

18 August 2023

Lucinda Craig
Senior Planning Officer
Key Sites Assessments
Department of Planning and Environment
Level 17, 4PSQ, 12 Darcy Street
Parramatta, NSW 2150

Re: Sirius Building - Stratum Subdivision application (DA-23/5644)

Dear Lucinda,

This letter provides a response to the submission received from City of Sydney in relation to DA-23/5644 which seeks approval for Stratum Subdivision of the 2-60 Cumberland Street, The Rocks.

The items raised in the submission are addressed in the table at Attachment 1 to this letter.

We trust that this response addresses all issues and the assessment can now be finalised. Thank you for your ongoing support with progressing this project.

Yours sincerely,



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Attachment A – Consideration of Council submission

Issue raised	Response
Submission comments	
<p>Figure 2 in the submitted Statement of Environmental Effects (SEE) provides an extract of the architectural plans over basement b1b-b1a. This extract shows a hatched area in the north-western corner of the site that appears to encroach into the Cumberland Street Road Reserve. This needs to be clarified to ensure there are no building encroachments into the road reserve.</p> <p>Further, it is noted that the north-western corner of the site does extend in stratum below ground level into the Cumberland Street Reserve as shown in Figure 3 of the SEE. The architectural basement design appears to extend beyond these boundary limits and requires clarification or amendment.</p>	<p>This is not relevant for the stratum subdivision application which is contained within Lot 100 and 101 DP264104.</p>
<p>A stormwater management plan has been provided by Northrop with an extract shown in Figure 4 of the SEE. The plan indicates reconstruction of the drainage network within Gloucester Walk which is a closed road now known as Lot 6 in DP776315. The proprietor of that land would need to provide consent for these works to be carried out.</p>	<p>This is not relevant for the stratum subdivision application which is contained within Lot 100 and 101 DP264104.</p>
<p>A proposed detention facility, being a water quality chamber, is shown within the basement. It is recommended to create a Positive Covenant over this facility/infrastructure to ensure maintenance and repair.</p>	<p>Supported – this can be conditioned.</p>
<p>Council has provided a list of proposed easements and restrictions provided on the plan of subdivision. These should be included in any stratum subdivision approval.</p>	<p>Noted. All easements referenced have been included.</p>
Recommended conditions	
<p>Council has recommended inclusion of conditions on any approval.</p>	<p>The conditions are largely supported. Where conditions are not supported, this has been detailed and justified below.</p>
<p>1. Compliance with SSD 1084 (As amended)</p> <p>Full compliance must be given to the conditions of the development consent contained within the Development Consent issued by the Minister for Planning, as subsequently amended, in relation to the development of the subject site (SSD 10384, as amended) where applicable to this subdivision.</p>	<p>Supported</p>
<p>2. Building height</p> <p>a) The height of the building must not exceed RL 67.4 (AHD) to the top of the building plant and RL 65.82 (AHD) to the Level 28 of the building.</p> <p>b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that</p>	<p>Supported</p>

Issue raised	Response
<p>the height of the building accords with (a) above, to the satisfaction of the Principal Certifier.</p>	
<p>3. Floor space ratio restriction The following applies to floor space ratio:</p> <ul style="list-style-type: none"> a) A documentary Restriction on Use of Land must be placed on the Titles of all the lots in the subdivision limiting the total Gross Floor Area of the components of the building occupying all lots, taken together, to be no more than that permissible for the entire site by the approval to this development application or by the relevant Environmental Planning Instrument in existence at the time (whichever is the greater). b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification of the total and component Gross Floor Areas (by use) in the development applicable at the time of development consent, to the satisfaction of the Principal Certifier. 	<p>Supported</p>
<p>4. Public art</p> <ul style="list-style-type: none"> a) Public art must be installed to the City's satisfaction prior to the issue of any Occupation Certificate. b) The public artwork must be in accordance with the Sydney DCP 2012, the Public Art Policy, and the Interim Guidelines: Public art in private developments. c) Public artwork must be installed to the City's satisfaction, inspected and approved and the Final Public Art Report submitted and approved by Council's Area Planning Manager prior to the issue of any Occupation Certificate. d) Note: Public Art must be reviewed and endorsed by the City's Public Art Team and/or the Public Art Advisory Panel prior to submission for Council approval. Further information is available online at http://www.cityofsydney.nsw.gov.au/explore/arts-and-culture/public-art Please contact the Public Art Team at publicartreferrals@cityofsydney.nsw.gov.au for further information. 	<p>This condition is not supported. Delivery of Public Art is dealt with as part of the SSDA approval and is not relevant for the Stratum Subdivision.</p>
<p>5. Land subdivision – separate DA required</p> <p>Any proposal for land subdivision will require a separate application to Council to obtain development consent and the subsequent approval of the plan of subdivision and issue of a Subdivision Certificate under Section 6.15 of the Environmental Planning and Assessment Act 1979.</p>	<p>DPE will be the consent authority for any further subdivision. The condition should be updated accordingly.</p>
<p>6. Land subdivision – subdivision certificate</p> <p>A separate application must be made to Council to obtain the approval of the plan of subdivision and issue of a Subdivision Certificate under Section 6.15 of the Environmental Planning and Assessment Act 1979</p>	<p>The subdivision certificate can be issued by the Private Certifying Authority and does not need to go to Council. The condition should be updated accordingly.</p>

