

**BRIEFING DETAILS**

<b>BRIEFING DATE / TIME</b>	Monday, 9 September 2024, 10:00am to 11:00am Site inspection undertaken on 25 September 2023
<b>LOCATION</b>	MS teams

**BRIEFING MATTER(S)**

**PPSSWC-337 – Fairfield – DA 167.1/2023 - 84 Broomfield Street, Cabramatta** - Demolition of existing buildings and staged construction of a mixed-use development up to 19 storeys comprising basement carparking over which will be a new market square, three buildings containing ground level retail, first level commercial GFA including a tavern, childcare centre for a maximum of 80 children, gymnasium, medical centre and restaurant as well and 358 apartments above. The DA also seeks consent for the public domain improvement and subdivision (by boundary adjustment) to incorporate a small section of the existing cul-de-sac head at the end of the public lane.

**PANEL MEMBERS**

<b>IN ATTENDANCE</b>	Justin Doyle (Chair), David Kitto, Louise Camenzuli
<b>APOLOGIES</b>	NIL
<b>DECLARATIONS OF INTEREST</b>	<ul style="list-style-type: none"><li>Kevin Lam and Hugo Morvillo declared a conflict of interest as they voted on the VPA associated with this site.</li><li>Councils' other representatives also voted on this site and cannot participate.</li></ul>

**OTHER ATTENDEES**

<b>COUNCIL ASSESSMENT STAFF</b>	Liam Hawke, Sunnee Cullen
<b>APPLICANT</b>	Stephen Castagnet, Jim Castagnet, Peter Lawrence, Michael Simone, Anthony Parisi, Anton Reisch
<b>PLANNING PANELS SECRETARIAT</b>	Renah Givney, Kim Holt

**KEY ISSUES DISCUSSED**

- The Panel was briefed by the Panel as to progress with the assessment of the DA.
- After considering the update provided as to progress with Council's assessment key issues which require attention include:

**Owners consent**

- An issue of owners consent is said to arise because a portion of the development described in the DA is planned to be located over a section of cul-de-sac presently owned by Council. The consent of an owner of land to which a DA relates must be provided when a DA is made, but the Court has accepted that the statutory requirement for power to approve the DA may be rectified prior to the granting of

consent. The Applicant has through GLN Planning referred the Council to the Court of Appeal's decision in *Sydney City Council v Ipoh Pty Ltd (2006) 149 LGERA 329; 2006 NSWCA 300*.

2. Without deciding any matter, the Panel notes that the Court of Appeal in that case found that the Land & Environment Court had power under s 39 of the Land & Environment Court Act to supply the necessary owners consent as arising from the powers and functions of the Council. While noting the observations of Justice Hodgson in particular as to the purpose of the requirement for owners consent. The Applicant should be alerted to the fact that the powers bestowed on the Land & Environment Court under that section will not be available to the Panel, and the issue of owners consent will need to be resolved.

#### **Clause 7.3(5A) of Fairfield LEP**

3. The Panel understands that the Applicant and the Council remain in disagreement over cl 7.3(5A) of Fairfield LEP and the Minimum Site Area Town Centre Precinct Map (MSA Map) forming part of that LEP.
4. The Panel has made no determination as to the interpretation of the clause but notes that if the clause imposes a development standard (which on the Panel's preliminary reading it appears to do) then it would seem that it is open to the Applicant to make a request under clause 4.6 of the LEP advancing grounds as to why development consent should be granted for development even though the development would contravene that development standard, having regard to the matters raised by that clause. The Panel would need to review such a request if made to determine whether it is to be supported.

#### **Site separation**

5. The Panel noted that a submission had been received from one lot owner within an adjacent strata plan raising a concern over the potential for site isolation caused by the proposal excluding that strata plan from the development.
6. There would be undoubted merit in the area of that strata plan being integrated into a consolidated DA. If that is not possible, then the DA should be responsive to the potential for that site to be developed in future.
7. The Planning Principle of how issues surrounding site isolation identified in the decision of Commissioner Tuor in *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* will need to be addressed. The owners of the isolated site should be referred to that decision and informed of the date of the determination meeting.

