



Corona Projects

DEVELOPMENT APPLICATION
**CI4.6 VARIATION REQUEST – Clause 6.10 – Limited
development on foreshore area**

Alterations and additions to an existing dwelling house

131A Seaforth Crescent, Seaforth

May 2025

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PROJECT DETAILS

Client: Ms. Jennifer Zhang
Subject land: 131A Seaforth Crescent, Seaforth
Lot Description: 2/-/DP562588
Proposed development: Alterations and additions to an existing dwelling house
Clause being varied: Clause 6.10 Limited development on foreshore area

The report is prepared by Pavel Zaytsev
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The report is reviewed by Mathew Fortunato
Bachelor of Architecture and Environment (USYD)

I certify that the contents of the Clause 4.6 Variation request to the best of my knowledge, has been prepared as follows:

- In accordance with Section 4.12 of the Environmental Planning and Assessment Act 1979 and Clause 24 of the Environmental Planning and Assessment Regulation 2021;
- The statement contains all available information that is relevant to the environmental impact assessment of the proposed development;
- To the best of my knowledge the information contained in this report is neither false nor misleading.

Quality Management

Issue	Description	Date	Written By	Reviewed By
A	Draft report issued for comment	14.05.2025	PZ	MF

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1.0 BACKGROUND

This Clause 4.6 variation is a written request to vary a development standard to support a development application for the alterations and additions to an existing dwelling house at 131A Seaforth Crescent, Seaforth.

The proposed works include:

- Demolition of internal and external walls;
- Installation of an inclinor adjacent to the northern side boundary; and
- Alterations and additions to the existing dwelling house.

The proposed inclinor encroaches into the foreshore area along the northern boundary of the site as shown in figure 2 below. As such, the development triggers Clause 6.10 Limited development on foreshore area which sets out provisions for development permitted within the foreshore area or land specified on the Foreshore Building Line Map.

Clause 6.10(2) states—

Development consent must not be granted to development on land in the foreshore area except for the following purposes—

- (a) the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
- (b) the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
- (c) boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

An 'inclinor' is not a type of development explicitly outlined within Clause 6.10 (2) of the MLEP, thus a Clause 4.6 variation request is sought. Clause 4.6 allows development consent to be granted despite contravening a development standard, provided the standard is not expressly excluded from the clause. In accordance with Clause 4.6(8), Clause 6.10 – *Limited development on foreshore area* – is not expressly excluded from variation under Clause 4.6. Therefore, if the applicant can demonstrate that strict compliance with the development standard is unreasonable or unnecessary, and can provide sufficient environmental planning grounds, development consent may be granted.

