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Plan finalisation report – PP-2021-3107

Fairfield LEP 2013 – Cabramatta Town Centre East

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Acknowledgment of Country

The Department of Planning and Environment acknowledges the Traditional Owners and Custodians of the land on which we live and work and pays respect to Elders past, present and future.

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1 Introduction

1.1 Overview

1.1.1 Name of draft LEP

Fairfield Local Environmental Plan 2013 (Amendment No. 42).

Amendment to maximum building heights, floor space ratios and town centre precinct provisions for land bounded by Fisher Street, Broomfield Street and Cabramatta Road East, Cabramatta adjacent to Cabramatta Railway Station.

1.1.2 Site description

Table 1 Site description

Site Description	The planning proposal (Attachment A) applies to land at Land bounded by Fisher Street, Broomfield Street and Cabramatta Road East, Cabramatta
Type	Site
Council / LGA	Fairfield City Council
LGA	Fairfield

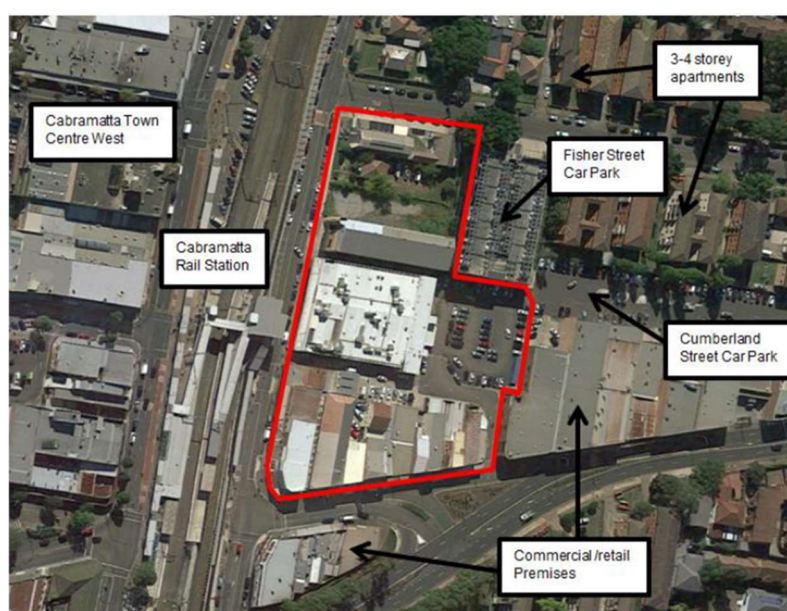


Figure 1 Subject site

The site is zoned B4 Mixed Use. Privately owned land within the subject site area has a current maximum allowable building height of 14 metres, and maximum allowable floor space ratio of 2.5:1.

The site is surrounded by B4 Mixed Use and R4 High Density Residential-zoned land.

The site is outlined in red dash in **Figure 2** below. The subject site is further divided into stages A, B, C, and D – as shown in **figure 3**.

