

13 June 2022

The Chief Executive Officer
Northern Beaches Council
725 Pittwater Road
Dee Why NSW 2099

By e-mail: council@northernbeaches.nsw.gov.au

FAO: Dean Pattalis

Dear Dean

**Submission with regard to Development Application DA2022/0448
Subdivision of one lot into two and partial demolition of existing dwelling
7 Cooleena Road, Elanora Heights, NSW**

I write regarding the above Development Application DA2022/0448 (subject DA) to make a submission on behalf of Mr and Mrs Kirby at 5A Cooleena Road (my clients).

This submission is prepared further to the assessment of the plans, reports and Statement of Environmental Effects (SEE) submitted as part of the subject DA against the relevant EPIs and Planning Controls and with the benefit of a site visit to assess the impact of the proposed development on my clients.

The subject DA seeks consent for the subdivision of one lot into two and partial demolition of the existing dwelling at 7 Cooleena Road, Elanora Heights (subject site). My client's property, at 5A Cooleena Road is located to the south east and downslope of the subject site. I have reviewed submitted DA plans and reports and considered the impacts on my clients to arise by virtue of the proposed development against the relevant planning controls and in accordance with Section 4.15 of the Environmental Planning & Assessment Act (the Act).

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

A summary of the impacts and non-compliance of the subject DA as determined from the information submitted is set out below.

Summary of submission

- Proposed development is a non-compliant development contrary to the objectives of the zone and Pittwater LEP Clause 4.1, 7.6 and 7.7 and Pittwater DCP 2014 Controls A4.5 – Elanora Heights Locality, B2.2 – Subdivision, B3.1 – Landslip Hazard, B4 – Controls relating to the Natural Environment, B5.15 - Stormwater, B6.2 - Internal Driveways, C1 – Design Criteria for Residential Development and D5.9 – Landscaped Area.
- Lot 2 (resulting lot) fails to meet the minimum requirements for subdivision under DCP Control B2.2 given that the minimum depth is of Lot 2 is approx. 24.4 metres rather than the 27 metres required and the gradient of the land of Lot 2 from the highest to the lowest section is greater than 16.7 degrees.
- Geotechnical Hazards and risk to life given the 9-30 degree slope of the land – note that the steepest part of the site to the rear must be included within this assessment. Without inclusion of this part of the site, the minimum lot size would not be achieved.
- Significant concerns and lack of clarity regarding a stormwater drainage system proposed and the related impacts include flood risk, soil instability, tree root instability and risk to life from landslip.
- Impact of tree loss and on biodiversity. The requested condition by Council's Biodiversity referral response would be problematic to comply with given the site constraints. Tree 9 root protection zone is within the indicative building footprint.
- Impact on amenity of neighbouring occupiers to arise by virtue of a new dwelling house on the resulting lot.

On the information submitted, it is recommended that the subject DA be refused for the reasons summarised above and provided in greater detail in this submission.

Should additional information be submitted, my clients request the opportunity to provide further comments.

Site details and character of the area

The subject site is located on the southern side of Cooleena Road, Elanora Heights. The total site area is made up of 1 existing dwelling and one existing lot at 7 Cooleena Road. The boundary identification survey shows the total site area as 1268.1 sqm.

The eastern boundary of the subject site abuts my client's property at 5A Cooleena Road at the point at which Lot 2 is proposed. The eastern boundary is approximately 68.13 metres and the western boundary is 56 metres. The front boundary facing Cooleena Road is 20.88 metres, as detailed on the Boundary Identification Survey. The site is situated on a sloping site as it falls in a south westerly direction with a 9 -30 degree fall (Geotechnical Report).

Figure 1 – Aerial photo of subject site and proximity to my client's property



Source: Northern Beaches Council Online Maps – Aerial view – own annotation added.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Surrounding development is predominantly made up of single and two storey detached dwellings which front onto the streetscape and generally complement the C4 zone.

My client's property is located in very close proximity to the subject site, approx. 1.5metres off the eastern side boundary, as shown in Figure 1. The windows on the western elevation of my clients property facing the subject site include unobscured bedrooms windows (2 bedrooms) and living space at both the ground and first floor.

Proposed development

Development Application DA2022/0448 seeks consent for the subdivision of one lot into two and partial demolition of the existing dwelling at 7 Cooleena Road, Elanora Heights.

Assessment of the proposed subdivision should include the implications of the resulting lot and capability of providing for the construction of a building that would not give rise to unacceptable hazards or impacts, in accordance with Cl.4.1 of the LEP.

