

4 May 2025

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

Dear Local Planning Panel Members,

Submission to Northern Beaches Local Planning Panel Meeting – 7 May 2025

**Re: DA2024/1376 – Subdivision of one lot into two including demolition works, new driveway and carport
7 Cooleena Road, Elanora Heights, NSW**

I have reviewed the assessment report which recommends approval. This submission strongly disagrees the recommendation for approval and rationale as set out in the assessment report and requests that the Northern Beaches Local Planning Panel (the Panel) refuse the DA for the reasons detailed below.

- **Clearly does not overcome the previous refusal reasons 1, 2, 3, 5, 6 ii., 9 iii. v., 11 iii., 12 and 13 of DA2022/0448 or NO584/16 (as shown in attachment 2). Key points include:**
 - 1. Refusal reason 1 was due to the inability to ensure the development was consistent with the desired character of the locality. From a comparison assessment of DA2022/0448 and DA2024/1376 there have been no significant changes to overcome this refusal reason. The only clear point of difference is that Lot 1 has been reduced in size to accommodate Lot 2. The overall site area and topography of the land remains the same and would be impossible to alter. In fact, Lot 1, in addition to a reduced site area, includes an additional deck

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area and carport, thus increasing the building footprint. The degree of slope can't have changed on the ground, and the steeply sloping section of the site to the rear is now accepted as a reason for merit approval in the assessment report, rather than acknowledging that this unusable section of the site should deem the subdivision unimplementable.

How can DA2024/1376 now meet with the desired character of the locality where it had previously failed?

- 2. Refusal reason 2 was due to inconsistency with the objectives of the zone due to the inability to provide for low-impact residential development given the geotechnical and landscape character of the site and proposed overdevelopment. As per the above points, very little has changed regarding the existing or indicative built form proposed or topography of the site.

The assessment is questioned on these grounds and the Panel is requested to ask what has significantly changed between the previous refusals and the current application to consider a recommendation of approval?

- 3. Refusal reason 3 i., states that, ***the site layout and geotechnical constraints which burden Lot 2 renders much of its site area unusable, thus heavily restricting the siting of any future development on that lot as well as its ability to comply with residential built form controls*** [own emphasis]. The assessment before the Panel reports that the maximum slope of the land is 37% and non-compliant but in contrast to the previous refusal, considers non-compliance of Clause B2.2 acceptable on merit subject to a Section 88B to restrict any use of the rear section of the site.

How can this rear section of the site be considered in the site calculations with regard to residential built form controls if it is to remain unusable in perpetuity?

- 5. Refusal reason 5 has not been overcome and, as proposed, has a greater impact than as per the previous DA. The reason for this refusal was due to the impacts of an additional dwelling on the lot and resulting landscaped setting, particularly given the topographical limitations of the rear of the site. In this current application, not only is Lot 1 reduced in size to accommodate Lot 2, exacerbating the impacts identified in refusal reason 5 but the Section 88B restriction would restrict use of the rear part of the site in perpetuity. As

previously stated, the topography or overall lot size cannot change and therefore the refusal reason cannot be overcome.

- 6. Refusal reason 6 ii. was due to the maximum slope of the land as 32.7% exceeding B2.2 control of 30%. In the current application it is reported that the maximum slope of the land is 37% but this is now accepted on merit, which is disputed, as detailed above. Accepting a slope in excess of 30% is not listed as a merit based variation to the control.
- 9. Refusal reason 9 iii., was due to the indicative dwelling on Lot 2 being closer than 9 metres from the existing adjoining dwelling and therefore not protected from direct overlooking. The proposed indicative dwelling is still closer than 9 metres from my client's property and would result in an unreasonable impact on visual privacy both for my clients and any future occupier of the site. My clients dwelling is not shown on the submitted plans.
- 11. – Refusal reason 11 iii., was due to the inability to achieve the desired future character of the locality or outcomes of DCP Control D5.9 Landscaped Area given the lack of landscaped area for Lot 1. As detailed in the refusal reason, *[t]his shortfall is a direct result of the creation of Lot 2*. In the cited refusal reason, the resulting landscaped area for Lot 1 would be 42.08% of the 597.44 sqm lot. On the current application, Lot 1 has been reduced to 554 sqm to meet the minimum lot size dimensions for Lot 2. A carport and deck are also shown on the current plans for Lot 1. However, the landscaped area for Lot 1 is stated to be 65% of the lesser 554 sqm lot. The calculations cited appear to be inaccurate and should be reassessed. A visual analysis of the plans alone demonstrate that a 65% landscaped area cannot be achieved on Lot 1. It is acknowledged that DCP Control D5.9 does not apply to subdivision development applications. However, any future Development Application does need to meet the outcomes of this control, along with the desired future character of the locality. A subdivision application which clearly fails to meet the outcomes of these controls and is inaccurate in its reporting should be refused.

It is requested that the Panel acknowledge and assess DA2024/1376 in light of the information submitted and against the previous refusal reasons. No significant policy change has occurred since the previous refusal, and it is impossible for there to have been any change to the topography of the site or site area. The assessment report and merit-based assessment for approval is strongly disputed.