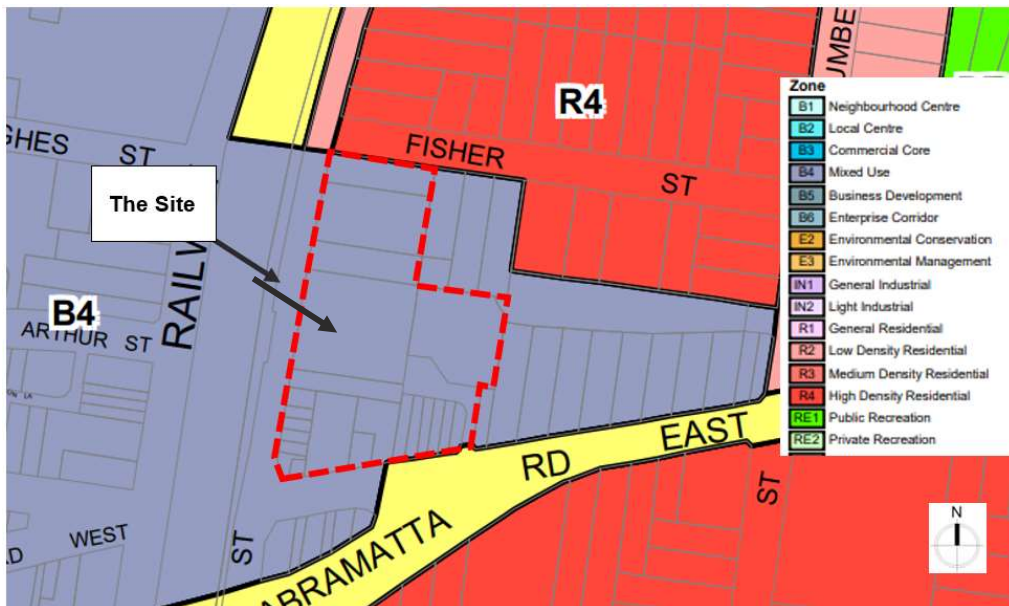


Figure 2: Site zoning context



Figure 3: Stages of the subject site

1.1.3 Purpose of plan

The table below outlines the current and proposed controls for the LEP.

It is noted that the Gateway Determination, dated 21st November 2021, conditioned that the maximum height of building be increased from the proposed 48m to 8m, 57m, 59m, and 66m across the site. The planning proposal put on public exhibition included this amendment.

Table 2 Current and proposed controls

Control	Current	Proposed
Maximum height of the building	14.0m – N2	59m – Z2: Stage A 66m – AA: Stage B 57m – Z1: Stage C 48m – X1: Stage D
Floor space ratio	2:1* - U	3.85:1 – W1: Stage A 6.45:1 – AA2: Stage B 6.1:1 – AA1: Stage C 4:1 – X: Stage D
Minimum Site Area Town Centre Precinct	Nil	Identify the site as “Cabramatta – Area E” Stage A – 2,700 (eastern half) and 1,800m ² (western half) * Stage B – S: 2,700m ² Stage C – O: 1,300m ² Stage D – R: 2,200m ²
Number of dwellings	N/A	582
Number of jobs	N/A	702

* See section 4.2 below for erratum to described proposed control

Amendments to local clauses:

The planning proposal also seeks to provide a new clause or amend existing clauses, which allows for additional floor space ratio and building height where certain development standards are met. The planning proposal also prohibits residential development on the ground floor to ensure that there is activation at ground level thus promoting active street frontages and minimising security risks.

Floor Space Ratio:

- The maximum floor space ratio of land identified as “Cabramatta – Area E” is:
 - i. If the building is not used for the purpose of residential accommodation – 1.5:1, or
 - ii. If less than 10% of the floor space is used for the purpose of residential accommodation – 2.0:1, or
 - iii. If 20% to 50% of the floor space is used for the purpose of residential accommodation – 2.2:1.

Height of Building:

- The height of a building on land identified as “Cabramatta – Area E” on the Town Centre Precinct Map must not exceed 14 metres unless the site area of the building is at least the minimum site area shown for the land on the Minimum Site Area Map.
- The height of a building on land identified as “Cabramatta—Area E” on the Town Centre Precinct Map must not exceed 10 metres unless at least 50% of the building will be used for a residential purpose.

Other development controls:

- Despite any other provision of the Fairfield LEP 2013, development consent must not be granted to development for the purposes of residential accommodation located on the ground floor of a building (excluding residential lobbies and access areas).

1.1.4 State electorate and local member

The site falls within the Cabramatta state electorate. Mr (Nick) Nickola LALICH, MP is the State Member.

The site falls within the Fowler federal electorate. Dai Le MP is the Federal Member.

To the team’s knowledge, neither MP has made any written representations regarding the proposal.

There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

2 Gateway determination and alterations

The Gateway determination issued on 15/11/2021 (**Attachment B**) determined that the proposal should proceed subject to conditions.

In accordance with the Gateway determination the proposal is due to be finalised on 18/11/2022.

3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 12/01/2022 to 9/02/2022, as required by section 29 of the *Local Government Act 1993*.

A total of 10 community submissions were received, comprising of 1 objection and 2 submissions supporting the proposal (**Attachment F0→F7**).

- 3 submissions were from state agencies (EES and TfNSW, TfNSW Property Section),
- 4 from utility providers: Telstra and Endeavour Energy were received prior to Council’s outcome meeting, Jemena Gas and Sydney Water were received after,
- 2 from the general public, and
- 1 from an organisation (Cabramatta Chambers of Commerce).

3.1 Submissions during exhibition

3.1.1 Submissions supporting the proposal

The 2 supporting submissions were received from the general public and referred to the importance the planning proposal will have on activating the eastern portion of Cabramatta Town Centre as it is currently isolated due to the train corridor. The submissions consider that the development will improve character and property values within the area.

