

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2023/0636
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<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 2 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 3 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 4 DP 9900, 876 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 9900, 874 Pittwater Road DEE WHY NSW 2099
<b>Proposed Development:</b>	Stratum Subdivision
<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>	DL Dee Why Pty Ltd
<b>Applicant:</b>	The Trustee For DI Dee Why Unit Trust

<b>Application Lodged:</b>	07/06/2023
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Mixed
<b>Notified:</b>	15/06/2023 to 29/06/2023
<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

It is proposed to subdivide the improvements to be erected on the land into a two-lot stratum subdivision.

The stratum plan of subdivision seeks to separate the residential and non-residential components of the development, including the associated car parking, over two separate lots.

Proposed Lot 1 will comprise Basement Levels 1 & 2 and the Ground Floor and Proposed Lot 2 will comprise Basement Levels 3 & 4 and Levels 1-7.

To facilitate the use of the premises, a series of easements are proposed as set out in the table below.

Easement Reference	Description
A	Right of carriageway (driveway)
B	Easement for access variable width (lobbies, fire stairs and lifts)
C	Easement for services variable width (pressurisation, exhaust, mechanical and service risers)
D	Easement for parking variable width
E	Easement for services variable width.

The proposed stratum subdivision aligns with the approved development in accordance with DA 2019/0505.

## 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

### SITE DESCRIPTION

<b>Property Description:</b>	Lot 2 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 3 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 4 DP 9900 , 876 Pittwater Road DEE WHY NSW 2099 Lot 1 DP 9900 , 874 Pittwater Road DEE WHY NSW 2099
<b>Detailed Site Description:</b>	The subject site consists of four (4) allotments located on the northeast corner of Pittwater Road and Oaks Avenue.  The site is irregular in shape with a frontage of 36.525m

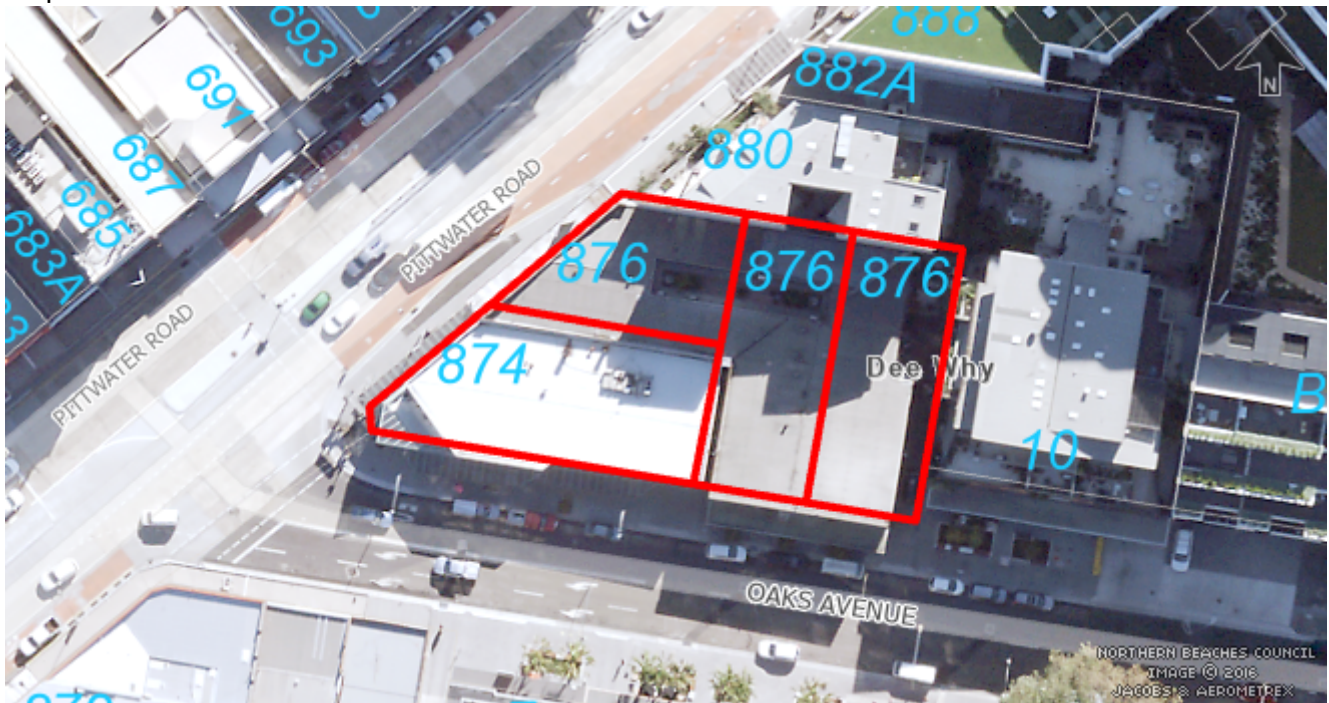
along Pittwater Road, a splay on the corner measuring 3.055m and a frontage of 61.17m along Oaks Avenue and a depth of 38.635m. The site has a surveyed area of 1443m<sup>2</sup>.

