

CEO
Northern Beaches Council

Attention: Nicholas England
nicholas.england@northernbeaches.nsw.gov.au

25 March 2024

Dear Nic,

Re: DA2023/1658 Alterations and additions to a dwelling house including the replacement and extension of an Inclined Passenger Lift at 948 Barrenjoey Road Palm Beach

Thanks for your time on the phone last week. I am assisting Mr Simon Downes and the owner of 948 Barrenjoey Road Palm Beach in response to your request for further information dated 4 March 2024. Your letter raised two issues, one of which relates to the overlay of existing survey information on the plans as proposed.

We can confirm that the 'inclinator control' noted on the plans is infrastructure currently supporting the existing inclinator on the site and is not part of the proposed new design. All proposed works will be contained within the boundaries of No. 948 Barrenjoey Road.

The second issue you raise is the non-compliance of the proposed new inclinator with the setback to the side boundary outlined in Pittwater 21 DCP at C1.19.

Your letter states the following:

Options Available to the Applicant

Council is providing you with two (2) options to progress the handling of your application:

- 1. Prepare and submit further supporting information/amendments to address the above issues. Please read carefully the below advice if you choose this option.*
- 2. Request that the current proposal proceed to determination in its current form, which may result in refusal of the application.*

The applicant Mr Simon Downes advised you verbally on 5th March and in writing on 13th March of his intention to prepare and submit supporting information and amendments in accordance with your invitation to do so under Option 1. In response, your email of 21 March includes the comment that 'Council is not inviting amended plans or additional information'.

We are concerned at your email response referred to above stipulating that Council is not inviting amended plans, which is entirely contrary to Council's formal RFI letter. It is important Council understand the considerable expense borne by the applicant in the engagement of consultants to provide the information and amendments that Council formally invited on March 4.

Council has raised concerns about the visual and acoustic impacts of the new lift on the adjoining property, the new lift has been designed in accordance with the outcomes of C1.19 which includes the mitigation of visual and acoustic impacts on adjoining properties which the attached additional information submission aims to further describe, and we would recommend that Council take the additional information into consideration as it specifically addresses the concerns raised by Council and clarifies the height of the rail near Landing 3 which is substantially lower than 1.2m above ground level.

Please see Section 3 on Drawing 00 which clarifies the height of the rail over ground, and the attached acoustic report which satisfies Council's requirements for acoustic performance.

For Council to now not consider the information it requested as you suggest would be wholly unreasonable. In the interests of procedural fairness then, we request that contrary to your email of 21 March, Council consider the below and attached information in the assessment of the application, which it invited the applicant to provide.

Incorrect assessment of height and length of proposed inclinator

Your letter of 4 March 2024 states:

The proposed extension (between "Landing 2" and "Landing 3"), estimated at 10m in length, being only 0.4m from the side boundary and at least 1.2m above the ground, would therefore represent an unreasonable variation with Council's control.

Your measurement of the proposed inclinator length relative to the existing inclinator is incorrect. Inclusive of the rail car itself, the proposed inclinator has an increase in travel distance of only 5m more than the existing structure. Additionally, that part of the proposed inclinator extending beyond the high end of the existing inclinator is not at a height of *at least 1.2m above the ground* as you state. The accompanying section drawing provides three measurements of height above ground level (existing) where the new inclinator extends beyond the existing. The greatest of these is 745mm above ground level (existing).

Your measurement of 1.2m above ground appears to have been taken from **an excavated level** at the base of the significant existing cut which accommodates the current inclinator. Natural ground lines are much higher either side of the inclinator rail for a large proportion of its length, as is demonstrated in the section drawing. This is also plainly evident on site.

The below photo (Source: Peter Downes Designs) shows the extent of retained natural ground either side of the existing inclinator rail, which will also be the location of the proposed replacement rail.



