

11 November 2022

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Coordinator Development Planning

Fairfield City Council

(Attention : Miss G Pham – gpham@fairfieldcity.nsw.gov.au)

RE: DA 384.1/2021 | 2 KAMIRA AVENUE VILLAWOOD

Reference is made to Council's letter dated 17 October 2022 in relation to the above application. This letter provides a response to the matters raised in turn within the letter, which is supported by the attached documentation. We also make opening comments in regard to the determination of the application.

1. DETERMINATION OF THE APPLICATION

We seek the finalisation of the assessment of this application, and reporting to the Planning Panel in December 2022 for determination.

This application has been lodged as a Crown DA with the property owner being NSW Land and Housing Corporation. It is therefore noted that if a consent authority fails to determine the Crown development application within 70 days (cl 95 of the Environmental Planning and Assessment Regulation 2021) the applicant (or the consent authority) may refer the application to the applicable Sydney or regional planning panel.

The application is of critical importance to LAHC and the applicant, any further delays are considered unreasonable in the context of the supply of housing and the positive contribution that this project will make to Place Making of the Villawood Centre. Therefore, the applicant wishes to exercise this right under the EP&A Regulation 2021 and seek a determination by either Council or the Planning Panel in December 2022.

2. INCONSISTENCIES WITH THE VILLAWOOD DCP 2020 AND MASTERPLAN

A response to this matter has already been provided to Council in June 2022. Council's statement that it is "*unable to consider the Application as currently submitted*" due to it being inconsistent with the DCP and UDR that accompanies the Planning Proposal is not legally correct. We have previously clarified this as follows:

Statutory Planning Controls

The Environmental Planning and Assessment Act 1979, establishes the Local Environmental Plan (LEP) as the statutory, leading and legally binding document. The provisions within Development Control Plan (DCP) are established to provide guidance on:

- a) giving effect to the aims of any environmental planning instrument that applies to the development,*
- b) facilitating development that is permissible under any such instrument, and*
- c) achieving the objectives of land zones under any such instrument.*

The RFI letter from Council assumes the DCP is the only method and configuration for carrying out development of the subject site. However, this is not the case as clearly articulated within Section 3.42 of the Environmental Planning and Assessment Act (the Act).

*Section 3.42 of the Act means that a DCP does not have significant weight in the consideration of a development application and that it **must** be interpreted with flexibility. The overarching requirement is to consider the aims and objectives contained within the LEP. The DCP is there to facilitate development.*

The proposed configuration of development does vary from the DCP however as a higher level of amenity and a superior urban design outcome is achieved, the Council assessment should consider the merit of the proposal as is legally required through the relevant planning provisions within the Environmental Planning and Assessment Act 1979 and more specifically within Section 3.42.

It is also critical to note the proposal has been the subject of an independent review by Gyde (City Plan) in February 2021. Council's strategic planners engaged Gyde to conduct an independent urban design review which resulted in the following key conclusions:

- Based on our review of the preliminary scheme provided, we commend the Proponent for their thoughtful approach to the planning and design of this of this important site. It is clear that the Proponent's aim is to maximise the potential for this site to deliver a range of public benefits including affordable housing, new open space high level of connectivity, and places for the community to interact.*

- *The proposal will establish new inclusive residential, employment and enjoyment opportunities. While the scheme proposes some variations of the intended outcome set out in the UDS, it is clear that this has been undertaken with a sound understanding and informed interpretation of the of the underlying principles of the plan.*

A development application in the format presented in this submission maintains the intentions of the masterplan and DCP therefore the opportunity exists for Council to consider the merit of the proposal. There is no statutory requirement to amend the DCP to suit the proposal and there is no legal impediment to council assessing the merits of the current proposal. Critically the proposal demonstrably achieves the aims and objectives of the LEP that are relevant to this proposal.

This part of the letter references merit matters, which are detailed further in the letter and responded to further below.