#### **Civil engineering**

8. The Council advised that there remained issues outstanding surrounding civil engineering for the project particularly as to how Council's policy for waste collection could be complied with. The Council noted that the Application relied upon collection by a private operator, but Council advised that it still saw it as necessary that the DA design allow for an MRV to safely enter and leave the site to access the waste collection point.

#### **Public meeting required**

9. Council indicated that an assessment report could be prepared by 21 October 2024 allowing for a public meeting to be scheduled (subject to Secretariat availability) on 4 November 2024.
10. A public meeting would be required because of the number of objectors, rather than determination by circulation of papers under the Department's policy.
11. To enable the Council report to digest the respective positions of the Council and the Applicant, the Applicant should advise the Council in writing by Friday 11 October 2024 its position in relation to:
  - Clause 7.3(5A) of Fairfield LEP
  - The site amalgamation/isolation issue (including any relevant correspondence with the adjoining owners and any valuation material relied upon);

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- The owner's consent issue,

## PREVIOUS KEY ISSUES DISCUSSED – Update Briefing 26 February 2024

- **DA status:** Following the site inspection last year, Council issued a detailed RFI in December re issues arising from assessment. The Applicant has responded to this RFI, predominantly on 9 February this year. Council is presently re-assessing the application in view of the additional information provided. The DA has also been re-referred to technical staff, along with Sydney Trains and TfNSW. The application has also been re-notified. The Applicant considers it has responded to the bulk of issues raised.
- **Legal issues:** Council's LEP was amended late last year to insert a black line on the zoning map for the site, which Council says was inadvertently omitted by DPHI and the Department has accepted it made an error. The site is located in Area "E". A legal letter regarding this change was provided to the Council by Applicant's solicitor on 30 January 2024. The Applicant's position is that the omission of the line was not in error and, that even if it was, its addition does not have the effect that the Council is contending regard the height outcome on the southern part of the site, which as a consequence would be less than 2700sqm. I.e. it is Council's position that the line effectively splits the site in two. The site is compliant on the northern part, but the southern part would be circa 2450sqm, meaning the Applicant cannot trigger the maximum height control in the LEP (cf clause 7.3(5A) of the LEP). The Applicant also asserts that there were two pre-DA meetings and this was not raised and that the exhibited map showed no line. The Council is reviewing the Applicant's legal advice.
- **The Panel Chair directed that both parties provide Panel with a submission within 7 days on this issue for the Panel's consideration and assessment as to whether independent legal advice is required on the matter.**
- **RFI:** The Applicant stated that a large part of RFI was dedicated to comparing the DA to a diagram in the DCP and that the Applicant undertaking the comparison in this way is incorrect as it highlights discrepancies in micro setbacks and distances between buildings that aren't intended by the DCP. It is the Applicant's position that Figure 5 of the DCP deals with detailed dimensions and Figure 4 establishes the height and siting of buildings, including the envelope within which bulk and scale can be moved about. The Applicant says the test in Figure 5 is directed at providing solar access to parts of the building and adjoining property. For this reason, the Applicant says that it has responded to all of the technical requirements of the DCP, including acoustic and traffic modelling matters.
- **The Panel Chair directed that Council's position on the Applicant's compliance with the DCP in view of the above is to be provided within 7 days, along with anything further the Applicant wishes to say on the matter for the Panel's consideration.**
- **Site isolation:** The Application excludes several lots. The Panel Chair reminded Council that at the site inspection the Panel requested that the Council writes to the owners of the excluded lots re the Proposal and highlight that the excluded sites risk their development potential being significantly constrained if the sites are not amalgamated. I.e. Panel wishes to ensure that the owners understand the implications of the Proposal.
- The Applicant indicated that it has provided evidence of the offers that have been made and details of those approached. The Applicant believes it has provided all necessary required information to the relevant parties and has pointed out the planning restrictions in the offer letters.
- Council's position is that while evidence was provided that owners of isolated lots have been consulted, some gaps were identified. In response to this, the Applicant has provided further information, which Council is currently considering.
- The Panel Chair noted that the Panel will need to be satisfied that sufficient communication has been had with the owners of the excluded sites in accordance with Karavellas. **Accordingly, the Chair directed that the Applicant draw the Panel's attention to the relevant information relating to site isolation on the Portal and the Council to advise Panel whether it takes any issue with the information provided within 7 days.**