Planning History

Two previous applications have been submitted for the subdivision of the subject site. N0533/17 was withdrawn, and N0177/16 was refused.

The stated reasons for refusal of N0177/16 are shown in figure 2.

This objection letter finds that the proposed subdivision should similarly be refused for the reasons detailed in this letter.

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Figure 2 – Reasons for refusal of N0177/16 for the proposed subdivision of the subject site into 2 lots

Decision:

The Development Application has been refused for the following reasons:

1. *The proposed development is not consistent with, nor does it satisfy the objectives of, the Environmental Living zone under Pittwater Local Environment Plan 2014.*
2. *The proposed development does not satisfy the controls or objectives of Clause 7.6 (Biodiversity) of Pittwater Local Environment Plan 2014.*
3. *The proposed development does not satisfy the controls or objectives of Clause 7.7 (Geotechnical hazards) of Pittwater Local Environment Plan 2014.*
4. *The proposed development is not consistent with the desired character requirements of Part A4.5 (Elanora Heights Locality) of the Pittwater 21 Development Control plan.*
5. *The proposed development does not satisfy the outcomes and controls of Part 82.2 Subdivision (Low Density Residential Areas) of Pittwater 21 Development Control Plan.*
6. *The proposed development does not satisfy the outcomes and controls of Part 85.10 (Stormwater Discharge into Public Drainage System) of Pittwater 21 Development Control Plan.*
7. *The proposed development does not satisfy the outcomes and controls of Part 86.3 (Off-Street Vehicle Parking Requirements) of Pittwater 21 Development Control Plan.*
8. *The proposed development does not satisfy the outcomes and controls of Part C4.1 (Subdivision -Protection from Hazards) of Pittwater 21 Development Control Plan.*
9. *The proposed development does not satisfy the outcomes and controls of DCP (C4.7 Subdivision – Amenity and Design) of Pittwater 21 Development Control Plan.*

Source: Northern Beaches DA tracker

Impacts and non-compliance of proposed development

Relevant legislation and Planning Controls

In preparing this submission, I have carefully considered the following legislation and planning controls:

Environmental Planning & Assessment Act 1979 (the Act)

Environmental Planning and Assessment Regulation 2000 (the Regulations)

Pittwater Local Environmental Plan 2014(LEP)

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Pittwater Development Control Plan 2014 (DCP)

Local Environmental Plan (LEP)

Land use zone: The subject site is zoned C4 Environmental Living under the Pittwater LEP 2014.

The objectives of the zone are as follows:

- *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.*

Comment: The proposed subdivision and concept plans for a single dwelling to the rear of the subject site would provide for the construction of a building that would have a detrimental impact on the special ecological and scientific values of the subject site, identified on the Pittwater Biodiversity Map.

The impact is expanded upon in this objection under Cl.7.6 Biodiversity and the resulting unacceptable impact on the special values of the subject site deems this DA contrary to the objectives of the zone.

Clause 4.1 Minimum subdivision lot size

The minimum subdivision lot size for the subject site is 550 sqm.

Comment: It is requested that Council's assessment include a measured assessment to ensure that the subdivision of the land would meet the minimum subdivision lot size of 550sqm, excluding the access handle.

Further to this, the implications of the gradient of the slope, in the assessment under DCP Control B2.2 must include the land to the rear of Lot 2, as without this area of land, the proposed subdivision would fail to meet the minimum subdivision size, as stated.

In accordance with Clause 4.1, the proposed subdivision must meet the objectives of the development standard, which it fails to do, as detailed below.

Clause 4.1 - Objectives

The objectives of Cl. 4.1 and comments of this submission are as follows:

- (a) to protect residential character and amenity by providing for subdivision where all resulting lots are consistent with the desired character of the locality, and the pattern, size and configuration of existing lots in the locality,*

Comment: As shown in figure 1, the configuration of battleaxe lots is limited only to the neighbouring lots to the east of the subject site where the lots have greater depth and therefore achieve the minimum depth requirement of 27 metres per lot. However, the battleaxe lot pattern is an anomaly in the locality. The predominant pattern, size and configuration of existing lots is single lots facing the streetscape. The proposed subdivision cannot be viewed as consistent with the pattern, size and configuration of existing lots and is contrary to the desired character of the area as detailed under DCP Control A4.5 – Elanora Heights Locality.

