

## SYDNEY WESTERN CITY PLANNING PANEL

**TO:** Sydney Western City Planning Panel

**REPORT:** DRAFT SWCPP Report

**FILE No:** DA 384.1/2021  
PAN-138481  
PPSSWC-221

**SUBJECT:**

<b>Property:</b>	Lot 37 in DP202006, Lot 39 in DP202006, Lot 136 in DP16186, Lot 381 in DP1232437 and Lot 382 in DP1232437 at No. 2 Kamira Court, Villawood (Total of five (5) lots).
<b>Application lodged</b>	21 October 2021
<b>Applicant</b>	Adam Byrnes (Think Planners)
<b>Owner</b>	NSW Land and Housing Corporation
<b>Application No.</b>	DA 384.1/2021
<b>NSW Planning Portal Application No.</b>	PAN-138481
<b>Planning Panel Reference No.</b>	PPSSWC-221
<b>Proposed Development</b>	Stage 1 of the Redevelopment of No. 2 Kamira Court within the Villawood Town Centre, involving Tree Removal, Construction of a 8-10 Storey Mixed Use Development comprising Information and Education facility with ancillary Cafe on the ground floor, 112 Residential Units, Public Open Space, a Podium Car Park comprising 119 Car Parking Spaces, associated Road Works and Landscaping pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009.
<b>Cost of Works</b>	CIV = \$29,271,348
<b>Zoning</b>	R4 High Residential under the Fairfield LEP 2013
<b>Primary Planning Issues</b>	<ul style="list-style-type: none"> <li>• Non-compliance with the Draft Villawood DCP 2020</li> <li>• Design Excellence</li> <li>• Above ground parking</li> <li>• Number of social housing units provided</li> <li>• Non-compliant building setback</li> <li>• Pocket Park and Active uses</li> <li>• Air-conditioning units</li> <li>• Tree Retention</li> <li>• Podium planting</li> <li>• Traffic matters</li> <li>• Waste management matters</li> </ul>

**Assessing Officer:** Geraldine Pham – Senior Development Planner

**Date of Report:** 16 December 2022

**ATTACHMENTS**

**ATTACHMENT A – Architectural Plans**  
**ATTACHMENT B – Urban Design Report**  
**ATTACHMENT C – Letter from Applicant regarding Amended Application**  
**ATTACHMENT D – Council Report DCP**  
**ATTACHMENT E- Draft Villawood DCP 2020**  
**ATTACHMENT F- Revised Statement of Environmental Effects**  
**ATTACHMENT G- Landscape Plans**  
**ATTACHMENT H- Revised Traffic Report**  
**ATTACHMENT I- Waste Management Plan**  
**ATTACHMENT J- Detailed Site Investigation**  
**ATTACHMENT K- Acoustic Report**  
**ATTACHMENT L- Remediation Action Plan**  
**ATTACHMENT M- Ventilation Report**  
**ATTACHMENT N- Traffic Model**  
**ATTACHMENT O- Arborist Model**  
**ATTACHMENT P- Stormwater Water Management Details**  
**ATTACHMENT Q- Preliminary Geotech Report**  
**ATTACHMENT R- ADG Compliance Table**  
**ATTACHMENT S- Villawood DCP 2020 Compliance Table**  
**ATTACHMENT T- Reasons for Refusal**  
**ATTACHMENT U- Draft Deferred Commencement Conditions of Consent**

## SUMMARY

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1. *Development Application No. 384.1/2021 was lodged on 21 October 2021 for Stage 1 of the Redevelopment of Villawood Town Centre, involving Tree Removal, Construction of a 8-10 Storey Mixed Use Development comprising information and education facility and ancillary Cafe on the ground floor, 112 Residential Units, Public Open Space, a 3-storey Podium Car Park comprising 119 Car Parking Spaces, associated road works and landscaping pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009.*
2. *The application is referred to the Panel for determination as the development has a capital investment value over \$5 million and has been lodged by the Crown, being NSW Land and Housing (LAHC).*
3. *On the 23 September 2023 Fairfield Local Environmental Plan (LEP) 2013 Amendment No.43 was gazetted for the subject site which introduced additional permitted uses of 'retail premises' and 'business premises' to the north-eastern portion of the site. The amendment to the LEP was accompanied by an Amended Urban Design Study, which changed the built form and massing within the Villawood Town Centre DCP. The Council is now in the process of updating the Villawood Town Centre 2020. The Updated DCP was recently endorsed at Council's City Outcomes Committee dated 6 December 2022 and commenced Public Exhibition on the 15 December 2022. The subject Application was submitted prior to the gazettal of the planning proposal and the amendment to the DCP. During the initial assessment of the application, the proposed development was inconsistent with the built forms envisaged under the original DCP. Given the latest changes to the DCP which sets out the updated vision of the built forms within Villawood town Centre, the application has been considered against the Draft DCP.*
4. *In order to develop the subject site in accordance with the DCP, a Voluntary Planning Agreement (VPA) has been submitted by Land and Housing Corporation (LAHC). The VPA involves land*

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acquisition between Council and LAHC and will also result in the construction and dedication of 3,000m<sup>2</sup> of open space (public park) and future road connections (at the completion of the overall project) by the developer. NSW Land and Housing Corporation and Traders in Purple have submitted Letters of Offer in accordance with Section 7.4 of the Environmental Planning and Assessment Act (EP&A) 1979, which was endorsed by Council on 11 October 2022 to proceed to public exhibition. It is anticipated that the matter will be reported to Council for finalisation in early 2023. The Application was submitted prior to the acceptance of the VPA and therefore given the timing of the VPA, Council considers that if any approval is granted, can only be dealt with as a possible Deferred Commencement.

5. The assessment of the development as proposed has identified non compliances with the Draft Villawood DCP 2020 and a number of areas of concern. These concerns include non-compliance and inconsistencies with the Draft Villawood DCP 2020, Design Excellence, above ground parking, the number of social housing units provided, non-compliant building setback, usability of pocket park and active uses, air-conditioning units, tree retention, podium planting, traffic and waste matters.
6. The application was publicly notified to occupants and owners of the adjoining properties and on Council's website (in lieu of a circulating newspaper) for a period of 21 days between 8 October and 29 October 2021. No submissions were received.
7. The applicant has submitted a written request for variation of the Height of Building standard pursuant to Clause 4.6 of the LEP 2013 to facilitate the parapet on Level 8 at the south western end of the building.
8. Council's assessment of the amended application has identified fundamental issues, which include non-compliance with the Draft Villawood DCP 2020 by proposing an additional 2 levels above the maximum number of stories permitted under the Draft DCP. It is considered that the development does not exhibit design excellence as required by Clause 6.12 of the Fairfield LEP 2013 and the application comprises of 3-storey podium car parking which is not appropriately sleeved. The number of social housing dwellings provided does not comply with the requirements set out within the NSW Governments Future Directions for Social Housing in NSW (Future Directions) Policy which is considered to be relevant and applicable to this development. Whilst these matters have been raised with the Applicant, the Applicant has nevertheless requested that the matter be forwarded to the Panel for determination. Given the fundamental issues with the application, Council cannot support the application as proposed and recommends that the application be refused. Notwithstanding, it is considered that the following options identified below would be available to the Panel as part of its deliberation and/or determination of the application as follows;
  - I. Provide a further opportunity to the Applicant to amend the Application in order to comply with the Draft Villawood DCP, ensure the development exhibits design excellence, appropriately sleeve the 3-storey podium car parking spaces and provide further social housing units.
  - II. Refuse the Application as submitted in accordance with the reasons within Attachment T of this report. This recommendation is considered appropriate given that the development is not yet at a stage that can be supported by Council.
  - III. If the Panel forms an alternate view regarding the assessment of the Application, then the application be approved. Should the Panel decide to approve the Application, it is considered appropriate that a Deferred Commencement be issued subject to the VPA presently under consideration being executed with respect to the subject site and in accordance with the draft conditions contained in Attachment U.

**EXECUTIVE SUMMARY**

Council is in receipt of Development Application No. 384.1/2021 for Stage 1 of the Redevelopment of No. 2 Kamira Court within the Villawood Town Centre, involving Tree Removal, Construction of a part 8 and 10 Storey Mixed Use Development comprising an Information and Education facility with ancillary Cafe on the ground floor, 112 Residential Units, Public Open Space, a 3-storey Podium Car Park comprising 119 car parking spaces, associated Road Works and Landscaping pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009.

The development will comprise of a mixture of privately owned units and social units which will be owned and managed by the NSW Land and Housing Corporation. A total of 32 social housing units and 80 private units will be provided.

The application is referred to the Sydney Western City Planning Panel (SWCPP) for consideration pursuant to State Environmental Planning Policy (Planning Systems) 2021, as the proposal has a capital investment value greater than \$5 million and has been lodged on behalf of the Crown, being Land and Housing Corporation. Accordingly, the matter is required to be determined by the Sydney Western City Planning Panel (SWCPP).

The current application is Stage 1 of the redevelopment of the subject land by the NSW Land and Housing Corporation (LAHC) who is also the owner of the subject site. Traders in Purple are the development partners in conjunction with LAHC for this development project. The site is currently vacant and has a total site area of 16,371m<sup>2</sup>. The subject application, that is Stage 1, relates to the southern portion of the site which has a site area of 5,413m<sup>2</sup>. A development application for Stage 2 has recently been submitted to Council, which proposes the re-development of the remainder of the site.

It should be noted that prior to and during the course of the assessment of the subject application, Traders in Purple submitted a separate Planning Proposal on behalf of LAHC which sought to introduce 'retail premises' and 'business premises' to the north-eastern portion of the site. The amendment to the LEP aimed to provide a supermarket and several smaller specialty retail shops within the LAHC site (located within stage 2 of the redevelopment). The introduction of commercial uses also changed the building typology and built form layout across the whole site, and therefore the Planning Proposal was accompanied by a revised Urban Design Study.

On 23 September 2023, Fairfield Local Environmental Plan (LEP) 2013 (Amendment No.43) was gazetted. Council is now in the process of updating the Villawood Town Centre 2020. The Updated DCP was recently endorsed by Council at its Outcome Committee meeting dated 6<sup>th</sup> December 2022 with Public Exhibition commencing from 15 December 2022. The subject Application was submitted prior to the gazettal of the Planning Proposal and the amendment to the DCP. During the initial assessment of the application, the proposed development was inconsistent with the built forms envisaged under the original DCP. Given the latest changes to the DCP which sets out the updated vision of the built forms within the Villawood town Centre, the application has been considered against the Draft DCP.

In order to provide the required land size and configuration for the development in accordance with the DCP, a Voluntary Planning Agreement (VPA) has been submitted by LAHC. The VPA involves land acquisition between Council and LAHC and will also result in the construction and dedication of 3,000m<sup>2</sup> of open space public park, and future road connections (at the completion of the overall project) by the developer. The VPA also involves the embellishment of the public park by the developer.

