

# Development Consent

## ***Section 4.16 of the Environmental Planning and Assessment Act 1979***

As delegate of the Minister for Planning and Public Spaces, I approve the Development Application referred to in Schedule 1, subject to the conditions specified in Schedule 2.

These conditions are required to:

- prevent, minimise, or offset adverse environmental impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development



**Annie Leung**  
**Acting Director**  
**Key Sites Assessments**

Sydney

25 October 2023

File: DA 23/5644

### **SCHEDULE 1**

<b>Application Number:</b>	DA 23/5644
<b>Applicant:</b>	Sirius Developments Pty Ltd
<b>Consent Authority:</b>	Minister for Planning and Public Spaces
<b>Site:</b>	2-60 Cumberland Street, The Rocks (Lot 100 in DP264104 and Lot 101 in DP264104)
<b>Development:</b>	<p>Stratum subdivision comprising:</p> <ul style="list-style-type: none"><li>• Three stratum lots:<ul style="list-style-type: none"><li>○ Stratum Lot 1: Residential stratum for 75 apartments and common areas</li><li>○ Stratum Lot 2: Commercial stratum for 4 SoHos</li><li>○ Stratum Lot 3: Retail stratum for 3 retail spaces and facilities in the building facing Cumberland Street</li></ul></li><li>• Associated easements and covenants for access and maintenance</li></ul>

## DEFINITIONS

<b>Advisory Notes</b>	Advisory information relating to the consent but do not form a part of this consent
<b>Applicant</b>	Sirius Developments Pty Ltd, the person having the benefit of this consent from time to time, or any person carrying out any of the development to which this consent applies
<b>AS</b>	Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the relevant work is undertaken
<b>AHD</b>	Australian Height Datum
<b>BC Act</b>	<i>Biodiversity Conservation Act 2016</i>
<b>CCC</b>	Community Consultative Committee
<b>CCS</b>	Community Communication Strategy
<b>Certifier</b>	A council or person registered as a registered certifier under the <i>Building and Development Certifiers Act 2018</i>
<b>CEMP</b>	Construction Environmental Management Plan
<b>Conditions of this consent</b>	Conditions contained in Schedule 2 of this document
<b>Construction</b>	The demolition and removal of buildings or works, the carrying out of works for the purpose of the development, including site establishment works, relocation of utilities, earthworks, and erection of buildings and other infrastructure permitted by this consent
<b>Construction Certificate</b>	A certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation
<b>Council</b>	City of Sydney Council
<b>CPTED</b>	Crime Prevention Through Environmental Design Assessment
<b>CWMP</b>	Construction Waste Management Sub-Plan
<b>Day</b>	The period from 7 am to 6 pm on Monday to Saturday, and 8 am to 6 pm on Sundays and Public Holidays
<b>Demolition</b>	The destruction and removal of buildings, sheds and other structures on the site.
<b>Department</b>	NSW Department of Planning and Environment
<b>Development</b>	The development approved pursuant to this consent, as defined in Condition A2 and as modified by the conditions of this consent
<b>Environment</b>	Includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings
<b>EPA</b>	NSW Environment Protection Authority
<b>EP&amp;A Act</b>	<i>Environmental Planning and Assessment Act 1979</i>
<b>EP&amp;A Regulation</b>	<i>Environmental Planning and Assessment Regulation 2021</i>
<b>EPL</b>	Environment Protection Licence under the <i>Protection of the Environment Operations Act 1997</i>
<b>Feasible</b>	Means what is possible and practical in the circumstances
<b>Incident</b>	An occurrence or set of circumstances that causes or threatens to cause material harm and which may or may not be or cause a non-compliance <i>Note: "material harm" is defined in this consent</i>
<b>Land</b>	Has the same meaning as the definition of the term in section 1.4 of the EP&A Act
<b>Material harm</b>	Is harm that: <ul style="list-style-type: none"> <li>• involves actual or potential harm to the health or safety of people or to the environment that is not trivial, or</li> <li>• results in actual or potential loss or property damage of an amount, or amounts in aggregate, exceeding \$10,000, (such loss includes the reasonable costs and</li> </ul>

expenses that would be incurred in taking all reasonable and practicable measures to prevent, mitigate or make good harm to the environment)

