

Annexure A

DETERMINATION OF DEVELOPMENT APPLICATION BY GRANT OF CONSENT

Development Application No: 453/2022/1

Development: Alterations and additions to the approved commercial development, including to add a new level

Site: Lot 1 in DP 796750, also known as 55 Bay Street, Double Bay NSW 2028

The above development application has been determined by the granting of consent subject to the conditions specified in this consent.

Date of determination: 4 July 2023

Date from which consent takes effect: Date of determination.

TERMINOLOGY

In this consent:

- (a) Any reference to a Construction, Compliance, Occupation or Subdivision Certificate is a reference to such a certificate as defined in the *Environmental Planning and Assessment Act 1979*.
- (b) Any reference to the “applicant” means a reference to the applicant for development consent or any person who may be carrying out development from time to time pursuant to this consent.
- (c) Any reference to the “site”, means the land known as Lot 1 in DP 796750, also known as 55 Bay Street, Double Bay NSW 2028.

The conditions of consent are as follows:

A. General Conditions

A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* (“the Act”) and the provisions of the *Environmental Planning and Assessment Regulation 2000* (“the Regulation”) such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the Act.

Standard Condition: A1 (Autotext AA1)

A.2 Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

BCA means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

Council means Woollahra Municipal Council

Court means the Land and Environment Court

Local native plants means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs" published by the Southern Sydney Regional Organisation of Councils).

Stormwater drainage system means all works, facilities and documentation relating to:

- the collection of stormwater,
- the retention of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater; and
- connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner-builder has the same meaning as in the *Home Building Act 1989*.

PC means the Principal Certifier under the *Act*.

Principal Contractor has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

Professional engineer has the same meaning as in the *BCA*.

Public place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the Applicant.

Site means the land being developed subject to this consent.

Woollahra LEP means *Woollahra Local Environmental Plan 2014*

Woollahra DCP means *Woollahra Development Control Plan 2015*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

Note: Interpretation of conditions - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

Standard Condition: A2 (Autotext AA2)

A.3 Notice of Modification of DA40/2021

Pursuant to section 4.17(5) of the *Environmental Planning and Assessment Act 1979*, a Notice of Modification of Development Consent DA40/2021 in accordance with clause 67 of the *Environmental Planning & Assessment Regulation 2021* (**Notice of Modification**) is required to be delivered to Council prior to works commencing under this consent.

The Notice of Modification is to provide for DA40/2021 to be modified in accordance with **Condition A.4** of this consent.

A.4 Modification of DA40/2021

The consent granted to DA40/2021 is required to be modified as follows:

(1) Deletion and Replacement of Conditions:

Condition A.3 and A.3(a) are to be deleted and replaced with new condition A.3 as follows:

A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
Architectural Plans			
DA101 (Rev C)	Site Plan	All by Stafford Architecture	All dated 22/05/2023
DA200 (Rev C)	Basement		
DA201 (Rev C)	Ground Floor Plan		
DA202 (Rev C)	Level 1 Floor Plan		
DA203 (Rev C)	Level 2 Floor Plan		
DA204 (Rev C)	Level 3 Floor Plan		
DA205 (Rev C)	Level 4 Floor Plan		
DA206 (Rev C)	Level 5 Floor Plan		
DA207 (Rev C)	Roof Plan		
DA301 (Rev C)	North Elevation		
DA302 (Rev C)	West Elevation		
DA303 (Rev C)	South Elevation		
DA304 (Rev C)	East Elevation		
DA321 (Rev C)	Section AA		
Landscape plans			
DA1	DA Landscape Plan – Levels 2-4	Volker Klemm Landscape Design	Rev A 09/22
DA2	DA Landscape Plan – Level 5		Rev E 05/23
Ref 21290	Access Report	Access-i	Rev 2.1 10/10/2022
20201338.1/1704A/R2/SN	Acoustic Report	Acoustic Logic	17/04/2023
Job P22713	Section J Report	Evolved Engineering	Rev 2.0 10/10/2022
Hydraulic Services Level 5 Stormwater Layout – Drawing P22713-H-L05-SW	Stormwater Management Plan	Evolved Engineering	Issue 1 25/07/2022
Hydraulic Services Level 6 Stormwater Layout – Drawing P22713-H-L06-SW			
22366	Traffic and Parking Statement	TTPP	9 September 2022
20396	Traffic Response (Including Traffic Management Plan)	TTPP	8 July 2021
20/138	Stormwater Plans	ITM Design	28/01/2021
14262/3	Geotechnical Report	Geotechnique	20/01/2021
WD20116	Construction Methodology Report	Webber Design	26/02/2021
P2008071JC01V03	Flood Report	Martens Consulting Engineers	29/01/2021
Version 8	Section J Energy Deemed-to-Satisfy Method	BlueGreen Engineering	21/10/2021
SWMMP	Site Waste Minimisation and Management Plan	Stafford Architecture	20/10/2022