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NSW Land and Housing Corporation and Traders in Purple have submitted a Voluntary Planning Agreement (VPA) – Letters of Offer in accordance with Section 7.4 of the Environmental Planning and Assessment Act (EP&A) 1979. The letters of offer were reported to Council on 11 October 2022. Council is currently in the process of reviewing and publicly exhibiting the draft VPA. It is anticipated that the matter will be reported to Council for finalisation in early 2023.

There have been a number of briefings of the Application to the Regional Panel, with the latest briefing being held on 17 October 2022. During these discussions, the Panel requested that the applicant reconsider the number of social housing units, undertake a meeting in conjunction with Council's Architect to discuss SEPP 65 and ADG matters and address the non-compliances with the Villawood DCP and Masterplan in accordance with the principles established in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472. This particular case deliberates the weight of a planning policy.

In response to the Panel's request, a meeting was held between Council and the Applicant which included Council's Architect. In response to the meeting, the Applicant submitted amended documentation. Council officers have considered the amended application in accordance with SEPP No. 65 – Apartment Design Guide, the Apartment Design Guide, State Environmental Planning Policy No 55—Remediation of Land, Fairfield Local Environmental Plan 2013, State Environmental Planning Policy (Affordable Rental Housing) 2009 and the Draft Villawood Town Centre Development Control Plan 2020. Subsequently, a number of non-compliances and issues were identified as follows;

- Non-compliance with the Draft Villawood DCP 2020 noting that the number of stories exceeds the maximum permitted storeys as identified within the DCP
- Design Excellence has not been achieved as required by Clause 6.12 within Fairfield LEP 2013
- Above ground parking in the form of a 3-storey podium arrangement has not been appropriately sleeved, as required in the Draft DCP.
- Non-compliance with the number of social housing units provided
- Non-compliant building setback
- Pocket Park and Active uses
- Air-conditioning units located within balconies resulting in non-compliance with balcony sizes
- Tree Retention
- Podium planting
- Traffic matters
- Waste matters

It is noted that Council has consistently raised the above concerns and non-compliances during the course of the assessment of the application. It was indicated to the Applicant that these matters were considered fundamental and would need to be suitably resolved in order for the development to be supported.

Fundamentally, the proposal is non-compliant with the built form and massing envisioned in the Draft DCP. The proposal in its current form extends the 10 storey element further south west and consequently results in additional overshadowing to Hilwa Park as well as residential properties adjoining the park to the south. Furthermore, the extent of the 10 storey element fundamentally adds additional bulk and scale to the building when viewed from Hilwa Park and the Pocket Park. Given this, the proposal is inconsistent with the DCP built form and ultimately results in an unacceptable built form and massing outcome for the site. Accordingly, the non-compliance with the additional 2 levels and resultant massing is subsequently unable to be supported in its proposed form.



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In terms of design excellence, Council's Architect has identified a number of outstanding issues in relation to bulk and scale, massing, building presentation, overshadowing to Hilwa Park and usability of corner pocket park. Accordingly, Council's Architect does not consider that the design of the proposal exhibits design excellence as required under Clause 6.12 of FLEP 2013 in its present form and as proposed.

The application in its current arrangement proposes a 3-storey podium with car parking spaces. This arrangement results in design issues such as excessive bulk and scale, elongated corridors, car park façade, extensive distances to lifts and lost opportunities to provide high quality ground floor apartments and position back house areas in inconspicuous areas. In addition, the majority of the car parking area is not sleeved from the public domain and consequently remains inconsistent and non-compliant with the Draft Villawood DCP. The proposed arrangement with respect to the carpark design is not supported.

In relation to the matter of the provision of social housing, Council notes that the site previously contained 111 social housing units which were demolished around 2006. The subject application involves the provision of 112 apartments including 32 social housing units. Council has recently received an Application for Stage 2 which involves the provision of 222 private units and no social housing units. The amount of social housing units provided within the overall site once both stages are completed represents 9.6% of the housing stock. The redeveloped LAHC site will increase the dwelling yield on the site by 223 dwellings, however, will reduce the amount of social housing units by 79.

The proposed quantity of social housing proposed for the entirety of the site does not achieve compliance with the 30:70 social to private tenure mix as required by the NSW Government's Future Directions for Social Housing in NSW (Future Directions) Policy, nor replace the loss of social housing on site. Given the lack of evidence to date that there will be no social impact given current and ongoing loss of social housing within the site, it is considered absolutely essential that a condition be imposed that requires the development provide a 30:70 ratio of social to private housing for stages 1 and 2 in compliance with the NSW Government's Future Directions Policy document.

The application proposes a minor encroachment of the 27m building height standard at the south western end of the building. There is a slight over-run of the parapet to Level 8 to the 27m height level. The parapet has a maximum height of 28.8m. This represents a 1800mm or 6.6% variation. The applicant has submitted a written request for a variation of the standard pursuant to Clause 4.6 of the LEP, which allows the Consent Authority to consider exceptions to development standards in certain circumstances. No concerns are raised regarding the Clause 4.6 written request.

A range of technical reports have been submitted in support of the application including but not limited to Acoustic Report, Cross Ventilation Report, Traffic Report, Waste Management Plan, Preliminary Geotech Report, Detailed Site Investigation and Remediation Action Plan.

In accordance with Council's Community Engagement Strategy 2020, the application was notified for a period of twenty-one (21) days. No submission were received.

The application was referred to Council's Development Engineer, Environmental Management Branch, Building Control Officer, Landscape Officer, Traffic Branch and Waste Branch. Council's Landscape Officer, Traffic Branch and Waste Branch have raised concerns regarding the proposal. The application was also referred to Sydney Trains who provided conditions of consent.

Council's assessment of the amended application has identified fundamental issues, which primarily includes non-compliance with the Draft Villawood DCP 2020 by proposing an additional 2 levels above the maximum number of stories permitted under the Draft DCP, the development does not

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exhibit design excellence as required by Clause 6.12 of the Fairfield LEP 2013, the application comprises of 3-storey podium car parking which is not appropriately sleeved, and the number of social housing dwellings provided does not comply with the requirements set out within the NSW Governments Future Directions for Social Housing in NSW (Future Directions) Policy. Given the fundamental issues with the application, Council is in no position to support the application as proposed and recommends that the application be refused. Notwithstanding, it is considered that the following options identified below would be available to the Panel as part of its deliberation and/or determination of the application as follows;

- I. Provide a further opportunity to the Applicant to amend the Application in order to comply with the Draft Villawood DCP, ensure the development exhibits design excellence, appropriately sleeve the 3-storey podium car parking spaces and provide further social housing units.
- II. Refuse the Application as submitted in accordance with the reasons within Attachment T of this report. This recommendation is considered appropriate given that the development is not yet at a stage that can be supported by Council.
- III. If the Panel forms an alternate view regarding the assessment of the Application, then the application be approved. Should the Panel decide to approve the Application, it is considered appropriate that a Deferred Commencement be issued subject to the VPA presently under consideration being executed with respect to the subject site and in accordance with the draft conditions contained in Attachment U.

## **2. SUBJECT SITE AND SURROUNDING AREA**

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The subject site is legally described as Lot 37 in DP202006, Lot 39 in DP202006, Lot 136 in DP16186, Lot 381 in DP1232437 and Lot 382 in DP1232437, and is known as No. 2 Kamira Court, Villawood.

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**Figure 1:** Aerial view of the site, outlined in red.

The site is contained within the western portion of the Villawood Town Centre.



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**Figure 2:** Villawood Town Centre, outlined in red. Application of the Villawood DCP 2020

The allotment is currently vacant and has a total site area of 16,371m<sup>2</sup>. Stage 1 (the subject of this Development Application) is located towards the southern portion of the entire allotment with frontages to Kamira Avenue to the west, future Stage 2 to the north and Kamira Court to the east. The subject proposal involves the closure of the existing Kamira Court Road through the site and proposes to extend Howatt Street to provide a road frontage and vehicular/ pedestrian access for the development.

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**Figure 3:** The site areas for each stage of the redevelopment of Villawood Town Centre.

### 3. DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed development forms a part of the redevelopment of Villawood Town Centre involving two (2) stages. The subject Application relates to Stage 1 and applies to the southern portion of the allotment. Stage 1 covers an area of 5,413m<sup>2</sup> and involves the construction of an 8-10 storey Mixed Use Development, and comprises of the following:

- 357m<sup>2</sup> for a community facility (information and education facility - library) which includes 3 x community rooms with an ancillary café on the ground floor. Please note this application seeks the fit-out of these premises only, the future use will be subject of a separate development application.
- 112 residential units (32 Social Housing units and 80 private units). 10 of the 80 private units and 23 of the Social Housing Units are dual key apartments.
- 119 parking spaces in a podium arrangement on the ground, first and second floors. No basement car parking is proposed within the subject application.



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- 1000m<sup>2</sup> of proposed park which will be dedicated to Council. The remaining 2000m<sup>2</sup> will be provided within Stage 2.

The social housing units within the development will be owned and managed by the Land and Housing Corporation. Details of the proposed development are as follows:



Proposed Ground Floor Plan



Proposed First Floor



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Proposed Second Floor

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Proposed Third Floor

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Proposed Fourth Floor



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Proposed Fifth to Seventh Floor



## SYDNEY WESTERN CITY PLANNING PANEL



Proposed Eighth Floor

## SYDNEY WESTERN CITY PLANNING PANEL



Proposed Ninth Floor

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Perspective 1



Perspective 2



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Perspective 3



Perspective 4

Proposed Building Elevations



## 4. HISTORY AND BACKGROUND

The subject site is owned by NSW Land and housing Corporation (LAHC). The site was previously used as social housing comprising 111 units. In 2006 the buildings were removed and the site has remained vacant.



*Subject site in the 1990s.*



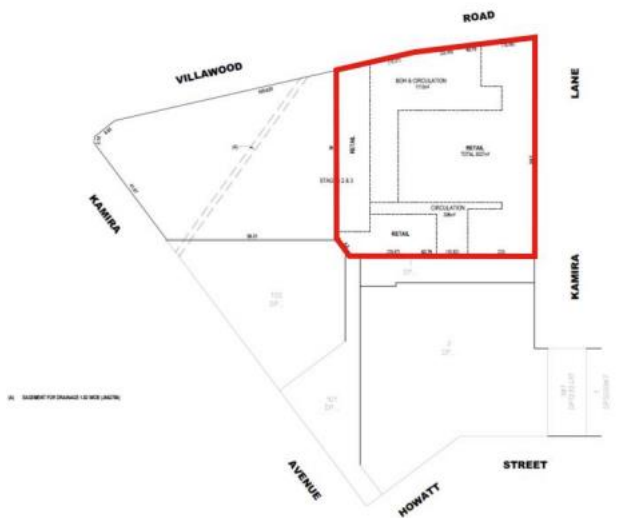
*Subject site in 2022.*

The proposed development will be constructed by Traders in Purple Pty Ltd on behalf of LAHC.

The land is located within the Villawood Town Centre Urban Design Study Area (VUDS) which seeks to revitalise the Villawood Town Centre. The VUDS was adopted by Council in March 2018. The VUDS informed a Planning Proposal and the Villawood Town Centre DCP which revised the built forms and heights in order to renew the town centre. The town centre DCP was adopted by Council on the 28 April 2020 and the planning proposal was gazetted on 5 June 2020 and the DCP.