- (b) to provide for subdivision where all resulting lots are capable of providing for the construction of a building that is safe from hazards,*

Comment: As detailed in this submission under Cl. 7.7 Geotechnical Hazards and DCP Controls B3.1 Landslip Hazard and B5.15 Stormwater, the proposed subdivision and resulting lot would provide for the construction of a building that presents a potential risk to life from land slip risk and stormwater run-off implications to soil stability.

- (c) to provide for subdivision where all resulting lots are capable of providing for buildings that will not unacceptably impact on the natural environment or the amenity of neighbouring properties...*

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Comment: As detail in this submission, the proposed subdivision and resulting lot would provide for a building that would undermine the retention of a tree which is required to be retained under a condition requested by Council's Biodiversity team and on land that is identified in the Pittwater Biodiversity Map.

A building on the subject site would further have a significantly, unreasonable impact on neighbouring amenity by virtue of its siting in close proximity to the neighbouring occupiers to the east, including view loss, overbearing impact and resulting privacy impacts.

(g) to ensure that lot sizes and dimensions are able to accommodate development consistent with relevant development controls.

Comment: The proposed subdivision is not compliant with the lot size, dimension and requirements of DCP Control B2.2 – Subdivision – Low Density Residential Areas given the minimum depth of Lot 2 is approx. 24.4 metres rather than the required 27 metres and has a slope greater than 16.7 degrees. The proposed development is also non-compliant with DCP Control A4.5 – Elanora Heights Locality, B3.1 Landslip Hazard, B4 Control relating to the Natural Environment, B5.15 Stormwater and B6.2 Internal Driveways.

Clause 7.6 Biodiversity

Council's Biodiversity Referral Response has recorded support for the proposed subdivision on the basis that a future referral will be required for a new dwelling on the subject site. However, the objectives of Cl.4.1 are to ensure that assessment for the subdivision of land should include consideration of the land being capable of providing for construction of a building without associated harmful impacts.

Given the site constraints, including the topography of the land and size limitations, it is likely that a DA for a new dwelling on the subject site would have a significantly detrimental impact on the biodiversity of the land. The indicative scheme demonstrates noted non-compliance with the biodiversity values of the land and by virtue of this the subdivision should be refused.

The support is conditional on the retention of tree 9 and 11 which are outside of the indicative building envelope. However, as shown on the submitted plans, the indicative building envelope

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au
www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

will encroach on the tree protection zone for tree 9 and the future health of this tree will be severely compromised and undermined. The limited siting options on this constrained site will deem the imposition of the required condition difficult to comply with.

As detailed in Council's Landscape Referral Response, which recommends the proposal is unsupported, *'No trees are supported for removal if impacted by the indicative building footprint for the new lot'*.

