

DEVELOPMENT APPLICATION ASSESSMENT REPORT

Application Number:	DA2022/0448
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Responsible Officer:	Dean Pattalis
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
Zoning:	C4 Environmental Living
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Northern Beaches Council
Delegation Level:	NBLPP
Land and Environment Court Action:	No
Owner:	Ianni Family Pty Ltd
Applicant:	Ianni Family Pty Ltd

Application Lodged:	16/05/2022
Integrated Development:	No
Designated Development:	No
State Reporting Category:	Subdivision only
Notified:	23/05/2022 to 06/06/2022
Advertised:	Not Advertised
Submissions Received:	11
Clause 4.6 Variation:	Nil
Recommendation:	Refusal

Estimated Cost of Works:	\$ 20,000.00
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EXECUTIVE SUMMARY

This report is submitted to the Northern Beaches Local Planning Panel (NBLPP) for consideration of Development Application DA2022/0448 for the partial demolition of the existing dwelling (to remove the existing garage) and the subdivision of the existing lot to form two new Torrens title lots.

The merits assessment of the application has identified that the proposed subdivision fails to adequately respond to the aims of Pittwater Local Environmental Plan 2014 or the objectives of the C4 Environmental Living zone, as the resultant subdivision layout places a new lot on steeply sloping land which is not conducive to built development. Furthermore, the proposed development fails to align with the existing and desired character of the Elanora Heights Locality and the density controls for

subdivision in low density residential areas, resulting in unacceptable amenity and streetscape impacts in the Cooleena Road locality.

Despite the application only proposing subdivision and minor demolition works, substantial consideration has been given to the presentation and impact of future residential development on the proposed rear lot. Under the principles of *Parrott v Kiama [2004] NSWLEC 77*, a subdivision application should provide detailed information as to how the constraints of the site will be incorporated into future buildings when the proposed allotments are environmentally sensitive or where significant impacts on neighbour's is likely and a careful or skillful design to minimise them is required

The application has provided a basic design of the future house (at least the outline design) and fails to adequately demonstrate how the proposed lot at the rear could be developed to align with the LEP and DCP. The site is environmentally sensitive due to it's extreme steepness and topography which restricts the ability of any future development on the proposed rear battle-axe allotment to be constructed without significant built form and amenity impacts. No information has accompanied the application which demonstrates otherwise.

The internal referral bodies (i.e. Development Engineering, Landscape Assessment, Traffic Engineering and Water Management) have identified a number of fundamental concerns with the proposed subdivision which are not simply resolvable. These relate to stormwater management, off-street carparking, vehicular access and tree protection.

The application was notified for 14 days and attracted a total of 11 individual submissions objecting to the proposal. The key concerns raised within the submissions relate to geotechnical hazards, stormwater, compatibility with surrounding development, subdivision density, insufficient landscaping, amenity impacts, traffic impacts, construction management, insufficient off-street parking, and impacts on local vegetation. Several of the concerns raised within the submissions have merit and warrant the recommendation of refusal of the application.

The applicant was advised of the abovementioned issues with the application and that the site was not considered suitable for subdivision, however the applicant advised that they wanted Council to proceed to determination.

Based on the detailed assessment contained in this report, it is recommended that the application be refused.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks approval for the partial demolition of the existing dwelling (to remove the existing garage) and a one (1) into (2) lot Torrens title subdivision of the existing lot. Both lots are to be accessed by a right of way along the western boundary.

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral

to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;

- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living

Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards

Pittwater Local Environmental Plan 2014 - 7.10 Essential services

Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted

Pittwater 21 Development Control Plan - A4.5 Elanora Heights Locality

Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas

Pittwater 21 Development Control Plan - B3.1 Landslip Hazard

Pittwater 21 Development Control Plan - B6.2 Internal Driveways

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

Pittwater 21 Development Control Plan - B6.6 On-Street Parking Facilities

Pittwater 21 Development Control Plan - C1.1 Landscaping

Pittwater 21 Development Control Plan - C1.4 Solar Access

Pittwater 21 Development Control Plan - C1.5 Visual Privacy

Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy

Pittwater 21 Development Control Plan - C1.7 Private Open Space

Pittwater 21 Development Control Plan - C4.1 Subdivision - Protection from Hazards

Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities

Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design

Pittwater 21 Development Control Plan - C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots

Pittwater 21 Development Control Plan - D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)

Pittwater 21 Development Control Plan - D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)

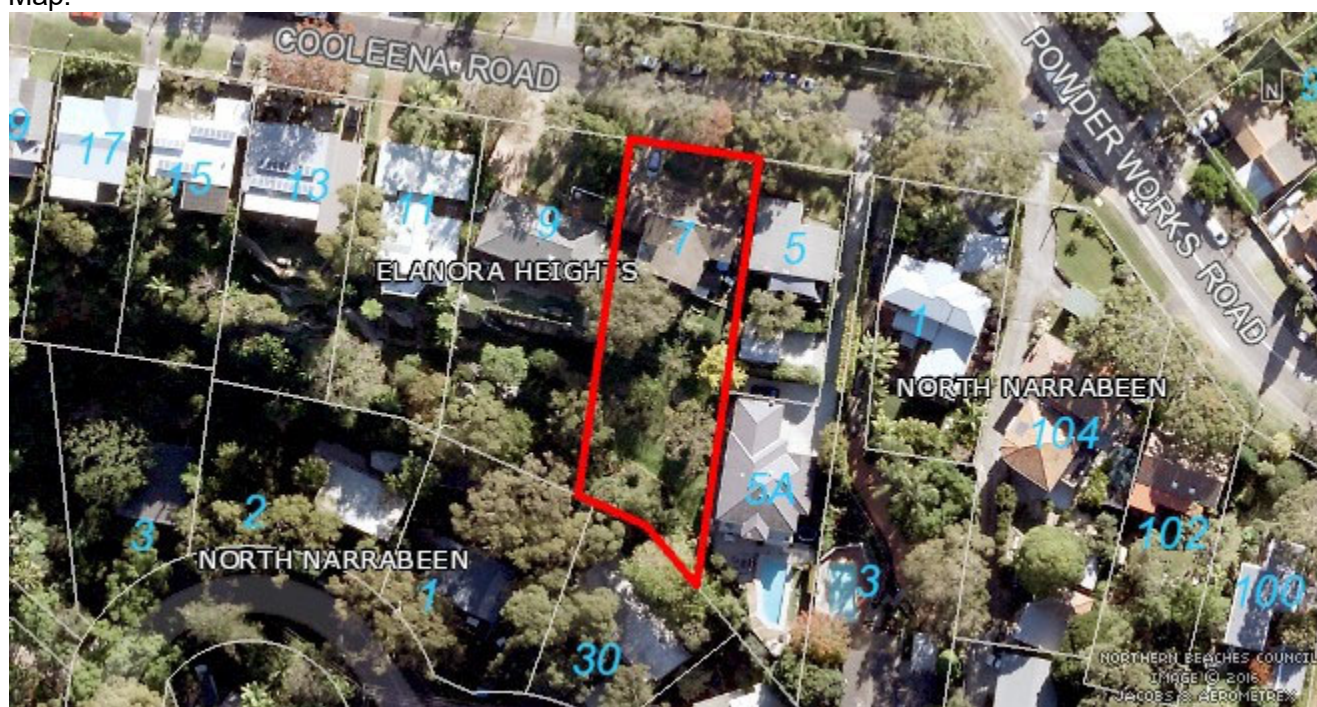
Pittwater 21 Development Control Plan - D5.9 Landscaped Area - Environmentally Sensitive Land

SITE DESCRIPTION

Property Description:	Lot G DP, 408223, 7 Cooleena Road ELANORA HEIGHTS NSW 2101
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<p>Detailed Site Description:</p>	<p>The subject site consists of 1 allotment located on the southern side of Cooleena Road, Elanora Heights.</p> <p>The site is irregular in shape with a frontage of 20.88 metres along Cooleena Road and a maximum depth of 68.13 metres. The site has a surveyed area of 1268.1m².</p> <p>The site is located within the C4 Environmental Living zone pursuant to PLEP 2014 and accommodates an existing 1-2 storey brick dwelling with a single garage. The lower level at the rear contains an approved secondary dwelling.</p> <p>The site slopes steeply from the street frontage towards the rear and is densely vegetated with several significant trees in the front and rear portions.</p> <p>Detailed Description of Adjoining/Surrounding Development</p> <p>Adjoining and surrounding development is characterised by low-density residential development of varying architectural styles and within a landscaped setting.</p>
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Map:



SITE HISTORY

The land has been used for residential purposes for an extended period. A search of Council's records has revealed the following relevant history:

Pre-lodgement Meeting **PLM2018/0175** for Subdivision of one lot into two
PLM held on 30/08/2018 specifically relating to stormwater drainage design for a future subdivision as well as vehicle access and utility services.

