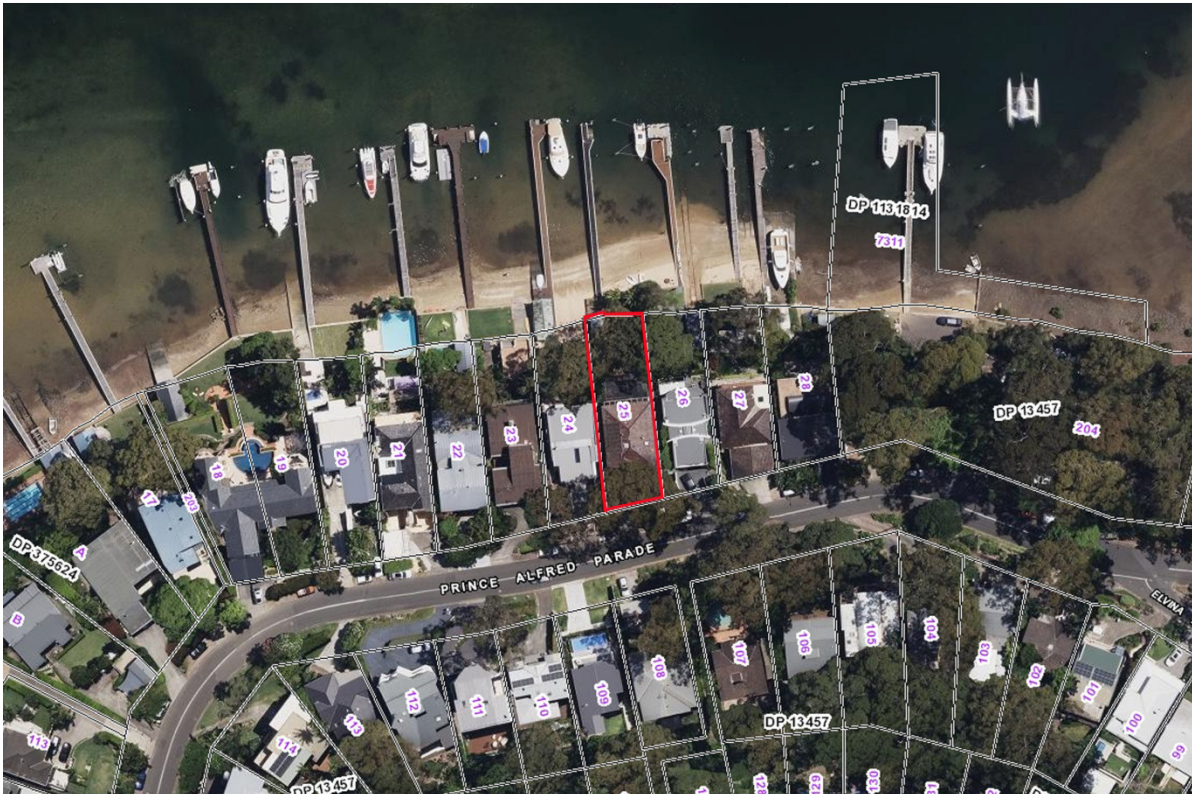
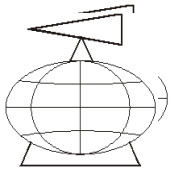


APPLICATION FOR EXCEPTION TO A DEVELOPMENT STANDARD

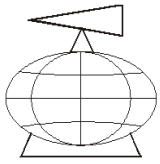


DEVELOPMENT APPLICATION FOR CONSTRUCTION & INSTALLATION OF AN INCLINATOR AT PROPERTY No. 106 PRINCE ALFRED PARADE, NEWPORT.