We encourage you to revisit the original plans and review the additional sectional drawings now provided, which demonstrate that the new inclinator is not 10m longer than existing as you state, that the new inclinator will be accommodated in the existing deeply excavated corridor, and that the section of inclinator rail that is proposed to extend to Landing No. 3 is at most 745mm above ground and not 1.2m as you suggest.

Section 4.15 (3A) Environmental Planning and Assessment Act 1979

The issue raised in your letter 4 March 2024 relates to non-compliance of the proposed inclinator with setback provisions within C1.19 of Pittwater 21 DCP. The proposed inclinator is assessed against the specific controls of the provision, as follows:

- *be designed and located so they do not involve excessive excavation, or the removal of natural rock or trees, and*

Very minimal excavation is needed because the new inclinator will predominantly sit within the already excavated corridor accommodating the existing inclinator. The existing footings are to be used where possible and the proposed new lift rail will be 4m further setback from Barrenjoey Rd than the existing bottom end of rail. No removal of rock or trees is proposed.

- *be erected as near as possible to the ground level (existing) of the site, and shall not involve the erection of high piers or visible retaining structures, and*

The new inclinator rail will be as close to the ground level below it as possible. To a large extent this is an already excavated level. Some clearance under the rail is necessary to accommodate the mechanism attaching the car to the rail as it travels.

BLACKWATTLE PLANNING

For a large proportion of its length the inclinator will be sit well below the natural ground levels of the land either side of the existing excavated corridor.

- *be located and designed to minimise the effects of noise from the motor and overlooking of adjoining dwellings, and*

By locating the inclinator within the existing excavated inclinator corridor and utilising the existing footings, there is minimal sightlines to the neighbouring property at No. 946 Barrenjoey Road. For the most part the inclinator car will be within the corridor with high retaining walls either side.

Above the top of the existing retaining wall is a substantial vegetated hedge which further restricts views of the rail or car from the neighbouring property.

At the highest end of the new rail where the rail is above ground by approximately 0.5m, overlooking is mitigated by the screen which is attached to the inclinator car. Overall, there will be a significant reduction in overlooking opportunities arising from the new inclinator compared to the existing inclinator and boundary stairs.

Replacing the very old inclinator with the new Railius infrastructure will significantly decrease any noise emanating from the operation of the inclinator, and an acoustic report demonstrating this improvement is attached.

- *be painted to blend in with surrounding vegetation and screened by landscaping and*

The new inclinator rail and car will not easily be viewed from the adjoining property because it is below the retained ground levels of No. 946 Barrenjoey Road for a significant part of its journey. Furthermore, it is capable of being finished in recessive colours to ensure it is not obtrusive in the landscape.

- *be set back two (2) metres from the side boundary to the outer face of the carriage*

It is agreed that the setback of the proposed inclinator car from the southern side boundary is less than 2m as provided by the DCP control. Given the developed nature of the site and the location of the existing inclinator, compliance with this control is not possible and would require major alteration to the existing dwelling. Constraints of the site, including the footprint of the existing dwelling are reasonable grounds for varying the DCP setback control.

Additionally, providing such a setback serves no beneficial purpose as the existing inclinator corridor, being largely excavated below ground level, appropriately accommodates the facility without unreasonable impact upon neighbours or the streetscape. Noting that the site is zoned C4 Environmental Living, requiring the site to be adapted to provide for a 2m setback would have impacts contrary to the C4 Zone objectives. Approving the new inclinator with a reduced setback but with also minimal impact is consistent with both the Zone objectives and the objectives of the Environmental Planning and Assessment Act 1979.

- *be located wholly on private land, and*

The inclinator is located wholly on No 948 Barrenjoey Road.

- *have a privacy screen where there is a direct view within 4.5m to a window of a habitable room of another dwelling.*

The proposed inclinator includes a fixed and permanent privacy screen consistent with the DCP provision.

You have indicated that the height of the rail above ground together with the proposed reduced setback results in a failure to achieve the objectives of the control, and specifically to *ensure minimal visual and acoustic disturbance to the environment and neighbours*. We provide the following assessment in relation to relevant provisions of the Act and the specific outcome of C1.19 Pittwater 21 DCP.