For clarity, there is no substantive planning foundation to abandon the assessment of the application merely because it is inconsistent with the DCP. Section 3.42 of the Act (nor any other part of the Act) does not confer upon the Council a restriction that the only development that can be assessed and determined is that which is consistent with the DCP.

3. URBAN DESIGN AND DESIGN EXCELLENCE

We thank Council for the feedback in relation to Design Excellence and in particular the productive meeting held on 24 October 2022, as suggested by the Planning Panel. Attached to this letter we provide a comprehensive response to the matters raised in your letter and discussed at the meeting.

The elevation facing Howatt Street has been amended to breakdown the scale through the use of built form adjustments and materiality. We have responded in particular to the helpful commentary provided at the meeting on 24 October 2022. The response includes an analysis of various options and a final position has been selected, with commentary and reasons articulated.

The amendments introduce further improvements to the design of the building, commensurate with the design excellence requirements of the LEP, which the proposal satisfies.

4. SOCIAL HOUSING APARTMENTS

We provide a further letter from the NSW Land and Housing Corporation (LAHC), to that provided in June 2022, that continues to clarify that LAHC has undertaken an

evaluation of the proposed social housing dwellings and is satisfied the proportion of social housing dwellings is within the maximum ratio of 30:70 social to private tenure mix set out in Future Direction for Social Housing in NSW. As the lead expert on the provision of Social Housing; that includes a practical and working understanding of the needs across the broader region and not the site alone, we accept LAHC's position that the proposal meets the social housing needs, and do not accept that the Council can or has substantiated its view that the proposed quantity is insufficient.

5. RESIDENTIAL PARKING SPACES

The parking rates of the Fairfield DCP are to be set aside as the higher order planning instrument (SEPP) takes precedence. The Housing SEPP establishes that the parking rates are to be applied across all of the development, once affordable housing is applied to a proportion of the development. Having regard to the higher order planning instrument, and in particular, the location of the site adjacent the Villawood town centre and train station, the parking proposed is both statutorily appropriate and suitable to the circumstances.


Parking rates have been provided for the 112 units (stratified on title) and also for the 145 units (counting all dual-key units as one unit). The 145 units is merely for information purposes to Council and demonstrate compliance in this alternative view of unit yield. The scheme is presented as 112 units on a strata plan and therefore the residential parking is allocated as such. Further information on provided parking spaces is included within the DA traffic report.

6. ABOVE GROUND PARKING

Above Ground Parking is an appropriate response to the improved urban design approach to the site, that intentionally contributes to the place making of Villawood. Above ground parking also has immediate long term ESD benefits and future use opportunities.

The above ground parking is an appropriate "outcome" in the circumstances, noting that –

- This application intentionally contributes to place making of Villawood village by introducing a human scale form at street edges, with recessed tower above. As a result, the built form results in podiums of 3-4 storeys
- The outcome of the provision of podiums is that the podiums, while being of a human scale at the edges and contribute to place making, also become grand spaces below refined towers. These spaces are appropriate for the provision of car parking. There is no opportunity to place residential apartments in these wide and deep spaces, as the



amenity would be impossible to provide. Commercial floor plates are not appropriate for Villawood village.

There are strong ESD reasons to support above ground parking within podiums as:

- There is a reduction in mechanical ventilation requirements from that of below ground parking; and
- The above ground parking spaces provide opportunity for some time in the future these spaces to be retro fitted for alternative uses such as recreation, storage, etc. This would arise when the projected and hoped reduction in vehicle ownership in the Sydney metro comes to fruition.

7. ACTIVE USES

The attached Urban Design Report prepared by DKO illustrates and articulates the active uses integral to the scheme. The meeting held with Councils urban design expert has given rise to improvements to the scheme relative to this matter also.

8. SETBACK TO FUTURE DEVELOPMENT

The attached Urban Design Report prepared by DKO illustrates and articulates the setback and separation relationships, including the incorporation of design elements to protect and enhance amenity.


