and advise your WSC when they are approved and of any conditions to be met before pipe placement. Two conditions are:

- the lodgement of an unconditional security bond from an acceptable financial institution that will cover our risk for this work
- your acceptance in writing to bonding conditions that we will provide in another agreement.

If any work on our assets is carried out without that advice or final approval, we'll take action to have work on the site stopped. We'll apply the provisions of Section 45 of the Sydney Water Act 1994.

6. Construction of these works will require you to pay project management, survey, design, and construction costs **directly to your Providers**. Additional costs payable to us may include:
 - water main shutdown and disinfection
 - connection of new water mains to our system(s)
 - design and construction audit fees
 - contract administration, Operations Area Charge & Customer Redress prior to project finalisation
 - creation or alteration of easements etc
 - water usage charges where water has been supplied for building activity purposes prior to disinfection of a newly constructed water main.

Note: Payment for any Goods and Services (including Customer Redress) provided by us will be required prior to the release of the Bank Guarantee or Cash Bond.

Your WSC can tell you about these costs.

7. Because this work involves construction on our "live" main, you must also:
 - have your Building Plans approved prior to temporary pipework and excavation
 - submit your temporary pipework design (if required) with your permanent wastewater deviation design for approval
 - accept in writing to bonding conditions that will be provided in the Bond Agreement
 - submit your Bond and signed Bond Agreement
 - submit the Construction Commencement Notice for construction of the temporary pipework
 - have your temporary pipework constructed by a listed provider
 - complete your permanent deviation works.

After we receive a copy of the successful tender for the work, we can calculate the amount of this bond. We'll then send you that other agreement which will tell you this amount. You must lodge the bond and the completed agreement with us before you start constructing the work.

The bond will be released after you have completed the construction of the works. (This includes lodgement of Work As Constructed plans and production and/or recreation of documentation and reports and completion of all the excavation and landscaping works needed for the total project.)

In addition, the following specific conditions apply:

- The property does not front a formed Road.
- A Sydney Water watermain extension may not be the best servicing method for this proposed single dwelling.
- From an Operational perspective it is best to extend the main along Pine street to provide connection for No. 40. However, a better option to provide water to the proposed dwelling may be an extended private water service.
- The preferred connection point for the extended private service would be at the corner of Pine Street and Collingwood Street.
- WSC to contact Connection Team "Chris Robinson" for meter location, if this is possible.
- The proposal for connecting at Kangaroo St is not preferred.
- WSC to investigate.

END

Attachment 3

Correspondence from New South Wales Ambulance in relation to the provision of a location access note in their call and dispatch system

Subject: RE: Access
Date: Thu, 6 May 2021 05:53:47 +0000
From: AMBULANCE-GeneralEnquiry <AMBULANCE-GeneralEnquiry@health.nsw.gov.au>
To: James Bell <jfbell18888@gmail.com>, AMBULANCE-GeneralEnquiry <AMBULANCE-GeneralEnquiry@health.nsw.gov.au>
CC: AMBULANCE-SydneyNorthSector <AMBULANCE-SydneyNorthSector@health.nsw.gov.au>

Thank you for your email.

NSW Ambulance can put a location access note for your property in our call and dispatch system which advises the attending paramedics how to enter the property in an emergency.

I have included our North Sydney Central Coast sector office in this response. If you can send them through the following details, they can arrange a location access note:

Full name of any resident(s):
 Address including unit number:
 The lock box code and any further instructions on how to enter the property:

Please be advised that an access location note expires 12 months after being entered into the NSW Ambulance CAD system. After this time you will need to get back in touch and advise us if you wish for these details to remain on file.

Regards

NSW Ambulance
www.ambulance.nsw.gov.au



Follow NSW Ambulance on:    @NSWAmbulance

*We acknowledge the Traditional Custodians of the lands where we work and the places in which we live.
 We pay our respect to our Ancestors and Elders, past, present and future.*



Attachment 4

Correspondence from myBins confirming a wheel out and wheel in service to Kangaroo Street

Fwd: Bins go to Kangaroo Street 50m away up slight slope with 7steps at house 7steps at laneway



James Bell <jfbell8888@gmail.com>

To: matt@carlislearchitects.com

Cc: Greg Boston

Click here to download pictures. To help protect your privacy, Outlook prevented automatic download of some pictures in this message.

Subject:Re: Bins go to Kangaroo Street 50m away up slight slope with 7steps at house 7steps at laneway

Date:Wed, 16 Jun 2021 14:27:00 +1000

From:Katy Horvath <katy@mybins.com.au>

To:James Bell <jfbell8888@gmail.com>

CC:Joe Drew <joe@mybins.com.au>, Amos Michael <amos@mybins.com.au>

Hi James,

Thanks for sending through your quote request with myBins. I have outlined a everything for you below.

Bin Placement

2 Bins weekly

Bins out Tuesdays = \$9+gst per visit

Bins in Wednesdays = \$9+gst per visit

Total weekly cost = \$18+gst per week

Total monthly cost = \$78+gst per month

If you would like to go ahead with this quote then all we would need from you are the below details please,

- o Bin breakdown (Red, yellow, blue, green)
- o Onsite contact details
- o Any access information like keys or garage buzzers
- o Location of the bins

If you do have any questions please don't hesitate to reach out.

Regards,



Katy Horvath

Office Manager | myBins

M 0450 455 581 | P 1300 692 467

