

## COUNCIL ASSESSMENT REPORT

### SYDNEY WESTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	DA 167.1/2023 PAN-333433 PPSSWC-337
<b>PROPOSAL</b>	Demolition of existing buildings and staged (Stages 1 and 2) 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 including a tavern, Childcare Centre for a maximum of 80 children, two (2) medical centres 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.
<b>ADDRESS</b>	<ul style="list-style-type: none"> <li>- Lot: 7 Sec: E DP: 4420 No. 76 Broomfield Street, Cabramatta</li> <li>- Lot: 1 DP: 205759 and Lot: 10 DP: 255023 No. 84 Broomfield Street, Cabramatta</li> <li>- Lot: 2 DP: 205759 No. No. 86 Broomfield Street, Cabramatta</li> <li>- Lot: 2 DP: 580587 No. 139 Cabramatta Road East, Cabramatta</li> <li>- Lot: 8 DP: 25618 Nos. 147 – 149 Cabramatta Road East, Cabramatta</li> <li>- Lot: 5 DP: 25618, Lot: 6 DP: 25618 and Lot: 7 DP: 25618 No. 151 Cabramatta Road East, Cabramatta</li> </ul>
<b>APPLICANT</b>	Mr Stephen Castagnet / The Trustee for moon Investment Trust
<b>OWNER</b>	Moon Cre Pty Ltd, Lubo Medich Holdings Pty Ltd, Milperra Hotel Pty Ltd and Fairfield City Council
<b>DA LODGEMENT DATE</b>	2 <sup>nd</sup> June 2023
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General Development over \$30 million
<b>CIV</b>	\$215,402,700.00 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Clause 7.3 (5A) of Fairfield Local Environmental Plan 2013
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li>- Fairfield LEP 2013</li> <li>- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development 2002</li> <li>- Apartment Design Guidelines</li> <li>- State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>- State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>- State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>- State Environmental Planning Policy (Planning Systems) 2021</li> </ul>

TOTAL & SUBMISSIONS ISSUES SUBMISSIONS	UNIQUE KEY IN
DOCUMENTS SUBMITTED FOR CONSIDERATION	The Council received a total of fourteen (14) unique submissions, comprising thirteen (13) objections and one (1) submission in favour of the proposal.
	<p>ATTACHMENT A – Architectural Plans</p> <p>ATTACHMENT B – Cabramatta East Urban Design Report</p> <p>ATTACHMENT C- Architectural Report Response</p> <p>ATTACHMENT D – Stormwater Management Plan</p> <p>ATTACHMENT E- Civil Engineering Plans</p> <p>ATTACHMENT F – Landscape Plan</p> <p>ATTACHMENT G – Landscape and Public Domain design report</p> <p>ATTACHMENT H – Statement of Environmental Effects</p> <p>ATTACHMENT I – Council Correspondence</p> <p>ATTACHMENT J- Response to Council Letter</p> <p>ATTACHMENT K - Letter re: Purchase of land and TfNSW response</p> <p>ATTACHMENT L - Clause 4.6 Variation</p> <p>ATTACHMENT M - Transport Assessment and Response</p> <p>ATTACHMENT N - Noise and Vibration Report</p> <p>ATTACHMENT O - Preliminary Site Investigation</p> <p>ATTACHMENT P - Detailed Site Investigation</p> <p>ATTACHMENT Q - Remediation Action Plan</p> <p>ATTACHMENT R - Geotech Report</p> <p>ATTACHMENT S - CPTED Report</p> <p>ATTACHMENT T - ESD Report</p> <p>ATTACHMENT U - Wind Analysis report</p> <p>ATTACHMENT V - Visual Impact Assessment</p> <p>ATTACHMENT W - Draft Fire Report</p> <p>ATTACHMENT X - Retail Strategy Report</p> <p>ATTACHMENT Y – Connecting with Country report</p> <p>ATTACHMENT Z - Survey</p> <p>ATTACHMENT AA - Waste Management Plan</p> <p>ATTACHMENT AB - Easement and Advice</p> <p>ATTACHMENT AC - Plan of Management – Tavern</p> <p>ATTACHMENT AD - Plan of Management - Childcare Centre</p> <p>ATTACHMENT AE - Plan of Management – Medical Centre</p> <p>ATTACHMENT AF - Site isolation Statutory Declaration</p> <p>ATTACHMENT AG – Cost Report</p> <p>ATTACHMENT AH - Compliance Table: SEPP (Transport and Infrastructure) 2021 Chapter 3 Childcare Centres and childcare Centre Guidelines 2021</p> <p>ATTACHMENT AI - Compliance Table: Apartment Design Guidelines</p> <p>ATTACHMENT AJ - Compliance Table: Cabramatta Town Centre DCP 2000</p>

	ATTACHMENT AK - Compliance Table: Fairfield City Wide DCP 2013 ATTACHMENT AL - Submissions ATTACHMENT AM - Reasons for Refusal
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)</b>	Not Applicable
<b>RECOMMENDATION</b>	Refusal
<b>DRAFT CONDITIONS TO APPLICANT</b>	Not Applicable
<b>SCHEDULED MEETING DATE</b>	1 November 2024
<b>PREPARED BY</b>	Liam Hawke
<b>DATE OF REPORT</b>	25 October 2024

## EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 167.1/2023 proposing demolition of existing buildings and staged (Stages 1 and 2) construction of a mixed-use development up to 19 storeys comprising basement carparking over which will be a new market square, three (3) buildings containing ground level retail, first level commercial including a tavern, Childcare Centre for a maximum of 80 children, two (2) medical centres and restaurant as well as 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.

The subject site is comprised of 6 lots and is known as Nos. 76 – 86 Broomfield Street and 139 - 152 Cabramatta Road East, Cabramatta. The subject site has a total site area of 8,113m<sup>2</sup> and has a general slope to the north west corner of the site. Located on the site is a variety of single to 2-storey commercial buildings including a hotel, tutoring centre and business and retail premises. The site is located within the eastern portion of the Cabramatta Town Centre.

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 \$30 million and is required to be determined by the SWCPP.

The subject site forms part of a precinct that was the subject of a Planning Proposal (PP) Application and a Site-Specific Development Control Plan (SSDCP). The subject Application only seeks the redevelopment of Stages 1 and 2 of a 4 Stage development. It is important to note that the SSDCP was formulated on the basis that all lots within the precinct are required to be included and form part of the development to ensure that the building forms envisaged would meet the relevant provisions.

The Planning Proposal (Amendment No. 42) was gazetted on 7 October 2023 after the Development Application had been lodged. The Planning Proposal amended the LEP as follows:

- Increase the maximum height of building from 14 metres to a range between 48 metres and 66 metres subject to minimum site area being met;

- Increase the maximum floor space ratio from 2:1 to a range between 3.85:1 and 6:45:1;
- Insert a minimum site area on the Town Centre Precinct map to facilitate staged future re-development into four (4) sub-precincts and adequate provision for residential accommodation over the precincts; and
- Insert a new local clause to prohibit dwellings on the ground floor to allow for activation of the precinct.

Furthermore, an amendment to the Cabramatta Town Centre Development Control Plan 2000 also came into effect upon finalisation of the Planning Proposal. It included a new Precinct 4A – East Side Market Square and Station Interface. The controls set a built form to be achieved under the FLEP 2013 centred on a new market square for open and activated pedestrian connections through the site and to adjoining streets.

In order to cater for the increase in density permitted under the LEP and SSDCP, a Voluntary Planning Agreement (VPA) was submitted by the Applicant. The VPA involved the construction of a pedestrian bridge from the subject site to connect with Cabramatta Train Station in order to improve accessibility between Cabramatta East to the rest of the town centre west of the train line. Notwithstanding this, TfNSW (Sydney Trains) advised that despite a new 4.2 million piece of infrastructure to help accessibility in Cabramatta Train Station, they did not support the bridge. Given this, the VPA included a fall-back position which would allow the developer to pay a monetary contribution equivalent to 110% of the cost of the pedestrian bridge towards community facilities in the Cabramatta area. Moon Investments Pty Ltd 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 VPA was signed and executed on the 24<sup>th</sup> May 2022.

The subject site is zoned MU1 Mixed Use pursuant to Clause 2.2 of the Fairfield Local Environmental Plan 2013 ('LEP 2013'). The proposed demolition, subdivision, shop top housing, centre-based child care facilities, medical centres and commercial premises are permitted within the zone subject to consent.

There have been three (3) briefings with the Panel in relation to this application, initially on 17<sup>th</sup> July 2023, then on 26<sup>th</sup> February 2024 and then on 9<sup>th</sup> September 2024. During the Briefings key issues were discussed including site amalgamation/site isolation, interpretation of the LEP height clause, compliance with the DCP and waste management.

As part of the assessment of the Application, an Urban Design expert was engaged by Council to assess the proposal against the design quality provisions of SEPP (Housing) 2021 (SEPP 65), the ADG and the design excellence provisions in the Fairfield LEP 2013. The Urban Designer identified a range of issues with the proposal and indicated that the proposal would not meet the principles of good design under SEPP 65, and particularly would not meet objectives of the principles of context, built form and scale, landscape, safety sustainability and amenity.

Council wrote to the applicant outlining the issues identified. The applicant responded with amended documentation incorporating some minor improvements, however, the proposal was not significantly amended in order to address the fundamental issues raised by Council.

At the latest Panel briefing (9<sup>th</sup> September) the Panel requested that the Applicant provide further information in regards to its position on the interpretation of Clause 7.3(5A) of Fairfield LEP 2013, site amalgamation/isolation issues and owners consent. The Applicant provided further documentation on 11 October 2024 which included a Clause 4.6 variation, negotiation correspondence with the isolated lots and correspondence regarding the acquisition of part of



Council's public road. The Application was then to be reported to the Panel for a final briefing/determination meeting.

