

Our Ref: RF25148DA

3 September 2025

Northern Beaches Council
PO Box 82
Manly NSW 1655
Attention: Lachlan Rose

Dear Sir/Madam,

**RE: DEVELOPMENT APPLICATION NO: DA2025/0455
131A SEAFORTH CRESCENT, SEAFORTH
PROPOSED INCLINATOR**

We act for the owner of Lot 2 in DP562588, being the property known as 131A Seaforth Crescent, Seaforth NSW 2092. We write in support of our client's Development Application for the installation of an inclinator.

We understand that Northern Beaches Council ("**Council**") has required further information as to whether the proposed inclinator works would affect the 3-foot wide easement to drain water registered on DP562588 as enclosed for your reference.

1. Legal nature and benefit of the easement

The easement is identified on the plan as an "easement to drain water 3-feet wide", burdening Lot 2 and benefitting Council (previously The Council of the Municipality of Manly). As a matter of law:

1. The only dominant tenement is the Council, benefitting from the easement to drain water.
2. The only servient tenement is Lot 2 (our client's land), which retains full proprietary rights subject only to the obligation not to interfere with Council's easement to drain water.
3. The evidence we have (the plan) indicates that the adjoining property at 131 Seaforth Crescent (Lot 1) does not enjoy any rights or benefits under this easement. Council is therefore the only beneficiary. If there have been any recent changes or council has intentions to assign this easement to Lot 1, please provide us with information.

The scope of an easement is determined by its express terms. An easement to drain water entitles the dominant tenement to install, use, and maintain drainage infrastructure, and to access the servient land for those purposes as defined in the *Conveyancing Act 1919*. It does not preclude the landowner from erecting structures above the easement provided they do not substantially interfere with drainage use or maintenance access or any other rights conferred by the easement.

The legal test for whether works breach an easement is whether they cause a "real and substantial interference" with the dominant tenement's rights. This principle has been repeatedly confirmed by the Courts, including most recently in *Condran v Collis* [2024] NSWSC, where the Court

held that only substantial interference, not minor inconvenience amounts to wrongful obstruction of an easement.

2. Engineering and design measures

Following discussions with Council, our client has obtained advice from various experts on the suitability of the inclinator and revised the inclinator plans.

The service location report, revised inclinator plan, letter dated 2 September 2025 from Mr Greg Hoare (Inclinitor Contractor), and Design Statement dated 3 September 2025 from Mr Ryan Chalmers (Civil Engineer) indicate the following:

1. The existing structure in the easement is a 150mm wide vitrified clay pipe.
2. The proposed inclinator has been relocated to be clear of the entire 3-foot wide easement area.
3. There is a single crossing point of the proposed inclinator and the easement.
4. At the crossing point, the rail sits 1500mm above ground which allows clear access to the easement underneath.
5. At the crossing point, the supporting footings for the rail are located approximately 3000mm away on either side of the crossing point, such that no structural load is imposed within the 3-foot-wide easement itself.
6. The 205mm wide rail at that crossing point is designed to be removable if Council requires further access.
7. The proposed inclinator will not interfere with the drainage of the existing structure.
8. The existing structure within the easement will not be affected by the imposed load of the inclinator at the crossing point.

3. Opinion

The proposed inclinator has been designed and engineered so as to not interfere with Council's easement. The proposed inclinator is built clear of the easement site and at the single cross over point, sits 1500mm above the ground, is fully removable if required to allow unfettered access, and does not affect Council's ability to exercise its easement rights.

The Engineer's Design Statement further confirms that the proposed inclinator imposes no physical impact on the pipes or their drainage function. Accordingly, there is no real or substantial interference with the easement. On that basis, it is our opinion that:

1. The inclinator works do not alter, damage, or obstruct the easement to drain water;
2. Council's drainage rights are preserved, including rights of physical access;
3. The proposed inclinator therefore does not amount to a breach of the terms of the easement; and
4. No consent from the adjoining neighbour at 131 Seaforth Crescent is required, as that property does not benefit from the easement (based on the registered plan and easement).

Accordingly, we are satisfied that the proposed inclinator does not breach the terms of the easement and can be constructed legally.

In any event, the owner is prepared to provide an indemnity in favour of Council in the event that the proposed inclinator causes any damage to, or interferes with, Council's easement rights, including covering the cost of any pipe repairs or, if necessary, removing the inclinator should access to the easement be impeded.

We respectfully submit that this addresses Council's requirement for further information/evidence and supports the determination of the Development Application in our client's favour.

Please do not hesitate to contact us should you require further information.

Kind regards,

Key Partners Solicitors



Rose Fan

Email: rose@keypartners.com.au

Encl

U# 56258

FEET THICKNESS	METERS		SD %
3	0.914		
5	1.524		
8 1/2	1.130		
2 3/4	1.209		
3 1/2	1.372		
11 3/4	3.468		
1 1/2	5.468		
6	5.639		
12 6	12.669		
6	12.669		
1 7/8	13.899		
1 1/2	15.691		
2 1/2	15.691		
2 1/2	20.117		
5 3/4	24.428		
10 1/4	23.768		
12 1/2	23.768		
12 1/2	21.517		
12 1/2	21.517		
5 1/4	23.768		
5 1/4	26.659		
1 1/4	185.752		
1 1/2	185.752		

WARNING: CRASHING OR FLYING WILL LEAD TO REJECTION.

Haben Sie nicht mehr?

General Clerk's Certificate.

[illegible]

*INSTRUMENT FU ER AS N364506

SOLDIER JOURNAL

[illegible]

1. Jack Hayward Watson, Registrate General for New South Wales, certify that this negative is a photograph made as a permanent record of a document in my custody this 14th day of December, 1926.

Jonathan

N 364506

INSTRUMENT SETTING OUT TERMS OF EASEMENTS
AND RESTRICTIONS AS TO USER INTENDED TO BE
CREATED PURSUANT TO SECTION 83B OF THE
CONVEYANCING ACT 1919.

PART 1.

Plan **DP562588**

Subdivision of Lot 160 in Deposited
Plan 4889 covered by Council Clerk's
Certificate No. 1973/2316

Full name and address of
Proprietors of the land:

HELEN GRACE WHINCOP of 131 Seaforth Crescent
Seaforth, Married Woman.

Identity of easement of
restriction firstly re-
ferred to in the above-
mentioned Plan:

Easement to drain water 3-feet wide.

SCHEDULE OF LOTS ETC. AFFECTED.

Lots Burdened.

Lots, name of road or authority benefited.

2.

The Council of the Municipality of Manly.

SIGNED in my presence)
by the said HELEN GRACE)
WHINCOP who is personally)
known to me:)

Helen G. Whincop.

SIGNED in my presence by)
the said JACK HALL CARTER)
who is personally known)
to me:)

[Signature]
The Deputy Town clerk of the
Municipality of Manly.

NDMENTS AND/OR ADDITIONS MADE ON
IN THE LAND TITLES OFFICE.

This negative is a photograph made as a permanent
record of a document in the custody of the
Registrar General this day. 27th May, 1986