SECTION 4.6 – REQUEST TO VARY A DEVELOPMENT STANDARD



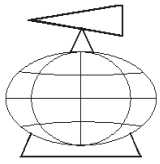
	<u>CONTENTS</u>	
	SUBJECT	PAGE
1.	INTRODUCTION	4
2.	SITE LOCATION AND DESCRIPTION	
2.1	Site Location and Context	4
2.2	Site Description	5
2.3	Adjoining Development	5
3.	DESCRIPTION OF THE PROPOSAL	5
3.1	Siting	6
3.2	Access	6
3.3	Structures and Appearance	6
3.4	Landings	6
3.5	Lift and Motor Noise	6
3.6	Erosion and Sediment Control	7
3.7	Waste Management	7
3.8	Schedule of Site Works Including works below the Foreshore Building Line	8
4.	RELEVANT ENVIRONMENTAL PLANNING INSTRUMENT	
4.1	Zoning	8
4.2	Pittwater Local Environmental Plan, 2014	8
4.3	The Development Standard to be Varied	10
4.4	The Type of Development Standard.	11
4.5	Justification of the Proposed Variation	11
5.	RELEVANT CASE LAW	15



6.	OTHER CONSIDERATIONS TO SUPPORT THE REQUEST	15
7.	CONTRAVENTION OF THE STANDARD BASED ON ENVIRONMENTAL PLANNING GROUNDS	16

APPENDICES

Appendix No.1 - Site Photographs



1. INTRODUCTION

This application requests to vary a development standard in relation to construction of an Inclinator within property No.106 Prince Alfred Parade, Newport. It has been prepared in accordance with clause 4.6 of Pittwater Local Environmental Plan, 2014, clause 35B(2) of the Environmental Planning and Assessment Regulation, 2021, and the 'Guide to Varying Development Standards', issued by the NSW Department of Planning and Environment, dated November 2023.

The construction of the proposed Inclinator below Council's mapped Foreshore Building Line represents a variation to a development standard in *Non-numerical* terms. This request will demonstrate that;

- * compliance with the development standard is unnecessary in the circumstances and,
- * there are sufficient environmental planning grounds to justify the contravention of the development standard.

The request has been prepared by YSCO Geomatics on behalf of the Owner of the land, Mrs Teresa Easter.

2. SITE LOCATION AND DESCRIPTION

2.1 Site Location and Context

The land is located as shown on Figure 1 below;

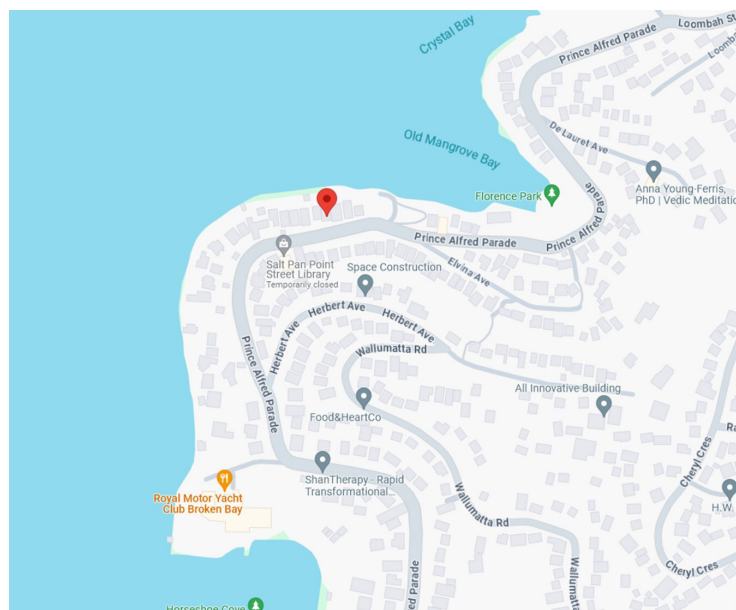
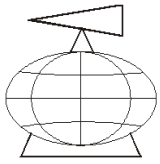


Figure 1: SITE LOCATION
(Google Maps)



2.2 Site Description

The land is currently held in title by Ms Teresa Easter as Lot 25 in Deposited Plan 13457.

Situated upon the land is a cement rendered brick residence together an enclosed concrete swimming pool and a weatherboard boatshed, known as No. 106 Prince Alfred Parade, Newport.

Various improvements are situated beyond the Mean High Water Mark boundary of the land within Pittwater including the roof overhang and deck of the weatherboard boatshed, a paved reclaimed area, a timber jetty and a pontoon.