In recent years the Villawood Town Centre has begun to transform into the vision established under the LEP and DCP as three (3) large scale Mixed Use Developments (ranging from 6 storeys to 12 storeys) have been approved in the town centre. Two (2) at No. 1 Villawood Place and Nos. 882-890 Woodville Road Villawood have been constructed and No. 47 Pedestrian Mall is currently under construction.

Since then, Traders in Purple submitted a separate Planning Proposal on behalf of LAHC that sought to introduce 'retail premises' and 'business premises' to the north-eastern portion of the site. This is seen in Figure 4 below:



**Figure 4: Additional Permitted Uses on the subject site.**

The amendment to the LEP aimed to provide a supermarket and several smaller specialty retail shops within the LAHC site. The introduction of the commercial uses also changed the building typology of the site and therefore the Planning Proposal was accompanied by a revised Urban Design Study, specifically for the LAHC site. The changes included:

- The reconfiguration of building heights across the site. The reconfiguration of the heights are within the existing LEP height of building development standards.
- The reconfiguration of the 3,000sqm neighbourhood park, creating a neighbourhood park that has a much greater street frontage with the park extending down to the Kamira Avenue/Kamira Court Intersection. This will visually connect the new neighbourhood park with Council's Hilwa Park.
- Update pedestrian links throughout the site as a result of the reconfiguration.
- Identify the active street frontages with active retail focus where the supermarket and speciality shops will be located.
- Refocusing the community facility along the east – west pedestrian connection that links the neighbourhood park back to the town centre proper.

The changes to the layout are provided below:

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*Villawood DCP 2020*



*Masterplan within the Amended Urban Design Study*

The Planning Proposal and Amended UDS was subject to a peer review by external consultants (City Plan) who had prepared the original VUDS for Council. They concluded the documentation was preliminary, but they generally supported the amended Urban Design Study. In regards to the active street edges of the development, facing Hilwa Park and the pocket park, the external consultant stated

- In relation to Building B, we encourage Council and the Proponent to closely consider the visual quality of the vehicle access and car parking levels to ensure continuity in the architectural program and a high quality visual response to the sensitive public open space (Hilwa Park) setting of this façade.
- In relation to Building B and its relationship to the proposed pocket park, we encourage the applicant to consider a non-residential frontage to at least the pocket park noting the development of 47-53 Pedestrian Mall opposite the site will facilitate the creation of a small cluster of active uses that would benefit from a reciprocal approach on the subject site. This will also assist in reducing potential for land use conflicts at ground level in this location.

Furthermore, it is noted in the peer review that Council's external consultant was unable to consider the overshadowing of the amended concept (as no overshadow diagrams were prepared at that stage) and therefore it was stated:

As previously discussed in Section 2.3, the reconfiguration of UDS/ DCP building heights in this part of the site should not form grounds for refusal of the proposal, rather the focus should be on whether the reconfigured heights support appropriate levels of solar access to Hilwa Park and that the requirements of SEPP 65/ ADG have been suitably addressed.

On 23 September 2023, Fairfield Local Environmental Plan (LEP) 2013 (Amendment No.43) was gazetted. Council is now in the process of updating the Villawood Town Centre 2020. The Updated DCP was recently endorsed by Council at its Outcome Committee meeting dated 6<sup>th</sup> December 2022 with Public Exhibition commencing from 15 December 2022. The subject Application was submitted prior to the gazettal of the Planning Proposal and the amendment to the DCP. During the initial assessment of the application, the proposed development was inconsistent with the built forms envisaged under the original DCP. Given the latest changes to the DCP which sets out the updated vision of the built forms within the Villawood town Centre, the application has been considered against the Draft DCP.



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It is noted there are minor errors with the Urban Framework Structure Plan and the Awning and Footpath Plan, however, Council's Strategic and Landuse Team have advised that these anomalies will be rectified once the matter is brought back to Council after the exhibition period has concluded and any submissions taken into consideration.

In order to provide the required land size and configuration for the development in accordance with the DCP, a Voluntary Planning Agreement (VPA) has been submitted by LAHC. The VPA involves land acquisition between Council and LAHC and will also result in the construction and dedication of 3,000m<sup>2</sup> of open space public park, and future road connections (at the completion of the overall project) by the developer. The VPA also involves the embellishment of the public park by the developer.

NSW Land and Housing Corporation and Traders in Purple have submitted a Voluntary Planning Agreement (VPA) – Letters of Offer in accordance with Section 7.4 of the Environmental Planning and Assessment Act (EP&A) 1979. The letters of offer were reported to Council on 11 October 2022. Council is currently in the process of reviewing and publicly exhibiting the draft VPA. It is anticipated that the matter will be reported to Council for finalisation in early 2023.

### 5. SYDNEY WESTERN CITY PLANNING PANEL BRIEFING NOTES

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On 19 April 2022, a briefing was held via teleconference between the Sydney Western City Planning Panel and Fairfield City Council regarding the subject development application. The following provides a response to each of the key issues of concern raised by the Panel during the briefing.

1. *There is an associated planning proposal which if adopted will facilitate the permissibility of additional retail and commercial uses in Stages 2 and 3 of the development. While the Panel understands that planning proposal has now been exhibited, it is yet to be presented to Council and may be the subject of further negotiation.*

Since the briefing the Planning Proposal has been adopted which involves changes to the Villawood DCP site layout and additional building heights. These changes were subject of an Urban Design Study (UDS) undertaken by an external consultant (City Plan) in February 2021. At the time of writing this report, a draft Villawood DCP has since been endorsed by Council and is currently on public exhibition. At the completion of the exhibition process the Draft DCP will be referred back to Council for adoption in the first quarter of 2023.

2. *A VPA is also proposed to address a land swap with the Council in relation to an extension of 'Howatt Street' and adjacent open space. That VPA is also unresolved.*

NSW Land and Housing Corporation and Traders in Purple have submitted a Voluntary Planning Agreement (VPA) – Letters of Offer in accordance with Section 7.4 of the Environmental Planning and Assessment Act (EP&A) 1979. The letters of offer were reported to Council on 11 October 2022. Council is currently in the process of publicly exhibiting the draft VPA. It is anticipated that the matter will be reported to Council in the first quarter of 2023.

3. *At the same time the masterplan for the site which underlies the DCP controls is being reassessed to reorganise the building envelopes and park configuration, in particular to relocate the proposed ground floor residential component to allow for essential services which had not been provided for in the masterplan relied upon for the DCP controls.*

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The proposal involves the provision of back of house areas and essential services on the ground floor. This arrangement also results in a lost opportunity for street activation.

*4. A clause 4.6 request has been lodged in relation to height which is associated with the reconfiguration of the building massing across the site.*

A Clause 4.6 written request has been submitted for the parapet on Level 8 at the south western end of the building.

*5. The plans include a library and education facility as well as a 1,000 m2 park and pedestrian link which will be included in the development.*

The provision and embellishment of the park is subject of the VPA which has not been finalised. The use of the library and educational facility will be subject to a separate development application.

*6. The Panel queried whether there was any existing policy which might have a bearing upon the proportion of public housing that should be included, possibly in association with the original approval for the demolition of the removed public housing. The Panel noted that the social housing component now proposed with this application seemed to be less than one third of the overall yield.*

It is noted that the site previously contained 111 social housing units which were demolished around 2006. Stage 1 of the redevelopment of the site will provide a total of 32 social housing units. Concern was raised for the adequacy of social housing units and it was requested that the applicant reconsider the number of social housing units and provide the same amount of social housing units at the very least to ensure that the site continues to provide for the social housing needs of the community. A letter from the NSW LAHC dated 9 November 2022 was submitted stating that development was assessed by LAHC to meet the broader strategic objectives of the social housing portfolio. The applicant has not increased the amount of social housing units in the development.

*7. The Panel questioned whether units 11 and 12 will be able to achieve sufficient amenity having regard to SEPP 65.*

Units 11 and 12 are in the same configuration and located adjacent to essential services including OSD tanks, bin storage room, fire stairs and visitor parking spaces, which is not optimal.

*8. The Panel noted the Council's identified concern about the long corridors at level 2.*

This issue still remains as the proposal still includes the provision of podium parking which results in the creation of long internal corridors.

*9. The development opts for an elevated podium carpark, but presents little detail as to how the design challenges associated with that design choice are to be resolved. The Panel questioned whether inducements such as additional yield should be considered to encourage a basement carpark being adopted due to the inferior public presentation of the building likely to result, and the increase to the perceived bulk of the building.*

Design elements including louvres and screening devices are proposed to conceal the parked vehicles within the podium parking. Notwithstanding, these design changes do not rectify the issue of bulk and scale, additional overshadowing and elongated corridors created by the podium parking arrangement.

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- 10. The library and café are appropriate ground floor uses which should be emphasised to provide quality public spaces. One aspect of the development application that might be examined is whether the public library/community facility should receive a design treatment to make it a point of interest that might break up the building massing.*

The façade has been amended and further articulated to create an emphasis on the ground floor community uses.

- 11. The particular wording of the savings provision in the Housing SEPP needs to be considered carefully.*

State Environmental Planning Policy (SEPP) (Affordable Rental Housing) 2009 (ARH SEPP 2009) was repealed on 26 November 2021 and has been replaced by SEPP (Housing) 2021. As the subject application was lodged on the NSW Planning Portal on 21 October 2021, prior to the repeal, SEPP ARH 2009, continues to apply to the application pursuant to Schedule 7 Savings and Transitional Provisions, which states in Sub-Clause (2) that the former provisions of a repealed instrument continue to apply to a development application made, but not yet determined, on or before the commencement date.

- 12. Overall, the Panel was concerned that this DA may have been lodged at too early a stage where significant planning and resolution of issues with the Council to resolve the scheme is still required. The Panel requests from the Council a projected timeline for approval of this DA within the target assessment time for regionally significant proposals of 12 months from lodgement. If a determination timeline consistent with that objective cannot be achieved, the Panel questions whether the DA ought to be withdrawn and relodged.*

The applicant has not withdrawn the application and requested that the application be determined in December 2022. At the time of writing the report, the VPA has not been finalised and the Villawood DCP is on public exhibition but has not yet been formally amended to reflect the Amended UDS.

In response to Council's request for additional information letter and the matters raised by the Panel, the applicant submitted additional documentation to address the concerns.

Further to the Briefing in April, on 17 October 2022, a briefing occurred between the Sydney Western City Planning Panel and Fairfield City Council regarding the development application. The following provides a response to each of the key issues of concern raised by the Panel during the briefing.

- 1. The panel requests, as a matter of urgency, that the Applicant's design team and Council's consultant architect meet with a view to reducing the outstanding urban design issues.*

In response to the Panel's request, a meeting was arranged with the Applicant's design team and Council's Architect. During the meeting, the applicant presented 3 different design schemes to Council showing varying modulation and articulation methods. The option chosen by the applicant is generally supported by Council's architect with the exception of the treatment on the north eastern corner. Council's architect recommends that a lighter coloured and less busy façade be provided for this corner element to provide a lighter appearance while recognising the verticality and separation of the corner upper balcony block.