Issue raised	Response
<p>7. Restricts on end of journey / community infrastructure</p> <p>Prior to any Occupation Certificate being issued or the use commencing, whichever is earlier, a documentary restrictive covenant to the effect that part of the building has been approved as end of journey infrastructure is to be registered on the Title of the development site pursuant to section 88E of the Conveyancing Act 1919. The covenant is to be created appurtenant to Council and at no cost to Council.</p>	<p>Supported.</p>
<p>8. Survey certificate at completion</p> <p>A Survey Certificate prepared by a Registered Surveyor must be submitted to the Principal Certifier at the completion of the building work certifying the location of the building in relation to the boundaries of the allotment.</p>	<p>Supported</p>
<p>9. Stormwater drainage connection</p> <p>For approval of a connection into the City of Sydney's drainage system an "Application for Approval of Stormwater Drainage Connections" must be submitted to the City, together with an application fee in accordance with the City of Sydney's adopted Schedule of Fees and Charges. This must be approved prior to approval being issued for the construction of public domain work.</p>	<p>Supported however this should be linked the subdivision certificate not public domain works which is not being approved under this DA.</p>
<p>10. Stormwater completion deed of agreement and positive covenant</p> <p>Prior to the issue of any Subdivision Certificate:</p> <ol style="list-style-type: none"> The Owner is required to enter into a Deed of Agreement (Stormwater Deed) with the City of Sydney and obtain registration of Title of a Positive Covenant for all proposed connections to the City's underground drainage system. The deed and positive covenant will contain terms reasonably required by the City and will be drafted by the City's Legal Services Unit at the cost of the applicant, in accordance with the City's Fees and Charges. A Positive Covenant must be registered on the property title for all drainage systems involving On-Site Detention (OSD) to ensure maintenance of the approved OSD system regardless of the method of connection. The positive covenant will contain terms reasonably required by the City and will be drafted by the City's solicitor at the cost of the applicant, in accordance with the City's Fees and Charges. 	<p>Supported.</p>
<p>11. Sydney Water Certificate</p> <p>A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.</p> <p>Application must be made through an authorised Water Servicing Coordinator. Please refer to the Building Developing and Plumbing section on the web site www.sydneywater.com.au then refer to "Water Servicing</p>	<p>The SSDA approval includes the following:</p> <p><i>D13. Prior to the issue of any Occupation Certificate, a Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation and submitted to the Certifier.</i></p>

Issue raised	Response
<p>Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.</p> <p>Following application a "Notice of Requirements" will advise of water and sewer infrastructure to be built and charges to be paid. Please make early contact with the Co-ordinator, since building of water/sewer infrastructure can be time consuming and may impact on other services and building, driveway or landscape design.</p> <p>The Section 73 Certificate must be submitted to Council or the Principal Certifier prior to any Occupation Certificate or subdivision/strata certificate being issued.</p>	<p>This condition should not be included as it is addressed by the SSDA approval.</p>
<p>12. Building / Strata Management Statement</p> <p>A Building/Strata Management Statement must adequately address the ongoing maintenance, upgrading, redevelopment and structural adequacy of each stratum lot to Council's satisfaction, and be submitted with the application for subdivision.</p>	<p>Supported, however the wording should be amended to refer to prior to the stratum subdivision certificate.</p>
<p>13. Through site link</p> <ul style="list-style-type: none"> a) A Right of Public Access variable width, limited in stratum, must be created pursuant to Section 88B of the Conveyancing Act, 1919 with the stratum subdivision. b) A Right of Footway, limited in stratum, must be created pursuant to Section 88B of the Conveyancing Act, 1919 with the stratum subdivision. The terms of the Right of Public Access must be to the satisfaction of Council, and can be provided by the Area Planning Manager upon request. c) A Positive Covenant must be created pursuant to Section 88B of the Conveyancing Act, 1919 with the subdivision, must be created pursuant to Section 88B of the Conveyancing Act, 1919. The terms of the positive covenant must include obligations for maintenance of the above easement sites, indemnify Council against loss or damage or liability, and include a requirement for public liability insurance in the amount of \$20 million for any one occurrence. <p>The terms of the above easements and positive covenant must be to the satisfaction of Council, and can be provided by the Area Planning Manager upon request</p>	<p>This condition is supported with the exception of 13c which should be indemnify PMNSW rather than City of Sydney.</p>
<p>14. Rights to use vehicle lifts</p> <p>An appropriate Easement is to be created over the vehicle lift, located within Lot 1, pursuant to Section 88B of the Conveyancing Act 1919. The Easement is to burden Lot 1 and benefit all other lots within the subdivision, granting rights to access and use of the vehicle lifts, and is to be created in appropriate terms acceptable to Council, with the Council being the authority to release, vary or modify the easement.</p>	<p>Supported</p>