Relevantly, the Environmental Planning and Assessment Act provides the following (our emphasis added):

*(3A) **Development control plans** If a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority—*

...

- (b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—**is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and***

...

Numerical non-compliance with a DCP standard such as the 2m setback provision of C1.19 is not of itself a valid reason for refusal. The Act requires the consent authority to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of the standard.

We cannot agree with your conclusion that the proposed inclinator rail fails to achieve the objectives of C1.19 of Pittwater 21 DCP. There is only one outcome within C1.19, as follows:

Incline passenger lifts and stairways that cause minimal visual and acoustic disturbance to the environment and neighbours.

Visual Disturbance

The proposed inclinator does not cause visual disturbance to the environment or neighbours because:

- It will be located predominantly in the existing excavated corridor meaning that the rail and car will be below adjoining ground levels for a large portion of its journey; and,
- Where it does rise above ground, this height is minimal and a view to it from adjoining land will be intervened by a 1.8m high dividing fence and the adjoining vegetated hedge; and,
- There is no ability for the occupant of the inclinator to overlook the neighbouring property because the inclinator car is fitted with a privacy screen.

Acoustic disturbance

- The new inclinator is of contemporary design and will be constructed to current standards. This will significantly reduce noise impacts compared to the existing lift. An acoustic assessment is provided demonstrating the minimal impact and the significant improvement of noise impacts from existing.

We request that Council consider this submission and grant development consent to the proposed inclinator. It is demonstrated above that the outcome of the DCP provision is met by the proposal, and Council therefore must be flexible in applying the provision. The proposed location and design of the new inclinator is a reasonable alternative solution, and Council therefore has an obligation to approve it.

Recent Decisions

Furthermore, we have become aware of recent examples where Council has approved variations the side setback numerical requirement of the DCP relating to inclinations, in accordance with the Act.

DA2023/0588 161 Riverview Road Avalon

Variation to side setback approved noting:

- The variation is acceptable because the constraints of the existing dwelling and site limits the ability of the development to comply, similar to 948 Barrenjoey Road; and,
- The approved setback is 400mm, which is similar to the proposal at 948 Barrenjoey Road; and,
- The height of the inclinator above ground line was assessed as being between 0.2m - 1.4m, which is higher than that proposed at 948 Barrenjoey Road.

DA2023/1494 168 McCarrs Creek Road Church Point

Variation to side setback approved noting:

- The variation is acceptable because the constraints of the existing footprint of the dwelling limits the ability of the development to comply similar to 948 Barrenjoey Road and,
- The approved setback is 460mm, which is similar to the proposal at 948 Barrenjoey Road; and,
- The height of the inclinor above ground line was assessed as being between in excess of 1m above ground level, which is higher than that proposed at 948 Barrenjoey Road.

DA2022/0133 182 McCarrs Creek Road Church Point

Variation to side setback approved noting:

- The variation was considered acceptable despite the application being for a new dwelling and therefore not constrained by an existing footprint; and,
- The approved setback to the side boundary is <500mm, which is similar to the proposal at 948 Barrenjoey Road; and,
- The height of the inclinor above ground line appears in excess of 1m above ground level, which is higher than that proposed at 948 Barrenjoey Road.

Conclusion

The proposed lift is designed to mitigate all visual and acoustic impacts on the adjoining property as further described by this additional information submission. The existing lift has none of these features, which is why the new lift not only provides an improvement to the access and amenity characteristics of the subject property, but it also provides an improvement to the privacy aspects afforded to the adjoining dwelling both visual and acoustic. The numerical non-compliance with the 2m setback rule is required to provide the various improvements that the new lift offers to the subject and adjoining properties as well as overall compliance with the objectives of C1.19.

We encourage Council to approve the application consistent with the requirements of the EPA Act 1979, and consistent with its overall approach of flexibility as demonstrated by the above development consents.

Regards,



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