

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/1594
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<b>Responsible Officer:</b>	Michael French
<b>Land to be developed (Address):</b>	Lot 2 DP 1241568, 888 Pittwater Road DEE WHY NSW 2099
<b>Proposed Development:</b>	Stratum subdivision of one lot into two
<b>Zoning:</b>	Warringah LEP2011 - Land zoned MU1 Mixed Use
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Karimbla Properties (No41) Pty Ltd
<b>Applicant:</b>	Karimbla Properties (No41) Pty Ltd

<b>Application Lodged:</b>	09/11/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Subdivision only
<b>Notified:</b>	16/11/2023 to 30/11/2023
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	0
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 0.00
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### PROPOSED DEVELOPMENT IN DETAIL

The applicant seeks development consent for the following:

- The Stratum Subdivision of Lot 2 of DP 124568 into two (2) lots over part of an approved mixed-use development, to divide the site into the following:

- (1) Childcare Lot.
- (2) Retail Lot.

### 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.

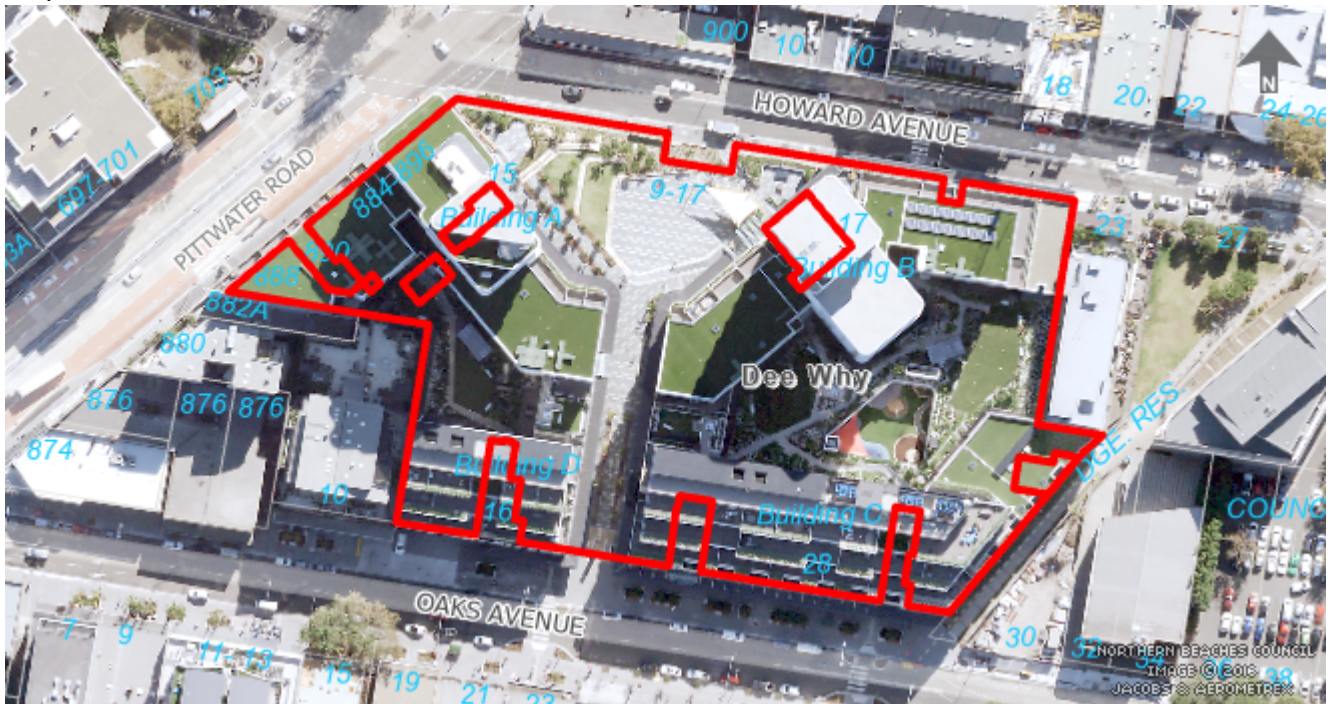
## SUMMARY OF ASSESSMENT ISSUES

Warringah Local Environmental Plan 2011 - Zone MU1 Mixed Use

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 1241568 , 888 Pittwater Road DEE WHY NSW 2099
<b>Detailed Site Description:</b>	<p>The subject site is legally described as Lot 2 DP 1241568 (888 Pittwater Road, Dee Why).</p> <p>The site is irregular in shape and abuts Howard Avenue, Pittwater Road and Oaks Avenue. The site has a surveyed area of 13120.0 m<sup>2</sup>.</p> <p>The site is located within the Dee Why Town Centre and is within the MU1 Mixed Use zone pursuant to the Warringah Local Environmental Plan 2011.</p> <p>The site is relatively flat throughout. The site experiences a cross-fall of approximately 3m from south-west of the site downward to the north-east.</p> <p>There are no details of any threatened species on site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by varying mixed use developments.</p>

Map:



## SITE HISTORY

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

DA2016/0705- Construction of a Mixed Use Development comprising retail, commercial and residential uses and a child care centre.

DA2017/0815- Stratum Subdivision (Residential & Non-Residential).

## 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	Warringah Development Control Plan applies to this proposal.

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(iii) – 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&amp;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>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 69</u> of the EP&amp;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. Council's Building Assessment Officer has reviewed the application and left the following comments- "<i>The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i>"</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) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> 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	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## 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 application has been publicly exhibited from 16/11/2023 to 30/11/2023 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition of the application Council received no submissions.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.</p> <p><i>Note: The proposed development may not comply with some requirements of the BC, the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</i></p>