Application **N0533/17** for Subdivision of one (1) lot into two (2) lots, alterations and additions to existing dwelling and construction of new dwelling

Development application withdrawn by applicant on 06/02/2018 upon recommendation from Council, citing various inconsistencies with the objectives of PLEP 2014 and the outcomes of P21 DCP including:

PLEP 2014

cl. 4.1 Minimum subdivision lot size: The development did not demonstrate that the adequate and safe access and services will be provided for the newly created lot.

cl. 4.3 Height of buildings: The maximum height of the dwelling exceeds 8.5m and a variation to this control is not supported because the design of the dwelling house and associated site works do not satisfactorily respond sensitively to the natural topography of the newly created site.

cl. 7.7 Geotechnical hazards: The Geotechnical report relates only to the subdivision and does not include any physical works assessment.

cl. 7.10 Essential services: An Essential Services plan has not been submitted with the application to demonstrate that services which are essential for the development will be available for the newly created lot.

P21DCP

cl. C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities: The proposal did not demonstrate that safe and convenient access and parking will be provided for each lot.

cl. C4.5 Subdivision - Utility Service: The development did not demonstrate that services which are essential for the development will be available for the newly created lot.

cl. C4.7 Subdivision - Amenity and Design: The proposal did not demonstrate that safe and convenient access and parking will be provided for each lot.

cl. A4.5 Elanora Heights Locality: The proposed dwelling did not satisfactorily provide a landscape setting nor integrate with the landform.

cl. B2.2 Subdivision - Low Density Residential Areas: The newly created lot, being Lot 2, will have a slope in excess of 16.7 degrees (30%).

cl. D5.7 Building envelope (Excluding Elanora Heights Village Centre): The western elevation non-compliance is substantial and does not satisfactorily minimise bulk and scale of the built form.

cl. D5.13 Construction, Retaining walls, terracing and undercroft areas (Excluding Elanora Heights Village Centre): Site disturbance has not been minimised and the building design does not respond sensitively to the natural topography.

Referral Issues

Council's Development Engineer assessed the application and found it to be inconsistent and or non-complying with the following Pittwater 21 Development Control Plan (P21DCP) clauses:

cl. B5.7 Stormwater Management - On-Site Stormwater Detention; cl. B5.10 Stormwater Discharge into Public Drainage System; B6.1 Access driveways and Works on the Public Road Reserve; and B6.2 Internal Driveways

Council's Natural Environment Officer assessed the application and requires further documentation with respect to P21DCP cl. C1.1 Landscaping.

Application **N0584/16** for Secondary dwelling

Development application approved for the use of lower ground floor as a secondary dwelling on 09/03/2017.

BC0136/16 Single storey masonry secondary dwelling located at lower ground floor partly below main dwelling

Approved Building Information Certificate gained for the previously unauthorised secondary dwelling

ordered for removal under NOT0246/16.

Application **N0177/16** for Subdivision of one lot into two and the demolition of existing garage
Development application refused by Council on 02/11/2016, citing various inconsistencies with the objectives of PLEP 2014 and the outcomes of P21 DCP including:

Pittwater Local Environment Plan 2014:

- *Permissibility and E4 zone objectives*
- *Clause 4.1 Minimum subdivision lot size*
- *Clause 7.6 Biodiversity protection*
- *Clause 7.7 Geotechnical hazards*
- *Clause 7.10 Essential services*

Pittwater 21 Development Control Plan

- *Part A1.7 Considerations before consent is granted*
- *Part A4.5 Elanora Heights Locality*
- *Part B2.2 Subdivision - Low Density Residential Areas*
- *Part B3.1 Landslip Hazard*
- *Part B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor*
- *Part B5.1 Water Management Plan*
- *Part B5.10 Stormwater Discharge into Public Drainage System*
- *Part B5.12 Stormwater Drainage Systems and Natural Watercourses*
- *Part B5.14 Stormwater Drainage Easements (Public Stormwater Drainage System)*
- *Part B6.1 Access driveways and Works on the Public Road Reserve*
- *Part B6.2 Internal Driveways*
- *Part B6.3 Off-Street Vehicle Parking Requirements*
- *Part C4.1 Subdivision - Protection from Hazards*
- *Part C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities*
- *Part C4.7 Subdivision - Amenity and Design*
- *Part D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)*

Internal Referrals

Development Engineer - Not supported

Natural Environment Officer - not supported

NOT0246/16 - Unauthorised Works

An order under former Section 121B of the Act was imposed by Council's Development Compliance Officer in regards to the unauthorised use of the lower ground floor as a separate occupancy. It was ordered by Council to cease and remove the unauthorised use. A subsequent building certificate was lodged to gain lawful approval.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.

Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&A Regulation 2021 requires the submission</p>
Section 4.15 Matters for Consideration	Comments
	<p>of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&A Regulation 2021 allow Council to request additional information. Council wrote to the applicant and provided an extensive list of factors that prevent approval of the proposed development. It was also advised to the applicant that Council did not believe the site to be suitable for subdivision in any form, therefore no additional information was requested in this case.</p> <p><u>Clause 61</u> of the EP&A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter could be addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This matter could be addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>

Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater Local Environmental Plan 2014 and Pittwater 21 Development Control Plan sections within this report. They are considered to be unacceptable.</p> <p>(ii) Social Impact The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	For the reasons articulated in this report, insufficient information has been provided to demonstrate that the site is suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act of EPA Regs	See discussion on “Notification & Submissions Received” in this report
Section 4.15 (1) (e) – the public interest	The proposed development is not in the public interest as it departs significantly from the controls that dictate the desired future character of the area, is not consistent with a low density residential environment, and would diminish the character of the area.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 23/05/2022 to 06/06/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 11 submission/s from:

Name:	Address:
Mrs Iris Joan Bell	9 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Adam Joseph Cummings	5 Cooleena Road ELANORA HEIGHTS NSW 2101
Ms Wendy Patricia Dzubiel	11 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Igor Molitor	1 Eungai Place NORTH NARRABEEN NSW 2101
Anthony Mark Sinderman	8 Cooleena Road ELANORA HEIGHTS NSW 2101

Ms Rosalyn Claire Pursey	6 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Daniel Arthur James Mylonas	2 Eungai Place NORTH NARRABEEN NSW 2101
Planning Progress	Po Box 213 AVALON NSW 2107
Withheld	ELANORA HEIGHTS NSW 2101
Mr Michael Scott Bradbery	10 Cooleena Road ELANORA HEIGHTS NSW 2101
Mr Lee Robert Bennett	114A Telopea Avenue CARINGBAH SOUTH NSW 2229

Following the public exhibition period Council received submissions from 11 households. Of those submissions, none were in support and 11 were objecting to the proposed development.

The following issues were raised in the submissions, and each are addressed below as follows:

- **Acoustic impacts of proposed right of carriageway**

Comment:

The submissions identified concern that the proposed driveway will result in an excessive amount of noise pollution upon adjoining private open space areas. In accordance with Part C1.6 Acoustic Privacy of P21 DCP, driveways are not identified as being sources of excessive noise. The discussion in this report under Part C1.6 does however refer to noise impacts of the proposed parking area due to its proximity to the shared boundary with proposed Lot 2.

- **Tree Removal, Biodiversity and Landscaped Area**

Comment:

The submissions raised concern regarding the loss of significant trees, biodiversity and landscaped area. Council's Landscape Officer has reviewed the application and does not support the proposal, on the basis that the proposed driveway is in an area that contains two significant trees which are identified as being retained in the submitted Arboricultural Impact Assessment. The retention is considered necessary.

The proposed subdivision also results in landscaped area variation on Lot 1 and is not supported, whilst the indicative landscaped area on proposed Lot 2 is not considered accurate due to likely future changes to the indicative building area, driveway and inter-allotment drainage easement which are required to satisfy other non-compliances that have been identified throughout this report.