Council has considered the amended application in accordance with the relevant planning provisions including but not limited to the SEPP (Housing) 2021: Chapter 4 Design of Residential Apartment Development; the Apartment Design Guide (ADG); SEPP (Resilience and Hazards) 2021: Chapter 4 Remediation of Land; Fairfield LEP 2013; SEPP (Transport and Infrastructure) 2021: Chapter 3 – Educational Establishments and Child Care Facilities and Child Care Planning Guideline 2021; Cabramatta Town Centre DCP 2000 and Fairfield CityWide DCP 2013. Subsequently, a number of non-compliances and issues are identified.

The key issues associated with the proposal are considered to be:

- **Site amalgamation and isolated Sites within Stage 2:** Stage 2 of the proposed development does not incorporate all lots and five (5) lots have not been incorporated into the development. It is considered that based on the documentation submitted and the design of the proposal, the application does not satisfactorily address the Land and Environment Court principles established under *Karavellas v Sutherland Shire Council* 2004. It is considered that insufficient information has been submitted to demonstrate a reasonable offer has been made to facilitate the incorporation of these isolated lots, and it is considered that the proposed development would prejudice the ability of the isolated lots from developing.
- **Built form Inconsistencies with the SSDCP:** The proposed development has not been designed in accordance with the built forms envisaged within the SSDCP. Given this, it is considered that the proposal as designed would impact the ability of Stages 3 and 4 to be developed in accordance with the SSDCP.
- **Pedestrian Bridge:** The proposed development does not incorporate a pedestrian bridge between the site and Cabramatta Train Station. It is noted that the link between the site and the station has been redesigned and in fact reduced from the SSDCP from 18m to 12m. It is considered that if the bridge was to be incorporated into the development at a later date, this reduced distance would minimise pedestrian movement on the ground floor and impact the amenity of a residential dwelling.
- **Design Excellence and Design Principles of SEPP 65 not achieved:** It is considered that the design of the shop top housing as proposed does not exhibit design excellence when considered against the matters in Clause 6.12 of the LEP. It is also considered that the design of the development, when evaluated in accordance with the design principles for residential apartment development as set out in Schedule 9 of SEPP (Housing) 2021 does not meet the principles of good design.
- **Owners Consent:** The subject site incorporates 187m<sup>2</sup> of a public road. The Applicant has began the process of acquiring this road, however, formal agreement from Council is required. Accordingly, owners consent has not been provided and therefore given that no consent has been obtained, a favourable determination cannot be recommended.
- **Servicing of the site:** The design of the basement does not allow access for a Heavy Rigid Vehicle (HRV), to the basement. It is considered appropriate that servicing for a HRV be accommodated in the design in order to allow Council's waste vehicle to service the site in the event that the proposed private arrangement ceases and to service the development. Based on the nature and extent of the development including

the types of commercial activities proposed on the site, it is considered necessary that the site be serviced by a heavy rigid vehicle.

- **Cabramatta Town Centre DCP 2000:** The proposed development does not meet the controls contained within Cabramatta Town Centre DCP 2000. Concern is raised that the proposed development does not provide sufficient active frontage to the Market Square, a light spill diagram has not been submitted for review and the conveyance of the overland flow path through the site has not been designed appropriately and therefore is not consistent with the requirements of the DCP.
- **Childcare Centre:** It is considered that the proposed childcare centre does not comply with State Environmental Planning Policy (Transport and Infrastructure) 2021: Chapter 3 – Educational Establishments and Child Care Facilities and Child Care Planning Guideline 2021.
- **Acoustic Impacts:** Council has assessed the acoustic report submitted in support of the proposed development. The acoustic report was not supported and concerns were raised regarding potential noise impacts from the childcare centre, tavern, medical centres and restaurant. Particular concern has been raised regarding the impact of the non residential uses to the residential uses that are proposed as part of the development.
- **Car parking:** In accordance with Cabramatta Town centre DCP 2000, 576 car parking spaces are required to be provided. Only 428 car parking spaces are provided and therefore the proposed development does not comply with the car parking rates as required in the SSDCP. It is considered appropriate that the car parking demand for the proposed development be provided on the site based on the rates as described within the SSDCP. Accordingly, the proposed car parking arrangement is not supported.
- **Minimum Site Area Exceedance:** In accordance with Clause 7.3(5A) of the LEP, the development does not meet the minimum site area required in order to allow a height greater than 14m in relation to Stage 2 of the development. The exceedance occurs because the application does not incorporate all lots that was subject to the planning proposal. A Clause 4.6 Request variation to the development standard has been submitted. It is not considered that the proposal in its current form, would mean that compliance would be unreasonable or unnecessary in this circumstance and there are sufficient environmental planning grounds to justify contravening the development standard.
- **Contamination:** Council requested that a hazardous building material survey be prepared and submitted and this has not been provided. The Preliminary Site Investigation report recommended that a hazardous building material survey should be undertaken. It is important to identify the existence of any potentially hazardous materials within the existing on-site structures in order to ensure that the development complies with the requirements of SEPP (Resilience and Hazards) 2021 and that the site is suitable or can be made suitable.

Other issues have been raised by Council's technical officers including the Building Control Branch, Development Engineering, Public Health and Environment Section, Strategic Land Use Planning, Waste Officer, Property Strategy and Services Division and Traffic Engineer.

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the Environmental Planning and

Assessment Act 1979 ('EP&A Act'). The Application was referred to TfNSW (Sydney Trains), TfNSW (Roads), Bankstown Airport and Endeavour Energy in accordance with SEPP (Transport and Infrastructure) 2021 for comment. TfNSW (roads) maintains objection to the proposed development.

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

The following jurisdictional prerequisites imposed by the following controls have not been satisfied and it is considered that consent cannot be granted on this basis:

- Clause 2.119 and 2.122 of SEPP (Transport & Infrastructure) with respect to the matters to do with safety, efficiency and ongoing operation of the classified road, the design of the vehicular access, sensitivity of the development to traffic noise and vehicle emissions, accessibility of the site, efficiency of movement of people, and the potential traffic safety, road congestion and parking implications.
- Clause 4.6 of the LEP with respect to exceptions to development standards.
- Clause 6.12 of the LEP with respect to design excellence as it is considered that the residential flat building does not exhibit design excellence
- Owners consent has not been obtained.
- SEPP (Resilience & Hazards) for consideration of whether the land is contaminated.

The following jurisdictional prerequisites to the grant of consent imposed by the following controls are considered to have been satisfied:

- Clause 2.48 of SEPP (Transport & Infrastructure) where the work is in the vicinity of electrical infrastructure.

In accordance with Council's 2024 Community Engagement Strategy, the subject Development Application was notified for a period of twenty-one (21) days on two (2) occasions. A total of fourteen (14) unique submissions were submitted to Council, comprising thirteen (13) objections and one (1) submission in favour of the proposal. The key concerns raised in the submissions relate to traffic and parking impacts, negotiations with isolated site, density, impact to the unique identity of Cabramatta, increase in crime, construction impacts, contamination, noise and vibration and flood modelling. These issues have been considered within this report.

Council's assessment of the amended application has identified fundamental issues, which are fatal to the application. The proposed development does not incorporate all lots contained within the planning proposal and the proposed buildings are inconsistent with the SSDCP. This is considered to result in significant issues with the ability for the remaining Stages and excluded lots to be developed appropriately. Whilst these matters have been raised with the Applicant, the Applicant has nevertheless not amended the proposal in order to address these fundamental issues. Given the issues identified with the application, Council cannot support the application as proposed and recommends that the application be refused.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, Fairfield LEP 2013 and Cabramatta Town Centre DCP 2000, the proposal cannot be supported. Given the issues with the application, it is considered that the proposal is not in the public interest, and cannot be supported.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, Development Application 167.1/2023 is recommended for refusal subject to the reasons contained at Attachment AM of this report.

## 1. THE SITE AND LOCALITY

### 1.1 The Site

The subject site is comprised of nine (9) lots which are legally described as follows:

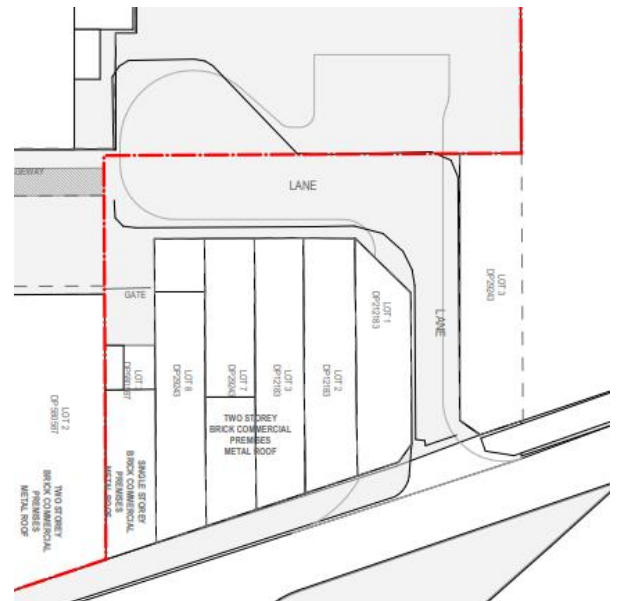
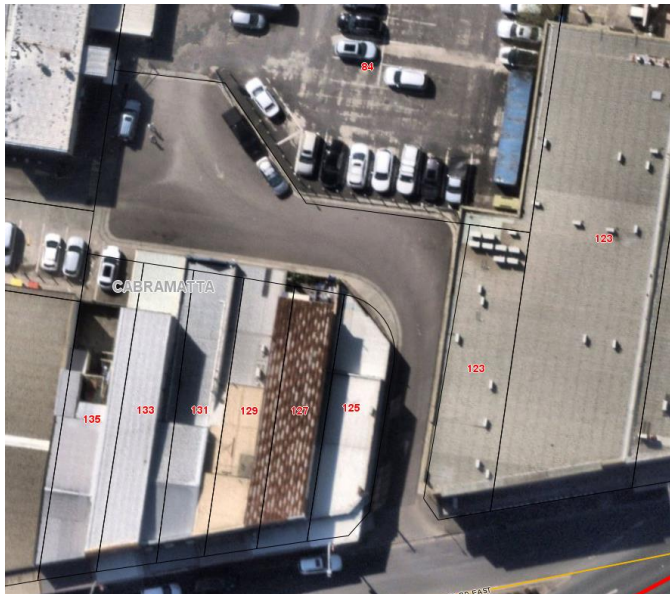
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- Lot: 2 DP: 205759 No. No. 86 Broomfield Street, Cabramatta
- Lot: 2 DP: 580587 No. 139 Cabramatta Road East, Cabramatta
- Lot: 8 DP: 25618 Nos. 147 – 149 Cabramatta Road East, Cabramatta
- Lot: 5 DP: 25618, Lot: 6 DP: 25618 and Lot: 7 DP: 25618 No. 151 Cabramatta Road East, Cabramatta