Clause 7.7 Geotechnical hazards

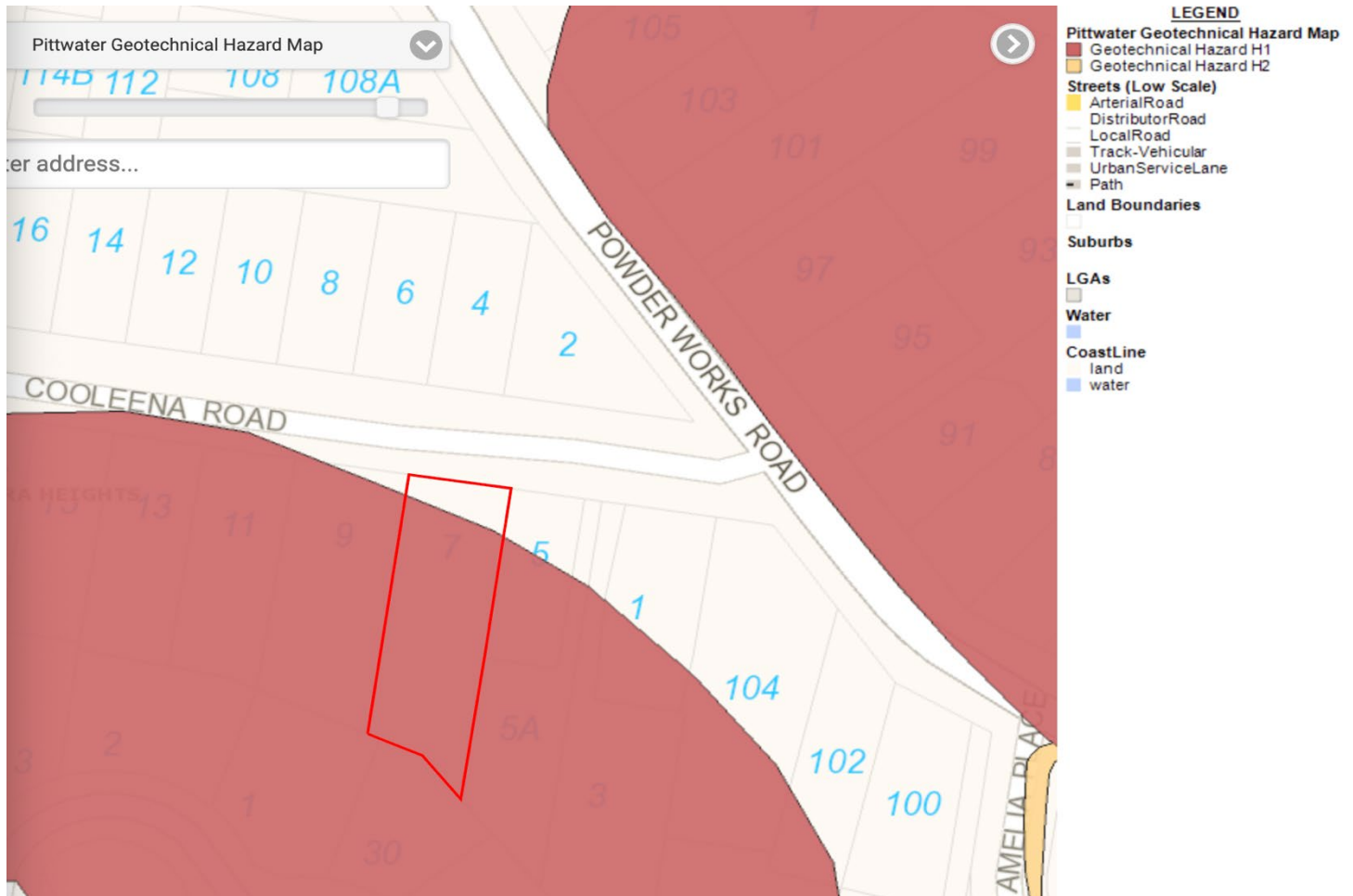
A Geotechnical Report has been submitted with the Development Application and risks to neighbouring and future occupiers should be fully assessed as part of this application. The fall of the land varies from 9 degrees to 30 degrees and a steep escarpment drop is set within the subject site towards the rear boundary line. The levels at the bottom of the escarpment drop off are not clearly annotated on the survey plan, although a site visit from my client's property would facilitate an appreciation of the significant fall in the land.

The subject site is located within Hazard Zone 1 of the Pittwater Landslip Risk, which indicates a possibility of a landslide events as, 'possible to almost certain'.

The Geotechnical Report submitted to support the proposed subdivision, identifies the risks with regard to soil instability and implications of full stormwater discharge given the topography to the site and escarpment drop off to the rear. However, the findings and potential risk to life implications are addressed by recommendations and stated limitations. As geotechnical assessment and stormwater management is not by area of expertise and given the significant risks to life, it is requested that Council Engineers are fully satisfied with the level of information submitted and associated risks to both neighbouring and future occupiers.

Although the proposed development is for the subdivision of the land, the implications from a stormwater and geotechnical assessment needs to take into account the impact of the future built form of the subject site, in accordance with Cl.4.1 and 7.7 of the LEP.

Figure 3 – Geotechnical Hazard Map



Source: Northern Beaches Council Online Maps – Geotechnical Hazard Map

My clients are particularly concerned regarding the stormwater management system proposed, particularly as they have experienced the inadequacy of stormwater drainage treatment on the downward side of the slope.

My clients have included the following dropbox link to demonstrate via video and images the extensive run off that occurs from a north easterly direction with a south west run off.

<https://www.dropbox.com/sh/0pz7ysufsoh7lhn/AABZ56S9RKqytbC8ploULAOqa?dl=0>

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234

karen@planningprogress.com.au

www.planningprogress.com.au

PO Box 213, Avalon Beach, NSW 2107

Future occupiers and the neighbouring occupiers to the rear of the site will be significantly impacted upon by the increase in stormwater run-off and impervious surfaces.

The concern is that any stormwater water drainage system proposed on the subject site will be unable to manage the capacity of water running into and through the site and this has been supported by drainage reports conducted on their property. An extract from a drainage report conducted on the adjacent site (my client's property) reads as follows:

You have a property that's surface water and natural ground water ingress flows across the bi axis towards the rear lower south west corner. The cut in the rock excavation to accommodate the current driveway & retaining wall for the lower dwelling amplifies these flows via the subfloor void as does the bedding of the stepped brick footing directly onto the underlying rock shelf.

