

6 September 2022



Ianni Family Pty Ltd
C/- Council Approval
PO BOX 7228 LEURA NSW 2780

Dear Sir/Madam

Application Number: DA2022/0448
Address: Lot G DP 408223 , 7 Cooleena Road, ELANORA HEIGHTS NSW 2101
Proposed Development: Subdivision of one lot into two and partial demolition of existing dwelling

Please find attached the Notice of Determination for the above mentioned Application.

Please be advised that a copy of the Assessment Report associated with the application is available on Council's website at www.northernbeaches.nsw.gov.au

Please read your Notice of Determination carefully and the assessment report in the first instance.

If you have any further questions regarding this matter please contact the undersigned on 1300 434 434 or via email quoting the application number, address and description of works to council@northernbeaches.nsw.gov.au

Regards,



Adam Richardson
Manager Development Assessments

NOTICE OF DETERMINATION

Application Number:	DA2022/0448
Determination Type:	Development Application

APPLICATION DETAILS

Applicant:	Ianni Family Pty Ltd
Land to be developed (Address):	Lot G DP 408223 , 7 Cooleena Road ELANORA HEIGHTS NSW 2101
Proposed Development:	Subdivision of one lot into two and partial demolition of existing dwelling

DETERMINATION - REFUSED

Made on (Date)	06/09/2022
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Reasons for Refusal:

The proposal fails the considerations of the Pittwater Local Environmental Plan 2014

The proposal fails the follows considerations and controls of the Pittwater Local Environmental Plan 2014:

Particulars:

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Pittwater Local Environmental Plan 2014.
 - i. Does not promote development in Pittwater that is economically, environmentally and socially sustainable, nor ensure development is consistent with the desired character of Pittwater's localities and provides for the needs of the community both now and in the future.
2. The proposal is inconsistent with the objectives of the C4 Environmental Living zone:
 - i. The proposed development does not provide for a low-impact residential development in the context of the ecological values of the site including its geotechnical and landscape character
 - ii. The subdivision development proposes to further intensify the use of the site which already consists of an existing residential dwelling and secondary dwelling. This is considered an overdevelopment and does not provide for residential development of a low density and scale integrated with the landform and landscape.

3. The proposal is inconsistent with the objectives of Part 7.7 Geotechnical Hazards PLEP 2014:
 - i. The site is mapped 'Geotechnical Hazard H1' on the Pittwater Geotechnical Hazard Map. 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.
 - ii. In accordance with the comments provided by Council's Development Engineer and Water Management Officer, it is not considered that the development will appropriately manage wastewater, stormwater, and drainage across the land so as not to affect the rate, volume and quality of water leaving the land.
 - iii. As a result of the proposal failing to meet the objectives of this clause, the development also fails to comply with Part 3.1 Landslip Hazard P21 DCP as well as the Geotechnical Risk Management Policy for Pittwater.
4. Inconsistent with Part 7.10 Essential Services PLEP 2014:
 - i. In accordance with comments provided by Council's Development Engineer, Council can not be satisfied that there is adequate availability of stormwater drainage.
 - ii. Council's Traffic Engineer notes that the turning path for Lot 1 encroaches into Lot 2, which does not result in suitable vehicular access.

The proposal is inconsistent with the Controls of the Pittwater P21 DCP

The proposed development is unacceptable as it is inconsistent with the controls of the DCP required by the considerations of Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979.

Particulars:

5. Inconsistent with the desired future character of the Elanora Heights Locality:
 - i. The indicative dwelling on Lot 2 is located over the portion of the existing allotment which currently provides the landscaped setting for the existing dwelling. Opportunities for replacement of the existing landscape setting is limited due to the topographical limitations of the rear of the site.
6. The proposal is inconsistent with the outcomes under B2.2 Subdivision - Low Density Areas P21 DCP:
 - i. The western side boundary of proposed Lot 2 provides a minimum depth of 24.44m, therefore failing to comply with the control requirement of 27m.
 - ii. The slope between the highest and lowest point of proposed Lot 2 located on the western side of the allotment is 32.73%, thus exceeding the control requirement of 30%.
 - iii. The control requires a minimum area of building of 175m². A gross floor area of 185.72m² is illustrated on the plans rather than a minimum building area or dwelling footprint, as is the intent of the control.

iv. It is also considered the currently proposed numerical characteristics are subject to change due to the amendments required for an inter-allotment drainage easement, right of carriageway, vehicle turning path and tree protection measures.

v. As a result of the above non-compliances, the proposal results in a built form which dominates the habitable areas of the existing and proposed allotments and exceeds the capacity of local infrastructure which is not considered to be consistent with the outcomes of the control.