Note: Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

Note: These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the Act modifying or amending the development (refer

to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)

Standard Condition: A5 (Autotext AA5)

AND

(2) Addition of New Conditions:

The following conditions are added:

C.1(a) Payment of Long Service Levy, Security, Contributions and Fees

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
LONG SERVICE LEVY under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
Long Service Levy www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator	Contact LSL Corporation or use online calculator	No	
SECURITY under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
Property Damage Security Deposit - making good any damage caused to any property of the Council	\$12,155	No	T115
DEVELOPMENT LEVY under Woollahra Section 7.12 Development Contributions Plan 2021 This plan may be inspected at Woollahra Council or downloaded at www.woollahra.nsw.gov.au			
Development Levy (section 7.12)	\$3,143.73 + Index Amount	Yes, quarterly	T96
INSPECTION FEES under section 608 of the <i>Local Government Act 1993</i>			
Security Administration Fee	\$215	No	T16
TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES	\$15,513.73 plus any relevant indexed amounts and long service levy		

Building and Construction Industry Long Service Payment

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website www.longservice.nsw.gov.au or the Long Service Corporation on 131 441.

How must the payments be made?

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

How will the section 7.12 levy (formerly known as 94A levy) be indexed?

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2021 sets out the formula and index to be used in adjusting the levy.

Do you need HELP indexing the levy?

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 94A Development Contributions Plan 2021

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- the reasons given,
- whether any prejudice will be caused to the community deriving benefit from the public facilities,
- whether any prejudice will be caused to the efficacy and operation of the Plan, and
- whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and

- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

I.15 Noise – Level 5 Rooftop Terrace

All recommendations as outlined in the **Acoustic Report, referenced 20201338.1/1704A/R2/SN, prepared by Acoustic Logic, dated 17/04/2023** are to be imposed and implemented during the ongoing use of the development.

I.16 Noise – Level 5 Rooftop Terrace

The following additional conditions must be adhered, in the ongoing use of the development:

- a) No functions or events are to be held at the rooftop terrace.
- b) No consumption of alcohol is permitted on the rooftop terrace.
- c) No music (electrically amplified or otherwise) is to be played at the rooftop terrace.
- d) No more than 75 people are to be on the rooftop terrace at any one time between 7am and 10pm, Monday to Friday.
- e) The rooftop terrace must not be used between the hours of 10pm and 7am every day, and all day on Saturday, Sunday and public holidays.
- f) Operational management plan must be implemented to restrict access of the rooftop terrace beyond the permitted hours of 7am and 10pm, Monday to Friday.

These conditions have been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

Note: This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use. General use and deliveries or dispatches may be restricted by hours of use conditions. This condition does not restrict the operation of noise pollution laws.

Standard Condition: I2

I.17 Furniture – Level 5 Rooftop Terrace

No furniture (fixed or moveable) on the Level 5 Rooftop Terrace shall exceed a maximum height of 1m measured from the finished floor level.

I.18 Signage to be displayed

Signage (in lettering not less than 15mm in height on a contrasting background) stating the restrictions outlined in **Conditions I.16** and **I.17** must be erected, and maintained

at all time, in a prominent position at eye level near the entry to the Level 5 rooftop terrace.