3.1.2 Submissions objecting to and/or raising issues about the proposal

There was 1 submission received objecting to the proposal. This was from the property section of TfNSW indicating that a proposed overhead pedestrian bridge (delivered by a VPA) is not supported as:

- It requires partial demolition and rebuilding of the existing station building; which could not be justified at this time;
- There is no long-term plan regarding upgrading Cabramatta Railway Station; and
- TfNSW has no program funding to undertake master planning.

Council and the applicant will address this issue via amendments to the VPA; thus, generating the potential need for a deferred commencement.

3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 3 who have provided the following feedback.

Table 3 Advice from public authorities

Agency	Advice raised	Council response
NSW Department of Environment, Industry and Environment (Environment, Energy and Science) – (Attachment F1)	The Planning Proposal Report identifies the need for the development of an overland flood risk management plan as part of any future development application over the site. EES considers this to be an appropriate approach.	Noted. The SSDCP and any future development assessments will consider the flood related matters as per the flood controls outlined in the NSW Floodplain Manual and requirements of Chp.11 – Flood Risk Management of the Fairfield City Wide DCP 2013.
Endeavour Energy – (Attachment F2)	Endeavour Energy approves with conditions. Not all the conditions / advice marked may be directly or immediately relevant or significant to the Planning Proposal.	Noted. The advice provided focuses on the network connection, easement management, and asset planning that will be required for future development. These matters will be addressed at any future development application stage.
Jemena Gas – (Attachment F3)	Jemena confirms that it has no objections to the proposed planning proposal PP-2021-3107.	Comments from Jemena Gas were not received prior to Council's Outcomes Committee – 10 May 2022. Council advised that any subsequently submitted issues would be dealt with at the DA stage

Agency	Advice raised	Council response
Sydney Water - (Attachment F4)	<p>There is no objection to the proposed changes to permissible development within the area.</p> <p>Once the planning proposal has been approved and finalised the Council / proponent is recommended to lodge a Feasibility application with Sydney Water.</p> <p>It is noted that Sydney Water referenced 542 dwellings in its submission. On 13/07/2022 Sydney Water clarified that its advice remains the same for 582 dwellings.</p>	<p>Comments from Sydney Water were not received prior to Council's Outcomes Committee – 10 May 2022. Council advised that any subsequently submitted issues would be dealt with at the DA stage</p>
Telstra – (Attachment F5)	<p>Telstra has advised that it has mobile coverage from another site, as such coverage will not be overly affected</p>	<p>Noted.</p>
Transport for NSW (Traffic Management Issues) – (Attachment F6)	<p>TfNSW has reviewed the submitted documents and raises no objection to the planning proposal (apart from the comments raised by TfNSW Property → See Attachment F7)</p> <p>TfNSW has also advised that it does not support any direct vehicular access to the site from Cabramatta Road East (State Road) and that the existing “One Way” exit arrangement from the site onto Cabramatta Road East (local road) should not be changed. However, as a small section of Cabramatta Road East is local road under the care and control of Council, vehicular access to this section would ultimately be for Council's determination (Attachment F6.1).</p>	<p>The initial analysis using the Mesoscopic Transport Model does not identify Cabramatta Road East as requiring any critical intersection upgrades, therefore the proposed access arrangement for the proposal is justified at this stage and can be further refined at the development application stage. In addition, further detailed analysis of the traffic modelling can be dealt with at development application stage and that would be referred to TfNSW for further review.</p> <p>Regarding, vehicular Access off Cabramatta Road East, as per Councils Post Exhibition Report (Attachment F0), Council's traffic branch has advised that this issue can be resolved at the DA Stage.</p>

Agency	Advice raised	Council response
Transport for NSW (Pedestrian footbridge connection) – (Attachment F7)	<p>The property section of TfNSW does not support the pedestrian footbridge connection, citing the following reasons:</p> <ul style="list-style-type: none"> - It requires partial demolition and rebuilding of the existing station building; which could not be justified at this time; - There is no long-term plan regarding upgrading Cabramatta Railway Station; and - TfNSW has no program funding to undertake master planning. 	<p>Council Officers are in the process of having further discussions with TfNSW and will continue to advocate for the pedestrian bridge to be considered as part of the development application.</p> <p>In the event that the overhead pedestrian bridge connection does not proceed with the Planning Proposal, the draft VPA will ensure that monetary contributions will be made to Council, and be put towards other related community infrastructure within the Cabramatta Sub-District</p>

The Department considers Council has adequately addressed matters raised in submissions from public authorities.