2.3 Adjoining Development

To the East of the subject land is:

A three storey cement rendered brick residence known as No.108 Prince Alfred Parade, Newport.

To the West of the subject land is:

A residence known as No.104 Prince Alfred Parade, Newport.

The structures referred to on the subject and adjoining land are based on the Site Plan by Chadwick & Cheng Consulting Surveyors, Ref: 40157/D3-MGA, updated on the 15th January, 2024.

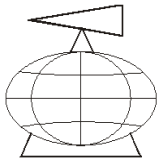
3. **DESCRIPTION OF THE INCLINATOR PROPOSAL**

Development consent is sought for construction and installation of an Inclinator. The plans submitted by P.R. King & Sons Pty Ltd., Ref: 3422/1A, dated the 7th of February, 2024, shows the proposed location and extent of the Inclinator on the land.

3.1 Siting

The 'Inclinator' is proposed to be situated adjacent to part of the Eastern boundary of the subject land for a horizontal distance of approximately 38 metres as shown on the design plan lodged with the application.

The bottom terminal of the proposed is to be situated approximately 10 metres below the Foreshore Building Line as mapped by Northern Beaches Council, pursuant to Pittwater Council, LEP, 2014.



3.2 Access

The proposed 'Inclinor' will be used primarily to provide equitable access between the residence and the lower waterfront level of the land & include a mid landing station. It will provide improved access for the owners of the land, guests, elderly guests and also any person having a disability or impaired mobility.

3.3 Structures and Appearance

The proposed 'Inclinor' carriage is to be 0.8 metres wide, 1.2 metres long and 1.1 metres high (above floor plate) with an aluminium frame.

The rail is to be a 150mm wide U.C. steel beam supported on concrete foundations of 400mm diameter with a steel universal beam riser connected to the rail.

The lift is to be painted a colour that blends in with the surroundings. Colour is to be Woodland Grey or a similar tone. (black, dark green, charcoal, pale eucalypt, ironstone, etc).

3.4 Landings

The top landing station is intended to align with a stair access landing at R.L. 17.88 (approximate) as shown on the design plan.

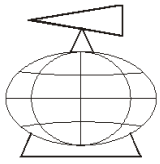
A mid landing is intended to be located on a terrace at R.L. 3.43 (approximate) as shown.

The proposed bottom landing station to be situated approximately 0.9 metres above the existing lower grassed terrace level within the land and approximately 3 metres inside the Mean High Water Mark boundary. The landing is proposed to be constructed at nominal R.L. 3.43 as shown on the design plan.

3.5 Lift Motor & Noise

The lift will be powered by an electric motor and will emit no pollutants or waste products. The Inclinor is designed to operate in a residential environment in consideration of noise levels established by 'EPA' guidelines.

The Inclinor will travel adjacent to the existing Inclinor situated within the adjoining land known as No. 108 Prince Alfred Parade, Newport. A nominally 2.1 high lapped paling fence is constructed on the boundary. Inclinors are used only occasionally and intermittently. Hence, in this particular instance it can be concluded that noise will not have any impact on the adjoining residence.



3.6 Erosion & Sedimentation Control

Excavation work will be required to enable the excavation of approximately 12 foundations, placement of the rail and the passage of the Inclinator carriage between the desired landing stations as shown on the plans.

Three foundations together with the bottom landing are to be constructed below the mapped Foreshore Building Line.

It is intended to demolish the tiled path on the Eastern side of the house and replace with soft landscaping.

Silt fencing is to be installed below the proposed works areas prior to commencement of works and any temporarily stored topsoil or other material is to be covered & protected for the duration of the works. This is indicated on the design plan by P.R. King & Sons Pty Ltd., Ref: 3422/1A, submitted with the application.

3.7 Waste Management

Approximately 7.5 cubic metres of earth will require excavation for the foundations and passage of the Inclinator.

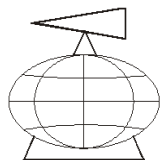
The paved stairs beside the house and part of the existing pool terrace slab are to be removed.