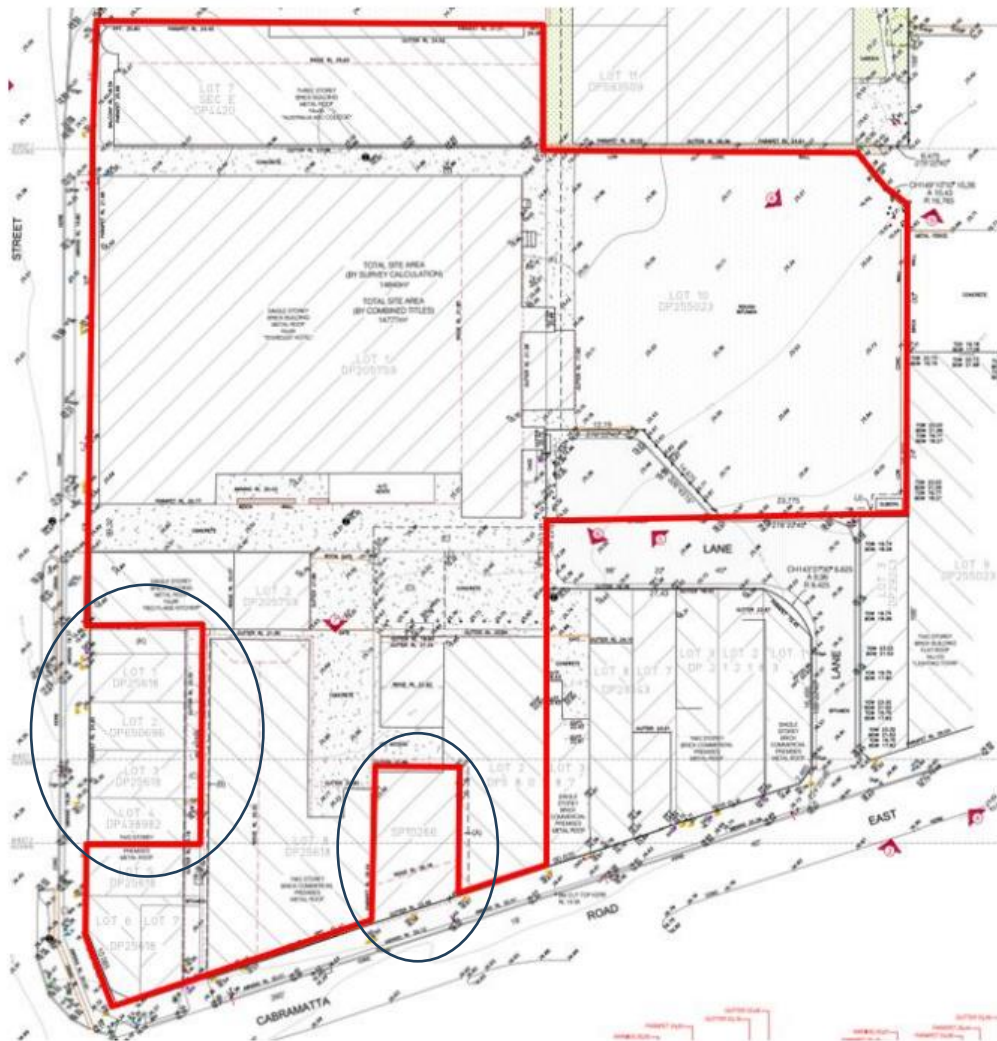
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- **Traffic and Access:** TfNSW has questioned the use of SIDRA modelling. The Applicant has indicated that TfNSW wants the Applicant to assess the proposal outside of the usual default settings for some reason, which makes the traffic outcomes more adverse. However, the Applicant says that this exercise has been undertaken as requested and, even with these changes, the proposed development still has an acceptable impact. The Council to assess this position and update the Panel at the next meeting or as part of its Assessment Report following further advice from TfNSW.
- **Waste:** The proposed development relies on private waste collection. The Applicant indicated that this is because the development cannot accommodate Council's large waste collection vehicles (being both a height clearance and turn-around issue). The Applicant understands that it is Council's position that the development has to accommodate the Council's standard trucks for waste collection in the usual way. **The Panel Chair directed that the Council consult its waste department and indicate whether there is an ongoing concern with private waste collection within 7 days and, if so, the basis for the concern.**