3.3 Exhibited Development Control Plan (DCP)

It is noted that a draft DCP was exhibited with the planning proposal (**Attachment D**). The DCP still refers to the overhead pedestrian footbridge, which is the subject of the unexecuted VPA and TfNSW Property sectors objection.

Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to a high level of public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination report (**Attachment G**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions. Where an inconsistency exists, this inconsistency is considered to be of minor significance.
- Remains consistent with all relevant SEPPs.

The following tables identify whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. Where the proposal is inconsistent with this assessment, requires further analysis or requires reconsideration of any unresolved matters these are addressed in Section 4.1

Table 4 Summary of strategic assessment

	Consistent with Gateway determination report Assessment	
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

Table 5 Summary of site-specific assessment

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No, refer to section 4.1

3.4 Detailed assessment

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable. It is noted that the Gateway way was assessed prior to the 1 March 2022 Ministerial Directions amendment.

Ministerial 9.1 Directions:

Ministerial 9.1 Direction 6.3 Site Specific Provisions: The objective of this direction is to discourage unnecessarily restrictive site-specific planning controls.

The planning proposal is inconsistent with this Direction as it seeks to introduce a new local clause which will limit residential development on the ground floor and permit additional FSR and HOB where certain development standards are met.

This inconsistency is considered to be of minor significance as the prohibition only applies to the ground floor and in doing so preserves active street frontages and retention of business premises.

Ministerial 9.1 Direction 4.3 Flood Prone Land: The objectives of this direction are to ensure consistency with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005 and flood impacts are considered both on and off the subject land.

The planning proposal is inconsistent with **Direction 4.3** as it seeks to alter a zone that affects flood prone land (figure 4). This was considered at Gateway and the inconsistency was found to be of a minor nature. Flooding is further discussed over.

This inconsistency is considered to be of minor significance as it is not permitting incompatible development or promotion of hazardous industries. Further, this development is not expected to result in significant government expenditure on evacuation or flood mitigation.



Figure 4: Subject site flooding

2022 NSW Flood Inquiry Report

The 2022 NSW Flood Inquiry Report (the Report) makes 28 recommendations in response to the 2022 floods. The Report recommends adopting a new risk-based approach to calculating flood planning levels and work to establish these be completed within three years by the new NSW Reconstruction Authority (NSWRA).

The Department notes that the site is within the Georges River Catchment – one of the two catchments identified in the Report in the Sydney Region. However, Council has confirmed that the site is only subject to overland flows.

The Report discusses three types of flooding (riverine, local overland flooding - or flash flooding, and coast flooding), and Council has confirmed that the site is only subject to flash flooding, which results primarily from drainage in urban areas.

At p21 of the Report it is stated that “the problems caused by flash flooding can sometimes be mitigated through upgrading engineering works to improve drainage capacity or by installing bespoke monitoring and warning systems. Flash flooding, though of concern, does not create the same level of ongoing challenges that extensive riverine flooding represents.”

Council advised the following regarding the subject site

For further background, the site is affected by overland flooding as a result of old stormwater infrastructure / capacity. Recent mapping identifies that the overland flooding over the site is of a low hazard risk.

The overland flooding on the site was considered as part of the planning proposal (4.3 Flood Prone Land). At the time, the review by Council's Catchment team noted that the site was at the top of the overland flood catchment and overland flooding would be best addressed at the development application stage where detailed design and on-site detention can address the issues. The comments also noted that the development should also comply with all the requirements in Fairfield LEP 2013 Clause 6.3 and 6.4 as well as Fairfield City Wide DCP Chapter 11 – Flood Risk Management.

The draft Cabramatta Town Centre DCP Amendment prepared in consultation with the applicant also provides development controls relating to the existing overland flood path, see extract below:

G. Flooding and overland flow paths

Performance criteria	Development controls
<ul style="list-style-type: none"> Existing overland flows will be safely accommodated as part of the development of the Precinct. 	<ul style="list-style-type: none"> The design will accommodate existing overland flows through the Precinct in a manner that does not increase the risk of flooding to adjacent properties and to the proposed development ground floor retail premises or expose pedestrians to unacceptable hazard in public domain areas. Overland flows can be accommodated in swales in the public and private land as shown in the following diagrams and sections. Development applications will need to provide the results of flood modelling as relevant to each stage of the
	development to achieve the performance criteria and development controls in this section.

