

Easement and Flooding

The Developer's Response to Submissions and Amendment Report states:

3.2 Further Engagement

3.2.2 10 Marian Street – Drainage Easement

The development proposes that stormwater runoff from the site is collected by roof drainage or surface inlet pits and is directed to an OSD tank at the rear of the site and overflow is discharged via an existing 300mm diameter pipe in 10 Marian Street at the rear of the site. DPHI requested that evidence of an agreement for the easement required to connect to the diameter pipe be provided.

Following DPHI's request, further engagement has been undertaken with 10 Marian Street to obtain formal approval for the easement (noting that several meetings and discussions had been undertaken prior to lodgement of the SSDA). Details of this engagement are provided in Appendix 13. As outlined in Appendix 13, an agreement has not yet been reached with the owners of 10 Marian Street despite the proponent's best efforts. Notwithstanding this, as set out in the appendix, an easement under Section 88K of the Conveyancing Act 1919 can be imposed by the Supreme Court. Accordingly, evidence of the easement's approval should not be material to the granting of consent for this SSDA. The proponent continues to engage with 10 Marian Street in an effort to resolve this matter without the need to proceed with a Court Order.

This contains incorrect and unfounded assertions.

1. At the time of lodgement of the SSDA there has been no formal approach to the Strata of 10 Marian Street, so there is nothing to be conveyed or decided by the Owners.
2. Details of the 'several' meetings and discussions are claimed to be provided in Appendix 13. Notwithstanding that Appendix 13 is still a DRAFT, it contains details of only one informal site meeting. That meeting was pre not post the DPHI's request.

The Proposed Design and Appendix 13 Stormwater Management Plan

1. The information (and premise) is wrong. There is no 300 dia pipe from the SE corner of 10 Marian Street connecting to the Trunk Drainage boxed culvert through 10 Marian Street. It changes from 300 to 600 dia at a second pit a short distance from the first pit.
2. The minimum easement width for a 600 pipe is 1.6 metres according to the Ku-ring-gai Water Management Development Control Plan – DCP47 Appendix 7. See extract below:

Appendix 7

Design of Property and Interallotment Drainage Systems

A7.2 Design Controls for Interallotment Drainage Easements

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c) The interallotment easement shall be designed in accordance with the following table:

Nominal Pipe Diameter	Minimum Easement Width
150mm	1.0 metres
225mm	1.2 metres
300mm	1.3 metres
375mm	1.4 metres
450mm	1.5 metres
525mm	1.6 metres
600mm	1.6 metres
750mm	1.8 metres
>750mm	1 metre + nominal pipe diameter

Note 1: The presence of an on-site stormwater retention, detention or extended detention system at the development site will not be accepted as a justification for reducing the design flowrate through a downstream interallotment drainage system. The capacity of the system within the easement must be sufficient in the event of a blockage failure or overflow of the detention system.

d) The in-ground interallotment drainage system (pipe) shall be sufficient to carry:

- (i) the 100 year ARI uncontrolled stormwater runoff from existing and future hard surfaces on the site, and
- (ii) the additional future design inflows, as determined by the requirements of this section, from all other properties that may benefit from a connection to the system, that adjoin and are uphill from the same associated drainage easement and/or have the benefit of the same associated drainage easement.

3. Note 1 above states that the retention, detention system will not be accepted as justification for reducing the design flow rate through the downstream interallotment drainage system. In case of blockages, the full stormwater load for 7.864 hectares must be able to flow through the easement either through a pipe or overland. This is not acceptable to the owners of 10 Marian Street.
4. There are many other noncompliances with Council's design requirements, including but not limited to:
 - a. Pipes must be outside of the dripline of trees – A5.1(j);
 - b. The Detention Tanks/system is located under the private courtyards of Lower Ground 2 residents – A5.1(h);
 - c. A5.1(m) states:

m) A spillway or overflow outlet shall be provided in all OSD systems as part of the operation of the system. The overflow shall be designed to cater for total system failure (blockage) in extreme storm events and designed to safely convey all overflows up to the 100 year ARI uncontrolled flow to an adequate downstream drainage system without adverse impact on neighbouring properties.
5. There is no Flood Study Report as required by Appendix 11 of the Council's DCP 47. This would be a fundamental report as the proposal is to discharge all of the development's stormwater into the Trunk Main through 10 Marian Street.
6. As previously indicated in the first round of submissions, Ku-ring-gai Council's hydrology map shows that there is a flood plain encroaching into 10 Marian

Street with the real risk of flooding its buildings. Therefore the risk of flooding cannot be increased by the very large inflow from the new development. If approved then 10 Marian Street owners would likely require full indemnity and any increased insurance costs to be borne by the approving authority.