7. The proposal is inconsistent with the outcomes of Section B6.2 Internal Driveways P21 DCP:
 - i. In accordance with comments from Council's Traffic Engineer, the vehicle turning path on Lot 1 necessitates an encroachment into Lot 2. A right of carriageway in favour of Lot 1 over this portion of Lot 2 would therefore be required which would ultimately alter the proposed lot size and indicative dwelling plans.
 - ii. Council's Development Engineer also could not make comment as further details are required for the proposed right of carriageway including driveway long-sections and cross-sections as well as existing and proposed finished levels. As a result, it is not considered that safe and convenient access is maintained for the proposed development.
8. The proposal is inconsistent with the outcomes of Sections B6.3 Off-Street Vehicle Parking Requirements and B6.6 On-Street Parking Facilities
 - i. In accordance with comments provided by Council's Traffic Engineer, the proposal does not achieve the required number of off-street parking spaces. An existing parking space non-compliance was approved under a prior application due to hardstand parking being available along the driveway. However as the driveway is now being converted into a right of way, this parking shall no longer be available.
 - ii. There is limited availability of on-street parking to offset the above non-compliance and it is considered that additional vehicles resulting from the proposed development will reduce similar on-street opportunities for adjacent development sites, which does not comply with the controls of section B6.6.
9. The future indicative development is inconsistent the residential amenity controls under P21 DCP:
 - i. Council's Landscape Officer is not able to provide further comment due to portions of the development being located over the significant trees which are proposed for retention under the submitted Arboricultural Impact Assessment, therefore demonstrating non-compliance with section C1.1 Landscaping P21 DCP.
 - ii. No indicative shadow diagrams have been provided with the application and it is therefore unable to be determined whether a reasonable level of solar access shall be maintained to the naturally vulnerable allotments to the south.
 - iii. Due to the limited siting of the indicative dwelling on Lot 2, private open space areas of proposed and any existing adjoining dwellings are not protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation, as is required under C1.5 Visual Privacy P21 DCP. Due to the minimal spatial separation, a sense of territory and safety is therefore not provided for residents.

iv. The proximity of the proposed parking area on Lot 1 to the indicative dwelling on Lot 2 is not considered consistent with the provisions of C1.6 P21 DCP which requires noise-sensitive rooms, such as bedrooms, to be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.

v. As the currently proposed numerical characteristics are subject to change due to required amendments to the proposed drainage easement, building area, tree protection, vehicle turning path and right of carriageway, it is unable to be determined whether a functional level of private open space can be provided to Lot 2, particularly as the topography renders the majority of the rear portion unusable.

10. The proposal is inconsistent with the Design Criteria for Subdivision under P21 DCP:

i. As a result of the proposal's inability to comply with the objectives of Part 7.7 PLEP 2014 and thus the Geotechnical Risk Management Policy for Pittwater, it is not considered that the proposal demonstrates it is capable of the protection of people, the natural environment, infrastructure and assets in the context of landslip hazards as is required under section C4.1 Subdivision - Protection from Hazards.

ii. A functional access and parking arrangement has not been provided under Section C4.2, as a non-compliant amount of off-street parking is provided for the indicative residential development, the vehicle turning path on Lot 1 encroaches into proposed Lot 2, and the proposed driveway is located over Tree 1 which is marked for retention.

iii. The limitations of the development in relation to the desired character of the area as well as vehicular, ecological, and residential amenity requirements, result in an inability to demonstrate compliance with C4.7 Subdivision - Amenity and Design nor the planning principle under Parrott v Kiama [2004] NSWLEC 77 revised - 16/03/2004

11. Indicative development is inconsistent with the Locality Specific Development Controls of the Elanora Heights Locality:

i. It is not considered that landscaping is adequately integrated with the building design of the existing or proposed allotments to screen the visual impact of the built form, and does not result in a built form appearance that is secondary to landscaping and vegetation, as required under section 5.1.

ii. The hardstand parking area on proposed Lot 1 has a nil setback to the rear common boundary. The parking area replaces an existing landscaped setting and results in acoustic privacy impacts which therefore does not satisfy the outcomes of the control D5.6 side and rear building line.

iii. The proposed landscaped area on Lot 1 according to the subdivision plan is 42.08% or 251.4m², which represents a variation of 29.87% from the numerical control of 60%. This shortfall is a direct result of the creation of Lot 2 and is not considered to achieve the desired future character of the locality or the outcomes of the control under D5.9 Landscaped Area - Environmentally Sensitive Land. On Lot 2, a compliant level of landscaped area is provided at this stage, however as further details are required in regards to the indicative building area, inter-allotment drainage easement and vehicle turning area, this level is subject to change. Therefore, it cannot be determined if Lot 2 can accommodate a compliant dwelling footprint as well as landscaped area, whilst also considering the hard surface areas required for the vehicle turning bay.

The site is not suitable for the proposed development

The site is not suitable for subdivision and inconsistent with the considerations of Section 4.14 (1)(b) of the Environmental Planning and Assessment Act, 1979.

Particulars:

12. The constraints of the site are such that the site is not suitable for the proposed subdivision.

The development is not within the public interest

The proposed development is not within the public's interest as required by the consideration of Section 4.14(1)(e) of the Environmental Planning and Assessment Act, 1979.

Particulars:

13. The proposed development due to its impacts is not considered to be within the public's interest.
14. The application has not been supported by adequate or sufficient information including:
 - ı Subdivision Plans do not correctly illustrate the minimum building area
 - ı Inconsistency between the subdivision plans and the Arboricultural Impact Assessment which reflects the proposed driveway being located over significant trees which are marked for retention
 - ı Indicative turning path on Lot 1 encroaches into Lot 2
 - ı No owners consent provided for a proposed inter-allotment drainage easement as well as the path or connection of the easement
 - ı Driveway section plans for the proposed right of carriageway

Right to Review by the Council

You may request Council to review this determination of the application under Division 8.2 of the Environmental Planning & Assessment Act 1979. Any Division 8.2 Review of Determination application must be lodged on the NSW Planning portal within 3 months of this determination, to enable the assessment and determination of the application within the 6 month timeframe.

NOTE: A fee will apply for any request to review the determination.

Right of Appeal

If you are dissatisfied with this decision Division 8.3 of the Environmental Planning & Assessment Act 1979 may give you the right to appeal to the Land and Environment Court within 6 months after the date on which you receive this notice.

Signed On behalf of the Consent Authority



Name Adam Richardson, Manager Development Assessments

Date 06/09/2022