<b>Minister</b>	NSW Minister for Planning and Public Space (or delegate).
<b>Mitigation</b>	Activities associated with reducing the impacts of the development prior to or during those impacts occurring
<b>NCC</b>	National Construction Code means the current standard which applies at the time the relevant work is undertaken, published by the Australian Building Codes Board.
<b>Non-compliance</b>	An occurrence, set of circumstances or development that is a breach of this consent
<b>Operation</b>	The carrying out of approved land uses upon completion of construction
<b>Owner</b>	Means the registered proprietor of the Property from time to time.
<b>PA</b>	Means a planning agreement within the meaning of the term in section 7.4 of the EP&A Act.
<b>Planning Secretary</b>	The Planning Secretary under the EP&A Act (or delegate).
<b>PM NSW</b>	Place Management NSW
<b>Reasonable</b>	Means applying judgement in arriving at a decision, taking into account: mitigation benefits, costs of mitigation versus benefits provided, community views, and the nature and extent of potential improvements.
<b>Registered Surveyor</b>	A person who is registered with the Board of Surveying and Spatial Information
<b>RtS</b>	The Applicant's response to issues raised in submissions received in relation to the application for this development consent under the EP&A Act.
<b>RRFI</b>	The Applicant's response to requests for information from the Department in relation to the application for this development consent under the EP&A Act.
<b>SDRP</b>	State Design Review Panel
<b>SEE</b>	Statement of Environmental Effects prepared by FPDplanning dated 5 May 2023, including all appendices
<b>Sensitive Receiver</b>	Residence, education institution (e.g. school, university, TAFE college), health care facility (e.g. nursing home, hospital), religious facility (e.g. church) and children's day care facility.
<b>Site</b>	The land identified in Schedule 1
<b>TfNSW</b>	Transport for NSW
<b>Tenanted Component</b>	Has the same meaning as the definition of the term in section 71 of the <i>State Environmental Planning Policy (Housing) 2021</i>
<b>Work(s)</b>	Any physical work to construct or facilitate the construction of the development, including low impact work and environmental management measures.

## SCHEDULE 2

### PART A ADMINISTRATIVE CONDITIONS

#### OBLIGATION TO MINIMISE HARM TO THE ENVIRONMENT

- A1. In addition to meeting the specific performance measures and criteria in this consent, all reasonable and feasible measures must be implemented to prevent, and if prevention is not reasonable and feasible, minimise, any material harm to the environment that may result from the construction and operation of the development.

#### TERMS OF CONSENT

- A2. The development must only be carried out:
- (a) in compliance with the conditions of this consent;
  - (b) in accordance with all written directions of the Planning Secretary;
  - (c) in accordance with the SEE, as amended by the RtS;
  - (d) in accordance with the approved plans in the table below:

Plan of Subdivision drawings prepared by LtS		
Sheet No.	Name of Plan	Date
1	Location Plan	9 May 2023
2	Basement B2B-B2A & Below	9 May 2023
3	Basement B2B-B2A Mezzanine	9 May 2023
4	Basement B1B-B1A	9 May 2023
5	Level 01-03	9 May 2023
6	Level 03-05	9 May 2023
7	Level 05-07	9 May 2023
8	Level 07-09 & Above	9 May 2023

- A3. The Proponent must comply with all written requirements or directions of the Planning Secretary, including in relation to:
- (a) the environmental performance of the approval;
  - (b) any document or correspondence in relation to the approval;
  - (c) any notification given to the Planning Secretary under the terms of this approval;
  - (d) any audit of the construction or operation of the approval;
  - (e) the terms of this approval and compliance with the terms of this approval (including anything required to be done under this approval);
  - (f) the carrying out of any additional monitoring or mitigation measures; and
  - (g) in respect of ongoing monitoring and management obligations, compliance with an updated or revised version of a guideline, protocol, Australian Standard or policy required to be complied with under this approval.
- A4. The conditions of this consent and directions of the Planning Secretary prevail to the extent of any inconsistency, ambiguity or conflict between them and a document listed in Condition A2. In the event of an inconsistency, ambiguity or conflict between any of the documents listed in Condition A2, the most recent document prevails to the extent of the inconsistency, ambiguity or conflict.

#### LIMITS ON CONSENT

- A5. This consent will lapse five years from the date the consent is published on the NSW Planning Portal unless a Subdivision Certificate has been issued.
- A6. This consent does not approve the following:
- (a) demolition;
  - (b) clearing of land (including but not limited to tree removal);

- (c) excavations, cut or fill;
- (d) land reshaping;
- (e) encroachment into or use of any road reserve; and
- (f) any other physical works.

Where required, separate approvals must be obtained from the relevant consent authority (except where exempt and/or complying development applies).

#### **PRESCRIBED CONDITIONS**

- A7. The Applicant must comply with all relevant prescribed conditions of development consent under Part 4, Division 2 of the EP&A Regulation.