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SUBMITTED DA

OPTION 1

OPTION 2

OPTION 3



SUBMITTED DA

OPTION 1

OPTION 2

OPTION 3



Please note that the applicant is proceeding with the option as shown below:



Council's architect prefers the corner façade as shown below:



2. *The panel asks the applicant to consider increasing the number of social housing units in Stage 1 or to commit to additional social housing units in Stage 2 to align with the 30:70 ratio highlighted in the Future Directions for Social Housing in NSW policy document published by the Minister for Social Housing. The Panel was particularly mindful in that regard of the important reminder from the Applicant's representatives of the serious impacts of housing unaffordability in Sydney.*

The Applicant has not increased the number of social housing units within the subject development, which does not achieve compliance with the 30:70 social to private tenure mix set out in the Future Directions for Social Housing in NSW (Future Directions). Accordingly, it is considered appropriate that if the Panel was to approve the Application, a condition be imposed that the 30:70 social to private housing is applied across the entire LAHC site.

3. *The planning assessment should address inconsistencies with the current site specific DCP, and if it is argued that the DCP should not be applied in whole or in part, a clear rationale as to why that is so having regard to recognised principals (see *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472 for example which is recognised by the published planning principle of the Land & Environment Court concerning "Weight to be given to Development Control Plans").*

Council has recently endorsed the Draft Villawood Development Control Plan, which has been updated to include changes under the recent Planning Proposal and Amended UDS. The Draft DCP is currently on public exhibition and once completed will be referred back to Council to be adopted subject to the consideration to any submissions.

It is therefore considered that the proposed development should be considered against the built layout and form contained within the Draft Villawood Town Centre DCP 2020, given the principles established in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472. It is noted that the proposed development is not strictly in accordance with the DCP given the extent of the 10 storey element has been increased further than the DCP. This matter is further discussed in the assessment section below.

4. *Council's outstanding waste and landscaping referral responses are to be finalised by 28 October 2022. Any issues raised in those responses are to be conveyed to the Applicant as*

## SYDNEY WESTERN CITY PLANNING PANEL

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*soon as possible, so that a final response to all outstanding matters can be submitted to Council by mid-November.*

A letter was issued to the applicant on 25 October 2022 requesting further information regarding waste storage and landscaping. An amended landscape plan has not been submitted addressing the landscaping concerns.

### 6. INTERNAL REFERRALS

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#### Asset Management

The development application was referred to Council's Asset Management Branch for assessment. It has been advised that the development application is satisfactory and, therefore, can be supported subject to recommended conditions of consent.

#### Development Engineering

The development application was referred to Council's Development Engineering Branch for assessment. It has been advised that the development application is satisfactory and, therefore, can be supported subject to recommended conditions of consent.

#### Development Engineering

The development application was referred to Council's Development Engineering Branch for assessment. It has been advised that the development application is satisfactory and, therefore, can be supported subject to recommended conditions of consent.

#### Building Control Branch

The development application was referred to Council's Building Control Branch for assessment. It has been advised that the development application is satisfactory and, therefore, can be supported subject to recommended conditions of consent.

#### Environmental Management Branch

The development application was referred to Council's Environmental Management Branch for assessment. It has been advised that the development application is satisfactory and, therefore, can be supported subject to recommended conditions of consent.

#### Traffic Engineering Branch

The development application was referred to Council's Traffic Engineering Branch for assessment. Council Traffic engineer has raised concerns regarding the proposed development.

#### Waste Management Branch

The development application was referred to Council's Waste Management Branch for assessment. The Branch has raised concerns that the proposed ground floor vehicular access arrangement is inappropriate and obstructs waste truck access.



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### Tree Preservation Officer

The development application was referred to Council's Tree Preservation Officer for assessment. On the 25 October 2022, the Applicant was advised that the Tree preservation Officer had the following concerns regarding the Application:

- *An Arboricultural Report has been submitted that supports the retention of 4 Trees. The report indicated that 3 of those trees will have major encroachments into their Tree Protection Zones. It appears that the proposed development intends to raise the soil levels surrounding these trees in order to install a paved boardwalk and footpath. The Arboricultural Report indicates the proposed soil level variations in the order of 300 to 400 millimetres. It is considered that the raising of the soil levels to this extent may result in a short lifespan of these trees. In particular, Tree 62 (Narrow Leafed Peppermint (Eucalyptus crebra)) is highly intolerant of soil level variations and root plate disturbance. Accordingly, it is considered that the retention of these four trees is not viable and therefore the applicant shall consider their removal and compensation planting in a suitable location on site.*
- *The submitted Landscape Plans indicate that the proposed landscaping on the podium communal open spaces on levels 3 and 8 involves soil mounded to a height of 1 metre. The landscape plans do not show the actual depth of soil which, as a result of the subsurface treatments, would be considerably shallower than what the finished levels indicates. Diagram '01: Typical planting on podium' clearly shows multiple, sub-surface structures which reduce the depth of actual soil contained within the proposed planting areas. As tree roots typically grow within the top 1 metre of soil, the lack of soil depth may prevent the development of an adequate root plate. To mitigate this issue, any soil which is proposed to be planted with trees must have a minimum soil depth of 1 metre, excluding of any sub-surface structures. Accordingly, the landscape plans shall be updated to reflect this.*

The Applicant has not provided a response nor amended the Landscape Plan to address the concerns raised by Council's Tree preservation Officer.

## 7. EXTERNAL REFERRALS

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### NSW Sydney Trains

The development application was referred to NSW Sydney trains for comment in accordance with Clause 85 of the State Environmental Planning Policy (Infrastructure) 2007. Sydney Trains have responded and raised no objection to the proposal subject to compliance with a number of conditions.

### Bankstown Airport

The Application was referred to Bankstown airport for comment. At the time of writing this report, no response has been received from the agency.

## 8. STATUTORY REQUIREMENTS

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### **State Environmental Planning Policy No. 55 (Remediation of Land) (SEPP 55)**

State Environmental Planning Policy (Resilience and Hazards) 2021 has replaced SEPP 55, now repealed, and commenced on 1 March 2022. As the development was lodged in October 2021, the development application is required to consider SEPP 55.

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SEPP 55 requires the consent authority to consider whether land is contaminated and if it requires remediation prior to granting consent to any development. The consent authority must be satisfied that any necessary remediation has occurred before the use of the land is permitted.

A Detailed Site Investigation (DSI) prepared by Douglas Partners dated March 2020 was submitted in support of the application. The DSI concluded that the presence of building rubble and the limited detection of Asbestos Containing Material (ACM) is possible that additional undetected ACM may be present infill across the site. There is low to medium likelihood of significant contamination risks to human health or the environment associated with the site. Accordingly, a remedial action plan (RAP) was required.

A Remediation Action Plan, prepared by Douglas Partners, Project Number 86819.02, dated July 2022 was submitted to Council for assessment. The RAP concluded that the site can be made suitable for the proposed residential/commercial development subject to recommendations including the retainment or relocation of contaminated soils beneath areas of proposed hardstand or the excavation and off-site disposal of soils which do not meet the remediation acceptance criteria. The RAP also recommends the implementation of an asbestos management plan. Accordingly, it is considered that the site can be made suitable for the proposed development subject to conditions of consent.

Council's Environmental Management Branch have reviewed the submitted documentation and raise no further concerns, subject to conditions of consent.

### **SEPP (Vegetation in Non-Rural Areas) 2017**

The proposal is considered to be in accordance with the provisions of SEPP (Vegetation in Non-Rural Areas) 2017. The development involves the removal of 12 trees. 10 trees require removal due to the development and a further 2 to be removed due to low significance and limited useful life expectancy.

Council's Tree Preservation Officer (TPO) reviewed the proposal and raised concerns regarding the submitted documentation. Concerns raised included the soil depth on the podium communal open space and retention of 4 trees which are likely to be impacted by the development have not been addressed. The applicant has not provided amended landscape plans to address these concerns.

### **SEPP (Building Sustainability Index: BASIX) 2004**

BASIX Certificates in support of the application were submitted and are in accordance with the provisions of the SEPP BASIX 2004. The certificate outlines the developer's commitments relating to water, energy and thermal comfort.

### **SEPP (Infrastructure) 2007**

The development application was referred to NSW Sydney trains for comment in accordance with Clause 85 of the State Environmental Planning Policy (Infrastructure) 2007. Sydney Trains have responded and raised no objection to the proposal subject to compliance with a number of conditions. It is not considered that the the application will have or be impacted by the nearby rail corridor.

The development site is not located on a classified road and as a result it is not necessary to consider the provisions of Clause 102, and 104 of the SEPP. Furthermore, the Application does not meet the thresholds identified as 'traffic generating development'.

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### Fairfield Local Environmental Plan 2013 (FLEP2013)

The subject site is zoned R4 High Residential under the FLEP 2013.

The proposed development can be characterised as “residential flat building” and “information and education facility” which are both permitted with development consent in the zone.

The FLEP 2013 defines a residential flat building as follows:

**residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

The FLEP 2013 defines an information and education facility as follows:

**information and education facility** means a building or place used for providing information or education to visitors, and the exhibition or display of items, and includes an art gallery, museum, library, visitor information centre and the like.

It is noted that the subject application seeks the construction and fit out of the information and education facility which contains an ancillary café. The use of the premises will be subject of a separate development application.

The objectives of the R4 High Density Residential zone are as follows:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maximise opportunities for increased development on all land by encouraging site amalgamations.

It is considered that the proposal is consistent with the zone objectives.

Other relevant matters to be considered under the Fairfield LEP 2013 for the proposed development are summarised below.

Development Standard	Compliance
<p><b>Clause 4.3 - Height of Building</b></p> <p>Control Height of Building =</p> <p>The site is subject to a split height control with the eastern portion within the maximum 39m height limit and the western portion in the 27m height limit.</p>	<p>The application proposes a minor encroachment of the 27m building height standard at the south western end of the building. There is a slight over-run of the parapet to Level 8 to the 27m height level. The parapet has a maximum height of 28.8m. This represents a 1800mm or 6.6% variation. The applicant has submitted a written request for variation of the standard pursuant to Clause 4.6 of the LEP, which allows the Consent Authority to consider exceptions to development standards in certain circumstances. This is discussed further below.</p>



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**4.4 Floor space ratio**

The maximum permitted floor space ratio (FSR) at the subject site is Max: 2.5:1

The proposed FSR = 2.0:1 and therefore complies

**Clause 6.2 – Earthworks**

Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:

- (a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,
- (b) the effect of the development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,

Yes

A Preliminary Geotech Report prepared by Douglas Partners dated November 2008 was submitted in support of the application. Council's Development Engineers assessed the application and raised no concerns.