Any waste material shall be reused, recycled or disposed of responsibly at a Council approved waste disposal centre.

There will be no excess building waste generated in the construction of the Inclinator.

Apart from pouring the required amount of concrete to form foundations, the remainder of the Inclinator components are constructed off site from factory measurements and installed on site with no wastage.

The works are generally minor and as such the amount of site disturbance & waste generated will be minimal.

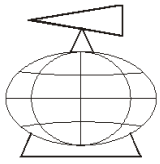


3.8 Schedule of Site Works

Works being the subject of this application for construction and installation of and Inclinator include;

ALL SITE PROPOSED WORKS

Item No.	Site Work	Drawing Reference
1.	Site establishment & install Sediment & Erosion Control facilities.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
2.	Demolition of; Tiled pathway and stairs on Eastern side of house, & disposal of materials. The East extent of the existing pool terrace area.	Plan- Erik Smithson Architecture, Project 196, Ref: DA110, Rev.B, dated 06/02/2024. Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
3.	Adjustment & lower section of concrete garden retaining walls approved in DA2021/1448, Plan L100C, to allow passage of rail and Inclinator car.	Plan- Erik Smithson Architecture, Project 196, Ref: DA110, Rev.B, dated 06/02/2024. Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
4.	Construct Inclinator foundations.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02, Rev.B, dated 06/02/2024. Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
5.	Proposed landscaping on Eastern side of house in location of demolished tiled pathway and stairs. To increase deep planting.	Landscape plan, ref: L100A, by Spirit Level, dated 25/01/2024.
6.	Construct top Inclinator landing to connect to approved stair access from Prince Alfred Parade.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02, Rev.B, dated 06/02/2024.
7.	Construct bottom Inclinator landing and access stairs.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02, Rev.B, dated 06/02/2024.
8.	Mid landing to be incorporated into Inclinator installation.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.
9.	Stormwater drainage works	Plan ITM Design, Ref: H-DA2-00, Rev B, "Proposed New Inclinator"
10.	Installation of Inclinator components including steel support brackets, steel rail and carriage.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.



WORK BELOW THE MAPPED FORESHORE BUILDING LINE

Item No.	Site Work	Drawing Reference
1.	Construct 3 Inclinator foundations & bottom landing structure and access stairs.	Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24. Plan- Erik Smithson Architecture, Project 196, Ref: DA02-101 & DA02-301, Rev.B, dated 06/02/2024.
2.	Adjustment & lower section of concrete garden retaining walls approved in DA2021/1448, Plan L100C, to allow passage of rail and Inclinator car.	Plan- Erik Smithson Architecture, Project 196, Ref: DA02-110, Rev.A, dated 06/02/2024. Plan 'P.R. King & Sons P/L, Ref 3422/1A, dated 07/02/24.

4. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENT

The applicable environmental planning is Pittwater Local Environmental Plan, 2014.

4.1 Zoning

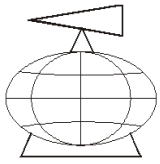
The land is zoned 'C4 - Environmental Living' pursuant to Pittwater Local Environmental Plan, 2014.

4.2 Pittwater Local Environmental Plan, 2014 (PLEP, 2014).

(i) Clause 2.3 - Objectives of Zone C4 Environmental Living

The objectives of zone C4 are;

- * *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*
- * *To ensure that residential development does not have an adverse effect on those values.*
- * *To provide for residential development of a low density and scale integrated with the landform and landscape.*
- * *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*



4.3 **The Development Standard to be Varied**

(i) **Clause 7.8 – Limited Development on Foreshore Area**

The objectives of this clause are as follows;

- (a) to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area,
- (b) to ensure continuous public access along the foreshore area and to the waterway.

Pursuant to clause 7.8 (2), Inclinator are not listed as structures that can be approved within the 'foreshore area'.

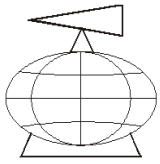
Structures that can be approved include *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*

The mapped Foreshore Building Line is indicated on Figure 2 below. (PLEP, 2014).



Figure 2: Northern Beaches Council - Foreshore Building Line Map, PLEP, 2014.