The site is located within the MU1 Mixed Use zone and is currently a construction site with basement works been currently undertaken.

#### **Detailed Description of Adjoining/Surrounding Development**

Adjoining and surrounding development is characterised by mixed use developments ranging in height from single storey to fifteen storeys in height .

Map:



- 141 x parking spaces, comprising:

- 78 x residential parking spaces,
- 47 x retail parking spaces,
- 11 x residential visitor spaces,
- 1 x maintenance space,
- 1 x removalist space, and
- 3 x car share spaces,

- Associated infrastructure, and

- Landscaping.

## 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 (1) (a)(iiia) – 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. Additional information was initially requested on 26 May 2023 for owners consent (Company/Organisation) and a revised Statement of Environmental Effects. The applicant responded back with this information on 7 June 2023. Further additional information was requested in relation to the original plans submitted with this application and identification of an additional lot on 20 July 2023. The applicant confirmed that was an error with these plans and resubmitted amended plans on 31 August 2023.</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.</p>

Section 4.15 Matters for Consideration	Comments
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 development application has been publicly exhibited from 15/06/2023 to 29/06/2023 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
NECC (Development Engineering)	<p>The proposal is for a stratum subdivision. The draft subdivision plan only Lot 1 and Lot 2 but the draft 88B refers to a Lot 3. Clarification as to the location of Lot 3 is required. The draft subdivision plan is to be revised to include Lot 3 if it is referred to in the 88B.</p> <p><b>Additional Information Provided on 23/8/2023</b></p>

Internal Referral Body	Comments
	The amended plans and 88B instrument have removed the references to Lot 3. No objections to approval subject to conditions as recommended.
NECC (Flooding)	The proposal seeks consent for the stratum subdivision of the approved development, which is currently under construction.  There are no flood related objections to the proposed stratum subdivision.

### 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 (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/commercial 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 considered to be suitable for the residential/commercial land use.

#### Warringah Local Environmental Plan 2011

Is the development permissible?	Yes
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

Standard	Requirement	Proposed	% Variation	Complies
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Height of Buildings:	27m	27m*	-	Yes
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\* As approved by DA2019/0505

#### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
Part 2 Permitted or prohibited development	Yes
2.6 Subdivision - consent requirements	Yes
Land Use Table	Yes
Part 5 Miscellaneous provisions	Yes
5.21 Flood planning	Yes
Part 6 Additional Local Provisions	Yes
6.4 Development on sloping land	Yes
Part 7 Dee Why Town Centre	Yes
7.3 Objectives for development within Dee Why Town Centre	Yes
7.4 Development must be consistent with objectives for development and design excellence	Yes
7.5 Design excellence within Dee Why Town Centre	Yes
7.6 Height of buildings	Yes
7.12 Provisions promoting retail activity	Yes
7.13 Mobility, traffic management and parking	Yes

#### **Warringah Development Control Plan**

#### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	Yes	Yes
Part C Siting Factors	Yes	Yes
C1 Subdivision	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
Part D Design	Yes	Yes
D14 Site Facilities	Yes	Yes
Part E The Natural Environment	Yes	Yes
E11 Flood Prone Land	Yes	Yes
Part G Special Area Controls	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 DA2023/0636 for Stratum Subdivision on land at Lot 2 DP 9900, 876 Pittwater Road, DEE WHY, Lot 3 DP 9900, 876 Pittwater Road, DEE WHY, Lot 4 DP 9900, 876 Pittwater Road, DEE WHY, Lot 1 DP 9900, 874 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
-	-	Street Level Plan	Adam Clerke Surveyors Pty Ltd	25 March 2021
-	-	Basement Level 3 & 4	Adam Clerke Surveyors Pty Ltd	25 March 2021
-	-	Basement Level 1 & 2	Adam Clerke Surveyors Pty Ltd	25 March 2021
-	-	Ground & First Floor	Adam Clerke Surveyors Pty Ltd	25 March 2021

In the event of any inconsistency between the approved plans, reports and documentation, the approved plans prevail.

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 lobbies, 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).

The Applicant shall create an easement for parking (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 parking bays 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. 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.

**4. 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.

**5. 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.

**6. 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 Principal Certifying Authority prior to the issue of the Subdivision Certificate.

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. 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, and an Occupation Certificate has been issued for DA2019/0505.

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

**9. 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**



**Phil Lane, Principal Planner**

The application is determined on 15/09/2023, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**