This is shown in the figure below:



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

The subject site also includes a portion of a public road (187m<sup>2</sup> of area in the cul de sac that has access from Cabramatta Road East), which is shown below:



**Figure 2:** Aerial view of the public road and the boundary of the subject site which cuts the cul de sac in half.

The subject site has a total site area of 8,113m<sup>2</sup> and has a general slope to the north west corner of the site. Located on the site is a variety of single to 2-storey commercial buildings including a hotel, tutoring centre and business and retail premises.

The subject site is located within an overland flood precinct by the 1 in 100 year event. During this event overland flooding currently enters the site from Cabramatta Road East (southern boundary) and flows through the private car park at the rear of No. 84 Broomfield before exiting the site adjacent to Fisher Street car park (northern boundary).

## 1.2 The Locality

The site is located on the eastern portion of the Cabramatta Town Centre, which is shown below:

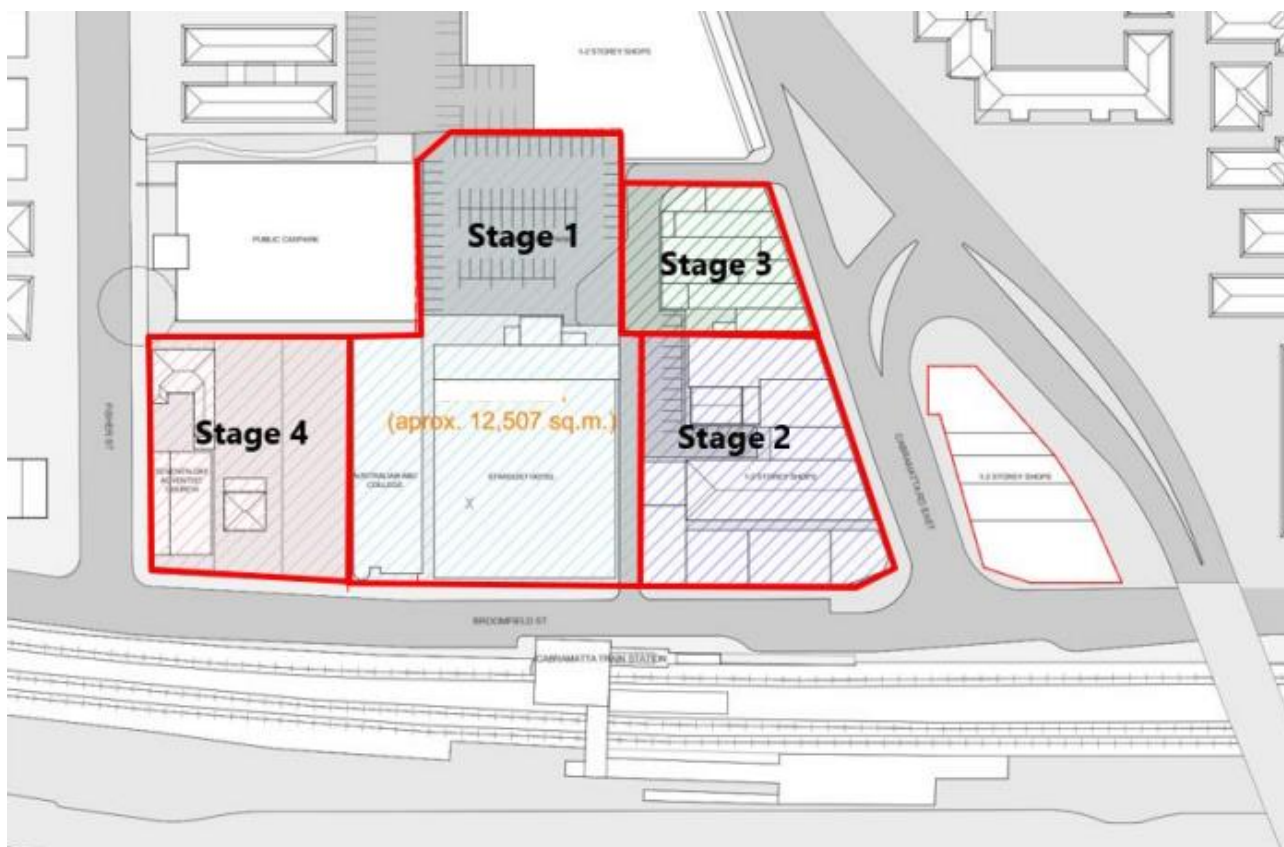




**Figure 3:** Cabramatta Town Centre, outlined in green and the subject site outlined in red.

Cabramatta Town Centre is located in the South West of Sydney along the T3 Bankstown line with the T5 Cumberland Line and the T2 Airport, Inner West and South Rail Line between Fairfield and Liverpool. The rail line cuts the town centre into 2 sections, being West and East, with the larger parcel located West of the train line. The subject site is located in the eastern portion of the town centre. The eastern portion of the town centre is characterised by single storey to 2-storey commercial properties and a Council multi deck car park.

As discussed further within the report, the subject site is part of a larger parcel that was subject to a Planning Proposal (Amendment No. 42). This parcel was approximately 1.25ha and was broken into 4 stages. The proposal is for Stages 1 and 2 only and this is shown in the Figures below:



**Figure 4:** The 4 Stages identified in the Planning Proposal. The subject application is for Stages 1 and 2.

It is noted that not all the lots contained within Stage 2 form part of the proposed development.

The lots not included in Stage 2 are as follows:

Lots 1 DP 25618 No. 88 Broomfield Street (130.9m<sup>2</sup>);

Lot 2 DP 650696 No. 88 Broomfield Street(84.1m<sup>2</sup>);

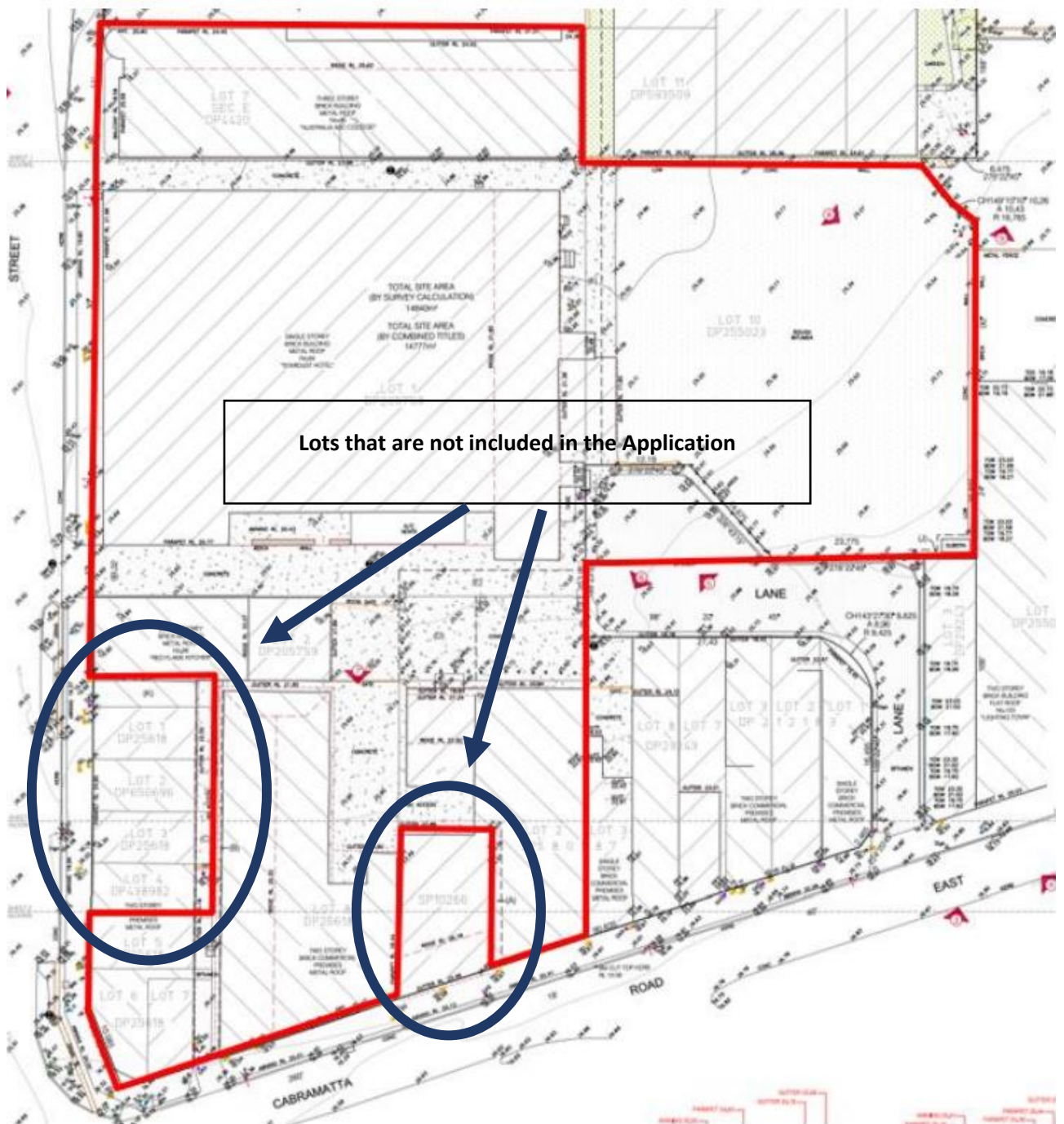
Lot 3 DP 25618 No. 90 Broomfield Street (86.9m<sup>2</sup>);

Lot 4 DP 438982 No. 92 Broomfield Street (86.8m<sup>2</sup>): and

SP 10266 Nos. 143-145 Cabramatta Rd East, Cabramatta (197.4m<sup>2</sup>).