- **Geotechnical Hazard and Topography**

Comment:

The submissions raised concerns relating to the site being a Geotechnical Hazard as well as containing a steeply sloping topography. Under Part B2.2 of P21 DCP, allotments containing a slope of over 30%, measured between the highest and lowest point, are not suitable for subdivision. On this basis, the proposal is not supported, as it has a slope more than 30%. Furthermore, the subject site is mapped as "Geotechnical Hazard H1" on the Pittwater Geotechnical Hazard Map. The provision states that development consent must not be granted unless the consent authority is satisfied 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. In accordance with comments

provided by Council's Development Engineer, insufficient detail is provided as to the path of a proposed inter-allotment drainage easement, if the system is of sufficient capacity for the intended development site stormwater flows. No owners consent from the downstream owners to the inter-allotment drainage easement has been provided.

- **Parking and Traffic**

Comment:

The submissions have raised concern stating that this section of Cooleena Road does not have the capacity of on-street parking to offset the non-compliant off-street parking provided by the proposal. This issue has also been identified by Council's Traffic Engineer, who does not support the application on this basis. Under Part B6.6 P21 DCP, on-street parking generated by a development must not reduce similar opportunities for adjoining residents. The proposal is therefore not supported.

- **View Sharing**

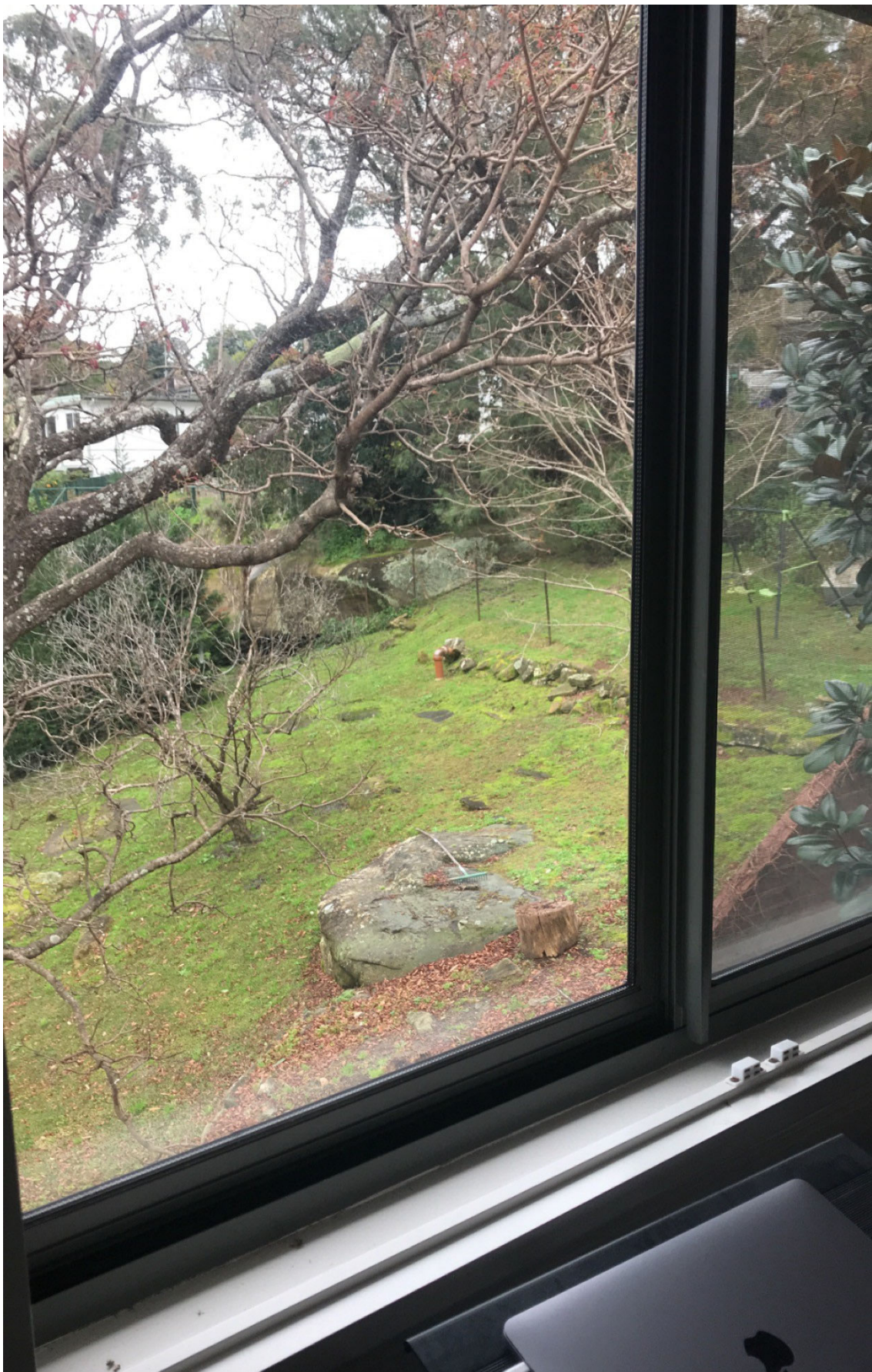
Comment:

View loss concerns were raised by the adjoining property owners to the east (No.5 and No.5A Cooleena Road) and as a result, a site inspection was undertaken. Following the inspection, the affected views related to areas of vegetation and open space only. It was considered that the perceived loss of views related more specifically to the loss of a feeling of openness resulting from the location of the indicative dwelling on Lot 2, rather than a loss of any valuable iconic or water views. A full view loss assessment under the principals of Tenacity Consulting v Waringah [2004] NSWLEC 140 is therefore not considered necessary.

Figure 1: *Location of the proposed indicative dwelling on Lot 2 as viewed from a ground floor bedroom of No.5 Cooleena Road*



Figure 2: *View of location of indicative dwelling on Lot 2 as viewed from a first floor study from No.5A Cooleena Road*



- **Stormwater and Easement**

Comment:

The submissions raised concern in regard to existing stormwater issues as a result of the sloping topography and geotechnical character of the locality, which shall be exacerbated by the proposed subdivision works. In accordance with comments provided by Council's Development Engineer, insufficient detail is provided as to the path of a proposed inter-allotment drainage easement, if the system can handle the development site stormwater flows, nor has owners consent been provided regarding any proposed downstream inter-allotment drainage easement.

- **Desired Future Character**

Comment:

The submissions raised concern in regard to the proposed development not being in keeping with the desired character of the locality. Under Part A4.5 Elanora Heights Locality (P21 DCP) in this report, it is considered unlikely that the proposed subdivision would be capable of accommodating residential development that is consistent with a density and scale that is sought within a landscaped setting, with most of the habitable areas of the site taken up by built form, not being secondary to landscaping.

- **Side and rear building line**

Comment:

The submissions raised concern in regard to setback non-compliances resulting from the proposed development. Under the discussion for Part D5.6 P21 DCP in this report, the western side setback is reduced as a direct result of the right of carriageway which runs adjacent to the western boundary, which provides a spatial buffer to the adjoining property to the west. As the built form of the existing dwelling on Lot 1 is not being increased or encroaching further towards the western adjoining neighbour, it is considered a variation could be afforded in this instance. The proposed parking area on Lot 1 contains a nil rear setback and is located within proximity of the indicative dwelling on proposed Lot 2 which impacts the acoustic privacy of the future occupants. The parking area is also proposed to replace existing landscaped area and vegetation that provides the landscaped setting for the existing dwelling. The outcomes of the control are therefore not considered to be achieved in this regard.

- **Construction Noise**

Comment:

The submissions raised concern in regard to construction noise, specifically related to drilling required for the proposed driveway. Suitable conditions of consent if approval is granted would be applied which restrict construction hours and noise levels.

- **Solar Access**

Comment:

The owners of the adjoining property to the South (30 Tatiara Crescent) and south-east (5A Cooleena Road) and have raised concern in regard to overshadowing impacts resulting from the proposal. Whilst proposed Lot 2 is considered vulnerable to overshadowing impacts from proposed Lot 1 as

mentioned in this report under Part C1.4 P21 DCP, it is unable to be determined whether a reasonable level of solar access will be maintained for future development on the subject property or adjoining properties during mid-winter as indicative shadow diagrams have not been provided with the application.

- Objectives of Zone C4 Environmental Living

Comment:

As discussed in detail under the land use section of this report (PLEP 2014), the proposal is considered to be inconsistent with the objectives of the C4 Environmental Living zone.