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<p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	
<p><b>Clause 6.3 – Flood Planning</b></p> <p>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</p> <p>(a) is compatible with the flood hazard of the land, and          (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and          (c) incorporates appropriate measures to manage risk to life from flood, and          (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and          (e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p>	<p>The subject site is located within a part low and part medium flood risk precinct due to overland flooding.</p> <p>Council's Development Engineer has assessed the application and raise no concerns, subject to conditions of consent.</p>
<p><b>Clause 6.5 – Terrestrial Biodiversity</b></p> <p>Before determining a development application for development on land to which this clause applies, the consent authority must consider:</p> <p>(a) whether the development is likely to have:          (i) any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and          (ii) any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and          (iii) any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and          (iv) any adverse impact on the habitat elements providing connectivity on the land, and          (b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>N/A</p> <p>There are no vegetation communities on site that are of biodiversity value.</p>
<p><b>Clause 6.9 – Essential Services</b></p> <p>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that</p>	<p>Yes</p> <p>Should the Panel wish to approve the application, a condition of consent can be</p>

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<p>adequate arrangements have been made to make them available when required:</p> <ul style="list-style-type: none"> <li>(a) the supply of water,</li> <li>(b) the supply of electricity,</li> <li>(c) the disposal and management of sewage,</li> <li>(d) stormwater drainage or on-site conservation,</li> <li>(e) suitable vehicular access.</li> </ul>	<p>imposed to ensure satisfactorily arrangement or amplification of services, if required, are provided prior to the issue of a Construction certificate.</p>
<p><b>6.12 Design excellence</b></p> <p>(1) The objective of this clause is to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Fairfield.</p> <p>(2) This clause applies to development involving the construction of a new building or external alterations to an existing building on land in the following zones—</p> <ul style="list-style-type: none"> <li>(a) Zone R4 High Density Residential,</li> </ul> <p>(3) Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.</p> <p>(4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—</p> <ul style="list-style-type: none"> <li>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</li> <li>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</li> <li>(c) whether the development detrimentally impacts on view corridors,</li> <li>(d) how the development addresses the following matters— <ul style="list-style-type: none"> <li>(i) the suitability of the land for development,</li> <li>(ii) existing and proposed uses and use mix,</li> <li>(iii) heritage issues and streetscape constraints,</li> <li>(iv) the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</li> <li>(v) bulk, massing and modulation of buildings,</li> <li>(vi) street frontage heights,</li> <li>(vii) environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</li> <li>(viii) the achievement of the principles of ecologically sustainable development,</li> </ul> </li> </ul>	<p>The applicant submitted an Urban Design Report (UDR) prepared by DKO, which illustrates the impacts of the development upon the surrounding residential developments and public park including overshadowing, visual impacts, privacy and pedestrian connections.</p> <p>The application has been referred to Council's architect to undertake an urban design and SEPP 65 review of the proposal. A number of outstanding issues have been identified by the review of the amended application in relation to bulk and scale, building presentation, overshadowing to Hilwa Park and usability of corner pocket park.</p> <p>With regard to the above, it is not considered that the design of the proposed development exhibits design excellence as required under Clause 6.12 of FLEP 2013.</p>



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(ix) pedestrian, cycle, vehicular and service access, circulation and requirements, (x) the impact on, and any proposed improvements to, the public domain, (xi) the interface with the public domain, (xii) the quality and integration of landscape design.	
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### **Variation to Clause 4.3 Height of Building Standard**

As outlined in the table above, the site is subject to a split height control under Clause 4.3 of the Fairfield LEP 2013, with the eastern portion within the maximum 39m height limit and the western portion in the 27m height limit.

The application proposes a minor encroachment of the 27m building height standard at the south western end of the building. There is a slight over-run of the parapet to Level 8 to the 27m height level. The parapet has a maximum height of 28.8m. This represents a 1800mm or 6.6% variation. The applicant has submitted a written request for variation of the standard pursuant to Clause 4.6 of the LEP, which allows the Consent Authority to consider exceptions to development standards in certain circumstances.

Clause 4.6(3) and Clause 4.6(4) of the LEP prescribes that:

*(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*(4) Development consent must not be granted for development that contravenes a development standard unless:*

- (a) the consent authority is satisfied that:*
  - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
  - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The applicant has provided the following reasons for justifying the variation to the LEPs maximum 20m height standard:

- *The variation is a result of the split level height control. This variation provides a beneficial planning outcome as it allows the delivery of high quality new housing to provide for the needs of the community.*
- *The proposal seeks to set the tone and scale for future high density residential development within the Residential Precinct associated with the Villawood Town Centre DCP 2020, noting that the minor encroachment of the height control will have no impact on the future built form character of the town centre.*
- *The departure does not impact on the achievement of suitable land use intensity (demonstrated by compliance with FSR).*

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- *The proposed development, however, is compatible with the existing character of the locality, being one of divergent building heights, bulks, and scales. The development, being surrounded by generous landscaped areas, is also consistent with the character of landscaping in the local area.*
- *The development proposal is consistent with the intent of the maximum height control under the Fairfield LEP and will provide an attractive 10 storey building that addresses the site's frontage.*
- *The additional height does not generate any additional amenity impacts regarding overshadowing, visual privacy, acoustic privacy, or view loss. The non-compliant portions of the buildings do not increase the shadows cast by the building. The proposed development would not have an unacceptable impact on the amenity of adjoining properties in terms of overlooking or overshadowing.*
- *Regarding visual impact, the area of the development which contravenes the development standard is largely imperceptible at street level. Therefore, the proposal minimises visual impact as viewed from the public domain and surrounds.*
- *Considering that the site is subject to a split-level height control, the encroach to the 28m height control is of a minor nature and negligible when viewed from the street level.*
- *The large site resides within its own island and as such the minor encroachment to the height control will not incur shadowing impacts to adjoining properties nor will it result in privacy impact to adjoining properties.*
- *The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site as per the Villawood Town Centre DCP 2020 by providing an attractive residential flat building that provides good address to the street frontage and complying with key planning controls applying to the proposal.*
- *The proposal does not result in a significant loss of amenity to neighbouring properties in terms of acoustic impacts because of the location of the minor height variation.*
- *A development of a compliant height would have a similar visual appearance when viewed from the public domain and adjoining properties as shown on the elevations.*
- *The proposal, and specifically the additional building height, will not impact on views enjoyed from the public domain or adjoining residential properties.*
- *The subject property is not proximate to heritage items, heritage conservation areas and areas of scenic or visual importance. This objective is not relevant to the proposed development.*
- *The subject property is not on the interface with an area of lesser intensity, with surrounding and nearby properties being similarly zoned and having similar restrictions on height and FSR. The subject height has not been nominated to provide a transition on the subject property to an area of lesser intensity.*

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### Proposed Height Exceedance

After reviewing the applicant's written request for a Clause 4.6 Variation to the Height of Building, it is considered that the Applicant's written request for variation of the standard has met the tests set out in Clause 4.6 of the LEP.

### SEPP No. 65 – Design Quality of Residential Apartment Development

SEPP No. 65 – Design Quality of Residential Apartment Development (current version for 12 August 2022 to date) and the accompanying Apartment Design Guide (ADG) applies to the proposed Shop Top Housing. A detailed assessment against the criteria of the ADG is provided in Attachment R. SEPP 65 sets out 9 design quality principles that needs to be taken into consideration. An assessment of these principles is provided below:



ADG design quality principle	Response
<b>1. Context</b>	<p>The subject site forms part of the Villawood Town Centre. The Villawood DCP 2020 was formed to guide the development of the Town Centre. Since the introduction of the DCP, a number of large scale Mixed Use Development has been developed within the Town Centre.</p> <p>The development involves a variation to the Draft Villawood DCP through an additional 2 storeys in the south western portion of the building.</p> <p>A review of previous development applications for sites within the Villawood Town Centre including No. 47 Pedestrian Mall and No. 1 Villawood Place revealed that these developments were compliant with the development controls and objectives within the Villawood Town Centre DCP and results in an optimum planning outcome.</p> <p>Assessment of the application revealed significant issues in relation to bulk and scale, overshadowing to the south and inappropriate car parking arrangement resulting in a reduced building functionality.</p>
<b>2. Built form and scale</b>	<p>The proposal involves variations to the site configuration and building heights set out in the draft Villawood DCP. The additional 2 storeys within the southern portion of the site results in excessive bulk and scale and massing. The additional height also creates additional overshadowing to the southern developments including Hilwa Park and residential properties. It is considered that the built form and scale is inappropriate in this circumstance.</p>
<b>3. Density</b>	<p>The FLEP 2013 allows a maximum FSR of 2.5:1. The proposal seeks an FSR of 2.0:1. There is the potential to provide additional residential units on site as there is a surplus of floor space available. The proposed development exceeds the built form envisaged in the latest DCP. It appears that if a basement car park was provided further GFA could be provided on the site.</p>
<b>4. Sustainability, resource, energy &amp; water efficiency</b>	<p>An updated BASIX Certificate is required for the amended application, which has not been submitted by the applicant.</p>
<b>5. Landscape</b>	<p>Council's Tree Preservation Officer assessed the application and raised concern for the soil depth on the podium communal open space and retention of 4 trees which are likely to be impacted by the development. The applicant has not provided amended landscape plans to address these concerns.</p>
<b>6. Amenity</b>	<p>The additional overshadowing created by the additional 2 storeys in the southern portion creates additional overshadowing to neighbours.</p>
<b>7. Safety &amp; security</b>	<p>The proposal is considered to be satisfactory in terms of future residential occupants overlooking public and communal spaces while maintaining internal privacy.</p>
<b>8. Social dimensions/housing affordability</b>	<p>The site previously contained 111 social housing units which were demolished around 2006. The subject application involves the provision of 112 apartments including 32 social housing units. This</p>

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	<p>represents a 28.6% of social housing apartments within the housing stock of Stage 1. Council has recently received the development application for Stage 2 which involves the provision of 222 private units and no social housing units. Accordingly, the completed development will comprise of 32 social housing units and 302 private units. The amount of social housing units provided within the overall site once both stages are completed represents 9.6% of the housing stock. The proposed quantity of social housing does not achieve compliance with the 30:70 social to private tenure mix set out in the Future Directions for Social Housing in NSW (Future Directions). It is therefore considered appropriate that if the Panel was to approve the Application, a condition be imposed the a 30:70 social to private housing is applied across the entire LAHC site.</p>
<b>9. Aesthetics</b>	<p>It is considered that the proposed development currently presents as one large building mass which creates additional overshadowing impacts upon the southern properties. It is considered that the provision of a series of buildings rather than one larger building is appropriate at this site, to reduce the bulk and scale of the development.</p> <p>Council's architect considers that the architectural treatment on the north eastern corner could be further improved to provide a better presentation to the public domain. Council's architect recommends that a lighter coloured and less busy façade be provided for this corner element to provide a lighter appearance while recognizing the verticality and separation of the corner upper balcony block.</p>

Council's Architect has undertaken a SEPP 65 and Apartment Design Guidelines assessment of the subject Application. The Consultant Architect has advised that it is considered that the proposal does not meet the requirements of SEPP 65 and the ADGs.