Four (4) of the lots face Broomfield Street and One (1) lot faces Cabramatta Rd East and they have a total area of 595.1m<sup>2</sup>, which is shown in the figure below:



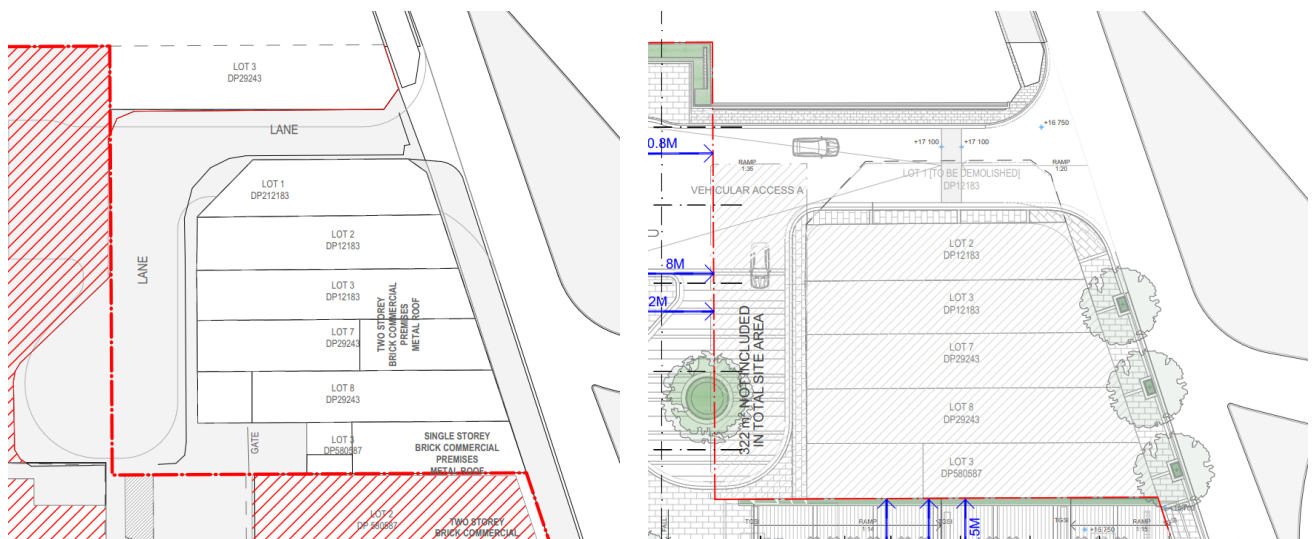






**Figure 5:** Five (5) lots not included in the Application that are within Stage 2.

In addition, the proposal will also include the demolition of Lot 1 DP 212183 No. 125 Cabramatta Rd East, Cabramatta (located within Stage 3) in order to widen the public road to provide 2 way traffic to Stage 1, as detailed in the Figure below.



**Figure 6:** of Lot 1 DP 212183 is proposed to be demolish in order to provide 2 way traffic to the western section of Stage 1.

## 2. THE PROPOSAL AND BACKGROUND

### 2.1 The Proposal

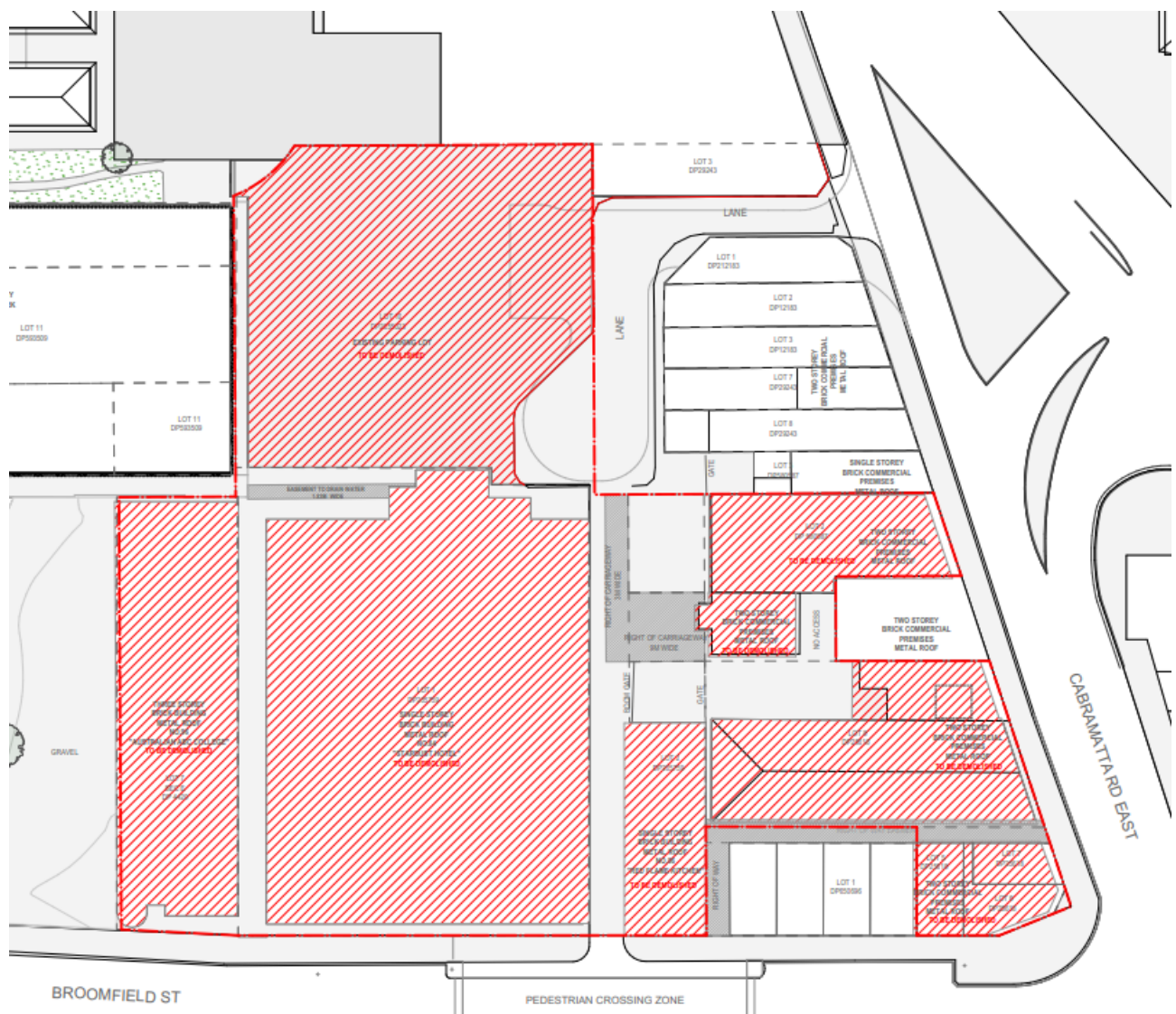
The proposed development forms a part of the redevelopment of Cabramatta East precinct involving four (4) stages. The subject Application relates to Stages 1 and 2 and applies to the central and South Western portion of the parcel. Stage 1 covers an area of approximately 5,882.3m<sup>2</sup> and Stage 2 covers an area of approximately 2,230.7m<sup>2</sup> (total area for both Stages 1 and 2 is approximately 8,113m<sup>2</sup>).

The redevelopment of Stages 1 and 2 of Cabramatta East will involve the 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 as 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.