#### **PLANNING SECRETARY AS MODERATOR**

- A8. In the event of a dispute between the Applicant and a public authority, in relation to a requirement in this approval or relevant matter relating to the Development, either party may refer the matter to the Planning Secretary for resolution. The Planning Secretary's resolution of the matter will be binding on the parties.

#### **LEGAL NOTICES**

- A9. Any advice or notice to the consent authority must be served on the Planning Secretary at the Planning Secretary Address for Service.

#### **EVIDENCE OF CONSULTATION**

- A10. Where conditions of this consent require consultation with an identified party, the Applicant must:
- (a) consult with the relevant party prior to submitting the subject document to the Planning Secretary for information or approval; and
  - (b) provide details of the consultation undertaken including:
    - (i) the outcome of that consultation, matters resolved and unresolved; and
    - (ii) details of any disagreement remaining between the party consulted and the Applicant and how the Applicant has addressed the matters not resolved.

#### **APPLICABILITY OF GUIDELINES**

- A11. References in the conditions of this consent to any guideline, protocol, Australian Standard or policy are to such guidelines, protocols, Standards or policies in the form they are in as at the date of this consent.
- A12. However, consistent with the conditions of this consent and without altering any limits or criteria in this consent, the Planning Secretary may, when issuing directions under this consent in respect of ongoing monitoring and management obligations, require compliance with an updated or revised version of such a guideline, protocol, Standard or policy, or a replacement of them.

## **PART B PRIOR TO ISSUE OF SUBDIVISION CERTIFICATE**

### **REQUIREMENTS OF THE EP&A ACT**

- B1. In undertaking the subdivision approved under this consent, the Applicant must comply with the requirements of Part 6 of the EP&A Act in relation to the issue of a Subdivision Certificate. For the purpose of this approval, the issue of a Subdivision Certificate/s is restricted to the development carried out in accordance with the documents set out in **Condition A2**.

### **SUBDIVISION CERTIFICATE**

- B2. Before granting any Subdivision Certificate, the Certifier must be satisfied that the Applicant has complied with all conditions of this consent that are required to be complied with before a Subdivision Certificate may be issued in relation to the plan of subdivision.

### **BUILDING MANAGEMENT STATEMENT**

- B3. Prior to the issue of a Subdivision Certificate, a Building Management Statement must be prepared in the approved form prescribed by Schedule 8A of the *Conveyancing Act 1919* or a Strata Management Statement must be prepared in the approved form prescribed by Part 6 of the *Strata Schemes Development Act 2015* and be submitted with the application for subdivision.
- B4. The Building Management Statement or Strata Management Statement (as applicable) is to apply to the development as a 'united building'. The Building Management Statement or Strata Management Statement (as applicable) must include details of the following:
- (a) the use, operation and arrangements for the supply of services, maintenance and upgrading of infrastructure of each stratum lot within the subdivision
  - (b) the ongoing maintenance, upgrading, redevelopment and structural adequacy of each stratum lot within the subdivision
  - (c) any other matters which the Certifier considers relevant and pertinent to the issue of a Subdivision Certificate.

### **CREATION OF EASEMENTS**

- B5. Prior to the issue of a Subdivision Certificate, easement/s:
- (a) for services, drainage, support and shelter, emergency egress, use of plant, equipment, loading areas and service rooms, repairs, maintenance or any other encumbrances and indemnities required for joint or reciprocal use of part or all of the proposed lots as a consequence of the subdivision, must be created over the appropriate lots in the subdivision pursuant to Section 88B of the *Conveyancing Act 1919* and to Council's satisfaction, with Council being the authority to release, vary or modify the easement/s.
  - (b) to burden Lot 1 and benefit all other lots within the subdivision, granting rights to access and use of the vehicle lifts within Lot 1, must be created pursuant to Section 88B of the *Conveyancing Act 1919* and to Council's satisfaction, with Council being the authority to release, vary or modify the easement.
  - (c) for access (or similar) over any required corridors, passages, traffic aisles, stairs and lifts, within the development that are needed to provide access from (or across) one lot to another that are reciprocal in nature (where applicable) and granting rights of access to persons and/or vehicles, must be created pursuant to Section 88B of the *Conveyancing Act 1919* and to Council's satisfaction, with Council being the authority to release, vary or modify the easement.
  - (d) for access to the building at ground level from the public domain for each respective building owner/s, tenant/s and visitors, as relevant to the stratum lot/s the subject of the stratum plan, must be created pursuant to Section 88B of the *Conveyancing Act 1919* to the satisfaction of Council, with Council being the authority to release, vary or modify the easement. Each easement may address construction staging, including any restrictions to access as a result of the construction activities, including erecting hoardings as relevant.