7. Further, Ku-ring-gai Council have issued a letter, dated 3 December 2025 following the recent flood studies, that appears to increase the relevant flooding zone,

It states that 10 Marian Street is located within the Overland Flow or Mainstream Flow Flood Planning Area (FPA) within which development may be subject to flood related development controls.

It is reproduced below.

818 Pacific Highway, Gordon NSW 2072
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Contact: Amy Lennard

Reference: S12747
3 December 2025

Mr [REDACTED]
/10 Marian Street
KILLARA NSW 2071

Dear property owner

Middle Harbour Catchment Flood Studies

Council has endorsed flood studies for the Middle Harbour catchments in the Ku-ring-gai Council Local Government Area. *The Middle Harbour – Southern Catchments Flood Study* was endorsed on 13th December 2022. *The Middle Harbour – Northern Catchments Flood Study* was endorsed on 23rd September 2025.

The Flood Studies were prepared in accordance with the NSW Government's Flood Risk Management Manual and were designed to investigate and understand flood behaviour across the Middle Harbour Catchments. This information is used to manage flood risk, support land-use planning and future development.

You are receiving this letter as your property, or part of your property, is located within the Overland Flow or Mainstream Flow Flood Planning Areas.

The flood planning area (FPA) incorporates land impacted by the 1% Annual Exceedance Probability flood event with the addition of a designated freeboard, this is known as the flood planning level (FPL).

The FPA is an area within which development may be subject to flood related development controls. Having FPA identified on your property does not mean you will be prevented from undertaking development; you may just need to carefully consider the location and type of development on your property or the floor level of certain structures.

You can view the flood planning area maps via Council's online map viewer using the QR code below.



Ku-ring-gai Council is following the NSW Government's Flood Risk Management Process. The next step in this process is the development of a Flood Risk Management Study and Plan which aims to provide strategies and actions to help prevent and reduce flood impacts. When this work commences for the Middle Harbour Catchments you will be notified and provided with opportunity to provide feedback on the process including flood mapping.

For more information, including frequently asked questions about the Council's Flood Study and Flood Risk Management Process, please:

- visit Ku-ring-gai Council's Flood Risk Management web page:
www.krg.nsw.gov.au/floodrisk;
- Email: floodriskmanagement@krg.nsw.gov.au; or
- Phone: Amy Lennard on 02 9424 0000

Regards,

Amy Lennard

8. It is worth examining Ku-ring-gai flood planning regulations which state:

KU-RING-GAI LOCAL ENVIRONMENTAL PLAN 2015 - REG 5.21

Flood planning

5.21 Flood planning

(1) The objectives of this clause are as follows-

- (a) to minimise the flood risk to life and property associated with the use of land,*
- (b) to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change,*
- (c) to avoid adverse or cumulative impacts on flood behaviour and the environment,*
- (d) to enable the safe occupation and efficient evacuation of people in the event of a flood.*

(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied

the development-

- (a) is compatible with the flood function and behaviour on the land, and*
- (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses.*

(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters-

- (a) the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) the intended design and scale of buildings resulting from the development,*
- (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*
- (d) the potential to modify, relocate or remove buildings resulting from erosion.*

9. The Trunk Drainage through 10 Marian Street reduces from 1200 dia to 750 dia at the downstream boundary with the council land. This is very bad engineering practice and so the likelihood of overground flooding through the overflow manhole is highly probable when there are blockages, ie. the existing flood system is very sensitive and should not be burdened further by allowing significantly greater inflows.
10. The increased flood risk will impact flooding of Selkirk Park , which is a public recreational area and the carpark of the Marian Street Theatre, another public facility.
11. Strata Plan SP80433 B, 10 Marian Street, has an easement with Ku-ring-gai Council that precludes any alteration to its drainage system.