For the reasons above, the Department is satisfied that the proposal can be finalised.

Ministerial 9.1 Direction 3.5 Development Near Regulated Airports and Defence Airfields: The objectives of this direction are to ensure the effective and safe operation of regulated airports and defence airfields; and to ensure that their operation is not compromised by development that constitutes an obstruction, hazard or potential hazard to aircraft flying in the vicinity.

The Gateway determination report (**Attachment G**) cites that the planning proposal is consistent with the Direction, however, it is considered that this Direction is not applicable. The subject site falls within the 'Conical Surface' boundary of the Bankstown Obstacle Limitation Surface (OLS) (figure 5 below), however, a letter from Sydney Metro Airports (dated 16 August 2017) (**Attachment H**) has advised that the proposed development at an overall height of 87.3 meters above Australian Height Datum (AHD) would not penetrate the Obstacle Limitation Surfaces (OLS) or the PANS/OPS relating to Bankstown Aerodrome.

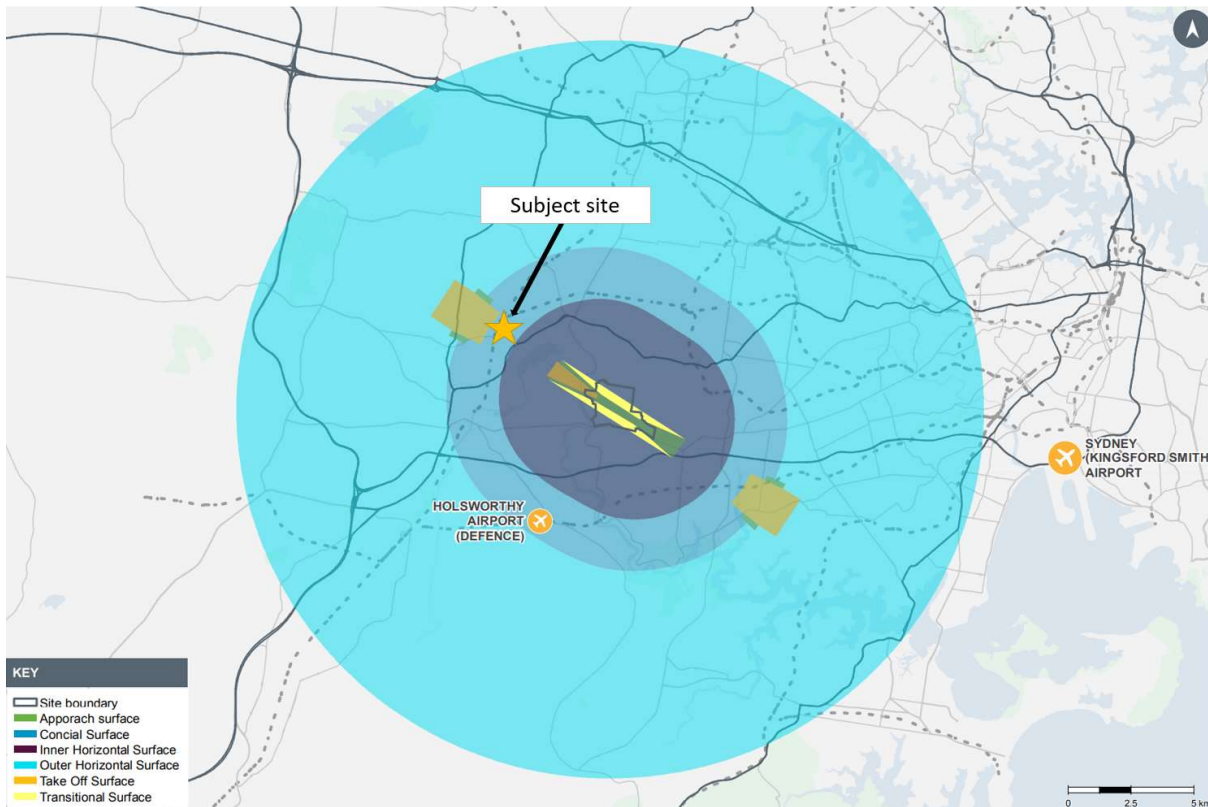


Figure 5: Subject Site Location in Bankstown Airport OLS

Site specific assessment:

Infrastructure: Infrastructure was not assessed under Section 4 Site-specific assessment of the Gateway determination report. The site is adjacent to Cabramatta train station, and the proposed VPA seeks to improve infrastructure through the provision of a Pedestrian footbridge connection. The site is also in close proximity to social infrastructure (including: Core Community Services, NDS Care, and Centrelink) and educational facilities including Cabramatta Public School (400m) and Cabramatta High School (1.1km). As such, the planning proposal satisfies the need for development well connected to infrastructure.

3.5 Errata to the planning proposal at finalisation

At finalisation the following errors in the planning proposal were identified.

1. The planning proposal outlines the amendments to the minimum Site Area “Area E” as:
 - Stage A has Minimum site area of 2,700m² (eastern half) and 1,800m² (western half).
 However, Council has confirmed that the correct controls should be:
 - Stage A has Minimum site area of 1,800m² (eastern half) and 2,700m² (western half).

As the correct mapping was exhibited as a separate attachment during exhibition (**Attachment I**), it is considered that re-exhibition is not required. See figure 6 below for further detail.

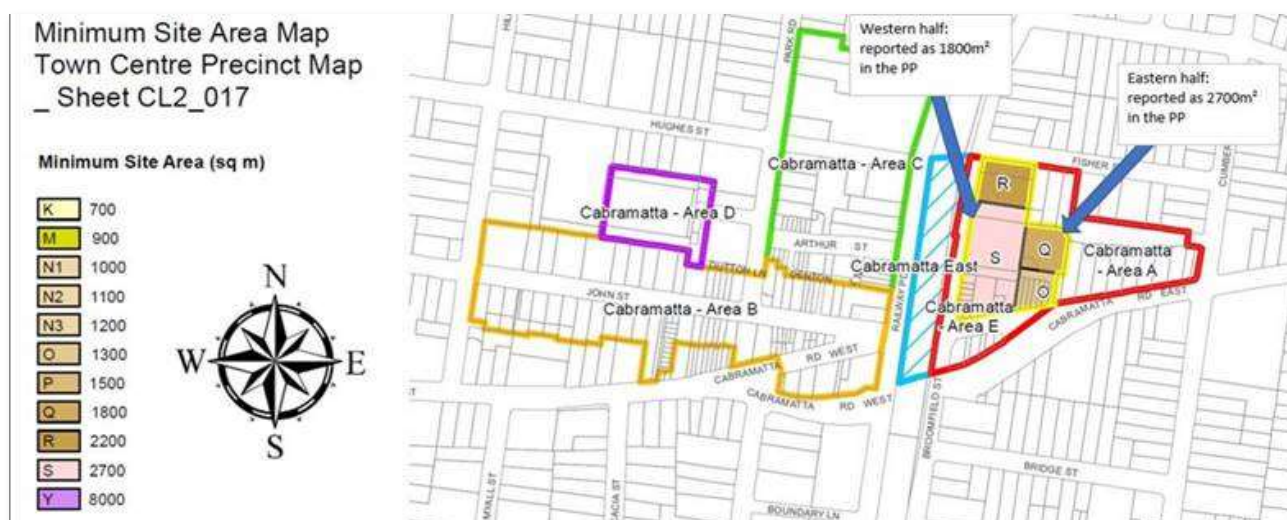


Figure 6: Minimum site area map vs planning proposal description

2. In the planning proposal, three of the lots and DP's (10/-/DP205759, 2/-/DP25618, 4/-/DP438982) on page 18 don't reconcile with the table on page 13. Council have confirmed that there was an error with both tables and have provided a corrected table; see table 6 below.