- Subdivision Density

Comment:

The submissions raise concern that the proposal does not meet the numerical subdivision requirements under Part B2.2 P21 DCP. As discussed in this report, the control requires that any lot (or lots) created by a subdivision of an existing lot (or lots) shall have a minimum depth of 27 metres and a minimum width of 16 metres on land identified as Area 1 on the Landscaped Area Map, as well as a slope of less than 30% between the highest and lowest point. The western side boundary of proposed Lot 2 provides a minimum depth of 24.44 metres and a slope of over 30%, therefore failing to comply with the control requirement. A variation cannot be afforded in this instance due to the inability of the proposal to comply with the outcomes of the control.

REFERRALS

Internal Referral Body	Comments
Landscape Officer	<p>Not supported</p> <p>The development application is for subdivision of one lot into two and partial demolition of the existing dwelling, and associated works, as described and illustrated in the reports and plans.</p> <p>Council's Landscape Referral is assessed against the Pittwater Local Environment Plan, and the following Pittwater 21 DCP controls (but not limited to):</p> <ul style="list-style-type: none">• B4.22 Preservation of Trees and Bushland Vegetation• C4.4 Subdivision - Public Roads, Footpath and Streetscape• C4.7 Subdivision - Amenity and Design• C4.8 Subdivision - Landscaping on the existing and proposed public road road reserve frontage to subdivision lots <p>An Arboricultural Impact Assessment is included in the application and has been assessed as part of the Landscape Referral. Tree 1, located within the road reserve, is a significant street tree which must be retained, thus the existing driveway alignment is recommended for retention. Any proposed driveway construction around tree 1 and tree 2 must be supported by the Arborist, as no impacts are permissible to these trees. The AIA identifies tree 1 for retention however the plans show the footprint of the proposed driveway over tree 1.</p> <p>No trees are supported for removal if impacted by the indicative building footprint for the new lot as any impact to these trees will be assessed in a future Development Application. Only subdivision works</p>

Internal Referral Body	Comments
	<p>are assessed as part of this Development Application.</p> <p>Updated plans clarifying trees to be removed and retained, and redesign of the driveway to ensure the retention of tree 1 and tree 2 is required to continue the Landscape Referral.</p>
NECC (Bushland and Biodiversity)	<p>Supported subject to conditions</p> <p>Council's Biodiversity referral team have reviewed the application for consistency against the relevant planning controls, including;</p> <ul style="list-style-type: none"> - Pittwater LEP 2014 Part 7.6 Biodiversity Protection, - Pittwater DCP Part B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridors. <p>The proposal is for a subdivision of one lot into two lots and demolition of the existing garage within existing Lot G DP 408223. The Arborist report provided shows four (4) tree removals proposed, two of which are located outside the building envelop of the proposal, being trees 9 and 11. This application seeks only to subdivide and allow access for both lots, as such trees 9 and 11 must be retained and can be assessed as part of any future DA that would seek to propose a new dwelling on the lot.</p> <p>Conditions have been applied to ensure consistency with the planning controls outlined above.</p>
NECC (Development Engineering)	<p>Not supported</p> <p>The proposed application is no supported for the following reasons:</p> <p>1) The engineering plans detail site drainage to be connected to a proposed inter allotment drainage easement. In accordance with Councils water management plan for development the applicant is to provide further details as to the path of the easement including connection either to a Council drainage system or drainage easement. A downstream capacity check is to be undertaken by a hydraulic engineer to determine if the system is able to handle the development site stormwater flows.</p> <p>2) Owner's consent is to be obtained and provided to Council in regard to any proposed downstream inter allotment drainage easement.</p> <p>3) Engineering details are to be prepared for the proposed internal access way/right of way. The details are to include a driveway longsection and cross sections drawn at a suitable scale. Existing and proposed finished levels are to be detailed on the plan.</p> <p>Retaining wall details if required are to be provided on the plans.</p>

NECC (Water Management)	<p>Not supported</p> <p>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.</p> <p>The proposal is a subdivision and triggers specific Council Water Management Policy controls.</p> <p>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%.</p> <p>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).</p>
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Traffic Engineer	<p>Not supported</p> <p>The proposal is for subdivision of the existing single lot into two lots. The front lot (lot1) will be partially demolished i.e removal of the existing garage with two new parking spaces to be created at rear of Lot 1 to provide parking for that lot.</p> <p>Under the Pittwater DCP a two or more bedroom dwelling is required to provide 2 parking spaces. The subdivision plans make appropriate provision to maintain the two parking spaces to support the existing dwelling on lot 1. It is noted that these two spaces are sized in accordance with AS2890.1 and will enable forwards entry and exit from each space space.</p> <p>It is however noted that development approval for a secondary dwelling in the subfloor area of lot1 has previously been granted. Under the Pittwater DCP the secondary dwelling would require an additional parking space to be provided (i.e 3 spaces in total) however during the assessment of the relevant DA it was deemed unnecessary at the time as parking for additional vehicles was available in a tandem arrangement on the driveway. This would no longer be the case if the subdivision were to proceed as the driveway would need to kept clear to enable access to the rear lot. It is understood that the applicant still intends to proceed with construction of the secondary dwelling and provision will therefore be required for a third off-street parking space to support the secondary dwelling.</p> <p>At this stage no development application for construction of a dwelling on lot 2 has been received however parking in line with DCP requirements would be required on that lot.</p> <p>The turning path plots provided with the DA application show that vehicles manoeuvring into and out of the parking spaces are required to encroach into lot 2. It will there be necessary to ensure that there is a right of carriageway in place in favour of lot 1 over the portion of lot 2 that is required for turning.</p>
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Internal Referral Body	Comments
	<p>Amendment to the plans to show:</p> <ol style="list-style-type: none"> 1. a third parking space on lot 1 and 2. additional information noting the intent to create a right of carriageway and 3. marking the extent of the right of carriageway on the plans <p>is required prior to further assessment of the plans</p>

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPS), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is acceptable when assessed against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

SEPP (Transport and Infrastructure) 2021

Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

SEPP (Resilience and Hazards) 2021

Chapter 4 – Remediation of Land

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for residential purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is suitable for the residential land use.

Pittwater Local Environmental Plan 2014

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
Minimum subdivision lot size:	550m ²	Lot 1: 597.44m ²	-	Yes
		Lot 2: 557m ²	-	Yes

Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
2.6 Subdivision - consent requirements	Yes
4.1 Minimum subdivision lot size	Yes
7.2 Earthworks	Yes
7.6 Biodiversity protection	Yes
7.7 Geotechnical hazards	No
7.10 Essential services	No

Detailed Assessment

Zone C4 Environmental Living

The development is considered against the underlying Objectives of the zone as follows:

- *To provide for low-impact residential development in areas with special ecological, scientific or aesthetic values.*

Comment:

The discussion under Section A4.5 (P21 DCP) of this report explains the biodiversity values of the site in the context of the Elanora Heights Desired Character. The geotechnical hazards of the site are also discussed under Part 7.7 (PLEP 2014). It is not considered as is articulated by the respective assessments under the DCP and LEP that proposed development provides for a low-impact residential development in the context of these ecological values.

The proposal does **not** satisfy this objective.

- *To ensure that residential development does not have an adverse effect on those values.*

Comment:

As stated above, it is not considered that the proposed development maintains a low-impact on the biodiversity values and geotechnical aspects of the site.

The proposal does **not** satisfy this objective.

- *To provide for residential development of a low density and scale integrated with the landform and landscape.*

Comment:

It is proposed to intensify the use of the site with an additional dwelling on Lot 2 (to be constructed under a future application), whilst the existing primary and secondary dwellings are to be retained on Lot 1. Due to the various amenity and ecological aspects discussed in this report, it is not considered that the proposed subdivision is consistent with low-density development that is typical within the C4 Environmental Living zone nor with the existing low-density character in the surrounding Cooleena Road locality. It is noted the adjacent subdivided lots to the east are similar sized lots, however, are not considered to contain the same environmental characteristics or topographical constraints that restrict the development of the rear battle-axe allotment, as is the case for the subject development.

The proposal does **not** satisfy this objective.

- *To encourage development that retains and enhances riparian and foreshore vegetation and wildlife corridors.*

Comment:

The subject land is mapped as "Biodiversity" on the PLEP 2014 Biodiversity Map as well as mapped Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridors under P21 DCP. Council's Biodiversity Officer has reviewed the application and raised no objection to approval, subject to recommended conditions.