### State Environmental Planning Policy (Affordable Rental Housing) 2009

The subject application was lodged on 21 October 2021 and therefore the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009 apply to the development.

<b>14 Standards that cannot be used to refuse consent</b>	<b>Control</b>	<b>Proposed</b>	<b>Compliance</b>
(b) site area	if the site area on which it is proposed to carry out the development is at least 450 square metres,	Stage 1 Site Area: 5,413m <sup>2</sup>	Yes
(c) landscaped area	30% of site area	1,000m <sup>2</sup> on GF 1173m <sup>2</sup> on level 3	Yes

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		222m2 on level 8  A total of 2,395m2 is provided. This is 44.2% of the site area.	
(d) deep soil zones	<p>if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed—</p> <p>(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area (the deep soil zone), and</p> <p>(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and</p> <p>(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,</p>	A total of 545m2 or 10% of the site area is dedicated for deep soil zones.	No but complies with ADG requirements for RFB developments.
(a) parking	(i) in the case of a development application made by a social housing provider for development on land in an accessible	0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2	The development provides sufficient car parking for the social housing units as required by the ARH SEPP.



### SYDNEY WESTERN CITY PLANNING PANEL

	area—at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms	bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms  15.6 spaces required. Total = 16 spaces		
(b) dwelling size	if each dwelling has a gross floor area of at least—  (i) 35 square metres in the case of a bedsitter or studio, or  (ii) 50 square metres in the case of a dwelling having 1 bedroom, or  (iii) 70 square metres in the case of a dwelling having 2 bedrooms, or  (iv) 95 square metres in the case of a dwelling having 3 more bedrooms.	Complies with ADGs requirements for RFBs	<b>Yes</b>	

### Villawood Town Centre Development Control Plan (DCP) 2020

A detailed assessment against the relevant controls of Draft Villawood Town Centre DCP 2020 is provided in Attachment S. As discussed above, Council has endorsed the Draft Villawood Development Control Plan 2020, which has been updated to include changes under the recent Planning Proposal and Amended UDS. The Draft DCP is currently on public exhibition and once completed will then be forwarded to Council to be adopted subject to the consideration of any submissions. It is therefore considered appropriate that the proposal be considered against the Draft DCP. In the attached compliance table the highlighted controls refer to the additional/amended controls contained within the DCP.

## TOWN PLANNING ASSESSMENT

In addition to the relevant provisions and requirements previously mentioned and discussed within this report, including those contained within the State Environmental Planning Policies, Fairfield Local Environmental Plan 2013 and Villawood Development Control Plan 2020, the key planning consideration with the application are identified below.

### Non-compliance with the Draft Villawood DCP 2020

The Draft DCP is currently on public exhibition and once completed will then be referred back to Council to be adopted subject to the consideration to any submissions. It is noted that the proposed development does not comply with the DCP. Particular reference is that the proposed development is not in accordance Clause 4.2.2 and the maximum building heights provided in the below figure:



The proposal seeks to extend the 10 storey section of the development further south west as indicated in the following diagram.

## SYDNEY WESTERN CITY PLANNING PANEL



It is noted that in the peer review of the amended UVS (which informed the Draft DCP), building envelopes and massing should focus on the heights supporting appropriate levels of solar access to Hilwa Park. The proposal in its current form extends the 10 storey element further south west and therefore would result in additional solar impacts to Hilwa Park and the residential development to the south. Furthermore, the extent of the 10 storey element fundamentally adds additional bulk and scale to the building when viewed from Hilwa Park and the Pocket Park. Given this, the proposal is inconsistent with the DCP built form and ultimately results in an unacceptable built form and massing outcome for the site. Accordingly, the non-compliance with the additional 2 levels and resultant massing is subsequently unable to be supported in its proposed form.

It is noted that the four (4) social dual key units (801 – 802, 803 – 804, 901 – 902 and 903 – 904) are located outside of the built form envisaged in the Draft DCP as indicated below:



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In a previous revision of the proposed development, these 4 dual keys units did not exist on Levels 9 and 10 and there were 4 dual key social housing units provided along the Northern elevation on Level 1. Under the current scheme, these 4 units are located outside the built forms envisage in the Draft DCP and 16 car spaces (which are not sleeved) are provided along the northern elevation facing the internal pedestrian link and Stage 2. The Applicant shall investigate if these 4 dwellings should be reallocated over the 16 car parking spaces subject to achieving the required solar access requirements and car parking controls. This would assist in reducing the extend of the DCP variation and therefore overshadowing and massing impacts to Hilwa park, while also sleeving the car parking spaces on the first level and providing further communal open space to the residents.

## Design Excellence

It is noted that Council and its Architect attended a meeting with the applicant and the Architect as requested by the Regional Panel in order for the SEPP 65 and ADG matters raised on Council's letter dated 17 October 202 could be discussed. It is noted that the Applicant and the architect presented multiple options to Council and the Consultant Architect. In response to this meeting the Applicant has submitted amended plans which have been considered by Council's Architect. Comments from the consultant architect are as follows:

*The applicant has responded to some of the issues raised within the discussions at the Panel and subsequently discussed at the workshop held at Council offices. The status of the key issues is as noted below.*

### *The overshadowing of Hilwa park and neighbours*

*No effective adjustment has been made to the volume/massing of the main building to reduce the overshadowing to the park. The overshadowing of Hilwa Park and impact upon neighbouring Villawood Pedestrian Mall development therefore remain. The applicant has not provided a detail assessment of the impact upon Nos. 47-53 Pedestrian Mall for solar impact and compliance on the current approved DA, which is in construction. This issue remains as in previous reviews.*

### *Building façade*

*The amended form, detail and colour of materials is accepted with the exception for clarification of material EF-11. The colour of the brick/mortar appears too similar to EF-06 especially when viewed on shaded elevations such as perspective 4 view across the carpark. Can the applicant investigate lighter brick, mortar and concrete verticals as before to improve visual separation of upper level and podium. We need to avoid the colours looking too similar in shaded facades.*

### *Podium Car Park*

*The reliance on above ground carpark has resulted in site planning shortcomings within the podium. The resulting shortcomings which principally are excessive corridor lengths, distance to lifts and the lobby positions, car park facade, impacts have been considerably ameliorated with detail design. The key exception to this is the excessive corridor lengths even though now, relieved by wider lobby and natural light which is an acceptable improvement. However given the greenfield site and scale of this development it is considered unfortunate to not provide an improved corridor length condition with potentially additional lift or underground carparking to resolve many of the issues. As stated previously the new heights and massing of the building form have a negative solar impact on Hilwa Park and neighbours is in excess of the DCP. The amended facade has missed the opportunity to rectify this outcome.*

*In addition, there is a in principle acceptance of solid to void and materials massing of the podium however more detail on the actual metal screen detail is requested. Ideally it is of some depth 100 to 150 mm folded perforated or louvre not plate/ perforated flat sheet. The drawings are not clear as the perspectives indicate possible louvre of folded element but sections show flush flat sheet. In addition a baffle needs to be designed and included on ceiling(or other effective area) to exclude lighting and reduce impact on neighbours and public domain when viewed from exterior.*

Signage

*Inclusion of artwork/lighting/signage on upper building facade at entry to laneway-while some signage appears at lower level walkway it does not incorporate artwork or is it at a height which would be effective as focal point when viewed across the carpark This was discussed in some detail at the workshop however does not seem to have been included within the updated plans.*

Pocket park/landscape triangle

*The applicant has provided clarification of the active edge and awning issues around this corner and that the space has undergone change due to traffic. The outcome does require more detail to be a useful public space. The documents refer to landscape drawings which were not with this package and it must be assumed that a similar level of detail as shown on P21 of the original landscape architecture public domain design is to be included.*

Council's Architect has advised that several issues have been addressed or resolved in the amended documentation, however, it is considered that the proposal in its current form does not meet the requirements of Clause 6.12 Design Excellence given the above.

**Above Ground Car Parking**

In the Draft Villawood Town Centre Development Control Plan, Clause 4.8 is as follows:

- 1. Car parking is to be provided in an underground basement, or where appropriate, sleeved with active uses to main street frontages.*
- 2. Sleeved car parking at ground level or above ground level must be architecturally designed and meet design excellence controls outlined within Fairfield LEP 2013.*

The application in its current form involves the provision of car parking in a podium arrangement, which is considered an inappropriate arrangement. This arrangement results in design issues such as excessive bulk and scale, elongated corridors, car park façade, extensive distances to lifts and lost opportunities to provide high quality ground floor apartments and position back house areas in inconspicuous areas. If a basement car parking was provided (and it would appear even 1 level of basement car parking) then further GFA could be provided. In the redevelopment of Villawood Town Centre, there has been three (3) recent large Mixed Use Developments that have been approved all with basement car parking and no above ground car parking. No 1 Villawood that is adjacent to the site to the immediate east has been constructed with 4 levels of basement car parking and it is within the building envelopes envisaged in the DCP.

Furthermore to the above, the above ground car parking is not considered to be sleeved as indicated in the following

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Level 1 which will have car parking face the Internal East/West pedestrian link and the Stage 2 development as well as face Howatt Street and Kamira Court.



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Level 2 which has car parking spaces presented to Howatt Street and Kamira Court.

### Social Housing Apartments

The subject site contained 111 social housing units prior to them being demolished in 2006. The subject application involves the provision of 112 apartments including 32 social housing units. This represents a 28.6% of social housing apartments within the housing stock of Stage 1.

Council has recently received the development application for Stage 2 which involves the provision of 222 private units and no social housing units. Accordingly, the completed development will comprise of 32 social housing units and 302 private units. The amount of social housing units provided within the overall site once both stages are completed represents 9.6% of the housing stock. The redeveloped LAHC site will increase the dwelling yield on the site by 223 dwellings, however, will reduce the amount of social housing units by 79.

The proposed quantity of social housing does not achieve compliance with the 30:70 social to private tenure mix set out in the Future Directions for Social Housing in NSW (Future Directions). The applicant has responded with correspondence from LAHC that indicates they have assessed the development to meet the 'broader strategic objectives of the social housing portfolio'. However, no evidence has been submitted to demonstrating there will be no social impact. Accordingly, it is considered appropriate that if the Panel was to approve the Application, it is considered absolutely essential that a condition be imposed that requires the development provide a 30:70 ratio of social to private housing.

### Setback to Future Development (Stage 2)

It is noted that the northern setback on Level 4 does not comply with the setback requirements in the ADG. The proposed setback is 15.2m, the ADG requires 18m. Given that this is a greenfield development, Council considers that the non-compliance is not appropriate and compliance is necessary to protect the privacy of future residents, instead of a design solution.