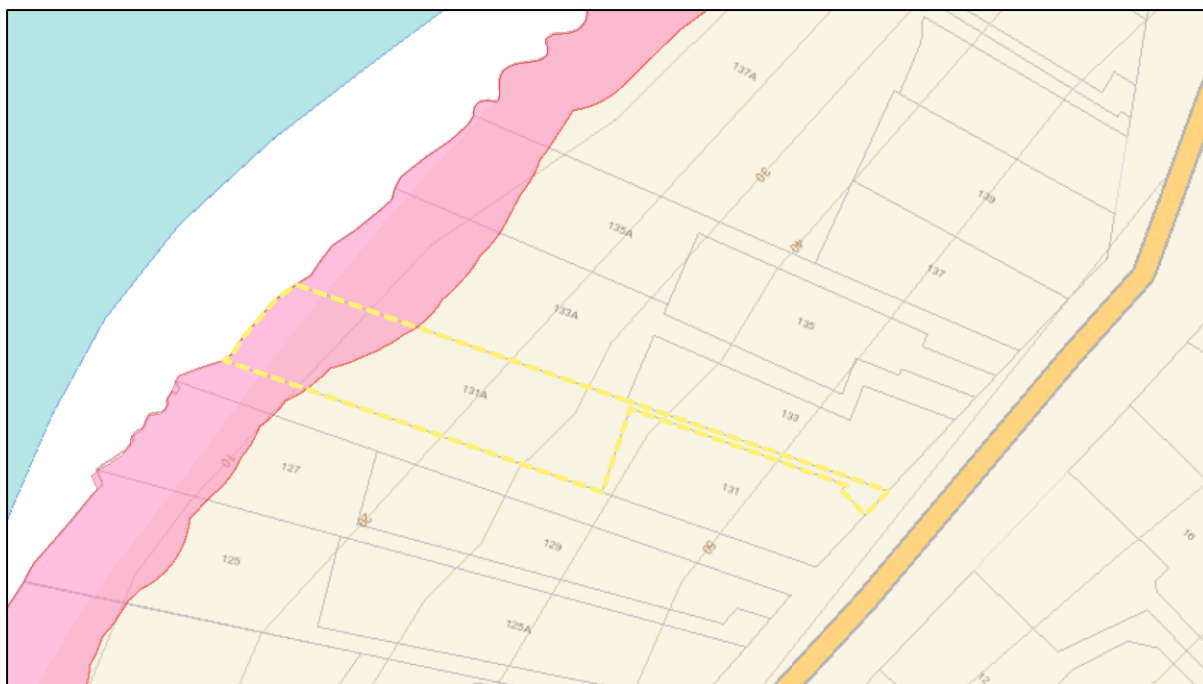


Figure 1: Foreshore building line map (NSW Planning Portal Spatial Viewer 2025).

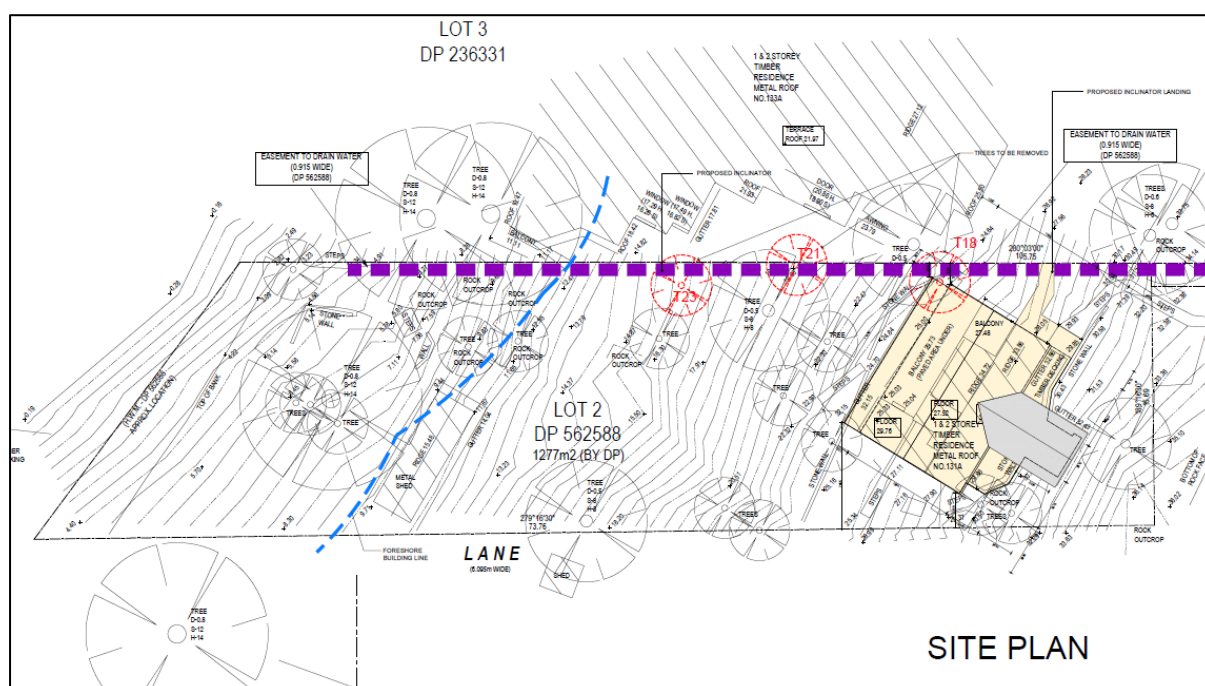


Figure 2: Extract of the site plan prepared by Corona Projects (Corona Projects Pty Ltd 2025).