The Foreshore Building Line is plotted on plans submitted with this Development Application.



4.4 The Type of Development Standard

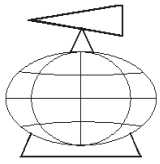
The development standard to be varied is non-numeric. An exception to the standard to be varied is dependent on a justification that the installation of the Inclinator will not have an impact on the environmental considerations outlined in clauses 7.8(3) and 7.8(4) of Pittwater LEP, 2014.

Clauses 7.8(3) and 7.8(4) are as follows;

Clause 7.8(3)

Development consent must not be granted under this clause unless the consent authority is satisfied that;

- (a) the development will contribute to achieving the objectives for the zone in which the land is located, and*
- (b) the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
- (c) the development will not cause environmental harm such as—*
 - (i) pollution or siltation of the waterway, or*
 - (ii) an adverse effect on surrounding uses, marine habitat, wetland areas, fauna and flora habitats, or*
 - (iii) an adverse effect on drainage patterns, or*
 - (iv) the removal or disturbance of remnant riparian vegetation, and*
- (d) the development will not cause congestion or generate conflict between people using open space areas or the waterway, and*
- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and*
- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and*
- (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and*
- (h) sea level rise, coastal erosion and recession, or change of flooding patterns as a result of climate change, have been considered.*



Clause 7.8(4)

In deciding whether to grant consent for development in the foreshore area, the consent authority must consider whether and to what extent the development would encourage the following;

- (a) continuous public access to and along the foreshore through or adjacent to the proposed development,*
- (b) public access to link with existing or proposed open space,*
- (c) public access to be secured by appropriate covenants, agreements or other instruments registered on the title to land,*
- (d) public access to be located above mean high water mark,*
- (e) the reinforcing of the foreshore character and respect for existing environmental conditions. (Pittwater local Environmental Plan, 2014)*

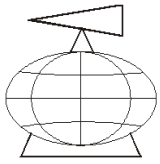
4.5 Justification of the Proposed Variation

The development standard to be varied is non-numeric. An exception to the standard to be varied is dependent on a justification that the Inclinator installation does not cause any significant impacts in terms of the environmental considerations outlined in clause 2.3, Zone Objectives and also clauses 7.8(3) and 7.8(4).

(i) Clause 2.3 - Objectives of Zone C4 Environmental Living

In terms of zone objectives;

- (a) The subject land has been occupied for residential purposes since approximately 1925 following the subdivision of the land in Deposited Plan 13457. The land forward of the Foreshore Building Line has been landscaped with typical residential gardens which terrace down to a grassed and brick paved area adjacent to the mean High Water boundary of the land. The characteristics of the land and landscaped gardens are indicated in photographs in Appendix No.1 to this request. The land has no special ecological or scientific values.
- (b) The Pittwater waterway and foreshores have aesthetic values. However, an Inclinator is a device that has a minimal footprint on the land and is not highly visible in comparison to other more substantial built structures along the water frontage such as multi storey dwellings and boat sheds.



The Inclinor will be screened by existing vegetation on the subject and adjoining lands and it will not be visible from the waterway.

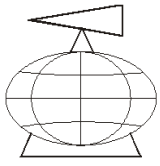
- (c) Inclinators are designed to complement living in a low density environment and provide equitable access from dwellings to and from the waterfront boundary of a property. The Inclinor is designed to integrate with the landform and landscape.
- (d) The proposed Inclinor is setback 3 metres inside the Mean High Water boundary of the land and there is a further 5 metres of pavement extending out from the boundary. Therefore, the setback from the waterline is substantial and there will be no significant impact on the riparian foreshore and no restriction on the movement of local fauna.

(ii) Clause 7.8(3) - Pittwater Local Environmental Plan, 2014.