The proposal **satisfies** this objective.

Conclusion:

For the reasons detailed above, the proposal is inconsistent with the collective objectives of the C4 Environmental Living zone.

7.7 Geotechnical hazards

The objectives of this clause are to ensure that development on land susceptible to geotechnical hazards—

- (a) matches the underlying geotechnical conditions of the land, and
- (b) is restricted on unsuitable land, and
- (c) does not endanger life or property.

Comment:

The subject site is mapped as "Geotechnical Hazard H1" on the Pittwater Geotechnical Hazard Map. The provision states that development consent must not be granted unless the consent authority is satisfied 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. In accordance with comments provided by Council's Development Engineer, insufficient detail accompany the application as to the path of a proposed inter-allotment drainage easement, if the designed stormwater system can handle the development site stormwater flows. The application has not been accompanied by owners' consent from any downstream owner for an inter allotment drainage easement. Therefore, the objectives of the clause are not met. Additionally, due to the total post-development impervious area of the new lots exceeding 40%, Council's Water Management Officer has identified other issues which require the system either requires a reduction in the total impervious area or introduce water quality devices to meet the water quality requirements of Council's Water Management Policy for Development.

Furthermore, the clause also states that the consent authority must consider the site layout and geotechnical constraints of the site to decide whether the development takes into account all geotechnical risks. As discussed elsewhere in this report, the site contains a considerable slope which burdens Lot 2 and renders much of its site area unusable or suitable for built development.

Conclusion:

For the reasons detailed above, the proposal is inconsistent with the provision.

7.10 Essential services

The provision states that development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

Comment:

In accordance with comments provided by Council's Development Engineer, there is inadequate information as to the path of the proposed inter-allotment drainage easement including connection either to a Council drainage system or a separate drainage easement, as well as conduct capacity checks to determine if the system can handle the development site stormwater flows. Therefore, Council cannot be satisfied that there is adequate availability of stormwater drainage.

Furthermore, Council's Traffic Engineer notes that the turning path for Lot 1 encroaches into Lot 2, which does not result in suitable vehicular access and further limits the available area for development on that Lot.

The proposal does not satisfy this provision.

Pittwater 21 Development Control Plan

Built Form Controls

Proposed Dwelling Lot 1:

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	6.5 metres	7.47 metres	-	Yes
Rear building line	6.5 metres	12.75 metres (Dwelling) Nil (hardstand parking area)	- 100%	Yes No
Side building line	2.5 metres (east)	Existing	-	Yes
	1 metres (west)	0.36 metres (min.)	64%	No
Landscaped area	60%	42.08% (251.4m ²)	29.87%	No

Indicative Dwelling Lot 2:

Built Form Control	Requirement	Proposed	% Variation*	Complies
Front building line	N/A - battle-axe	-	-	-
Rear building line	6.5 metres	11.02 metres (min.)	-	Yes
Side building line	2.5 metres (east)	4.44 metres	-	Yes
	1 metre (west)	1.78 metres	-	Yes
	1 metre (nothh)	1.54 metres	-	Yes
Landscaped area	60%	63.48%	-	Yes

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	No	No
A4.5 Elanora Heights Locality	No	No
B2.2 Subdivision - Low Density Residential Areas	No	No
B3.1 Landslip Hazard	No	No
B4.4 Flora and Fauna Habitat Enhancement Category 2 and Wildlife Corridor	Yes	Yes
B6.1 Access driveways and Works on the Public Road Reserve	Yes	Yes
B6.2 Internal Driveways	No	No
B6.3 Off-Street Vehicle Parking Requirements	No	No
B6.6 On-Street Parking Facilities	No	No
B8.3 Construction and Demolition - Waste Minimisation	Yes	Yes
C1.1 Landscaping	No	No
C1.2 Safety and Security	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
C1.3 View Sharing	Yes	Yes
C1.4 Solar Access	No	No
C1.5 Visual Privacy	No	No
C1.6 Acoustic Privacy	No	No
C1.7 Private Open Space	No	No
C4.1 Subdivision - Protection from Hazards	No	No
C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities	No	No
C4.7 Subdivision - Amenity and Design	No	No
C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots	No	No
D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)	No	No
D5.2 Scenic protection - General	Yes	Yes
D5.5 Front building line (Excluding Elanora Heights Village Centre)	Yes	Yes
D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)	No	No
D5.9 Landscaped Area - Environmentally Sensitive Land	No	No

Detailed Assessment

A1.7 Considerations before consent is granted

Before granting development consent, Council must be satisfied that the development is consistent with:

- *Pittwater Local Environment Plan 2014*; and
- the desired character of the Locality; and
- the development controls applicable to the development; and
- relevant matters of consideration under Section 4.15 Evaluation of the Environmental Planning and Assessment Act (EPA) 1979.

As detailed under the relevant sections of this report, the development is assessed as being inconsistent with the following planning controls:

- Pittwater Local Environmental Plan 2014 - 1.2 Aims of Plan
- Pittwater Local Environmental Plan 2014 - Zone C4 Environmental Living
- Pittwater Local Environmental Plan 2014 - 7.7 Geotechnical hazards
- Pittwater Local Environmental Plan 2014 - 7.10 Essential services
- Pittwater 21 Development Control Plan - A1.7 Considerations before consent is granted
- Pittwater 21 Development Control Plan - A4.5 Elanora Heights Locality
- Pittwater 21 Development Control Plan - B2.2 Subdivision - Low Density Residential Areas
- Pittwater 21 Development Control Plan - B3.1 Landslip Hazard
- Pittwater 21 Development Control Plan - B6.2 Internal Driveways

- Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements
- Pittwater 21 Development Control Plan - B6.6 On-Street Parking Facilities
- Pittwater 21 Development Control Plan - C1.1 Landscaping
- Pittwater 21 Development Control Plan - C1.4 Solar Access
- Pittwater 21 Development Control Plan - C1.5 Visual Privacy
- Pittwater 21 Development Control Plan - C1.6 Acoustic Privacy
- Pittwater 21 Development Control Plan - C1.7 Private Open Space
- Pittwater 21 Development Control Plan - C4.1 Subdivision - Protection from Hazards
- Pittwater 21 Development Control Plan - C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities
- Pittwater 21 Development Control Plan - C4.7 Subdivision - Amenity and Design
- Pittwater 21 Development Control Plan - C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots
- Pittwater 21 Development Control Plan - D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)
- Pittwater 21 Development Control Plan - D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)
- Pittwater 21 Development Control Plan - D5.9 Landscaped Area - Environmentally Sensitive Land

Having regard to the above, the development is inconsistent with this clause and therefore does not satisfy the relevant matters of consideration of the EPA Act 1979 - Section 4.15 Evaluation and is recommended refusal on this basis.

A4.5 Elanora Heights Locality

The desired future character of the Elanora Heights locality requires low-density residential development, with dwellings being within a landscaped setting, integrated with the landform and landscape.

It is considered the rear of the current site (proposed Lot 2) currently provides the landscaped setting for the existing development. Due to the topographical features and steep slope, the indicative building footprint on proposed Lot 2 is restricted in location and size and is considered to significantly impact the natural and vegetative features that currently occupy this portion of the site. Lot 2 has limited opportunity to implement replacement vegetation within the rear of the site due to the topographical limitations.

It is therefore considered unlikely that the proposed subdivision would be capable of accommodating residential development that is consistent with a density and scale that is sought within a landscaped setting, with most of the habitable areas of the site taken up by built form, not being secondary to landscaping.

Based on the above, the proposed development is considered as inconsistent with the established and desired future character of the locality and is recommended for refusal on this basis.

B2.2 Subdivision - Low Density Residential Areas

Description of non-compliance

The control requires that any Lot (or Lots) created by a subdivision of an existing Lot (or Lots) are to have a minimum depth of 27 metres and a minimum width of 16 metres on land identified as Area 1 on the Landscaped Area Map. The subject site is within Area 1. The western side boundary of proposed

Lot 2 provides a minimum depth of 24.44 metres, therefore failing to comply with the control requirement.

The control also states a proposal for subdivision should not be sought if the allotment(s) intended to be created has a slope more than 16.7 degrees (30%), measured between the highest and lowest points on any such allotment(s). 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 this requirement.