No consideration has been given during construction of the dwelling to introduce a drainage system to cope with this problem and the attempts to drain the building pay no respect to the fundamentals of drainage.

As a result, the overlying subsoil in rain periods because it is very shallow, reaches saturation very quickly and the underlying rock shelf upon which the dwelling is constructed is where the water runs creating a wet subfloor void environment. In turn, the event of any rain the rock shelf becomes saturated to an extent that the problem manifests and remains in a saturated state causing erosion, flooding and major structural issues over time! A wet void leads to fungal spores, leading to damp mould growth and ultimately health problems such as respiratory disease for the occupants of the dwelling this is unfortunate.

The subject site, resulting lot, is immediately to the west of the site referred to above and has similar site conditions.

The Geotechnical Report provides a number of recommendations regarding the stormwater drainage, particularly given the slope instability issues on site, including that discharge needs to be via a spreader and not a concentrated discharge.

Stormwater impacts are discussed further under DCP Control B5.15 – Stormwater.

Development Control Plan (DCP) - Non-compliant development and amenity impacts

DCP Control A4.5 Elanora Heights Locality

The desired character of the area is to, *‘remain primarily a low-density residential area with dwelling houses... in a landscape setting, integrated with the landform and landscape... Existing and new native vegetation, including canopy trees, will be integrated with the development... Development on slopes will be stepped down or along the slope to integrate with the landform and landscape, and minimise site disturbance’.*

Comment: The proposed subdivision of the subject site fails to meet with the desired character of the area and would have a detrimental impact on the landform and landscape characteristic. The proposed future dwelling on the subject site would only be facilitated by the removal of a number of significant trees in an area identified in the Pittwater Biodiversity Map. As per DA refusal reason 4 of N0177/16, the proposed development conflicts with the Elanora Height Locality and desired future character.

DCP Control B2.2 – Subdivision – Low Density Residential Areas

Controls

Any lot (or lots) to be created by a subdivision of an existing lot (or lots) shall have a minimum lot depth of 27 metres.

Comment: The resulting lot created by the subdivision of the existing lots do not appear to have a minimum lot depth of 27 metres. The western boundary of the subject site as existing is 56.585 metres. Measuring off the submitted Masterset plans, the lot to be retained is the larger of the two resulting lots and has a minimum depth of approx. 32.18 metres whereas the resulting lot to the rear would have a minimum depth of approx. 24.4 metres which is non-compliant with DCP Control B2.2. The outcomes of this control are not achieved for the reasons set out in this objection.

Any lot (or lots) are to be capable of providing for the construction of a building which is safe from hazards, does not unreasonably impact on the natural environment, does not adversely affect heritage, and can be provided with adequate and safe access and services.

Comment: As detailed in this objection under non-compliance with Cl. 7.6 Biodiversity and 7.7 Geotechnical Hazards and DCP Control B5.15 Stormwater, the proposed subdivision and resulting lot would not be capable of providing the construction of a building which is safe from hazards and would have an unreasonable impact on the biodiversity and existing trees on the subject site which is identified within the Pittwater Biodiversity Map.

A person shall not subdivide land if the allotment(s) intended to be created have a slope in excess of 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s).

Comment: As detailed in the Geotechnical Report, the land on the subject site varies from 9-30 degrees. However, it is at the resulting lot to the rear of the site where the gradient is at its steepest. The resulting lot as measured between the highest and lowest point (including the bottom of the steepest section which although fenced, is located within the resulting lot, would have a slope far in excess of 16.7 degrees contrary to DCP Control B2.2.

Non -compliance with DCP Control B2.2

Comment: The proposed subdivision fails to meet the outcomes of the stated control or numerical controls with regard to the minimum depth of the resulting lot and slope of the allotment and should be refused on these grounds, in addition to the other detailed reasons for refusal.

DCP Control B3.1 – Landslip Hazard

The subject site is identified as H1 in the Pittwater Geotechnical Hazards Map. As detailed in this objection under Cl.7.7, the proposed subdivision would fail to meet either the outcomes or controls of the stated control given the risk to life of a resulting lot and subsequent building.

DCP Control B4 – Controls Relating to the Natural Environment

Comment: For the reasons detailed under Cl.7.6, the proposed subdivision would fail to meet the outcomes or controls of DCP Control B4.4 and B4.22 given the proposed tree removal and impact on biodiversity on land identified in the Pittwater Biodiversity Map.