In terms of satisfying the requirements of this clause, the Inclinor;

- a) does not contravene the objectives of the land zone C4,
- b) represents a low structure of minor proportions that will not be visible from Pittwater,
- c) operates via an electric motor and does not emit any exhaust or pollution in the course of its operation, and,

will be situated wholly within the subject land and will not have any impact on drainage patterns or the aquatic environment of Pittwater.
- d) will have no impact on public open space or the waterway,
- e) will not compromise existing access along the waterfront,
- f) will not compromise any natural or aesthetic values of the land. As noted already in section 4.5(1) above, the part of the land upon which the Inclinor is to be situated does not possess any significant historic, scientific, cultural, social, archaeological or architectural designations,
- g) will be situated approximately 2.1 metres above the level of Mean High Water at its lowest level and be wholly above the estuarine planning level of 2.65 metres A.H.D. for the vicinity, to allow for future climate change and sea level rise.



(ii) Clause 7.8(4) - Pittwater Local Environmental Plan, 2014.

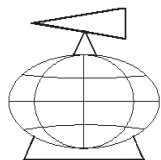
In terms of satisfying the requirements of this clause, the Inclinor is situated wholly within the subject land on a largely developed and landscaped foreshore. It will have no impact upon the encouragement of public waterfront access, foreshore character or environmental conditions.

In conclusion, the Inclinor

- * will not require the removal of any trees of significance for its construction,
- * is not set in a 'natural environment',
- * will not impede the passage of wildlife,
- * will not impede access along the waterfront of the land as the structure will be situated wholly within private land.
- * will be situated within the Mean High Water Mark boundary of the subject land above existing paved and reclaimed land.
- * will have an adequate buffer zone to the waterline to ensure no negative impacts on foreshore vegetation, scenic quality of the waterway or aquatic species.
- * will not require excessive excavation for its construction,
- * will predominantly sit as close as possible to the terraced ground levels of the land. Hence, there will be no significant impact on the visual qualities of the land as viewed from the waterway,
- * be screened by existing structures and vegetation on the subject and adjoining lands,
- * be painted to blend in with the natural landscape,
- * be wholly located on private land,
- * not emit any waste products in its continued operation.

(iii) Previous Departures from the development standard

While there is not a suggestion of an abandonment of the standard in relation to installation of an Inclinor below the Foreshore Building Line, the following table provides a sample of approvals gained for installations either partially or fully below the Foreshore Building Line to provide access to the Mean High water boundary.



Inclinor installations on waterfront properties are constructed for the purpose of accessing the waterfront.

A LIST OF PRIOR CONSENTS

D.A.	Date of Consent	Nature of Consent	Property Address
2020/1225	14/01/2021	Partially (8m) below FSBL – 3.5m inside MHWM	98 Prince Alfred Parade, Newport
2018/1540	10/01/2019	Fully (23m) below FSBL – 0.5m inside MHWM	21 'Lameroo' The Portions, Lovett Bay
2018/0923	07/09/2018	Partially (12m) Below FSBL - 2m inside MHWM	48 Bona Crescent, Morning Bay.
N0194/15	19/06/2015	Partially (13m) Below FSBL - 5m inside MHWM	111 Richard Road, Scotland Island
	2016	Partially (11m) below FSBL – 3.5m inside MHWM	108 Prince Alfred Parade, Newport
NSWLEC1334 (*)	4/08/2008	Partially (11m) below FSBL- 3.5 inside MHWM	205 Riverview Road, Clareville

(*) The court decision was based on a submission from the Southern neighbour in relation to cross viewing and visibility of approximately 2 metres of rail at the top landing station. The action was not in relation to work below the Foreshore Building Line.

5. Relevant Case Law

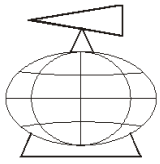
Application where requests for variance to standards on the basis of compliance being 'Unreasonable and Unnecessary' have been considered within the following LEC court cases. These include;

- i) *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46*
- j) *Wehbe v Pittwater Council [2007] NSWLEC 827*
- k) *Initial Action Ltd v Woollahra Municipal Council [2018] NSWLEC 118*
- l) *Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7*

A detailed analysis or summary of the cases is outside the scope of this submission

In each case, decisions are centred around the impacts of the proposal in terms of core zone objectives and also development objectives relative to the specific situation of the proposal and impacts on surrounding properties.