NECC (Development Engineering)	No objections to approval subject to conditions as recommended.
NECC (Flooding)	<p>The proposal is to stratum subdivide the Lot 2 of Deposited Plan 1241568 lot into two new Stratum lots, of which Stratum Lot 1 would comprise childcare. Childcare facilities are Vulnerable Development, which need to be at or above the Probable Maximum Flood (PMF) level. The childcare centre is located on the first floor of the existing building, and is above the PMF level.</p> <p>No flood related objections.</p>
NECC (Water Management)	<p>Supported</p> <p>This application was assessed in consideration of:</p> <ul style="list-style-type: none"> <li>• Supplied plans and reports;</li> <li>• Northern Beaches Water Management for Development Policy (WMD Policy), and;</li> <li>• Relevant LEP and DCP clauses;</li> </ul> <p>The proposal is for subdivision of an existing strata lot.</p> <p>No changes to water management or impervious area are proposed.</p> <p>No objections to the proposal.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	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 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 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 considered to be acceptable 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 or not 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.

**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. The subject application seeks consent for the stratum subdivision of one lot into two, and does not introduce any excavation works which would otherwise require further consideration under the SEPP. 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 considered to be suitable for its intended land use.

**Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
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After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

#### Principal Development Standards

No physical works are proposed alongside the subdivision. As such, the Principal Development Standards are not pertinent to this assessment.

#### Compliance Assessment

Clause	Compliance with Requirements
2.6 Subdivision - consent requirements	Yes
5.21 Flood planning	Yes
Part 7 Dee Why Town Centre	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes

#### Detailed Assessment

#### **Zone MU1 Mixed Use**

#### **Zone Objectives**

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.

#### Comment:

The proposal is considered to wholly adhere with the above-mentioned objective.

- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.

#### Comment:

The proposal is considered to wholly adhere with the above-mentioned objective.

- To minimise conflict between land uses within this zone and land uses within adjoining zones.

#### Comment:

The proposal is considered to wholly adhere with the above-mentioned objective.

- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.

#### Comment:

The proposal is considered to wholly adhere with the above-mentioned objective.

- To provide an active day and evening economy encouraging, where appropriate, weekend and night-time economy functions.

Comment:

The proposal is considered to wholly adhere with the above-mentioned objective.

## **Warringah Development Control Plan**

### Built Form Controls

No physical works are proposed alongside the subdivision. As such, the Built Form Controls are not pertinent to this assessment.