A detailed breakdown of the proposed works is provided below:

## Demolition

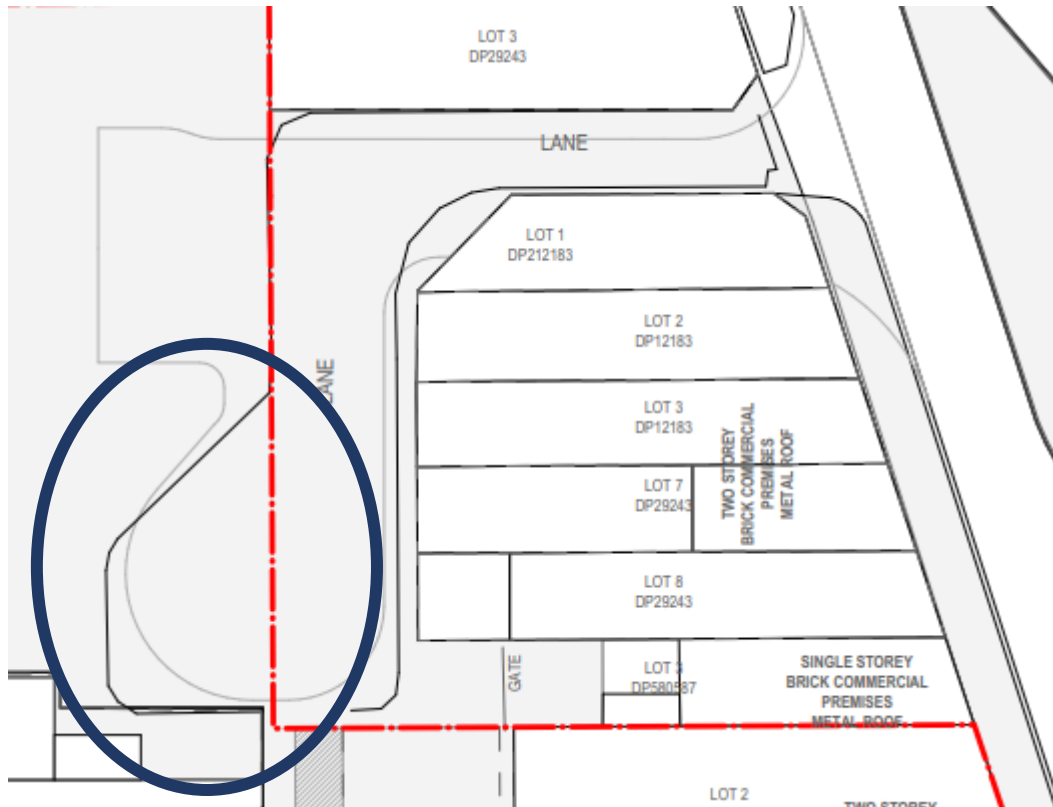
The proposal seeks to demolish all structures within the subject site. The application indicates that soil and erosion management measures and security fencing will be provided during construction. The structures to be demolished is shown in the figure below.



**Figure 7:** Structures to be demolished shown in red hatching.

## Subdivision of Part of Public Land and Stormwater Works

The proposal includes the closure and subdivision of 187m<sup>2</sup> of public road that is part of a cul de sac head. This is shown in the figure below:



**Figure 8:** Area of Public Road to be closed and subdivided into the site.

The Application includes a 1200mm x 600mm box culvert that runs along the western boundary and will be located within the basement level. The intention of the culvert will be to capture overland flow coming down Council's laneway from Cabramatta Road East in order to convey the flow to a Council pit located adjacent to Fisher Street carpark.

## Construction of Mixed-Use Development

The proposed construction works are as follows:

### Excavation

Excavation will occur to accommodate three (3) levels of basement within the majority of the site. A sewer main is located within the property and is required to be relocated in order to accommodate the proposed basement.

### Basement

The proposal involves the construction of three (3) levels of basement that is separated into a commercial area and a residential area. Details of the basement are provided below:

#### *Basement level 3*

- 151 residential car parking spaces for Building A and B including 23 Accessible spaces;
- 39 residential car parking spaces for Building C including 4 accessible spaces; and
- Storage compartments for the residential dwellings.

#### *Basement Level 2*

- 30 residential car parking spaces for Building A and B including 4 accessible spaces;
- 90 commercial car parking spaces for Building A and B including 2 accessible spaces; and
- 31 commercial car parking spaces for Building C including 1 accessible space.

#### *Basement Level 1*

- 24 residential car parking spaces for Building A and B including 4 Accessible spaces;
- 16 commercial spaces for Building A and B;
- 21 car parking spaces for the childcare centre including 1 accessible space;
- 26 commercial spaces for Building C including 1 accessible space;
- 63 bike spaces for the commercial uses;
- Plant and services areas;
- One (1) loading area that can accommodate a Medium Rigid Vehicle; and
- Waste storage areas.

#### *Total Carparking Provided*

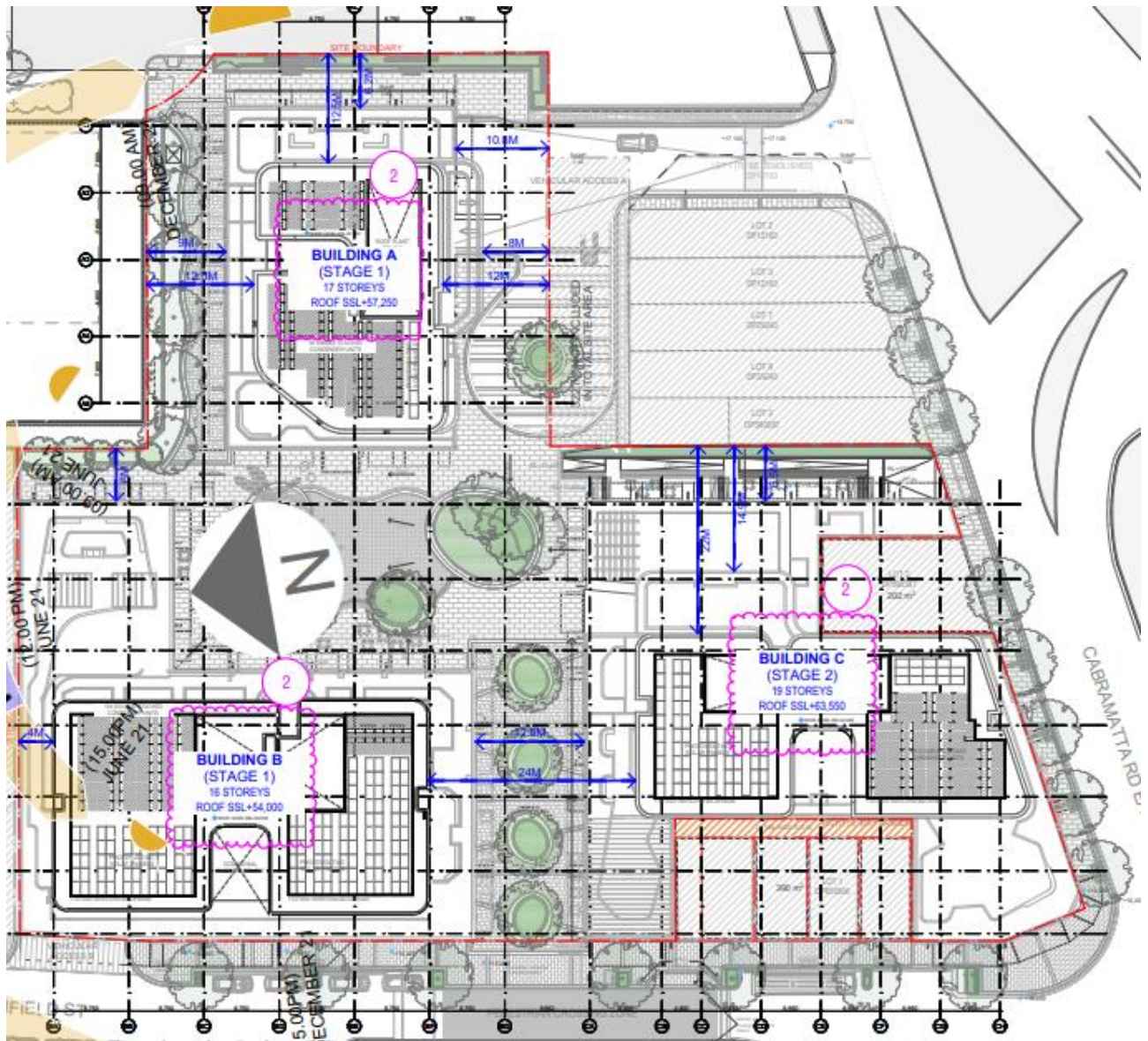
- A total of 244 car parking spaces are provided for the residential units (205 for Building A and B and 39 for Building C);
- A total of 163 car parking spaces for the commercial/retail uses (106 for Building A and B and 57 for Building C);
- 21 car parking spaces for the Childcare centre;
- A total of 428 car parking spaces are provided for the entire development.

The basement will have access from Broomfield Street and the laneway off Cabramatta Road East. The design of the basements seeks that residents will access the basement from the laneway and visitors/staff to the non-residential properties will access from Broomfield Street. The basement has also incorporated future access points for Stage 3 (that fronts Cabramatta Road East) and the isolated lots (that front both Broomfield Street and Cabramatta Road East).

#### Ground Floor and Market Square

The proposal includes a 3434m<sup>2</sup> Market Square that has a 12.5m wide pedestrian access to Broomfield Street and 6.5m wide pedestrian access to Cabramatta Road, as shown in the figure below:





**Figure 9:** Market Square and access to the square.

The market square will be embellished with landscaping and local art. The square will have direct vehicular access from the public lane way from Cabramatta Road East.

In addition to the above, the proposed development does not include a pedestrian bridge between the train station and the market square. The Applicant has been in discussion with TfNSW (Sydney Trains) who do not support the pedestrian bridge as this may impact the redevelopment of the train station. Given they do not support the pedestrian bridge, this is not included in the current application.