Furthermore, the control states that the minimum area for buildings shall be 175m². The indicative building footprint on the proposed site plan shows gross floor area only, rather than the building area. The steeply sloping topography of the rear portion of Lot 2 limits the developable size of the allotment and restricts the ability of an indicative dwelling to be constructed without significant non-compliances related to the minimum building area, as well as the built form and amenity controls for the Elanora Heights Locality.

Additionally, as per the comments of Council's Development Engineer, further details are required as to the path of a proposed inter-allotment drainage easement, whilst Council's Traffic Engineer has determined that the proposed vehicular turning path on Lot 1 encroaches into Lot 2, creating other issues and limitations around future development. As a result, the path and location of the easement, as well as the required amendments to the vehicle turning path and hardstand area, also further restricts the developable area of Lot 2, which is already limited by the topographical features.

Merit consideration

With regard to the consideration for a variation, the development is considered against the underlying outcomes of the clause as follows:

- ***Achieve the desired future character of the locality.***

Comment:

As discussed, the proposed subdivision is not considered to achieve the desired character of the Elanora Heights locality.

The proposal does not satisfy this outcome.

- ***Maintenance of the existing environment.***

Comment:

It is noted the indicative footprint on proposed Lot 2 is located within the area that currently provides the landscaped setting for the existing dwelling. Due to the above-mentioned limitations of the site related to the topography, irregular configuration and drainage easement it is considered that the existing environment cannot be maintained under this proposal.

The proposal does not satisfy this outcome.

- ***Equitable preservation of views and vistas to and/or from public/private places.***

Comment:

This application is for subdivision and demolition of existing structures only and it is therefore considered equitable preservation of views and vistas to and/or from public/private places will be maintained. Any future dwelling will be subject to a separate development application which will include a view impact analysis. It is however considered that the scope to minimise is

limited due to the small area available for a building footprint.
The proposal does not achieve this outcome.

- ***The built form does not dominate the natural setting.***

Comment:

As mentioned earlier in this report, any future dwelling on proposed lot 2 is heavily constrained in terms of its size, location, and configuration, whilst also requiring the removal of the existing landscaped setting. As a result, most of the habitable areas of the site shall be taken up by built form, not being secondary to landscaping and thus shall dominate the natural setting. The proposal does not satisfy the outcome.

- ***Population density does not exceed the capacity of local and regional infrastructure and community services.***

Comment:

The current singular allotment accommodates an existing primary and secondary dwelling to be maintained on proposed Lot 1, whilst a new additional dwelling will be situated on proposed Lot 2. In accordance with comments provided by Council's Traffic Engineer, insufficient additional off-street parking has been provided to accommodate the proposed increase in population density in the Cooleena Road locality, therefore exceeding the capacity of local infrastructure in the form of on-street parking. As mentioned earlier in this report, the resultant development is not considered to be consistent with the objectives of the low-density C4 Environmental Living zone. The proposal does not satisfy this outcome.

- ***Population density does not exceed the capacity of local and regional transport facilities.***

Comment:

It is not considered the development will contribute to a population density that exceeds the capacity of local and regional transport facilities.
The proposal satisfies this outcome.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B3.1 Landslip Hazard

Description of non-compliance

In accordance with the DCP control, all development on land to which this control applies must comply with the requirements of the Geotechnical Risk Management Policy for Pittwater. The DCP requires that development must not adversely affect or be adversely affected by geotechnical processes, nor must it increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.

As stated earlier in this report, the site is mapped Geotechnical Hazard H1 and does not meet the objectives of the clause under Part 7.7 Geotechnical Hazards PLEP 2014.

Merit Consideration

Comment:

The outcomes of the control require:

Protection of people.

Protection of the natural environment.

Protection of private and public infrastructure and assets.

As a result of the proposal's steep topography inability to comply with the objectives of Part 7.7 PLEP 2014 and the Geotechnical Risk Management Policy for Pittwater, it is considered the proposal does not demonstrate that it can maintain geotechnical processes that do not increase the level of risk for any people, assets and infrastructure in the vicinity due to geotechnical hazards.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B6.2 Internal Driveways

Description of non-compliance

The control states that if the applicant proposes to retain the existing driveway, the applicant will need to demonstrate compliance with the outcomes and driveway standards of this control.

Merit Consideration

The outcomes of the control require:

Safe and convenient access.

Reduce visual impact of driveways.

Pedestrian safety.

An effective road drainage system.

Maximise the retention of trees and native vegetation.

Reduce contaminate run-off from driveways.

Council's Traffic Engineer has reviewed the application and identified concerns regarding the inadequate turning path and issue that vehicles manoeuvring into and out of the parking spaces on Lot 1 are required to encroach 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 and reduce the available area for future development.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B6.3 Off-Street Vehicle Parking Requirements

Description of non-compliance

Clause B6.3 of the P21DCP requires dwellings with two or more bedrooms to provide at least two off-street parking spaces on the site, as well as a minimum of one additional space for secondary dwellings.

In accordance with comments provided by Council's Traffic Engineer, the proposal does not achieve the required number of off-street parking spaces on each Lot. Whilst the subdivision plans make appropriate provision for two parking spaces on both proposed Lots 1 and 2, an additional parking space is not provided for the existing approved secondary dwelling on Lot 1, as is required by the control, as the use is to remain. It is noted that the current site provides for a secondary dwelling without additional carparking, however this is an existing approved non-compliance, approved under DA N0584/16. That assessment found it that as parking for additional vehicle was available in a tandem arrangement on the driveway, no additional carparking was necessary. However, the subdivision proposes to alter this arrangement and convert the existing driveway into a right of carriageway which would no longer be suitable for parking. It is not considered that there is adequate on-street parking on this section of Cooleena Road, to offset this numerical compliance or satisfy the outcomes of the control.

Merit Assessment

With regard to the consideration for a variation, the proposed development is considered against the underlying objectives of this control as follows:

- *An adequate number of parking and service spaces that meets the demands generated by the development.*

Comment:

The proposal is intensifying the use of the site to an extent that it does not satisfy the numerical requirements of P21 DCP, whilst adequate on-street parking is not available on this section of Cooleena Road that would not reduce similar opportunities for adjacent development sites.

- *Functional parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety.*

Comment:

The engineering plans illustrate that stormwater is to be connected to a proposed inter-allotment drainage easement. As per comment from Council's Development Engineer, there is insufficient detail provided with the plans to determine if the system is able to accommodate the additional stormwater flows.

- *Safe and convenient parking.*

Comment:

The proposed development will impact upon vehicular movement to and from the site and does not demonstrate an ability to meet the necessary parking demands. Therefore, it cannot be considered that

the development will allow for safe and convenient parking.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

B6.6 On-Street Parking Facilities

Description of non-compliance

The control states that on-street parking facilities must not reduce similar opportunities for adjacent development sites.

As stated under Section B6.3 P21 DCP, there is insufficient on-street parking facilities to offset the numerical non-compliance of off-street parking.

The image below depicts the on-street parking arrangement at the front of the subject site as per a photo taken by the assessing officer on a weekday morning. On-street parking opportunities are limited, despite this being a perceived 'low-demand' time of day. It is also noted that the image shows a construction site, which may also diminish from the availability of on-street parking at the time the photo was taken.

Figure 3: On-street parking arrangement



Merit Consideration

The outcomes of the control require:

Safe and convenient parking that meets the demands of all modes of transport. (S)

Functional car parking that minimises rainwater runoff and adverse visual or environmental impacts while maximising pedestrian and vehicle safety. (En, S)

Safe public access. (S)

Maximise retention of native vegetation and trees in road reserve.

Reduce contaminate run-off.

Parking on both sides of the street creates a narrow carriageway with a single-vehicle width along this section of Cooleena Road, therefore any additional pressure on the carriageway should be avoided.

Considering comments provided by Council's Traffic Engineer in relation to the shortfall of off-street parking, it is considered that additional vehicles resulting from the proposed development would reduce similar on-street opportunities for adjacent development sites and place additional pressure on the existing carriageway.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.1 Landscaping

Description of non-compliance

Council's Landscape Officer has reviewed the application in conjunction with the Arboricultural Impact Assessment (AIA). The AIA identifies the retention of 'Tree 1', however, the proposed driveway is located over Tree 1 on the architectural plans. Further landscaping comment therefore could not be provided siting the need for updated plans clarifying trees to be removed and retained, and redesign of the driveway to ensure the retention of Tree 1 and Tree 2. It is not known how Tree 1 and 2 can be retained and an acceptable driveway configured. In addition, no trees are supported for removal if impacted by the indicative building footprint for the new Lot.