Subject to the Panel's review of the additional information requested, if there are outstanding issues, the Panel Chair indicated that another meeting may be required or a response outlining the Panel's position or direction on each issue may be provided in writing, in order to allow for the assessment of the application to proceed as expeditiously as possible.

### PREVIOUS KEY ISSUES DISCUSSED – Site Visit 25 September 2023

- **The isolated sites** – The Panel inspected the sites on Broomfield St and Cabramatta Rd East (comprising the missing wedges in the image below extracted from the Proponent's SEE prepared by GLN) that will become isolated sites should the proposal proceed. The Panel was particularly concerned about the implications of not integrating the Broomfield St properties on the overall urban design outcome of the redevelopment of Broomfield St. The Panel noted that it is imperative that the relevant parties are on notice of the implications of not becoming part of the proposed development, in particular, the Broomfield St properties appear likely to only be able to realise a maximum of 2-3 storeys given the size of these lots. The Panel will want to be satisfied that the relevant owners have been contacted and are sufficiently on notice of the proposed development and potential impacts on the future development potential of their land-holdings.



**Figure 4 Survey and site boundaries**

- **Access issues** – The left in, left out access on Cabramatta Rd East was discussed and, in particular, the right of way running along the boundary of 94-96 Broomfield St. Any encroachment into the right of way at any level needs to be checked for consistency with its terms.
- **Future character of the area and surrounding sites** - The Panel wishes to be clear about the intentions for the future development of the Council's carpark and the laneway to the rear of the site between Cabramatta Rd and Fisher St, which currently provides an access point for the car park and serves as a location for on-street parking. The ownership of this laneway should also be outlined for the Panel's consideration in understanding the subject proposed development in context.
- **Instrument change**- Council informed the Panel that there was an error in the minimum lot size mapping for the subject site when the instrument change giving effect to the planning proposal for the redevelopment of the precinct was gazetted. The DPE has been contacted about this error, but it is unclear whether this error will be fixed. In the alternative, a clause 4.6 variation may be required to address the matter.
- **Pedestrian bridge**- The Panel was informed that there is no change of position from Sydney Trains in relation to its interest in the proposed pedestrian bridge as Sydney Trains is proposing some upgrades to Cabramatta Station, but there is no timeframe for such works. Accordingly, the pedestrian bridge to the station continues to be excluded from the application. The Panel Chair suggested that a further letter be sent to Sydney Trains in relation to the significant benefits of provision of the pedestrian bridge to create east-west connectivity.

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- **Inconsistency with the site specific DCP** – The Panel also discussed inconsistencies with the site specific DCP, predominantly arising as a consequence of the sites that will not form part of the subject development as identified above. The Panel will need to be satisfied about the urban design consequences of these inconsistencies.

**TENTATIVE DETERMINATION DATE SCHEDULED FOR 4 November 2024**