



northern
beaches
council

MEMORANDUM

DATE: 30 April 2024

TO: Northern Beaches Local Planning Panel (NBLPP)

CC: Peter Robinson, Executive Manager Development Assessment

FROM: Adam Richardson, Manager Development Assessment

SUBJECT: Item No. 4.3 – DA2024/0113 – 106 Prince Alfred Parade, Newport

TRIM REFERENCE: 2024/311109

The purpose of this memo is to advise the Panel that a late submission has been received from consultant working on behalf of the applicant. The submission seeks to respond to the assessment report and recommendation for DA2024/0113, setting out the following points for consideration of the Panel:

- Support by all internal Council referral bodies and external bodies to the application
- Table of compliance relative to Pittwater LEP 2014
- Environmental planning grounds
- Built form controls
- Recommendations
- Northern Beaches Council disability Inclusion Access Plan
- Inclinator Development Applications

Support by all internal Council referral bodies and external bodies to the application

The applicant's consultant notes that there were no submission made in relation to the application, all internal and external referral bodies support the application and it is therefore uncontroversial and should be supported.

It is acknowledged that there were no submissions to the application and that it is supported by specialist referrals. However, and despite this, the overall assessment has found that despite these facts, the merits of the development do not warrant approval of the application, primarily due to the inconsistencies with Clause 7.8 of the PLEP 2014.

Table of compliance relative to the Pittwater LEP 2014

The applicant's consultant submits that the site does not have any special ecological or scientific values and that the proposed inclinators will not have any impact on the foreshore or wildlife corridors.

As such, it is argued that the proposed development satisfies the zone objectives and given this, the variation sought to the development standards prescribed under Clause 7.8 of the PLEP should be supported pursuant to the flexibility enabled through Clause 4.6.

As discussed in the report at Page 91 of the agenda, the proposed development is not considered to satisfy the objectives of the C4 zone, in that the proposal will add additional built form to the foreshore area which in turn affects the aesthetic qualities of the land / water interface of the site within the foreshore area. Despite the claims of the applicant's consultant the Clause 4.6 variation request should not be supported.

Environmental planning grounds

The submission provides for additional environmental planning grounds, which attempt to provide a sufficient justification in which flexibility can be applied to the restrictions of Clause 7.8 of the PLEP.

The submission provides that the development is able to satisfy the objects of the Act. The purpose of the objects established under Section 1.3 of the Environmental Planning and Assessment Act are to establish the purpose and function for the regulation of development in NSW. The objects are not an assessment hierarchy, rather that function is prescribed at the merits test under Section 4.15(1) of the Act, to which the development is considered to fail.

Built form controls

The applicant's consultants submits that the side 2 metres setback control for inclinators prescribed by the PDOP has not been enforced by Council for a long period of time. It is noted that Council applies the controls of the DCP objectively and whilst it is accepted that in some instances flexibility with this control has been applied in the past, it has equally been upheld.

Recommendations

The applicant's consultant submits that given the absence of impacts to the natural environmental, there are sufficient environmental planning grounds to justify the contravention of the development restrictions of Clause 7.8.

It is considered that the proposed development has an adverse visual impact and that simply not having an environmental impact does not in itself justify adequately departure to the development standard.

It is argued that the structure won't be readily visible from the adjoining waterway. It is considered that the structure will be visible and that built form will contribute to the increasing dominance of built form within the foreshore area, which is contrary to the purpose of Clause 7.8.

The applicant's consultant also reaffirms that the referrals are in support of the applicant. This point is acknowledged however as previously stated not of sufficient weight to warrant departure to the development standard at Clause 7.8 of the PLEP.

Northern Beaches Council Disability Inclusion Access Plan

It is argued by the applicant's consultant that the topographical constraints limit access for people with a disability in, and around the site, particularly at the rear. As such the inclinators are needed for the purpose of equitable access.

It is important to note that single residential dwellings are not required to provide equitable access, or be designed to a standard which meets AS1428 under the BCA. Whilst on face value the inclinator would provide improved equitable access around the site, access to and from the inclinator and the inclinator itself have not been designed to comply with the access requirements of AS1428. As such, whilst the inclinator may provide for an ease of access, it does not provide for the scope of access that meets a disabled level of access. If the true intent of the inclinator is for that purpose, then it is necessary that it and access to / from it be designed to meet AS1428.

Inclinator Development Applications

The applicant's consultant argues that inclinator are commonplace in and around Pittwater and that without accessible access in and around properties, many elderly, or less able body residents cannot move freely about their properties and enjoy their amenities.

The concerns raised by the applicant's consultant in this regard are subjective which prima facie has merit, however they are not a planning considerations, insofar that residential development is not required to be built to an accessible standard. Clause 7.8 of the PLEP was drafted and enacted with an understand of the topography of the surrounding area and that despite this topography, development was restricted within the foreshore area. Furthermore, inclinator are permitted landward of the foreshore building line and as such, an inclinator maybe proposed on site in a way which meets the requirements of the PLEP and PDCP.

Recommendation

The Panel note the submission made by the Applicant in responding to the published assessment report and recommendation DA2024/0113, and that no changes are required to the recommendation contained in the assessment report.