DCP Control B5.15 - Stormwater

Comment: The proposed stormwater drainage system, as set out in the submitted stormwater plans, is proposed to be via on site detention. However, the SEE refers to a proposed easement. The recommendations of the Geotechnical Report is for level spreaders given the associated risk of stormwater run-off in the volumes that can be achieved at the subject site. It is not therefore clear what stormwater treatment is proposed.

Council's Water Management Referral Response is unsupportive, as detailed below and notes the substantial increase in impervious area which would add to the degree of stormwater run-off likely to occur at the subject site.

Figure 4 – Water Management Referral Response

Council's Water Management Officers are required to consider the likely impacts.

Officer comments

The proposal was assessed under the current creek and water management legislation framework, the relevant parts of the LEP, DCP and Protection of Waterways and Riparian Lands Policy . The Creek Management Study 2004 principles and NRAR waterfront land principles were also considered in the assessment.

The proposal is a subdivision and triggers specific Council Water Management Policy controls.

The proposed subdivision is resulting in the creation of two (2) lots where the total post development impervious area of the new lots exceeds 40%.

At that stage the proposal is not complying and will need amendments to either increase the total impervious area (permeable paving for the driveway for example) or introducing water quality devices to meet the water quality requirements (likely table 5, Council Water Management Policy for Development).

The proposal is therefore unsupported.

Source: Northern Beaches DA tracker

As previously discussed, my clients have significant concerns regarding the implications of stormwater drainage and images showing the flow of stormwater from the north east to the south west are to be read in conjunction with this letter.

<https://www.dropbox.com/sh/0pz7ysufsoh7lhn/AABZ56S9RKqytbC8ploULAOqa?dl=0>

In addition to the potential impacts with the potential proposed on-site system from stormwater run-off, the on-going maintenance, flow capacity and impacts that may arise from the disruption to tree root systems need to be addressed in addition to the risk to soil stability and landslip risk to life hazard, particularly relevant to the occupiers immediately at the bottom of the escarpment, to the south.

DCP Control B6.2 – Internal driveways

Comment: It is requested that Council Engineers check the dimensions and turning circle proposed for Lot 2. The submitted Masterset Plans do not appear to show the dimensions within the internal driveway for a car to turn without turning into the garage space.

The resulting impact of inaccessible or un-useable on-site parking and turning on the internal driveway and parking area is that cars will park on the street.

DCP Control C1 – Design Criteria for Residential Development

Comment: Given the site constraints of Lot 2, a new dwelling on the subject site would have the significant potential to cause unreasonable harm on the amenity of neighbouring occupiers. My clients, from my assessment of the indicative plans proposed, would be impacted in terms of:

- View loss,
- Solar Access,
- Visual Privacy,
- Acoustic privacy, and
- Potential impacts from non-compliance with built form controls.

D5.9 – Landscaped Area – Environmentally Sensitive Land

Comments: It is unlikely that the subdivision and resulting buildings on site would achieve the numerical requirements of DCP Control DCP Control D5.9 which requires 60% total landscaped area. It is requested compliance is assessed as part of the subject DA given the indicative GFA of 185 sqm and the requirement of B2.2 for a minimum building size of 175 sqm.

Conclusion

This submission sets out my client's concerns regarding the proposed development under Development Application DA2022/0448.

The proposed subdivision is a non-compliant development contrary to the objectives of the zone and Pittwater LEP Clause 4.1, 7.6 and 7.7 and Pittwater DCP 2014 Controls A4.5 – Elanora Heights Locality, B2.2 – Subdivision, B3.1 – Landslip Hazard, B4 – Controls relating to the Natural Environment, B5.15 - Stormwater, B6.2 - Internal Driveways, C1 – Design Criteria for Residential Development and D5.9 – Landscaped Area.

It is respectfully requested that the proposed subdivision be refused to address the concerns outlined in this submission. The proposed subdivision is not capable of providing for the construction of a building on the subject site without significant non-compliance with the objectives and numerical controls of both the LEP and DCP.

Should additional information be submitted, my clients request that they be given an opportunity to comment accordingly.

I thank you in advance for your consideration of the concerns raised in this submission.

Kind regards,

Karen Buckingham *on behalf of Mr and Mrs Kirby*
BA(Hons) Planning; MSc Spatial Planning; MPIA
Planning Progress

Karen Buckingham BA (Hons) MSc Spatial Planning MPIA
0423 951 234
karen@planningprogress.com.au
www.planningprogress.com.au
PO Box 213, Avalon Beach, NSW 2107