### **ENCROACHING AND/OR SHARED SERVICES**

- B6. Any pipes, service lines or the like servicing each lot must be contained within their respective lots or, if service lines encroach upon adjoining lots within the subdivision or are shared by more than one lot, appropriate easement/s must be created pursuant to Section 88B of the *Conveyancing Act 1919* over the service lines where any such encroachment occurs. The terms of the easement/s must be to Council's satisfaction, with Council being the authority to release, vary or modify the easement.

### **ACCESS TO PUBLIC DOMAIN AND THROUGH SITE LINKS**

- B7. Suitable easement/s for access or rights-of-way benefiting the public are to be created over the public domain areas in the stratum subdivision to ensure public access to public domain areas. The rights of public access are to be triggered by an occupation certificate for the relevant public domain areas (temporary or permanent) within the

site. The terms of the easement/s are to be to Council's satisfaction, with Council being the authority to release, vary or modify the easement.

- B8. A Right of Public Access and/or Right of Footway of variable width must be created pursuant to Section 88B of the *Conveyancing Act 1919* with the stratum subdivision applying to through-site links. The terms of the Right of Public Access/Right of Footway must be to the satisfaction of Council, with Council being the authority to release, vary or modify the easement.
- B9. A Positive Covenant for obligations for maintenance of these easement sites and indemnifying Council and PM NSW against loss or damage or liability, including a requirement for public liability insurance in the amount of \$20 million for any one occurrence, must be created pursuant to Section 88B of the *Conveyancing Act 1919* with the subdivision. The terms of the positive covenant must be to the satisfaction of Council and PM NSW, with Council being the authority to release, vary or modify the easement.

#### **RESTRICTION ON USE OF CAR SPACES AND STORAGE**

- B10. A Restriction On The Use Of Land pursuant to Section 88B or 88D of the *Conveyancing Act 1919*, in terms to the satisfaction of Council, must be created requiring that:
- (a) the on-site car parking spaces and storage spaces, exclusive of service spaces, are not to be used other than by a resident, tenant or occupant of the lots and must not to be operated as a public carpark.
  - (b) visitor parking spaces must not be allocated, sold or leased to an individual owner/occupier and must be retained as common property.

#### **RESTRICTION OF END OF JOURNEY / COMMUNITY INFRASTRUCTURE**

- B11. Prior to the issue of any Subdivision Certificate, 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.

#### **RESTRICTION ON RESIDENTIAL DEVELOPMENT**

- B12. A documentary Restriction on Use of Land is to be created over residential lot/s in the Subdivision Plan, requiring the apartments within that lot not to be used for the purposes of a hotel, serviced apartments, boarding house, or tourist and back-packer accommodation, pursuant to Section 88B or 88D of the *Conveyancing Act 1919* in terms to the satisfaction of Council, with Council being the authority to release, vary or modify the easement.
- However, nothing in the restriction can exclude or restrict any Short-term rental accommodation (for example, AirBNB) that is permissible in accordance with any relevant environmental planning instrument or legislation (even where the restriction could otherwise prevent such a use).

#### **STORMWATER COMPLETION DEED OF AGREEMENT AND POSITIVE COVENANT**

- B13. Prior to the issue of any Subdivision Certificate, 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 Council and will be drafted by Council's solicitor at the cost of the applicant, in accordance with Council's Fees and Charges.

#### **ADDITIONAL EASEMENTS AND COVENANTS**

- B14. 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.

#### **STREET ADDRESSES OF LOTS**

- B15. 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.

#### **REGISTRATION**

- B16. Prior to the issue of a Subdivision Certificate, the Applicant must provide evidence that all matters required to be registered on title on the draft subdivision plans listed in **Condition A2** and the conditions, including easements, rights of way, restrictions or covenants or similar, are contained within the subdivision plan to be lodged for registration at the NSW Land Registry Services.

#### **COMPLIANCE CERTIFICATE**

- B17. Prior to issue of any Subdivision Certificate, a compliance certificate issued under Division 9, section 73 of the *Sydney Water Act 1994* must be obtained from Sydney Water and must be provided demonstrating that the development has satisfied the detailed requirements of Sydney Water in respect to water and wastewater.
- B18. Prior to the issue of each Subdivision Certificate (as relevant), a Registered Surveyor has confirmed that the parcel boundary of the plan corresponds with floors, external walls and ceilings of the relevant building/structures

approved under SSD 10384 and as constructed or alternatively, has the benefit of an appropriate easement or is the subject of appropriate provisions in the Building Management Statement or Strata Management Statement, to enable the registration of the plan.