- **Risk to life and property by virtue of geotechnical risk hazard and stormwater impacts**

Geotechnical risk assessment or stormwater management is not my area of expertise. Council has a responsibility to the applicant, any future occupiers of the land and surrounding landowners to full assessment the land slip and stormwater impacts of the proposed development against risk to life and property. As stated in the previous section of this letter, the topography of the site and therefore the geotechnical and stormwater flow impacts cannot have changed since the previous application.

It is queried how a very similar proposal can have been refused given the geotechnical and stormwater risk and is now recommended for approval. My clients have provided me with photographic evidence to support the further landslip impacts on their property, which is located immediately adjacent to the indicative dwelling. The photos overleaf demonstrate the increasing landslip which is occurring on site and should be avoided on the subject site. The slip area is falling in a south-westerly directions towards the side and rear of the subject site.

Should the subject DA be approved, my clients are significantly concerned that the landslip with risk to property and life would be substantially increased, with similar impacts for future occupiers of the site.

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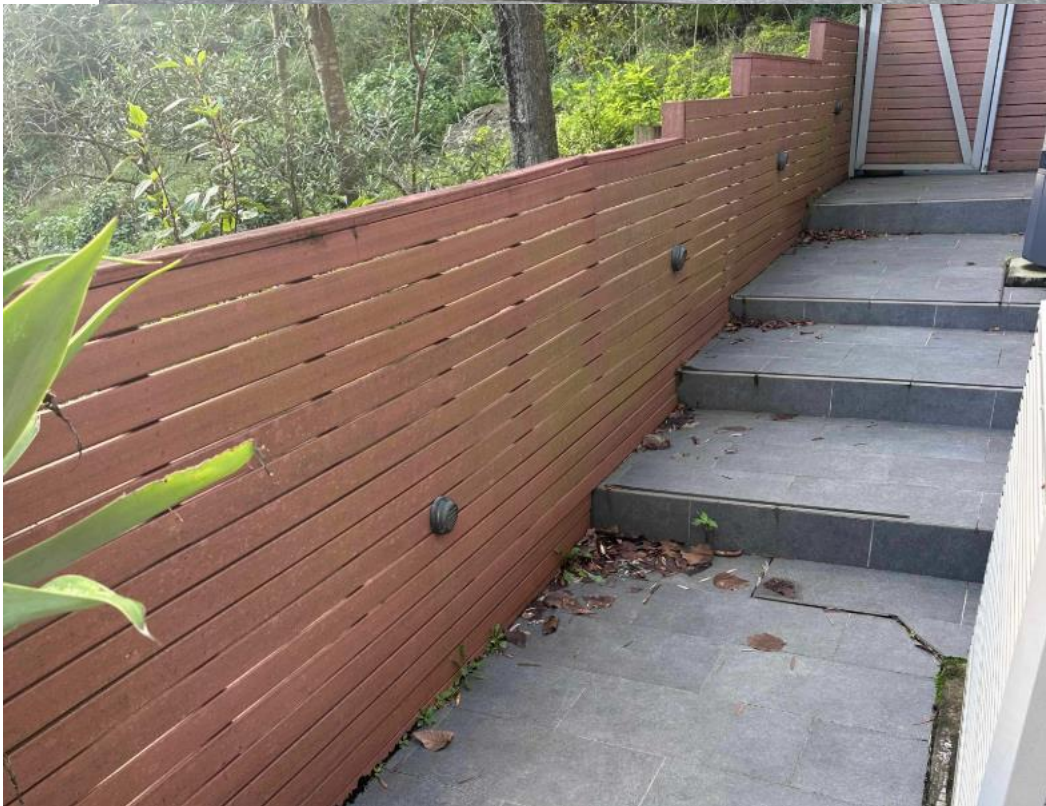
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Figure 1 – Photos of land movement at 5A Cooleena Road – immediate adjacent to indicative dwelling proposed.





Note the side boundary fence with the subject site

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Note the slip area is to the south-west – the subject site is just past the swimming pool fence.

Conclusion: This submission to the Panel challenges the responsible officer's assessment and questions how the previous reasons for refusal have been overcome when the level of development and site constraints remain the same. The resulting impacts of the proposed subdivision would have a demonstrable impact on my clients and the surrounding environment, failing to be in the public interest in accordance with Section 4.15 of the Act. It is requested that the Panel refuse DA2024/1376 for the clear reasons detailed in this submission.

Kind regards

Karen Buckingham *on behalf of Tim and Alarna Kirby of 5A Cooleena Road, Elanora Heights*
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Attachment 1:

Planning History

Three previous applications have been submitted for the subdivision of the subject site. DA2022/0448 was refused, N0533/17 was withdrawn, and N0177/16 was refused.

The stated reasons for refusal of N0177/16 are shown in figure 2. Planning history and refusal reasons of DA2022/0448, not overcome are included in the body of this letter to the Panel.

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

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