Table 6: Corrected lots and DP's

Property address	Lot	DP	Area (m ²)
76 Broomfield Street	7 Section E	4420	933
70 Broomfield Street	10 Section E	4420	814
72-74 Broomfield Street	100	1141040	1,710
84 Broomfield Street	1	205759	2,938
86 Broomfield Street	2	205759	557
88 Broomfield Street	1	25618	130
90 Broomfield Street	3	25618	88
92 Broomfield Street	4	438982	87
151 Cabramatta Road East	5	25618	88
151 Cabramatta Road East	6	25618	98
151 Cabramatta Road East	7	25618	70
147-149 Cabramatta Road East	8	25618	882
88 Broomfield Street	2	650696	85
84 Broomfield Street	10	255023	1,948
143-145 Cabramatta Road East		SP 10266	197
139 Cabramatta Road East	2	580587	536
135 Cabramatta Road East	3	580587	207
131 Cabramatta Road East	7	29243	159
133 Cabramatta Road East	8	29243	188
125 Cabramatta Road East	1	212183	149
127 Cabramatta Road East	2	212183	144
129 Cabramatta Road East	3	212183	159
Total			12,167

From the revised table, it is identified that Milperra Hotel Pty Ltd, 84 Broomfield Street, 10/-/DP255023 is not included in the table on page 17-18 of the planning proposal. It is also noted that 10/-/DP205759, 2/-/DP25618, 0/-/SP10266 on page 17-18 of the planning proposal do not exist in the NSW Planning Spatial viewer.

Despite these errors in the planning proposal, it is considered finalisation can continue as the effected lots are clearly identified in the subject site map. Also, Council report that as per Council's Community Participation Plan a total of 394 notification letters were sent out to affected and adjoining landowners and other relevant stakeholders (**Attachment J**).

3. The planning proposal describes the current subject sites' FSR as 2:1. Review of the FSR mapping shows that the current FSR is U→ 2.5:1. This discrepancy has been raised with Council who have advised that the PP is referencing Clause 7.2 Cabramatta – floor space ratio which sets out a range of permissible FSRs depending on land use. This site falls within the existing Area A and the clause sets out a sliding scale, including a FSR of 2:1.

3.6 Voluntary Planning Agreement (VPA)

As noted above in Table 3, a VPA was exhibited with the planning proposal; however, TfNSW Property & Commercial Services does not support the development of the footbridge. The key elements of the VPA are:

- Developer to fund and construct a pedestrian bridge (valued at approximately \$4.2M)
- Developer will be responsible for all on-going maintenance and lease / license agreements
- An easement / stratum will be applied to the site / bridge

Should the proponent not be able to obtain the required statutory approvals then the proponent will be required to make a monetary contribution in the amount of 110% of the total cost of the indexed (**Attachment K**).

It is noted that the VPA is listed as 'executed' in Council's VPA Register for Planning Agreements <https://www.fairfieldcity.nsw.gov.au/Planning-and-Building/Planning-and-Policies/Planning-Agreements#section-2> (**Attachment L**).

3.7 Change of Plan Making Delegation (PMA)

In Council's letter to the Department (**Attachment E**), Council advised it is not seeking to use its delegation to determine the Planning Proposal and requested that the Department be the local plan making authority due to the existing one-way laneway that forms part of the Proposal is under the ownership of Council.

Accordingly, the Department will assume the PMA role and has submitted the memo to Legal for the drafting of the instrument with PCO.

4 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

Table 7 Consultation following the Department's assessment

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	3 maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979</i> (Attachment C)</p> <p>Council confirmed on 23/09/2022 that it approved the draft and that the plan should be made (Attachment C)</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	<p>On 21/09/2022 , Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at Attachment PC.</p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

5 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with the Fairfield Local Strategic Planning Statements intent of Cabramatta East contributing to the Local Housing Strategy.
- It is consistent with the Gateway Determination.
- Aside from TfNSW Property Sectors opposition to the pedestrian footbridge, no issues or objections to the proposal were raised during consultation.

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 Manager, Metro West



30 Sept 2022

Adrian Hohenzollern
 Director, Metro West

Assessment officer

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 9585 6463

Attachments

Attachment	Document
A	Planning Proposal
B	Gateway Determination
D	Exhibited DCP
E	Request for Finalisation
F0	Council Post Exhibition Report
F1	EES Submission
F2	Endeavour Energy Submission
F3	Jemena Submission
F4	Sydney Water Submission
F5	Telstra Submission
F6	TfNSW Traffic Mgmt Submission
F6.1	Tab A – TfNSW Traffic Mgmt Submission
F7	TfNSW Pedestrian Footbridge Submission
G	Gateway report
H	Sydney Metro Airport Response
I	Exhibited Maps
J	Outcomes Committee Report
K	Outcomes Committee - VPA
L	Council Register of Planning Agreements
PC	PC Opinion