



northern
beaches
council

MEMORANDUM

DATE: 14 November 2023

TO: Northern Beaches Local Planning Panel (NBLPP)

CC: Peter Robinson, Executive Manager Development Assessment

FROM: Olivia Ramage, Planner

SUBJECT: Item No. 4.3 – DA2023/0726 – 257 Whale Beach Road, Whale Beach

TRIM REFERENCE: 2023/748435

The purpose of this memo is to advise the Panel that on late Monday afternoon (13.11.23), the applicant provided further written submissions for the Panel's consideration that seeks to address the recommended reasons for refusal and deficiencies identified in the assessment report. It is noted that this information has not been formally lodged through the NSW Planning Portal. Given this, a detailed assessment on the information has not been able to be completed however the below responses are provided to assist the Panel.

The late submissions includes amended plans showing the elevated swimming pool at adjoining 255 Whale Beach Road to the south. No changes or amendments have been made to the proposed inclinator.

The applicant has also provided an updated Clause 4.6 written request in response to the reasons for refusal. The applicant also provides the following commentary:

The proposed inclinator within the foreshore area, is discreet and recessive, with the portion in front of the FBL not visible from the public domain due to the existing sand dunes and extensive vegetation buffering the foreshore area from the public view. The images attached demonstrate that it DOES NOT disrupt the aesthetic values of the area and DOES NOT result in an adverse visual impact on the public domain. Furthermore, the proposed inclinator is a lower and more discreet structure within the foreshore area than the recently approved elevated swimming pool at 255 Whale Beach Rd, which heavily relies on the same vegetation and sand dune screening for its approval.

Response:

The images within the amended Clause 4.6 are of the existing site conditions. The images do not demonstrate or detail the appearance of the proposed inclinator and the associated visual impact. As such, the images do not adequately demonstrate that the proposed inclinator would not disrupt the aesthetic values of the area.

The additional grounds advanced in the updated Clause 4.6 written request are addressed below.

- **Access**

The existing access pathway is an informal landscaped walkway that meanders down the slope of the site. The pathway was never designed to be the primary form of access to the rear of the site, with the intention to replace and extend of the pre-existing inclinator at the site. The existing pathway was constructed to enable access to previously inaccessible areas of the garden for maintenance, has not been constructed to applicable Australian Standards and is not suitable or adequate for regular use by the current occupants of the dwelling.

Should an inclinator not be permitted on the site, the narrow and somewhat haphazard walkway will need to be replaced to provide safe access to the rear of the site. Whilst permitted under clause 7.8 of PLEP 2014, the visual impact of the replacement stairs will be far greater than that of the single rail associated with the proposed inclinator. Site disturbance will also be significantly increased, with countless posts and piers required to construct a compliant staircase and handrails, compared to the minimal piers required for the inclinator.

As such, the proposed inclinator is considered to be achieve a better planning outcome in light of the sensitivity of the foreshore locality.

Response:

It is noted that the existing access pathway was recently constructed and approved under DA2019/0309. Figure 2 in the Assessment Report shows the existing stairs and pathway demonstrating that there is a satisfactorily formed pathway which provides a right of access to the foreshore. The existing stairs are of minimal visual impact and sit close ground level integrating with the landform. Additionally, if modifications are required to bring the stairs into compliance with the relevant Australian Standards, then such works maybe contemplated. It is considered that any supplementary works would not have an intrusive impact in the foreshore, noting the wide and deep treads and shallow risers. The Request for Further Information (RFI) letter sent to the applicant provided an opportunity to amend the proposal to comply with the requirements of Clause 7.8. Such amendments could include replacing the existing walkway to be sufficient for the occupants and comply with Clause 7.8.

As such, access is not considered to be a sufficient environmental planning ground to justify the variation.

- **Limited development on foreshore area**

The intent of clause 7.8 of PLEP 2014 is conveyed by the title of the clause: "Limited development on foreshore area".

With the exception of the existing stairway, there is no other development in the foreshore area of the subject site. Even with the proposed inclinator track and landing, Council can be satisfied that development on the foreshore area of the subject site will be appropriately limited.

Response:

The intent of Clause 7.8 is to limit development on foreshore area to the following purposes:

- *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area, but only if the development will not result in the footprint of the building extending further into the foreshore area,*
- *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

As such, inclinator development within the foreshore area and therefore does not comply with the requirements of this clause. The justification offered by the application fails to consider or address the objectives of the Clause. It is not considered to be a sufficient environmental planning ground.

- **Lack of impact**

The portion of the proposed inclinator within the foreshore area consists of a single rail and the lower landing. Due to the existing vegetated dunes, the lower landing will not be readily visible from the beach. Further, the significant foreshore landscaping establishing at the site will readily screen the single rail, such that the inclinator will only be visible intermittently from neighbouring properties, when travelling up/down the site. Even then, the carriage is limited in size, and is far less visually offensive than other structures expressly permitted within the foreshore area, such as swimming pools and boatsheds.

Furthermore, it is difficult to suggest that a single inclinator rail will create an unacceptable visual impact on the foreshore area in light of development approved throughout the surrounding area. This is not limited to the recently approved inclinator referenced at Point 2 (above), which serve to establish that inclinator form part of the surrounding foreshore character, but also the significant swimming pool structure on the adjoining site at 255 Whale Beach Road. As shown in Figures 3 and 4, an 8.3m high projecting swimming pool was approved by Council in June 2022 (DA2021/2239) and is currently under construction on the neighbouring property.

[Please see the updated Clause 4.6 written request for figures]

*As confirmed in the Assessment Report prepared to accompany DA2021/2239:
"The proposal has been designed to step down the slope of the land to integrate with the landform and landscape. The proposed native landscape treatment and existing vegetation within the foreshore area will assist in softening the built form. For these reasons, the proposal is not considered to detract from the scenic qualities of the coastal area." (Page 16)*

"Due to existing dense vegetation within the foreshore area... the swimming pool will not be viewed from Whale Beach... The swimming pool will also not have an adverse impact upon the amenity or aesthetic appearance of the foreshore, given the existing and proposed landscape treatment obscures the pool." (Page 27)

With regard to the swimming pool approved pursuant to DA2021/2239, Council formed the position that the existing dunes and surrounding vegetation will suitably screen the 8.3m high elevated concrete swimming pool in the foreshore area immediately adjacent to the subject site, and that the development was consistent with the provisions of clause 7.8 of PLEP 2014.

As such, it cannot be said that a single, dark-coloured rail, that sits low to the ground in amongst landscaping, will create an unacceptable visual impact that is uncharacteristic of the surrounding foreshore area. The same foreground dunes and surrounding vegetation will also serve to screen the proposed inclinator rail from view, as indicated in the photos from the beach at Figures 5, 6 and 7.

[Please see the updated Clause 4.6 written request for figures]

Response:

As stated in the Assessment Report, a precedence of approvals of other inclinator within the foreshore area on nearby sites is not a sufficient environmental planning ground. Additionally, swimming pools are permitted development within the foreshore area under Clause 7.8 and are therefore not required to demonstrate that there are sufficient environmental planning grounds.

The site at present has access to the waterway through means that are consistent with the provisions of Clause 7.8. It is considered that there is no specific access or site requirement which necessitates the inclinor, as such the environmental planning grounds advanced are insufficient.

Recommendation

That the Northern Beaches Local Planning Panel note and receive the late submission by the applicant. As the information has not been lodged on the NSW planning portal and accepted by the Consent Authority, it does not form part of the application.

That the Northern Beaches Local Planning Panel refuse the application in accordance with the recommendations of the Assessment Report.