Merit Consideration

The outcomes of the control require:

A built form softened and complemented by landscaping. (En)

Landscaping reflects the scale and form of development. (En)

Retention of canopy trees by encouraging the use of pier and beam footings. (En)

Development results in retention of existing native vegetation. (En)

Landscaping results in the long-term retention of Pittwater's locally native tree canopy. (En)

Landscaping retains and enhances Pittwater's biodiversity by using locally native plant species (En)

Landscaping enhances habitat and amenity value. (En, S)

Landscaping results in reduced risk of landslip. (En, Ec)

Landscaping results in low watering requirement. (En)

As per the comments provided by Council's Landscape Officer, it is not considered the proposal in its current form satisfies the outcomes of the control. In addition, as mentioned earlier in this report, it is also considered that the location of the indicative dwelling on proposed Lot 2 encroaches into the landscaped setting for the existing dwelling. As a result, the proposed subdivision and resultant development will not be able to provide a built form softened and complemented by landscaping.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21 DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

C1.4 Solar Access

The outcomes of the control are:

Residential development is sited and designed to maximise solar access during mid-winter. (En)

A reasonable level of solar access is maintained to existing residential properties, unhindered by adjoining development. (En)

Reduce usage and/dependence for artificial lighting. (En)

Comment:

The DCP control states that the main private open space of each dwelling and the main private open space of any adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st, whilst windows to the principal living area of the proposal, and windows to the principal living area of adjoining dwellings, are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21st (that is, to at least 50% of the glazed area of those windows).

Due to the orientation of the proposed subdivided lots, Lot 2 is considered to be naturally vulnerable to overshadowing impacts resulting from the existing dwelling on Lot 1. As indicative shadow diagrams have not been provided with the application, it is unable to be determined whether a reasonable level of solar access will be maintained for future development during mid-winter. This issue is heightened due to the restricted area available for future development due to the steep topography of the site.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.5 Visual Privacy

Description of non-compliance

The DCP control states that private open space areas of proposed and any existing adjoining dwellings are to be protected from direct overlooking within 9 metres by building layout, landscaping, screening devices or greater spatial separation. As stated earlier in this report, the location of the indicative dwelling on proposed Lot 2 is heavily limited by the site conditions, therefore minimal spatial separation is provided between the private open space of the respective properties.

Merit Consideration

The outcomes of the DCP control require:

Habitable rooms and outdoor living areas of dwellings optimise visual privacy through good design. (S)

A sense of territory and safety is provided for residents. (S)

A minimum setback distance of 1.54 metres is provided between the indicative 'split level' dwelling on Lot 2 and the private open space of Lot 1. Due to the minimal spatial separation, unreasonable overlooking opportunities will likely to be available from Lot 2. A sense of territory and safety is therefore not provided for residents.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.6 Acoustic Privacy

Description of non-compliance

The DCP control states that noise-sensitive rooms, such as bedrooms, should be located away from noise sources, including main roads, parking areas, living areas and communal and private open space areas and the like.

Merit Consideration

The outcomes of the control require:

Noise is substantially contained within each dwelling and noise from any communal or private open space areas are limited. (S)

Noise is not to be offensive as defined by the Protection of the Environment Operations Act 1997, including noise from plant, equipment and communal or private open space areas (S)

The proposed parking area on Lot 1 is located adjacent to the common boundary with proposed Lot 2. The proposed proximity of the indicative dwelling on Lot 2 to the common boundary would therefore render the dwelling vulnerable to noise impacts from the parking area. This arrangement is not considered consistent with the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C1.7 Private Open Space

Description of non-compliance

In accordance with the DCP control, functional private open space per dwelling shall consist of a minimum of 80m² at ground level, with no dimension less than 3 metres. The overall private open space area should be designed with a minimum principal area of 16m² and grade no steeper than 5% whilst being directly accessible from living areas and have good solar orientation.

Merit Consideration

The outcomes of the control require:

Dwellings are provided with a private, usable and well-located area of private open space for the use and enjoyment of the occupants. (S)

Private open space is integrated with, and directly accessible from, the living areas of dwellings. (S)

Private open space receives sufficient solar access and privacy. (En, S)

As mentioned earlier in this report, the limitations of proposed Lot 2 restrict the construction of a building on the subject site without significant numerical and amenity non-compliances. Due to the topography of the land, the location of usable rear private open space to meet the recreational needs of

the occupants, will also be drastically limited, particularly on Lot 2.

Apart from the steeply sloping topography, further limitations include the location of the proposed inter-allotment drainage easement and encroachment of the turning path of vehicles on Lot 1 into Lot 2, both of which require further design refinements which are not readily achievable, due to the heavily constrained site.

Furthermore, the indicative dwelling on Lot 2 on the subdivision plan only illustrates gross floor area rather than the building footprint, meaning it is not clear whether Lot 2 can accommodate a compliant dwelling footprint, in conjunction with compliant private open space. As a result, it is not considered that functional private open space can be provided in accordance with the outcomes of the control on the respective proposed lots.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.1 Subdivision - Protection from Hazards

Description of non-compliance

All subdivision is to be designed such that adequate building platforms/building areas are provided that have a low risk due to hazards including flood, landslip, bushfire, coastline, and estuarine hazards.

As stated earlier in this report, the site is mapped Geotechnical Hazard H1 and does not meet the objectives of the clause under Part 7.7 Geotechnical Hazards PLEP 2014 nor B3.1 P21 DCP.

Merit Consideration

The outcomes of the control require:

Protection of people. (S)

Protection of the natural environment. (En)

Protection of private and public infrastructure and assets. (S)

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.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.2 Subdivision - Access Driveways and Off-Street Parking Facilities

Description of non-compliance

The DCP control states that the design of each individual lot created within the subdivision is to provide for off street parking facilities compatible with the proposed development uses for that Lot. In addition,

where an internal driveway is located within a 'right of way' or proposed 'right of way', the internal driveway is to be designed and constructed as part of the subdivision works.

Merit Consideration

The outcomes of the control require:

Safe and functional access for vehicles, cyclists and pedestrians. (S)
Safe and convenient access and parking is provided on each lot.

As discussed earlier in this report under B6.3 P21 DCP, a non-compliant amount of off-street parking is provided for the indicative residential development.

In addition, the vehicle turning path on Lot 1 encroaches into proposed Lot 2 as per comments from Council's Traffic Engineer, whilst the proposed driveway is located over Tree 1 and 2 which are marked for retention and their removal not supported. The control states that internal driveways located within a right of way are required to be constructed as part of subdivision works, therefore a functional access arrangement has not been provided.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.7 Subdivision - Amenity and Design

Description of non-compliance

The DCP control requires a comprehensive site analysis considering the final development which will occur on the site as a result of the subdivision. The analysis and resultant subdivision design should address issues including the slope and topography, solar access to the subdivision site, the side, rear and front setbacks of future dwellings, the visual impact of built development which will occur, the provision of vehicular access to the future buildings and the provision of onsite car parking on each proposed lot.

The DCP control also requires a building envelope area to be nominated on each proposed lot within which any future building is to be contained. The application should clearly demonstrate that a building envelope can be built on site that has regard for the retention of trees and bushland, vehicular access, provision of services, provision of emergency services and safety from hazard, as well as a building which achieves the desired character of the area and is commensurate with the amenity standards of surrounding development, and does not overly impact on the environment, and can be erected within that envelope.

In this regard, an assessment of the buildings which will be erected because of the proposed subdivision is to be carried out demonstrating that the requirements and outcomes of the DCP controls which will apply to those buildings will be able to be complied with.

Furthermore, the planning principle under *Parrott v Kiama [2004] NSWLEC 77* states that 'the design of the future house (at least the outline design) is not a matter that is appropriately left until later'. A subdivision application should provide constraints on future buildings when the proposed allotments are smaller than usual, or environmentally sensitive or where significant impacts on neighbours is likely and needs careful design to minimise them. The site is considered environmentally sensitive as a result of its

slope and topography characteristics. It is therefore necessary that detailed plans of how future development may occur support the subject application.

Merit Consideration

The outcomes of the control require:

Desired character of the locality.

Protection of the natural environment. (En)

Ecologically sustainable development. (En)

Minimal design constraints. (S)

Adequate access and services. (En, S)

Access driveways to public roads are minimised.

