

6 July 2023

Our Ref: 2023/411100
File No: R/2023/14
Your Ref: DA 23/5644

Lucinda Craig
A/Senior Planning Officer – Key Sites Assessments
Department of Planning and Environment

By email: Lucinda.Craig@dpie.nsw.gov.au

Dear Lucinda

Sirius Building Stratum Subdivision – DA 23/5644 – Advice on Development Application

Thank you for your correspondence dated 1 June 2023 inviting the City of Sydney Council (the City) to comment on the above.

The application seeks consent for the stratum subdivision of the existing site into the following three lots:

- Stratum Lot 1: Residential stratum comprising 75 apartments and common areas
- Stratum Lot 2: Commercial Stratum comprising 4 SoHo Lots
- Stratum Lot 3: Retail Stratum comprising 3 retail lots.

The City has reviewed the submitted application and provides the following comments for your consideration.

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. 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.

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.

It is also noted that 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.

Should the application be supported, all plans of subdivision must also be stamped.

Below is a list of proposed easements and restrictions provided on the plan of subdivision. These should be included in any stratum subdivision approval.

PROPOSED WHOLE OF LOT EASEMENTS:

Easement For Support and Shelter (Whole of Lots)
 Easement For Services (Whole of Lots)
 Easement For Access to Shared Facilities (Whole of Lots)
 Easement For Fire Egress (Whole of Lots)

PROPOSED EASEMENTS:

(A) Easement For Access Variable Width Limited In Stratum
 (D) Easement For Use Loading Bay Variable Width Limited In Stratum
 (F) Right Of Footway Variable Width Limited In Stratum
 (Gr) Easement For Use Of Garbage Room Variable Width Limited In Stratum
 (G1) Easement For Garbage Collection Variable Width Limited In Stratum
 (Gr1) Easement For Access To Garbage Room Variable Width Limited In Stratum
 (Gr2) Easement For Access To Garbage Room Variable Width Limited In Stratum
 (Vl) Easement For Use Of Vehicle Lift Variable Width Limited In Stratum
 (Ag2) Easement For Access And Use Of Gym Facilities Variable Width Limited In Stratum
 (Bs2) Easement For Access And Use Of Bike Store Variable Width Limited In Stratum
 (Bs3) Easement For Access And Use Of Bike Store Variable Width Limited In Stratum
 (Et2) Easement For Access And Use Of End Of Trip Facilities Variable Width Limited In Stratum
 (Et3) Easement For Access And Use Of End Of Trip Facilities Variable Width Limited In Stratum
 (P) Easement For Pedestrian Access Variable Width Limited In Stratum
 (F2) Easement For Access And Use Variable Width Limited In Stratum

It is recommended that, in addition to any standard conditions recommended by DPE, the stratum approval of this application is to include conditions as provided in Attachment A accompanying this letter,

Should you wish to speak with a Council officer about the above, please contact Marie Burge, Senior Planner, on 9265 9333 or at mburge@cityofsydney.nsw.gov.au

Yours sincerely,



Christopher Corradi
A/Manager Planning Assessments
 City Planning | Development | Transport

ATTACHMENT A

Recommended Conditions of Consent

(1) COMPLIANCE WITH SSD 10384 (AS AMENDED)

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.

(2) BUILDING HEIGHT

- (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.
- (b) Prior to an Occupation Certificate being issued, a Registered Surveyor must provide certification that the height of the building accords with (a) above, to the satisfaction of the Principal Certifier.

(3) FLOOR SPACE RATIO RESTRICTION

The following applies to Floor Space Ratio:

- (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.

(4) PUBLIC ART

Public art must be installed to the City's satisfaction prior to the issue of any Occupation Certificate.

- (a) 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*.

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.

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.

(5) LAND SUBDIVISION – SEPARATE DA REQUIRED

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*.

(6) LAND SUBDIVISION – SUBDIVISION CERTIFICATE

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*.

(7) RESTRICTION OF END OF JOURNEY / COMMUNITY INFRASTRUCTURE

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.

(8) SURVEY CERTIFICATE AT COMPLETION

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.

(9) STORMWATER DRAINAGE CONNECTION

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.

(10) STORMWATER COMPLETION DEED OF AGREEMENT AND POSITIVE COVENANT

Prior to the issue of any Subdivision Certificate:

- (a) 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.
- (b) 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.

(11) SYDNEY WATER CERTIFICATE

A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained from Sydney Water Corporation.

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 Coordinator" under "Developing Your Land" or telephone 13 20 92 for assistance.

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.

The Section 73 Certificate must be submitted to Council or the Principal Certifier prior to any Occupation Certificate or subdivision/strata certificate being issued.

(12) BUILDING/STRATA MANAGEMENT STATEMENT

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.

(13) THROUGH SITE LINK

- (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.

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.

(14) RIGHT TO USE VEHICLE LIFTS

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.

(15) EASEMENTS FOR ACCESS

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.

(16) RESTRICTION ON THE USE OF LAND - RESIDENTIAL DEVELOPMENT

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:

- (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.

(17) RESTRICTION ON USE OF CAR SPACES – RESIDENTIAL

A restriction on the use of land must be created on future strata plans:

- (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 owner/occupier and must be strictly retained as common property by the Owners Corporation for use by building visitors.
- (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.

(18) RESTRICTION ON THE USE OF LAND - PARKING ON COMMON PROPERTY AREAS

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.

(19) RESTRICTION ON USE OF CAR SPACES - COMMERCIAL CAR PARKING

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.

(20) STRATA TITLE PARKING SPACES

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.

(21) USE OF COMMON AREAS AND FACILITIES

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.

(22) ADDITIONAL EASEMENTS AND COVENANTS

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.

(23) EASEMENTS RELATING TO STRATUM LOTS

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.

(24) STREET ADDRESSES OF LOTS

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.

(25) SURVEY INFRASTRUCTURE

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.