#### **USE OF COMMON AREAS AND FACILITIES**

- B19. Any common areas or common facilities must be available for the use of 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.

#### **SURVEY INFRASTRUCTURE**

- B20. 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.



## ADVISORY NOTES

### APPEALS

AN1. The Applicant has the right to appeal to the NSW Land and Environment Court in the manner set out in the EP&A Act and the EP&A Regulation.

### OTHER APPROVALS AND PERMITS

AN2. All licences, permits, approvals and consents as required by law must be obtained and maintained as required for the development. No condition of this consent removes any obligation to obtain, renew or comply with such licences, permits, approvals and consents.

A separate application must be made to obtain a Subdivision Certificate under Section 6.15 of the Environmental Planning and Assessment Act 1979.

### RESPONSIBILITY FOR OTHER CONSENTS / AGREEMENTS

AN3. The Applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

### ROAD OCCUPANCY LICENCE

AN4. A Road Occupancy Licence must be obtained from the relevant road authority for any works that impact on traffic flows during construction activities.

### SAFework REQUIREMENTS

AN5. To protect the safety of work personnel and the public, the work site must be adequately secured to prevent access by unauthorised personnel, and work must be conducted at all times in accordance with relevant SafeWork requirements.

### HOARDING REQUIREMENTS

AN6. The Applicant must submit a hoarding application to Council for the installation of any hoardings over Council footways or road reserve.

### HANDLING OF ASBESTOS

AN7. The Applicant must consult with SafeWork NSW concerning the handling of any asbestos waste that may be encountered during construction. The requirements of the *Protection of the Environment Operations (Waste) Regulation 2014* with particular reference to Part 7 – 'Transportation and management of asbestos waste' must also be complied with.

### DISABILITY DISCRIMINATION ACT

AN8. This application has been assessed in accordance with the EP&A Act. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992*. The Applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

AN9. The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the NCC which references *AS 1428.1 - Design for Access and Mobility*. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the *Disability Discrimination Act 1992* currently available in Australia.

### COMMONWEALTH ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

AN10. The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) provides that a person must not take an action which has, will have, or is likely to have a significant impact on a matter of national environmental significance (NES) matter; or Commonwealth land, without an approval from the Commonwealth Environment Minister.

AN11. This application has been assessed in accordance with the EP&A Act. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation. It is the Applicant's responsibility to consult the Department of Agriculture, Water and Environment to determine the need or otherwise for Commonwealth approval and you should not construe this grant of approval as notification to you that the EPBC Act does not have application. The EPBC Act may have application and you should obtain advice about this matter. There are severe penalties for non-compliance with the Commonwealth legislation.

### BUILDING PLAN APPROVAL

AN12. You must have your building plans stamped and approved before any construction is commenced. Approval is needed because construction/building works can affect Sydney Water's assets (e.g. water, sewer and stormwater mains).

For further assistance please telephone 13 20 92 or refer to the Building over or next to assets page on the Sydney Water website (see plumbing, building and developing then building over or next to assets).

## APPENDIX 1 INCIDENT NOTIFICATION AND REPORTING REQUIREMENTS

### WRITTEN INCIDENT NOTIFICATION REQUIREMENTS

1. A written incident notification addressing the requirements set out below must be emailed to the Department at the following address: [compliance@planning.nsw.gov.au](mailto:compliance@planning.nsw.gov.au) within seven days after the Applicant becomes aware of an incident. Notification is required to be given under this condition even if the Applicant fails to give the notification required under this consent or; having given such notification, subsequently forms the view that an incident has not occurred.
2. Written notification of an incident must:
  - (a) identify the development and application number;
  - (b) provide details of the incident (date, time, location, a brief description of what occurred and why it is classified as an incident);
  - (c) identify how the incident was detected;
  - (d) identify when the Applicant became aware of the incident;
  - (e) identify any actual or potential non-compliance with conditions of consent;
  - (f) describe what immediate steps were taken in relation to the incident;
  - (g) identify further action(s) that will be taken in relation to the incident; and
  - (h) identify a contact person for further communication regarding the incident.
3. Within 30 days of the date on which the incident occurred or as otherwise agreed to by the Planning Secretary, the Applicant must provide the Planning Secretary and any relevant public authorities (as determined by the Planning Secretary) with a detailed report on the incident addressing all requirements below, and such further reports as may be requested.
4. The Incident Report must include:
  - (a) a summary of the incident;
  - (b) outcomes of an incident investigation, including identification of the cause of the incident;
  - (c) details of the corrective and preventative actions that have been, or will be, implemented to address the incident and prevent recurrence; and
  - (d) details of any communication with other stakeholders regarding the incident.