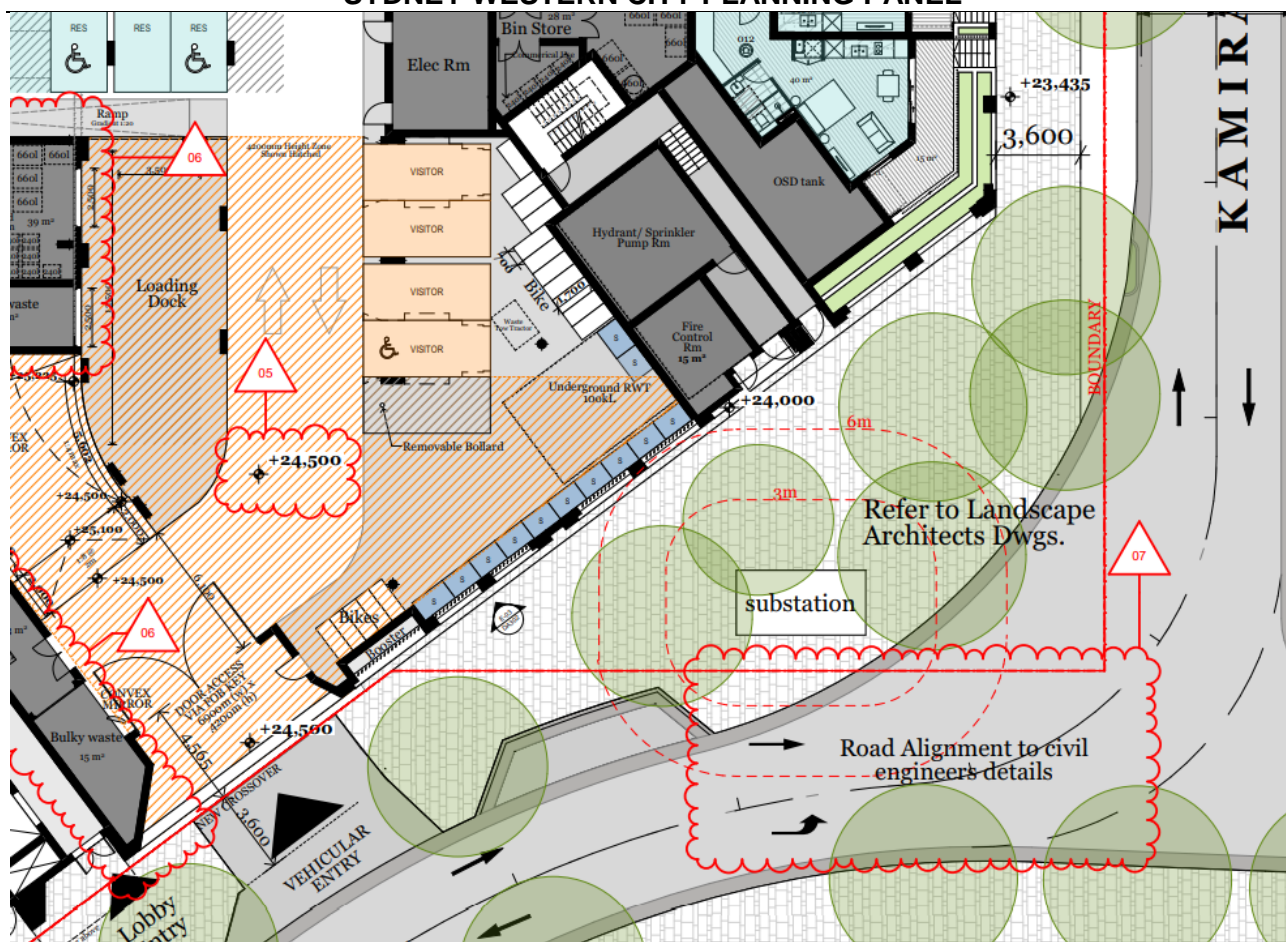
### **Pocket Park and Active Uses**

The Amended Urban Design Study refer to the creation of a pocket park at the corner of Kamira Avenue and Howett Street. As outlined above, the peer review that was undertaken supported the introduction of this and recommended that non residential uses address the park given the commercial uses that would face this park from the adjoining approved Mixed Use development at No. 47 Pedestrian Mall. In support of this recommendation the Draft DCP acknowledges this and therefore seeks an active street frontage to this park. This is depicted in the figure below:

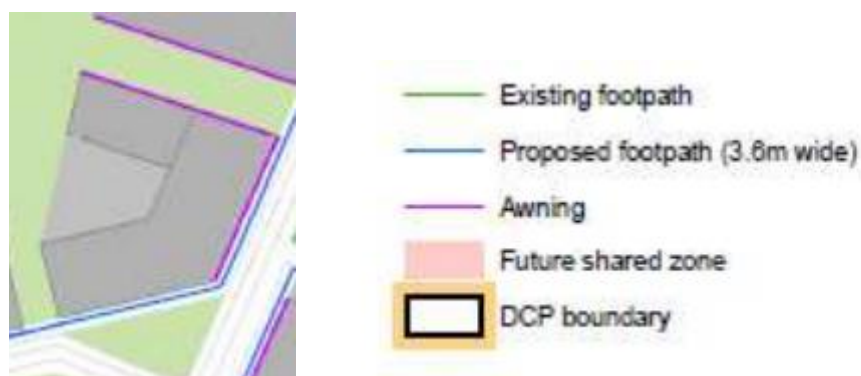


The proposal has been designed with limited active uses facing the Pocket park with most of the Back of House and services addressing it. Furthermore, the proposal seeks to construct a substation within the park instead of within the built form which is inconsistent with all the other recent Mixed use Developments within Villawood Town Centre.

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Given the lack of an active edge to the pocket park, the proposal is inconsistent with the Awning Plan indicated in the Draft DCP which



The Applicant has not submitted revised landscape plans addressing the latest changes to the development. Given the above, the proposal in its current form is considered to be inappropriate and removes the possibility of an improved active edge. Furthermore, the back of house areas within the ground floor that adjoins this park prevents the opportunity to create a relationship between the internal uses and this public open space area.



### Air conditioning Units on Balconies

The documentation does not clearly demonstrate that the dimensions and areas of the private open spaces (balconies) is compliant with the ADG development standards as a result of the exclusion of the area used to store the air conditioning units. It is not considered that an air-conditioning unit can be considered as an overall balcony furniture, and provide a useful addition to the balcony space. It appears that the air-conditioning unit is an obstruction to usable private open space.

### Tree Retention

The development proposes the retention of 4 trees (identified as Trees 62, 63, 64 and 65) in the Architectural Plans. The submitted Arboricultural Report indicates that Trees 62, 63 and 64 will all have major encroachments into their Tree Protection Zones (TPZ's).

It appears that the proposed development intends to raise the soil levels surrounding these trees in order to install a paved boardwalk and footpath. The Arboricultural Report indicates the proposed soil level variations in the order of 300 to 400 millimetres. The raising of the soil levels to this extent may result in a short lifespan of these trees. In particular, Tree 62 (Narrow Leafed Peppermint (*Eucalyptus crebra*) is highly intolerant of soil level variations and root plate disturbance. Accordingly, it is considered that the retention of these four trees is not viable. Amended landscape plans have not been submitted to address this issue.

### Podium Planting

The current Landscape Plans indicate that the proposed landscaping on the podium communal open spaces on levels 3 and 8 involves soil mounded to a height of 1 metre. The landscape plans do not show the actual depth of soil which, as a result of the sub-surface treatments, would be considerably shallower than what the finished levels indicates. Concern is raised for the longevity of the vegetation planted in this area.

### Traffic Engineering

The amended application was referred to Council's Traffic Section who raised the following concerns:

- Swept path diagram (L. Turning Path Analysis - Howatt St & Kamira Crt – diagrams 3 and 4) indicates that when the 11m long heavy rigid vehicle (largest vehicle) is turning into and out of the site via Howatt Street, it would conflict with other vehicles manoeuvring within the site where two-way traffic movements are permitted;
- Swept path diagram (L. Turning Path Analysis - Howatt St & Kamira Crt – diagram 1) indicates that when the 11m long waste truck is turning left from Kamira Avenue into Howatt Street, it would encroach into the path of oncoming traffic as Kamira Avenue is designed to accommodate two-way traffic flow;
- Swept path diagram (L. Turning Path Analysis - Howatt St & Kamira Crt – diagram 2) indicates that the 11m long truck is required to reverse into the driveway of the site and this is likely to impact traffic flow on Howatt Street;
- Swept path diagram (L. Turning Path Analysis - Howatt St & Kamira Crt – diagram 4) indicates that the 11m truck is required to reverse out of the site which can cause impact on traffic flow on Howatt Street;



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- Swept path diagram (L. Turning Path Analysis - Howatt St & Kamira Crt – diagrams 3 and 4) indicates that the 11m truck is required to reverse into the driveway of the site impacting traffic flow on Howatt Street;
- Swept path diagram (L. Turning Path Analysis - Howatt St & Kamira Crt – diagram 7), indicates that 11m truck turning left from Villawood Road into Kamira Court is required to encroach onto the centre of the road (Kamira Court).
- Based on the applicant's anticipated traffic generation rates, it is anticipated that there would be weekday AM and PM peak traffic volume of 280 vehicle trips (109 in and 171 out) and 439 vehicle trips (251 in and 188 out). An operational traffic management plan (OTMP) has not been submitted to demonstrate how peak traffic generation will be managed within the site without creating internal manoeuvring issues or without adversely impacting traffic flows on the external adjoining road network.
- The applicant has not undertaken investigation works for a potential future **upgrade** of the nearby intersections to maintain safety and efficiency during the post development stage.

*The applicant has not addressed the Road Safety Audit Report findings regarding the lack of pedestrian crossing facilities and the potential and foreseeable hazards for pedestrians. The applicant has not provided sufficient information to address the following:*

- *The applicant has not demonstrated how pedestrian connectivity can be improved in the area. According to Table 4.4 – Treatment approach of Guide to Road Safety Part 6: Road Safety Audit, medium risk item No. 12 (pedestrian desire line in Koonoona Avenue) should be corrected or the risk significantly reduced.*
- *The high risk item No. 14 (shared path in Howatt Street) which relates to sight distance issues and the potential conflicts between cyclists and pedestrians have not been adequately addressed. According to Guide to Road Safety Part 6: Road Safety Audit, high risk should be corrected or the risk significantly reduced.*
- *The proposed pedestrian (zebra) crossing location does not comply with the requirements of AS 1742.10.*
- *The location of the pedestrian (zebra) crossing is unsuitable as the sight distance between motorists/motorists and motorists/pedestrians is limited at the intersection.*
- *Should the pedestrian crossing be installed on a public road, it needs to comply with the numerical warrant requirements of Transport for NSW prior to the approval by the Fairfield Traffic Committee. It appears that the location of the pedestrian crossing will impact service vehicles and vehicles turning at the intersection of Howatt Street and Kamira Avenue.*
- *The high risk item No. 18 (Turning into oncoming traffic lanes) has not been satisfactorily addressed. The road widths shall comply with the requirements of relevant Australian Standards and Guidelines as well as satisfying the requirement of swept paths. As mentioned in the findings of the Road Safety Audit report, there are turn paths provided that cross into oncoming travel lanes, particularly at intersections and where a turning vehicle would not have sufficient sight to incoming vehicles to ensure they can safely cross into oncoming travel lanes or where a turning vehicle may not be able to hold on the through road to allow an oncoming vehicle to clear the intersection. There is a risk that a turning vehicle may impact oncoming vehicles, roadside infrastructure or pedestrians.*
- *There is a risk that a turning vehicle may suddenly stop in the through lane to wait for oncoming vehicles resulting in rear end collisions.*

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### Waste Engineering

The proposed ground floor vehicular access arrangement is inappropriate and obstructs waste truck access. The updated ground floor plan indicates a secure access door which opens inwards and is provided with fob access. This arrangement is unsuitable as the inward opening door design will obstruct traffic movement, particularly Council's waste service trucks as the location and size of the doors will conflict with the truck's turning circle access.