Issue raised	Response
<p>15. Easement for access</p> <p>Appropriate Easements for Access (or similar) are to be created over any required corridors, passages, traffic aisles, stairs and lifts, within the development that are need to provide access from (or across) one lot to another, pursuant to Section 88B of the Conveyancing Act 1919. The Easements are to be reciprocal in nature (where applicable), granting rights of access to persons and/or vehicles, and are to be created in appropriate terms acceptable to Council, with the Council being the authority to release, vary or modify the easement.</p>	Supported
<p>16. Restriction on the use of the land – residential development</p> <p>A restriction on the use of land must be created pursuant to Section 88B of the Conveyancing Act, 1919 with the future strata plan, in the following terms burdening Lot 1 and to the satisfaction of Council:</p> <ul style="list-style-type: none"> a) The residential apartment lots must be used as permanent residential accommodation only and not for the purpose of a boarding house or hostel, hotel or motel accommodation, serviced apartments, tourist and visitor accommodation or the like, other than in accordance with the Sydney Local Environmental Plan 2012. b) No change of use of those strata lots from “residential” as defined in Sydney Local Environmental Plan 2012 is permissible. The restriction is to be registered on title prior to any Occupation Certificate being issued or the use commencing, whichever is earlier. c) If a unit contains tenants, it must be subject to a residential tenancy agreement for a term of at least three months. d) No person can advertise or organise the use of residential apartments approved under this consent for short term accommodation or share accommodation. 	Supported
<p>17. Restriction on use of car spaces – residential</p> <p>A restriction on the use of land must be created on future strata plans:</p> <ul style="list-style-type: none"> a) The on-site car parking spaces are not to be used other than resident or tenant of the subject building for parking of vehicles related to a residence in the unit with which the space is associated, or retail unit including parking spaces. No storage should take place for commercial businesses in car parking spaces. b) The future strata subdivision of the site is to include a restriction on user pursuant to Section 88B of the Conveyancing Act, 1919, burdening all strata lots incorporating car spaces. c) Visitor parking spaces must not at any time be allocated, sold or leased to an individual 	Supported

Issue raised	Response
<p>owner/occupier and must be strictly retained as common property by the Owners Corporation for use by building visitors.</p> <p>d) Any visitor spaces must be clearly marked 'visitor' prior to the issue of any occupation certificate or the use commencing, whichever is earlier. All signs must be maintained in good order at all times.</p>	
<p>18. Restriction on the use of the land – parking on common property areas</p> <p>No part of the common property, apart from the visitor vehicle spaces which are to be used only by visitors to the building, and service vehicle spaces which are to be used only by service vehicles, is to be used for the parking or storage of vehicles or boats. Future strata subdivisions of buildings are to include an appropriate documentary restriction on the use of land pursuant to Section 88B of the Conveyancing Act 1919, so burdening common property, with the Council being the authority to release, vary or modify the restriction.</p>	Supported
<p>19. Restriction on the use of car spaces – commercial parking</p> <p>A documentary Restriction on Use of Land is to be created burdening all lots with car spaces, pursuant to Section 88B of the Conveyancing Act 1919, created appurtenant to Council, in terms to the satisfaction of Council, requiring the on-site car parking spaces, exclusive of service car spaces, are not to be used other than by an occupant, tenant or visitor to the commercial lot within the building, with the Council being the authority to release, vary or modify the restriction. The terms of the restriction must also prevent the storage of any boxes or items other than motor vehicles in the parking spaces.</p>	Supported
<p>20. Strata title parking spaces</p> <p>All parking spaces other than visitor parking or service spaces must form part of a residential or commercial strata unit in any future strata subdivision. No parking spaces or storage spaces are to have their own individual strata title.</p>	Supported
<p>21. Use of common areas and facilities</p> <p>Any common areas or common facilities must be available for the use all residents of the building and must be designated as common property on any future strata subdivision of the site, with no exclusive use rights.</p>	<p>This condition should be reworded to make it clear that:</p> <ul style="list-style-type: none"> • Lot 1 (residents) have access to all facilities. • Lot 2 (commercial) has access to Gym. • Lot 3 (retail) has no access to Gym or Pool
<p>22. Additional easements and covenants</p> <p>Aside from Easements mentioned in the above conditions, any further Easements and/or Covenants required as a consequence of the subdivision are to be created via Section 88B of the Conveyancing Act 1919 and to Council's satisfaction.</p>	Supported

Issue raised	Response
<p>23. Easements relating to stratum lots</p> <p>Documentary reciprocal easements for services, drainage, support and shelter, and emergency egress (and other similar easements as required), affecting the whole of each lot if so desired, must be created over the lots in the subdivision, pursuant to Section 88B of the Conveyancing Act 1919 and to Council's satisfaction.</p>	Supported
<p>24. Street address of lots</p> <p>In accordance with Clause 60(c) of the Surveying and Spatial Information Regulation 2017, the street addresses for each lot must be shown on the final plan of subdivision.</p>	Supported
<p>25. Survey infrastructure</p> <p>Prior to the issue of the subdivision certificate, sufficient survey infrastructure, including reference marks and permanent marks, must remain in place in order to satisfy the requirements of the Surveying and Spatial Information Regulation 2017, and to the satisfaction of Council.</p>	Supported