The limitations of the development in relation to the desired character of the area have been discussed in this report under A4.5 P21 DCP. In addition, as also discussed at various stages in this report, it is considered the proposal does not adequately satisfy the relevant provisions related to vehicular access, retention of trees and bushland, solar access, side and rear setbacks, landscaping, or onsite car parking. The slope and topography of the land also represents a substantial limitation for future development on the subdivision site.

As a result, under the outcomes of this control and *Parrott v Kiama [2004] NSWLEC 77*, it is not considered that the completed development (including existing and proposed buildings to be constructed on the proposed lots) retains a level of amenity commensurate with the locality and the desired character of the area, nor achieves an acceptable impact on the surrounding environment.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

C4.8 Subdivision - Landscaping on the Existing and proposed public road reserve frontage to subdivision lots

Description of non-compliance

As addressed in this report under C1.1 P21 DCP, Council's Landscape Officer has reviewed the application in conjunction with the Arboricultural Impact Assessment (AIA). The AIA identifies the retention of Tree 1; however, the proposed driveway is located over Tree 1 on the architectural plans. Further landscaping comment therefore could not be provided siting the need for updated plans clarifying trees to be removed and retained, and redesign of the driveway to ensure the retention of Tree 1 and Tree 2. In addition, no trees are supported for removal if impacted by the indicative building footprint for the new lot.

Merit Consideration

The outcomes of the control require:

Achieve the desired character of the locality.

Consistency of landscape works in the road verge. (S)

As per the comments provided by Council's Landscape Officer above, it is not considered the proposal

in its current form satisfies the outcomes of the control.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

D5.1 Character as viewed from a public place (Excluding Elanora Heights Village Centre)

Description of non-compliance

The existing building which fronts Cooleena Road will remain predominantly unchanged, whilst retaining compatible design elements and street presence.

However, the DCP control also requires landscaping to be integrated with the building design to screen the visual impact of the built form. In residential areas, buildings are to give the appearance of being secondary to landscaping and vegetation.

Merit Consideration

The outcomes of the control require:

To achieve the desired future character of the Locality.

To ensure new development responds to, reinforces and sensitively relates to the spatial characteristics of the existing built and natural environment. (En, S, Ec)

To enhance the existing streetscapes and promote a scale and density that is in keeping with the height of the natural environment.

The visual impact of the built form is secondary to landscaping and vegetation, or in commercial areas and the like, is softened by landscaping and vegetation. (En, S, Ec)

High quality buildings designed and built for the natural context and any natural hazards. (En, S)

Buildings do not dominate the streetscape and are at 'human scale'. Within residential areas, buildings give the appearance of being two-storey maximum. (S)

To preserve and enhance district and local views which reinforce and protect the Pittwater's natural context.

To enhance the bushland vista of Pittwater as the predominant feature of the landscape with built form, including parking structures, being a secondary component.

To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, compliments the landscape character, public use and enjoyment of that land. (En, S)

As provided by the balance of this assessment, the indicative dwelling on Lot 2 replaces the existing landscaped setting on the current allotment and as such, it is not considered to achieve the desired future character of the locality. As most of the habitable areas of Lot 2 shall be taken up by built form, rather than being secondary to landscaping, it is considered the objectives are not satisfied.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

D5.6 Side and rear building line (Excluding Elanora Heights Village Centre)

Description of non-compliance

The hardstand parking area on proposed Lot 1 has a nil setback to the rear common boundary.

In addition, the western side setback of the existing dwelling is proposed to be setback 0.36 metres, due to the inclusion of the right of carriageway.

Merit Consideration

The outcomes of the control require:

Safe and convenient access.

Reduce visual impact of driveways.

Pedestrian safety.

An effective road drainage system.

Maximise the retention of trees and native vegetation.

Reduce contaminate run-off from driveways.

The western side setback is reduced as a direct result of the right of carriageway which runs adjacent to the western boundary, which provides a spatial buffer to the adjoining property to the west. As the built form of the existing dwelling on Lot 1 is not being increased or encroaching further towards the western adjoining neighbour, it is considered a variation could be afforded in this instance. However it compromises the future amenity of that dwelling.

As stated earlier in this report under C1.6 P21 DCP, the proposed parking area on Lot 1 is located within close proximity of the indicative dwelling on proposed Lot 2 which impacts the acoustic privacy of the future occupants. The parking area is also proposed to replace existing landscaped area and vegetation that provides the landscaped setting for the existing dwelling. The outcomes of the control are therefore not considered to be achieved in this regard.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

D5.9 Landscaped Area - Environmentally Sensitive Land

Description of non-compliance

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%.

On Lot 2, a compliant level of landscaped area is provided at this stage, however as further details are required in regard to the indicative building area, inter-allotment drainage easement and vehicle turning area, this level is subject to change.

Merit Consideration

The outcomes of the control require:

Achieve the desired future character of the Locality. (S)

The bulk and scale of the built form is minimised. (En, S)

A reasonable level of amenity and solar access is provided and maintained. (En, S)

Vegetation is retained and enhanced to visually reduce the built form. (En)

Conservation of natural vegetation and biodiversity. (En)

Stormwater runoff is reduced, preventing soil erosion and siltation of natural drainage channels. (En)

To preserve and enhance the rural and bushland character of the area. (En, S)

Soft surface is maximised to provide for infiltration of water to the water table, minimise run-off and assist with stormwater management. (En, S)

The creation of the proposed Lot 2 creates a shortfall in landscaped area on proposed Lot 1 which is not considered to achieve the desired future character of the locality or the outcomes of the control.

As already mentioned, the limitations of proposed Lot 2 restrict the construction of a building on the subject site without significant numerical and amenity non-compliances. The indicative dwelling on Lot 2 only illustrates gross floor area rather than the building area. 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.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant outcomes of the P21DCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this circumstance.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention Through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contributions Plan 2022

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this application.

CONCLUSION

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, in this regard the application

is not considered to be acceptable and is recommended for refusal.

In consideration of the proposal and the merit consideration of the development, the proposal is:

- Inconsistent with the objectives of the DCP
- Inconsistent with the zone objectives of the LEP
- Inconsistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Inconsistent with the objects of the Environmental Planning and Assessment Act 1979

The Development Application seeks consent for the partial demolition of the existing dwelling (to remove the existing garage) and a one into two Torrens title subdivision. Both Lots are to be accessed by a right of way along the western boundary.

It is considered that the proposed development fails to adequately respond to the aims of the Pittwater Local Environmental Plan 2014 or the objectives of the C4 Environmental Living zone. Furthermore, the proposed development fails to align with the Desired Future Character of the Elanora Heights Locality and the density controls for subdivision in low density residential areas.

Overall, the proposal subdivision represents as an overdevelopment of the site creating an undesirable amenity and streetscape outcome when compared with the surrounding low density residential development along Cooleena Road. Furthermore, issues have been identified with the proposed stormwater management system, water quality requirements, right of carriageway arrangement, vehicle turning path, car parking and tree retention which due to the constraints of the site, are not easily resolvable, if at all.

The application was notified for community consultation and attracted a total of 11 individual submissions objecting to the proposal. The key issue raised within the submissions pertain to geotechnical hazards and impacts, inadequate stormwater, compatibility with surrounding development, subdivision density, insufficient landscaping, amenity impacts, traffic impacts, construction management, insufficient off-street parking and impacts on local vegetation. Several the concerns raised within the submissions have merit and warrant refusal of the application.

It is recommended that the NBLPP refuse the development application for the reasons set out within the assessment report.

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT the Northern Beaches Local Planning Panel, on behalf of Northern Beaches Council, as the consent authority REFUSE Development Consent to Development Application No DA2022/0448 for the Subdivision of one lot into two and partial demolition of existing dwelling on land at Lot G DP 408223,7 Cooleena Road, ELANORA HEIGHTS, for the reasons outlined as follows:

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 cannot 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 regard 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. For the reasons articulated in this report, insufficient information has been provided to demonstrate that the site is suitable for the proposed development.

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, 197

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:
 - ❖ Subdivision Plans do not correctly illustrate the minimum building area
 - ❖ 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
 - ❖ Indicative turning path on Lot 1 encroaches into Lot 2
 - ❖ No owners consent provided for a proposed inter-allotment drainage easement as well as the path or connection of the easement
 - ❖ Driveway section plans for the proposed right of carriageway