### Environmental Planning and Assessment Act 1979 – Section 4.15 Evaluation

The proposed development has been assessed and considered having regard to the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979. Significant issues have been identified that warrant the application being refused on planning grounds. The following is a brief assessment of the proposal with regard to Section 4.15(1).

#### The provisions of any Environmental Planning Instruments (EP& A Act s4.15 (1)(a)(i))

An assessment of the proposal against the following Environmental Planning Instruments identified as being of relevance to the proposal has been undertaken:

- State Environmental Planning Policy No. 55 – Remediation of Land
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development
- SEPP (Vegetation in Non-Rural Areas) 2017
- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Infrastructure) 2007.
- SEPP (Building Sustainability Index: BASIX) 2004
- Fairfield Local Environmental Plan 2013 (FLEP 2013).

#### The provisions of any draft Environmental Planning Instruments (EP& A Act s4.15 (1)(a)(ii))

Not applicable – there is currently no draft environmental planning instrument of relevance to the subject site or proposal.

#### The provisions of any Development Control Plans (EP& A Act s4.15 (1)(a)(iii))

The Villawood Town Centre Development Control Plan 2020 applies to the subject site and was adopted by Council on 28 April 2020. The DCP came into force on 5 June 2020 and implements the vision for the site. The Council is now in the process of updating the Villawood Town Centre 2020. The Updated DCP was endorsed by Council at its Outcomes Committee meeting dated 6 December 2022 and Public Exhibition has commenced from 15 December 2022. The subject proposal seeks variations to Draft Villawood Town Centre Development Control Plan 2020 as the proposed development exceeds the maximum number of storeys by 2 at the south western corner. This results in additional overshadowing than what a DCP compliant development would create. Based on the information provided it is considered that the degree of variation is significant and results in unacceptable bulk and scale and amenity issues.

#### Any planning agreement that has been entered into under part 7.4, or any draft planning agreement that a developer has offered to enter into under part 7.4, (EP&A Act s4.15(1)(a)(iiia))

In order to provide the required land size and configuration for the development, the developer has entered into a VPA involving land acquisition between Council and Land and Housing Corporation.

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Part of the VPA will also result in the construction and dedication of 3,000m<sup>2</sup> of open space public park and future road connections (at the completion of the overall project) by the developer. The VPA also involves the embellishment of the public park by the developer.

NSW Land and Housing Corporation and Traders in Purple have submitted a Voluntary Planning Agreement (VPA) – Letter of Offer in accordance with Section 7.4 of the Environmental Planning and Assessment Act (EP&A) 1979. The letter of offer was reported to Council on 11 October 2022. Council is currently in the process of reviewing and publicly exhibiting the draft VPA. It is anticipated that the matter will be reported to Council for finalisation in early 2023.

### The provisions of the Regulations (EP&A Act s4.15 (1)(a)(iv))

There are no matters prescribed by the Regulations that apply to the subject development.

### The Likely Environmental, Social or Economic Impacts (EP&A Act s4.15 (1)(b))

#### **Social Impacts**

Council notes that the site previously contained 111 social housing units which were demolished around 2006. The subject application involves the provision of 112 apartments including 32 social housing units. Council has recently received an Application for Stage 2 which involves the provision of 222 private units and no social housing units. The amount of social housing units provided within the overall site once both stages are completed represents 9.6% of the housing stock. The redeveloped LAHC site will increase the dwelling yield on the site by 223 dwellings, however, will reduce the amount of social housing units by 79.

The proposed quantity of social housing proposed for the entirety of the site does not achieve compliance with the 30:70 social to private tenure mix as required by the NSW Government's Future Directions for Social Housing in NSW (Future Directions) Policy, nor replace the loss of social housing on site. Given the lack of evidence to date that there will be no social impact given current and ongoing loss of social housing within the site, it is considered absolutely essential that a condition be imposed that requires the development provide a 30:70 ratio of social to private housing for stages 1 and 2 in compliance with the NSW Government's Future Directions Policy document.

#### **Environmental Impacts**

The development involves the provision of podium parking on the ground, first and second floors which is not considered to be a suitable arrangement for the type of development proposed and results in other urban design issues such as bulk and scale, elongated internal corridors and loss of opportunity for street activation on the ground floor. This arrangement also results in amenity impacts including additional overshadowing upon Hilwa Park and provision of back of house areas and essential services on the ground floor adjacent to residential units.

### The suitability of the site for the development (EP&A Act s4.15 (1)(c))

The site is considered suitable for the proposed development.

### Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))

Advertised (newspaper) ☐

Mail ☒

In accordance with Council's Community Engagement Strategy 2020, the application was notified for a period of twenty-one (21) days. No submission were received.

The public interest (EP& A Act s4.15(1)(e))

Having regard to the assessment the proposed development, the development in its current form is not considered to be in the public interest.

## **1. CONCLUSION**

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There have been a number of briefings of the Application to the Regional Panel, with the latest briefing being held on 17 October 2022. During these discussions, the Panel requested that the applicant reconsider the number of social housing units, undertake a meeting in conjunction with Council's Architect to discuss SEPP 65 and ADG matters and address the non-compliances with the Villawood DCP and Masterplan in accordance with the principles established in *Stockland Development Pty Ltd v Manly Council* [2004] NSWLEC 472. This particular case deliberates the weight of a planning policy.

In response to the Panel's request, a meeting was held between Council and the Applicant which included Council's Architect. In response to the meeting, the Applicant submitted amended documentation. Council officers have considered the amended application in accordance with SEPP No. 65 – Apartment Design Guide, the Apartment Design Guide, State Environmental Planning Policy No 55—Remediation of Land, Fairfield Local Environmental Plan 2013, State Environmental Planning Policy (Affordable Rental Housing) 2009 and the Draft Villawood Town Centre Development Control Plan 2020. Subsequently, a number of non-compliances and issues were identified as follows;

- Non-compliance with the Draft Villawood DCP 2020 noting that the number of stories exceeds the maximum permitted stories as identified within the DCP
- Design Excellence has not been achieved as required by Clause 6.12 within Fairfield LEP 2013
- Above ground parking in the form of a 3-storey podium arrangement has not been appropriately sleeved, as required in the Draft DCP.
- Non-compliance with the number of social housing units provided
- Non-compliant building setback
- Pocket Park and Active uses
- Air-conditioning units located within balconies resulting in non-compliance with balcony sizes
- Tree Retention
- Podium planting
- Traffic matters
- Waste matters

It is noted that Council has consistently raised the above concerns and non-compliances during the course of the assessment of the application. It was indicated to the Applicant that these matters were considered fundamental and would need to be suitably resolved in order for the development to be supported.

Fundamentally, the proposal is non-compliant with the built form and massing envisioned in the Draft DCP. The proposal in its current form extends the 10 storey element further south west and consequently results in additional overshadowing to Hilwa Park as well as residential properties adjoining the park to the south. Furthermore, the extent of the 10 storey element fundamentally adds additional bulk and scale to the building when viewed from Hilwa Park and the Pocket Park. Given this, the proposal is inconsistent with the DCP built form and ultimately results in an unacceptable



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built form and massing outcome for the site. Accordingly, the non-compliance with the additional 2 levels and resultant massing is subsequently unable to be supported in its proposed form.

In terms of design excellence, Council's Architect has identified a number of outstanding issues in relation to bulk and scale, massing, building presentation, overshadowing to Hilwa Park and usability of corner pocket park. Accordingly, Council's Architect does not consider that the design of the proposal exhibits design excellence as required under Clause 6.12 of FLEP 2013 in its present form and as proposed.

The application in its current arrangement proposes a 3-storey podium with car parking spaces. This arrangement results in design issues such as excessive bulk and scale, elongated corridors, car park façade, extensive distances to lifts and lost opportunities to provide high quality ground floor apartments and position back house areas in inconspicuous areas. In addition, the majority of the car parking area is not sleeved from the public domain and consequently remains inconsistent and non-compliant with the Draft Villawood DCP. The proposed arrangement with respect to the carpark design is not supported.

In relation to the matter of the provision of social housing, Council notes that the site previously contained 111 social housing units which were demolished around 2006. The subject application involves the provision of 112 apartments including 32 social housing units. Council has recently received an Application for Stage 2 which involves the provision of 222 private units and no social housing units. The amount of social housing units provided within the overall site once both stages are completed represents 9.6% of the housing stock. The redeveloped LAHC site will increase the dwelling yield on the site by 223 dwellings, however, will reduce the amount of social housing units by 79.

The proposed quantity of social housing proposed for the entirety of the site does not achieve compliance with the 30:70 social to private tenure mix as required by the NSW Government's Future Directions for Social Housing in NSW (Future Directions) Policy, nor replace the loss of social housing on site. Given the lack of evidence to date that there will be no social impact given current and ongoing loss of social housing within the site, it is considered absolutely essential that a condition be imposed that requires the development provide a 30:70 ratio of social to private housing for stages 1 and 2 in compliance with the NSW Government's Future Directions Policy document.

### 13. RECOMMENDATION

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Council's assessment of the amended application has identified fundamental issues, which primarily includes non-compliance with the Draft Villawood DCP 2020 by proposing an additional 2 levels above the maximum number of stories permitted under the Draft DCP, the development does not exhibit design excellence as required by Clause 6.12 of the Fairfield LEP 2013, the application comprises of 3-storey podium car parking which is not appropriately sleeved, and the number of social housing dwellings provided does not comply with the requirements set out within the NSW Governments Future Directions for Social Housing in NSW (Future Directions) Policy. Given the fundamental issues with the application, Council is in no position to support the application as proposed and recommends that the application be refused. Notwithstanding, it is considered that the following options identified below would be available to the Panel as part of its deliberation and/or determination of the application as follows;

- I. Provide a further opportunity to the Applicant to amend the Application in order to comply with the Draft Villawood DCP, ensure the development exhibits design excellence, appropriately sleeve the 3-storey podium car parking spaces and provide further social housing units.

## **SYDNEY WESTERN CITY PLANNING PANEL**

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- II. Refuse the Application as submitted in accordance with the reasons within Attachment T of this report. This recommendation is considered appropriate given that the development is not yet at a stage that can be supported by Council.
  
- III. If the Panel forms an alternate view regarding the assessment of the Application, then the application be approved. Should the Panel decide to approve the Application, it is considered appropriate that a Deferred Commencement be issued subject to the VPA presently under consideration being executed with respect to the subject site and in accordance with the draft conditions contained in Attachment U.