### Compliance Assessment

<b>Clause</b>	<b>Compliance with Requirements</b>	<b>Consistency Aims/Objectives</b>
C1 Subdivision	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
E11 Flood Prone Land	Yes	Yes

## **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.

## **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 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah 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, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

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



considered to be:

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

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## RECOMMENDATION

THAT Council as the consent authority grant Development Consent to DA2023/1594 for Stratum subdivision of one lot into two on land at Lot 2 DP 1241568, 888 Pittwater Road, DEE WHY, subject to the conditions printed below:

### Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

## GENERAL CONDITIONS

### 1. Approved Plans and Supporting Documentation

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
Sheet 1 of 8	-	-	B & P SURVEYS	4 October 2023
Sheet 2 of 8	-	PARKING LEVEL 3 & BELOW	B & P SURVEYS	4 October 2023
Sheet 3 of 8	-	PARKING LEVEL 2	B & P SURVEYS	4 October 2023
Sheet 4 of 8	-	PARKING LEVEL 1	B & P SURVEYS	4 October 2023
Sheet 5 of 8	-	GROUND FLOOR	B & P SURVEYS	4 October 2023
Sheet 6 of 8	-	LEVEL 1	B & P SURVEYS	4 October 2023

Sheet 7 of 8	-	LEVEL 2	B & P SURVEYS	4 October 2023
Sheet 8 of 8	-	LEVEL 3 & ABOVE	B & P SURVEYS	4 October 2023

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

## BEFORE ISSUE OF A SUBDIVISION CERTIFICATE

### 2. Easement Creation

The Applicant shall create an easement for access (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all lobbys, fire stairs and lifts are located within the appropriate easement(s).

The Applicant shall create an easement for services (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision, to accompany the Section 88B instrument to ensure all utility services are located within the appropriate easement(s).

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: Council's Subdivision standards and statutory requirements of the Conveyancing Act 1919.

### 3. Accessible carparking spaces

Accessible carparking spaces shall be available to each lot to comply with the National Construction Code - Building Code of Australia and AS 1428.1.

Details are to be provided to the Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure that carparking spaces for use by people with a disability are designated to give equitable access for carparking.

### 4. Provision of Services for Subdivision

The applicant is to ensure all services including water, electricity, telephone and gas are provided, located and certified by a registered surveyor on a copy of the final plan of subdivision.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure that utility services have been provided to the newly created lots.

### 5. Right of Carriageway

The Applicant shall create a right of carriageway (under the provisions of Section 88B of the Conveyancing Act) on the final plan of subdivision and accompanying 88B instrument, to include all vehicular access and manoeuvring areas.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

**6. Subdivision Certificate Application**

The Applicant shall submit a Subdivision Certificate Application to Council, which is to include a completed Subdivision Certificate form and checklist, a final plan of subdivision prepared in accordance with the requirements of the Conveyancing Act 1919, the final plan of subdivision and all relevant documents including electronic copies. This documentation is to be submitted to Council prior to the issue of the Subdivision Certificate. All plans of survey are to show connections to at least two Survey Co-ordination Permanent Marks. The fee payable is to be in accordance with Council's fees and charges.

Reason: Statutory requirement of the Conveyancing Act 1919.

**7. Survey Plan – Construction Identification**

The Applicant shall submit a declaration by a registered surveyor as evidence that all construction has been effected within the appropriate property, easement boundaries and rights of carriageway. This shall be in the form of a copy of the final subdivision or easement plan, with the distances from the boundaries to the edges of these structures endorsed in red thereon and signed by the surveyor.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: To ensure accurate location of buildings, access and services.

**8. Building Management Statement**

The Applicant shall submit a Building Management Statement to set out the provisions for the management and maintenance of the building.

Details demonstrating compliance are to be submitted to the Principle Certifying Authority prior to the issue of the Subdivision Certificate.

Reason: Statutory requirement of the Conveyancing Act 1919.

**9. Release of Subdivision Certificate**

The final plan of subdivision will not be issued by Council until the development has been completed in accordance with terms and conditions of the development consent.

Reason: Council's subdivision standards and the statutory requirements of the Conveyancing Act 1919.

**10. Title Encumbrances**

The Applicant shall ensure all easements, rights of carriageway, positive covenants and restrictions as to user as detailed on the plans and required by the development consent are to be created on the title naming Council as the sole authority empowered to release or modify.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of the Subdivision Certificate.

Reason: To ensure proper management of land.

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Michael French, Planner**

The application is determined on 07/02/2024, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**