The documentation upon which this report has been prepared is as follows:

Description	Date	Author
Architectural Plans	June 2024	Corona Projects Pty Ltd
Statement of Environmental Effects	February 2025	Corona Projects Pty Ltd

2.0 IS THE STANDARD A DEVELOPMENT STANDARD?

A development standard is defined in Section 1.4 of the Environmental Planning and Assessment Act 1979 ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- b) the proportion or percentage of the area of a site which a building or work may occupy,*
- c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- d) the cubic content or floor space of a building,*
- e) the intensity or density of the use of any land, building or work,*
- f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- h) the volume, nature and type of traffic generated by the development,*
- i) road patterns,*
- j) drainage,*
- k) the carrying out of earthworks,*
- l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- m) the provision of services, facilities and amenities demanded by development,*
- n) the emission of pollution and means for its prevention or control or mitigation, and*
- o) such other matters as may be prescribed."**

Clause 6.10 Limited development control on the foreshore area falls under subsection (o); therefore, the control is a development standard and Clause 4.6 of the Manly Local Environmental Plan 2013 is applicable.

3.0 CLAUSE 4.6 OF THE MANLY LOCAL ENVIRONMENTAL PLAN 2013

The Standard Instrument LEP contains its own variations clause (Clause 4.6) to allow the variation of development standards. Clause 4.6 of the Standard Instrument is similar in tenor to the former State Environmental Planning Policy No. 1; however, the variations clause contains considerations which are different to those in SEPP 1. The language of Clause 4.6(3)(a)(b) and case law suggests a similar approach to SEPP 1 may be taken in part.

There is abundant judicial guidance on how variations under Clause 4.6 variations should be assessed. Some of these cases are taken into consideration in this request for variation.

While it is not necessary to refer to case law, we do so as it has become customary in sustaining requests under Clause 4.6.

4.0 THE ONUS ON THE APPLICANT

Under Clause 4.6(3)(a), it is the onus of the applicant to demonstrate: -

- a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The judgement by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* clarified the correct approach to Clause 4.6 variation requests, including that:

Paragraph 13 -15 of the judgement states: -

The permissive power in cl 4.6(2) to grant development consent for a development that contravenes the development standard is, however, subject to conditions. Clause 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard

The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii). Each opinion of satisfaction of the consent authority, or the Court on appeal, as to the matters in cl 4.6(4)(a) is a jurisdictional fact of a special kind: see Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707; [2004] NSWCA 442 at [25]. The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.

The first opinion of satisfaction, in cl 4.6(4)(a)(i), is that the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by cl 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

Accordingly, the matters required to be demonstrated by cl 4.6(3) are set out below using the relevant principles established by the Court.

Clause 4.6 (3) (a) - Compliance with the development standard is unreasonable or unnecessary in this particular case.

In *Wehbe V Pittwater* [2007] NSW LEC 827 (Wehbe) a five-part test was established in which a variation to a development standard is considered to be unreasonable or unnecessary as per Clause 4.6(3A). The five tests established in Wehbe are (emphasis added):

- 1. The objectives of the standard are achieved notwithstanding non-compliance with the standard;**
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

5. *The zoning of the land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.*

Satisfaction of any one of these tests is sufficient to demonstrate the compliance with the standard is unreasonable or unnecessary. This variation is based on the first test, which is addressed below.

Consistency with the objectives of the standard:

The first test of Wehbe requires demonstration that the objectives of a development standard can be achieved notwithstanding noncompliance with that particular standard. The objectives of Clause 6.10(1) are articulated at Clause 6.10(1):

- (1) *The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.*

Objective (1) relates to the potential impact a development may have on the natural foreshore processes or the significance and amenity of the area. The proposed inclinor is situated well above the mean high-water mark. Accordingly, the development will not impact on the natural foreshore process. The proposed development is of a minor scale, elevated above the ground, which minimises interference with the significance and amenity of the area. The proposed inclinor would not be highly visible given the abundance of vegetation which will serve as a form of natural screening for the development. The proposed inclinor is of an insignificant scale which would not detrimentally impact the significance or amenity of the area.

For the above reasons, I am of the view that the variation requested and the resultant development is consistent with the objectives of the development standard and an appropriate degree of flexibility is warranted.

Consequently, I conclude that the first test of Wehbe is achieved and thus strict compliance with the development standard is unreasonable or unnecessary in this particular case.

Clause 4.6 (3) (b) - That there are sufficient environmental planning grounds to justify contravening the development standard

Satisfaction as to sufficient environmental planning grounds is a matter for the Council to determine and can be site specific as set out in the judgement of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.