This request for a non numeric variance to a development standard is based on the objectives not being compromised. It has been demonstrated that there are no sensitive matters of environmental significance that will be impacted in this application by installation of the Inclinor.



6. **Other Considerations to Support the Request**

(i) **Northern Beaches Council Disability Inclusion Access Plan**

Northern Beaches Council is committed to creating and enabling access and inclusion for all people in the community. While the action plan focuses on community facilities, the principle should extend to enabling access within private property. The Inclinator will provide equitable access for the owners of the land, their visitors including any person with a disability or impaired mobility.

While a set of stairs can provide access to the waterfront of the land, the level difference between the pool terrace (R.L.10.7) and the waterfront of the property (R.L.1.7) is 9 metres. It would be impossible for a visitor with a physical disability to access the waterfront.

(ii) **Construction of the Inclinator.**

The Inclinator construction will consist of 3 foundations within the foreshore area being constructed on concrete foundations at 400mm diameter on 600mm square pads. This represents a total of approximately 1.1 square metres of foundations. The rail is a 150mm square steel section. Hence, a very minimal development footprint.

The Inclinator is to be constructed adjacent to the existing Inclinator within property No.108 Prince Alfred Parade which is set at a similar setback to the common property boundary.

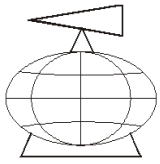
Refusal of the Request to accept a variance to the development standard to allow construction below the mapped Foreshore Building Line will impact the viability of proceeding with the installation. Inclinator are generally installed on steep sites to allow more efficient and equitable access between a car parking area at street frontage and a dwelling or from a dwelling to the waterfront or a property or a combination of both.

7. **Contravention of the Development Standard on Environmental Planning Grounds.**

This submission demonstrates that the installation of the 'Inclinator' will not contravene any of the objectives of the zone or locality pursuant to Pittwater Local Environmental Plan, 2014.

There are no significant environmental implications for construction of the Inclinator below the foreshore building line within the terraced and landscaped yard of the property.

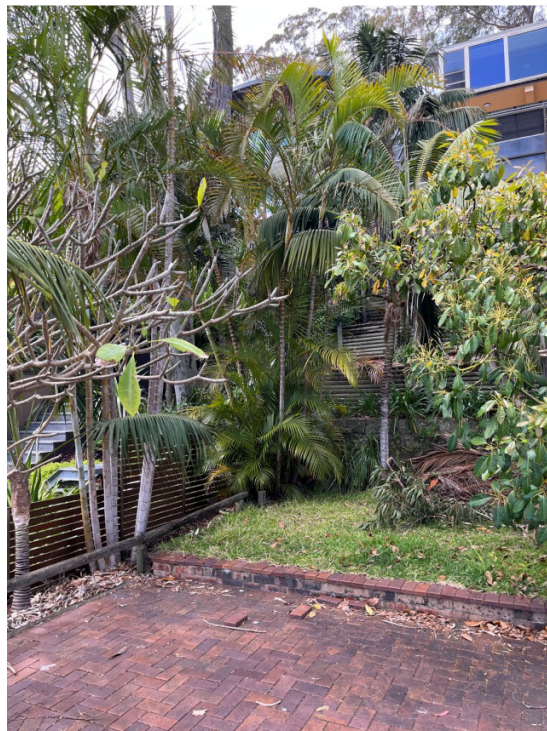
The Inclinator does not require any vegetation removal or significant ground disturbance and will not be visible from the waterway of Pittwater.



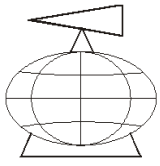
APPENDIX No.1 – Site Photographs



The property facing Pittwater. The Inclinor will be a relatively minor installation forward of the Foreshore Building Line. Not visible from Pittwater



Bottom landing area. The Inclinor to terminate behind the brick paving on the lawn area adjacent to the existing Inclinor landing station situated on the adjoining property to the East. (No.108)



Landscaped and terraced gardens. Inclinator will clear the stone wall. Log walls to be replaced in approved house DA2021/1448.



Inclinator on adjoining property –low visual impact and screened by vegetation and blending in with landscaped gardens.