9. UNIT AREA AND DIMENSIONS

The attached Urban Design Report prepared by DKO contains clarifications and amendments to address the concerns raised by the Council.

10. BUILDING HEIGHT

The extent of the proposed building height beyond the maximum height plane relates only to non habitable spaces. The overshadow impact of these features is inconsequential and a Clause 4.6 Report has been submitted for Council's consideration in the assessment of this application. This matter has been previously responded to and Councils own consultants (City Plan) have provided advice previously to the Council as follows –

The building heights are generally consistent with the underlying principles and intent of the UDS. If it can be demonstrated that design excellence has been achieved pursuant to Cl 6.12 of the FLEP 2013, and the proposal achieves a suitable level of compliance with the ADG requirements, then the reconfiguration of heights in relation to the Heights Map under the DCP should not be used as grounds for refusal. (emphasis added)



We reiterate that nothing statutorily prevents the Council from approving something that differs from the DCP and we remind Councils assessment officers that the background to the lodgement of this application included positive discussion with the Council about the height of the proposal differing from the DCP, in order to deliver a better urban design outcome than that set out in the DCP.

11. USABILITY OF POCKET PARK

The attached Urban Design Report prepared by DKO illustrates and articulates the urban nature and usability of the pocket park. The design is responsive to the site and surrounds, and must be understood also in the context of the large proximate improved green space. The pocket park plays a different role, of which the design is cognisant of, and leads to a usable and useful addition of open space to the town centre.

12. ENTRANCE TO LIBRARY

We acknowledge and thank Councils urban design expert for the working session held on 24 October 2022 in relation to the entrance to the library. The attached Urban Design Report prepared by DKO responds to this, consistent with the conversation held. Further development of the entry and this space will be provided in a subsequent development application for the use of the space. However, the future opportunities are demonstrated through the human scale pedestrian link and the proposed building form and features at this location.

13. AIR CONDITIONING UNITS ON BALCONIES

The attached Urban Design Report prepared by DKO illustrates and articulates the design of the air condition units, which are to become an integrated element of the balcony design. The units are located so not to be visually obtrusive, designed to be a part of the overall balcony furniture, and provide a useful addition to the balcony space.

14. NATURAL VENTILATION AND PRIVACY

The attached Urban Design Report prepared by DKO illustrates and articulates justification of the scheme to address the concerns of Council, inclusive of independent expert advice in relation to acoustics.

15. TRAFFIC ENGINEERING MATTERS

Many of the matters raised in Council's RFI letter dated 17 October 2022 were either addressed in the subsequent RFI response lodged by the applicant in July 2022 or were already agreed by Council and Council's independent consultant (Stantec) during



the finalisation of the retail Planning Proposal matters in early 2022 and summarised in a Stantec report dated 7 April 2022.

It is noted that after the 17 October panel briefing, Council noted they wish to consider a '*further*' reassessment of the traffic matters and introduce an independent traffic consultant to review this application. This is considered impractical at this stage of the assessment process and was not clarified by Council in writing as of the date of this letter. In any case applicant has further clarified the items in the attached Urban Design Report prepared by DKO.

Further, the additional building-specific items raised in Council's letter have been updated in forthcoming traffic/waste reports and architectural plans submitted in support of this application. Given the traffic outcomes have been addressed across numerous submissions, it is considered that sufficient detail is provided for Council to form conditions of consent and the proposal may be determined.

CONCLUSION

Having regard to the above discussion we advise that the DA documentation, incorporating all updates, is being finalised for submission in the coming week.

In this regard and affording the knowledge of the statutory timeframes which are outlined in clause 95 of the Environmental Planning and Assessment Regulation 2021, we request that the Council work towards finalising its assessment report and proposed conditions of consent for the December planning panel meeting.

Regards

Adam Byrnes
Think Planners Pty Ltd