Paragraph 23 -24 of the judgement states: -

As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [26]. The adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

The environmental planning grounds relied on in the written request under cl 4.6 must be “sufficient”. There are two respects in which the written request needs to be “sufficient”. First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The term ‘environmental planning grounds’ is not defined and may be interpreted with wide scope as has been the practice of the Land and Environment Court. The environmental planning grounds supporting variation are on the basis of:

1. Minimal interference with the natural and coastal environment

The works have been carefully designed to minimise disruption to natural foreshore processes wherever possible. The proposal retains all vegetation not directly impacted by the inclinators' location, requiring the removal of only five trees. As outlined in the Flora and Fauna Assessment Report by Narla Environmental (October 2024), the vegetation removal is limited to 0.03 ha of Planted Native and Exotic Garden Vegetation and just 0.001 ha of Sydney Coastal Sandstone Forest, ensuring minimal ecological impact.

Noting that the recommendations provided within the Arboricultural Impact Assessment prepared by Luke Smart on the 11 December, 2024 and the Flora and Fauna Assessment Report prepared by Narla Environmental on October 2024 are to be implemented, the proposal sufficiently mitigates the impacts on natural foreshore processes.

2. Topography

The natural topography of the site necessitates a means safe access for its residents to adequately traverse between the front and rear of the site. Given the steep slope (~30 degrees) and significant distance between the front and rear boundary (105m), stairs are not entirely practical and an alternate method of transport must be considered.

The proposed inclinators, whilst contravening the development standard, would significantly improve the accessibility and amenity of the site with minimal interference with the natural environment as noted above.

3. Precedence

A review of the Clause 4.6 Register, as published on the Northern Beaches Council's website, indicates that multiple applications were submitted in relation to an inclinators and considered during the quarters of 1 January to 31 March 2023 and 1 April to 30 June 2023. This demonstrates an established precedent for the assessment and approval of Clause 4.6 variations.

Importantly, development consent has previously been granted for the installation of an inclinators within the foreshore area. In this context, the proposed variation to Clause 6.10 Limited development on foreshore area is considered both reasonable and justified, particularly given the minimal visual and environmental impact associated with the proposal. The development maintains consistency with the objectives of the planning controls and results in negligible interference with both the built and natural environment.

Application Number	Address	Description	Determination & Date
DA2022/1368	15 The Chase LOVETT BAY NSW 2105	<i>Alterations and additions to dwelling house, installation of an incline passenger lift, replacement of the on-site wastewater treatment system.</i>	15.02.2023— Determined by NBLPP
DA2022/0133	182 McCarrs Creek Road CHURCH POINT NSW 2105	<i>Demolition works and construction of a dwelling house, detached garage, inclinator and boat shed</i>	NBLPP
DA2022/1048	15 Sturdee Lane ELVINA BAY NSW 2105	<i>Construction of an incline lift</i>	NBLPP

Table 1. Development applications involving an inclinator that were approved.

As set out in *'Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118'*, the aforementioned environmental planning grounds do not rely on the benefits of the development as a whole, but rather they directly relate to the proposed Floor Space Ratio aspect that contravenes the development standard.

For the reasons detailed in this request, I am of the opinion that there are sufficient environmental planning grounds for Council to be satisfied that the request is adequate and to allow appropriate flexibility.

5.0 CONCLUSION

The purpose of the application is to apply for the alterations and additions to an existing dwelling house at 131A Seaforth Crescent, Seaforth. The nature of the proposal necessitates a variation to the limited development on foreshore area development standard; however, the proposal will be commensurate in bulk and siting to surrounding development within the locality.

As development standards tend to be strictly numerical in nature, they fail to take into consideration the nature of the development, any site constraints, or qualitative aspects of the development or of the particular circumstances of the case. Clause 4.6 of the standard instrument LEP allows such an analysis to be carried out.

It has been demonstrated in this request that strict compliance with the limited development on foreshore area development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to allow Council to form the opinion of satisfaction that this written request has adequately addressed the matters required to be demonstrated by Cl.4.6(3)(a) and (b).

Therefore, I request that Council support the variation on the basis that this Clause 4.6 variation demonstrates that strict compliance with the development standard is both unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify a variation to the development standard.

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