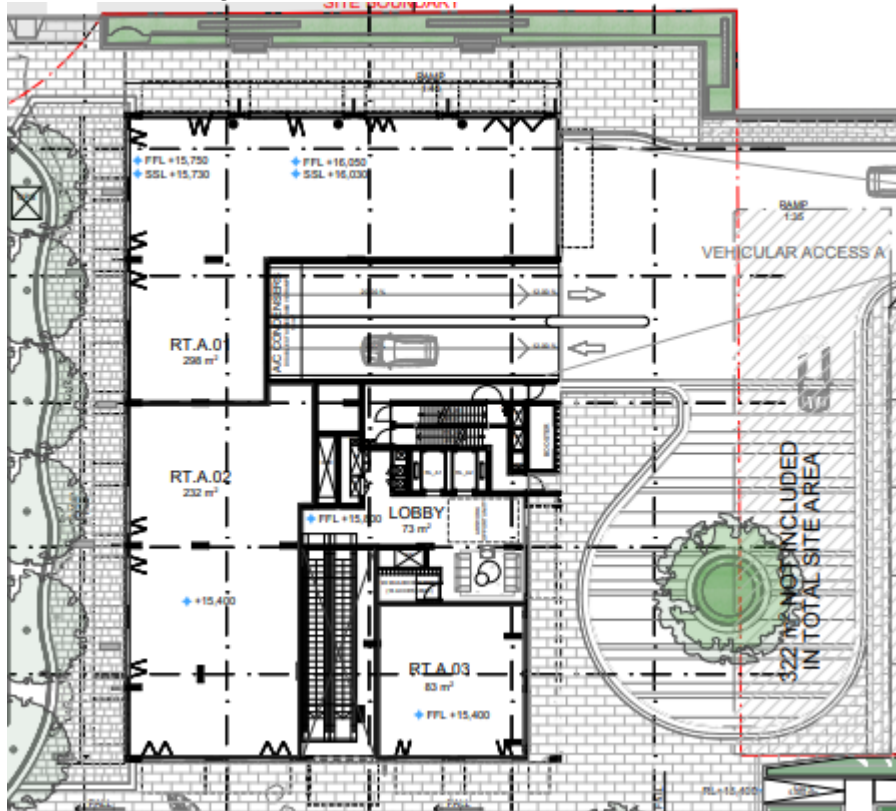
### Construction of three (3) Mixed Use Buildings

The proposed development includes the construction of three (3) Mixed Use Buildings, Building A and B within Stage 1 and Building C in stage 2.

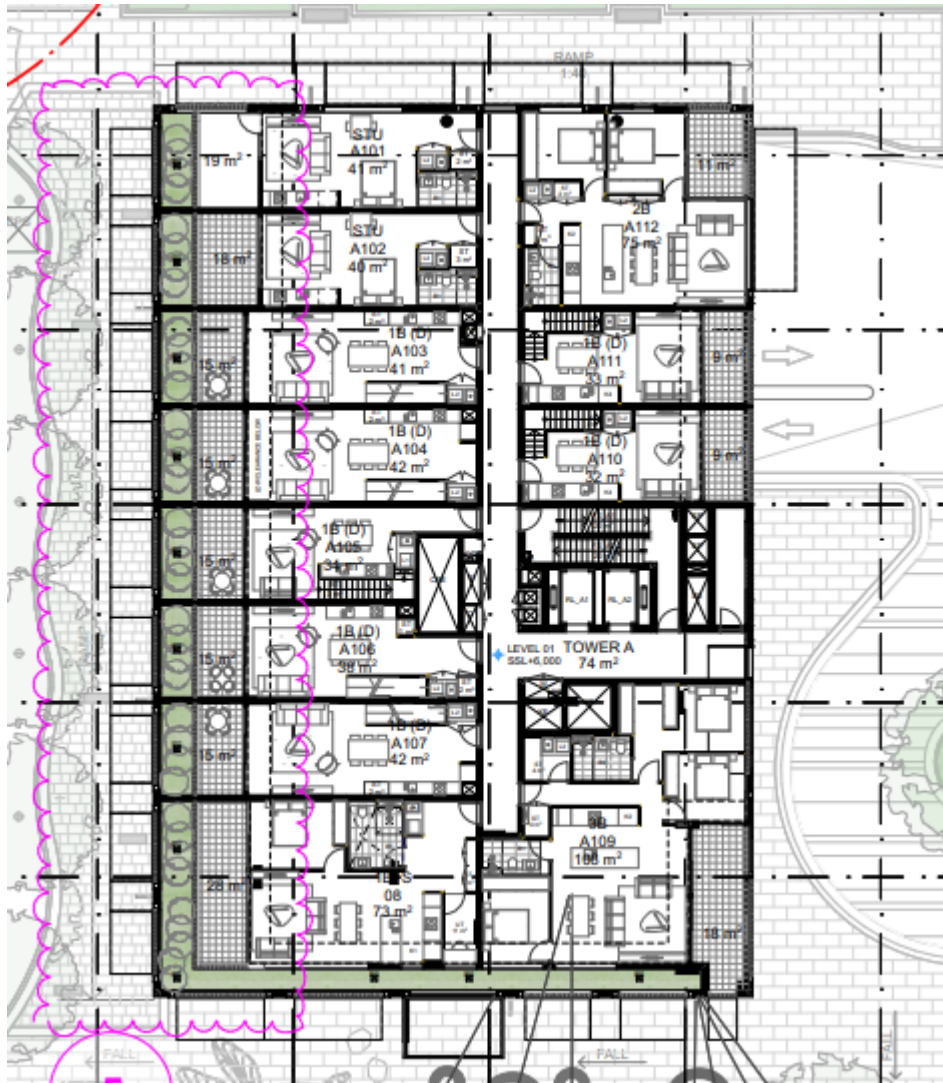
Building A is located within the Western portion of the site within Stage 1 and is 18 storeys (inclusive of a mezzanine level). Building A will comprise of the following:

- 3 retail premises with mezzanine levels (474m<sup>2</sup>, 337 m<sup>2</sup> and 129 m<sup>2</sup>) on the ground floor
- Vehicle access to the basement level;
- 96 dwellings comprising of 14 x studios, 21 x 1 bedroom, 46 x 2 bedroom, 14 x 3 bedroom and 1 x 4 bedroom.

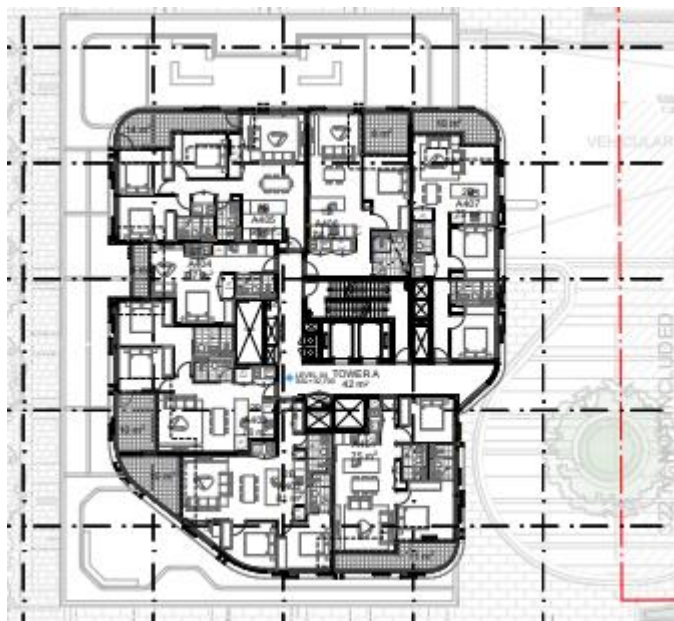
As seen in the figures below:



**Figure 10:** Building A Ground Floor

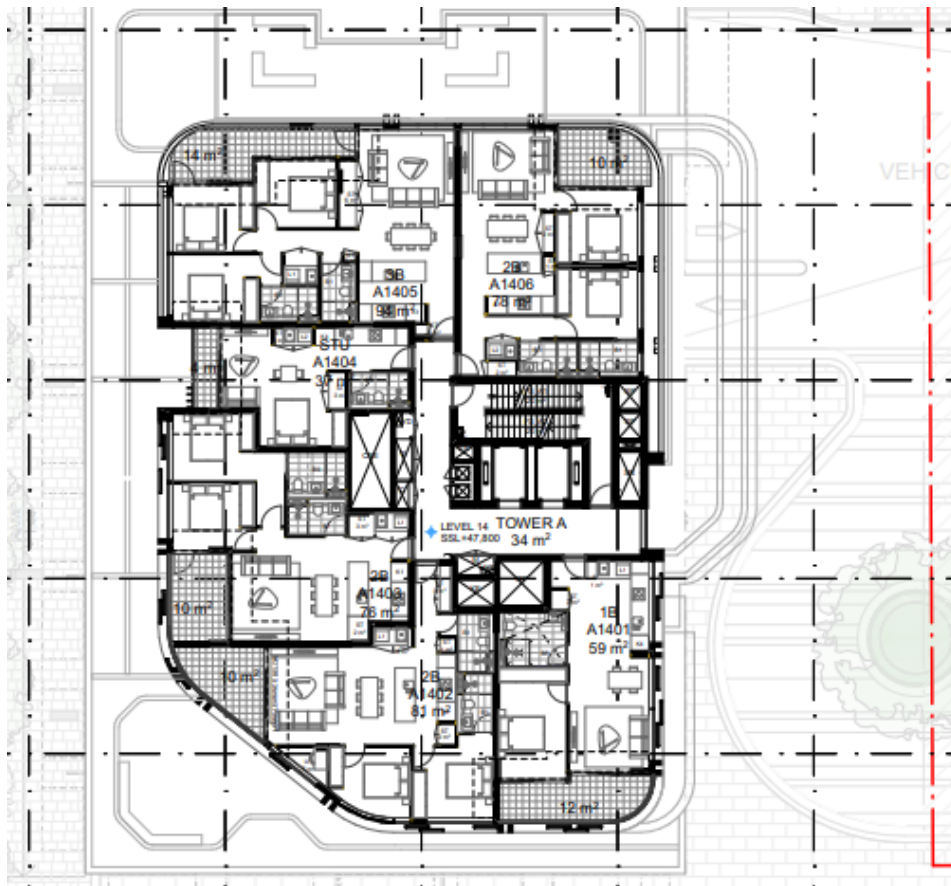


**Figure 11:** Building A Level 1 residential



**Figure 12:** Building A Level 4 residential





**Figure 13:** Building A Level 14 residential



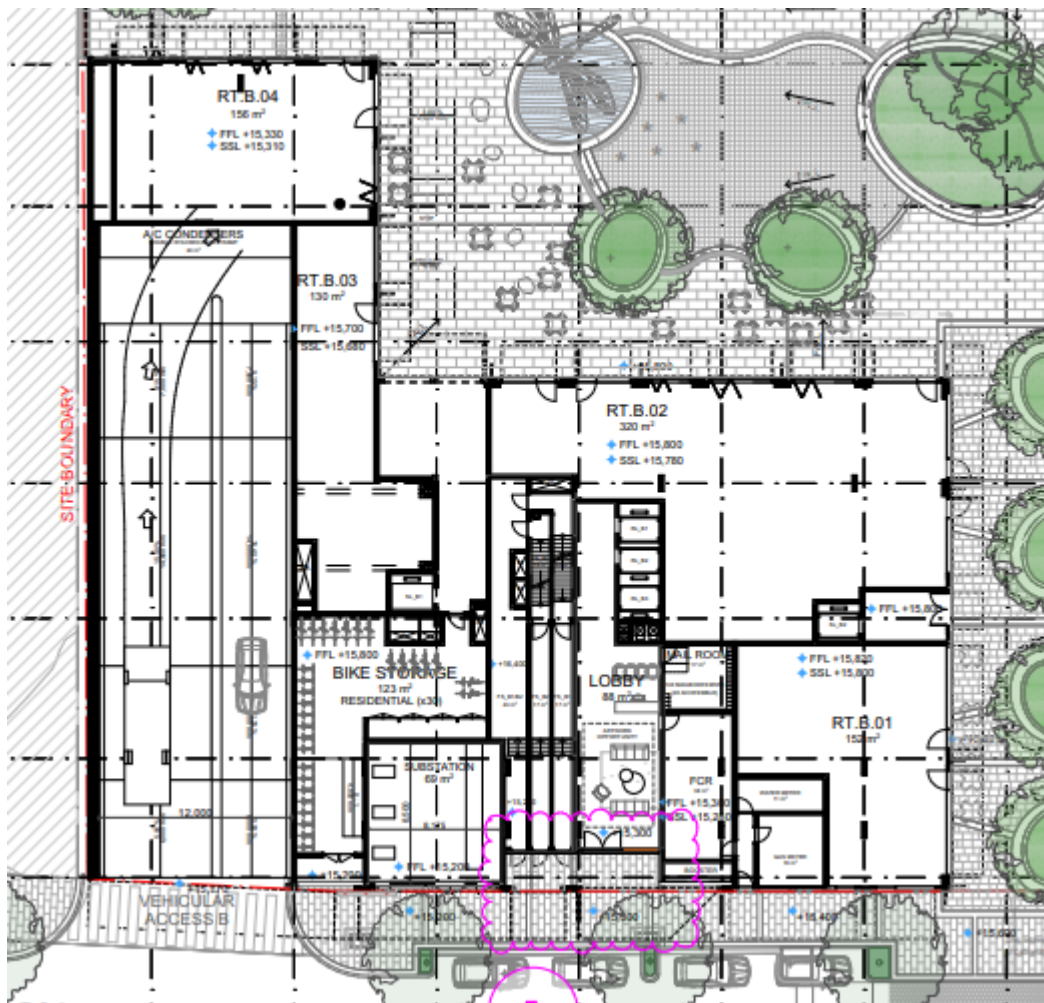
**Figure 14:** Building A South Elevation (towards Cabramatta Rd) and East Elevation (from neighbouring property).



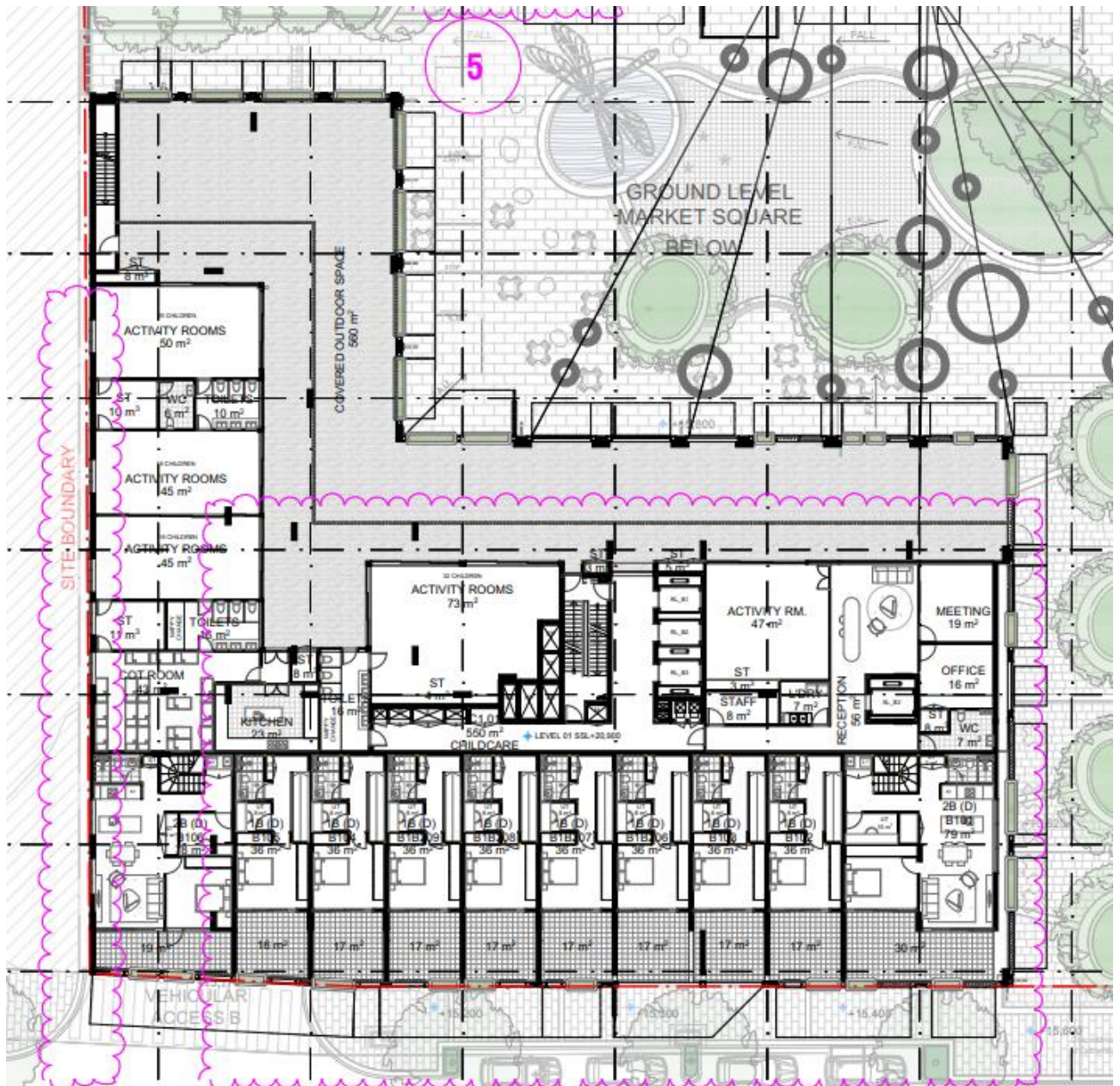
Building B is located on the eastern portion of the site within Stage 1 and is 16 storeys. Building B will comprise of the following:

- 4 retail premises (156m<sup>2</sup>, 130m<sup>2</sup>, 320m<sup>2</sup> and 152m<sup>2</sup>) on the ground floor
- Childcare for 80 Children on the first level;
- Substation and Bike Storage area on the ground floor; and
- 134 dwellings comprising of 1 x studio, 44 x 1 bedroom, 82 x 2 bedroom and 7 x 3 bedroom units.

As seen in the figures below:



**Figure 15:** Building B Ground Floor



**Figure 16:** Building B Level 1 includes the childcare centre





**Figure 17: Building B Level 10**



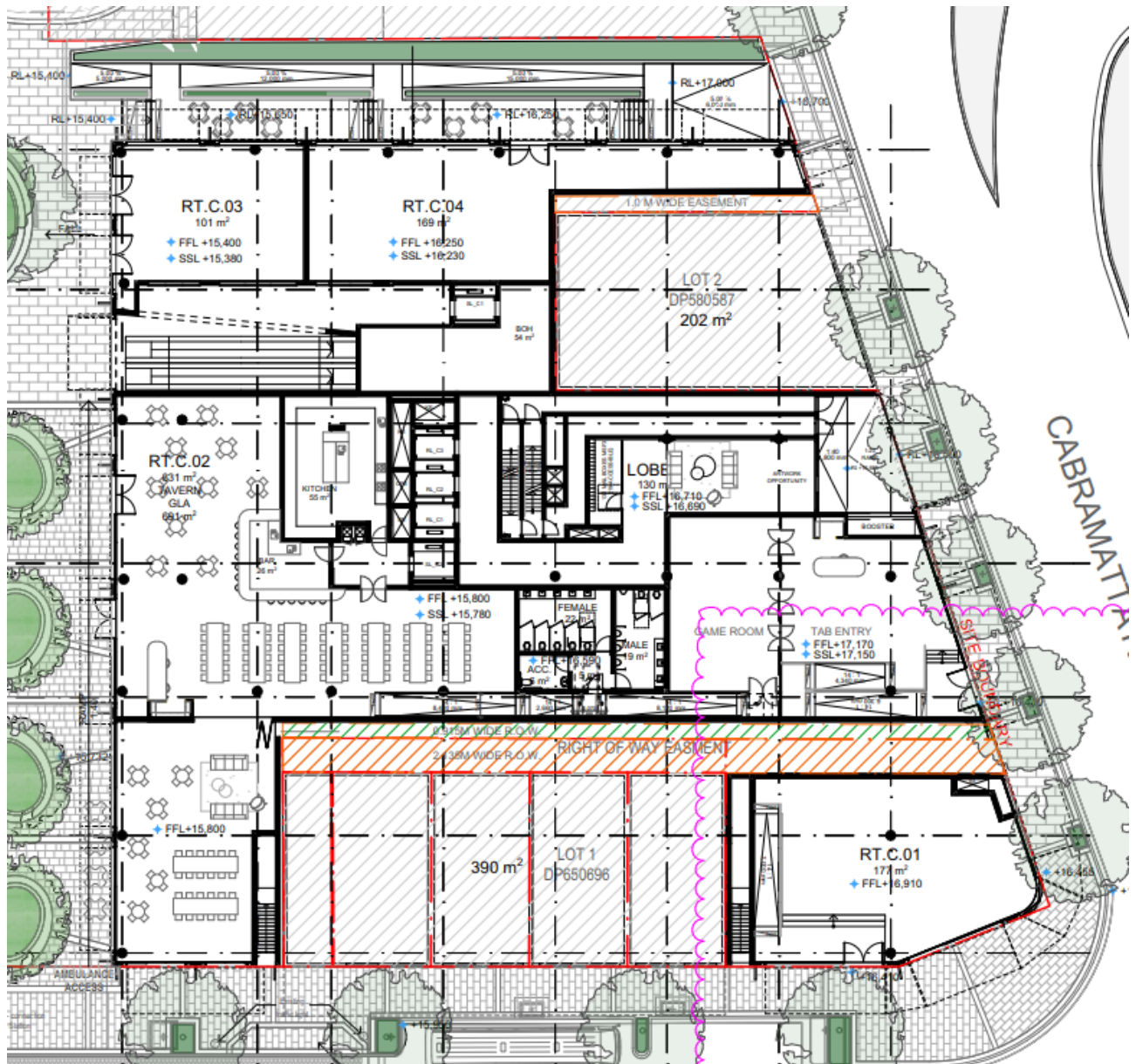
**Figure 18: Building B West Elevation (towards Broomfield Street) and North Elevation (from neighbouring property).**

Building C is located on the South Western corner of the site (on the intersection of Broomfield Street and Cabramatta Rd East) within Stage 2. The Building is the tallest building in the Cabramatta East precinct with a building height of 19 storeys. Building C will comprise of the following:

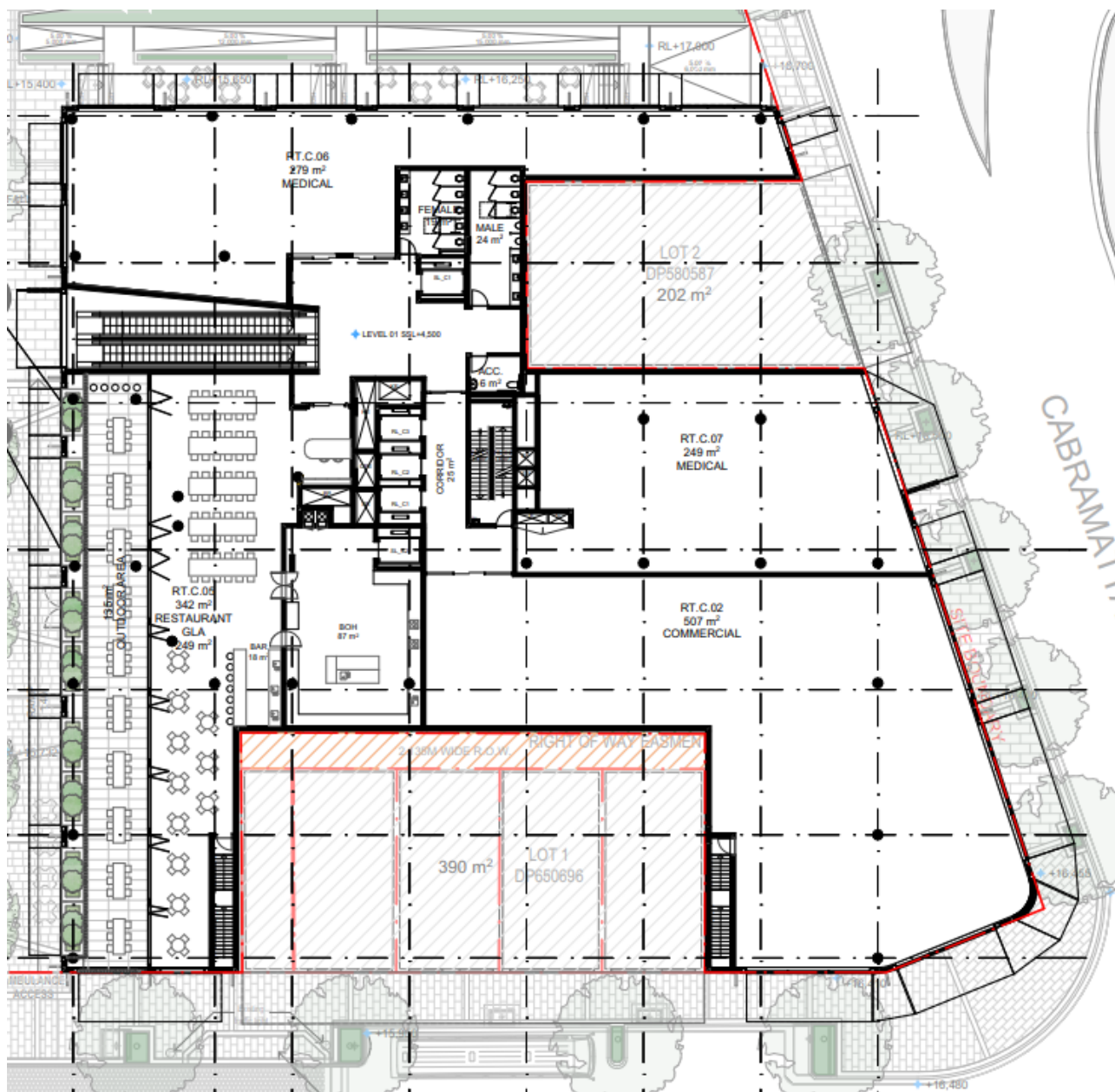
- 3 retail premises (101m<sup>2</sup>, 169m<sup>2</sup> and 177m<sup>2</sup>) on the ground floor;
- A Tavern (including TAB) with an area of 831m<sup>2</sup> on the ground floor;
- 2 medical centres (279m<sup>2</sup> and 249m<sup>2</sup>) on Level 1;
- Commercial premises with an area of 507m<sup>2</sup> on Level 1;
- Restaurant (342m<sup>2</sup>) with 176 seats on Level 1; and

- 128 dwellings comprising of 13 x studios, 29 x 1 bedroom, 61 x 2 bedroom and 25 3 bedroom units.

As seen in the figures below:



**Figure 19:** retail premises and Tavern located on Ground Level of Building C.

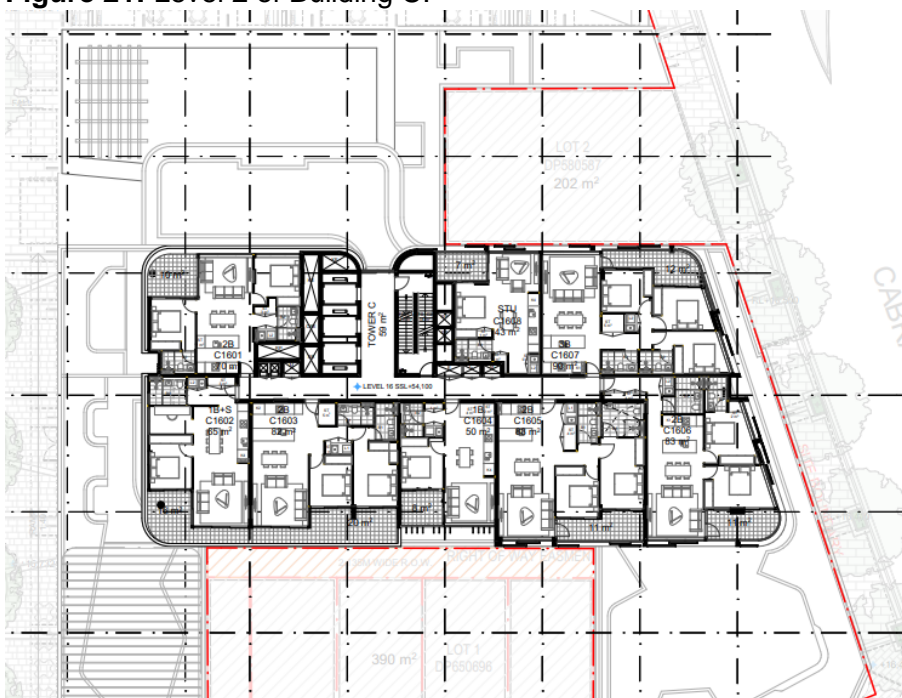


**Figure 20:** Medical Centres, Commercial premises and restaurant located on Level 1 of Building C.





**Figure 21: Level 2 of Building C.**



**Figure 22: Level 16 of Building C.**



**Figure 23:** Building C South Elevation (towards Cabramatta Road East) and West Elevation (Towards Broomfield Street).

Overall the Proposed development of both Stages 1 and 2 (Buildings A, B and C) will comprise of the following:

- 358 dwellings (28 x studio, 94 x 1 bedroom, 189 x 2 bedroom and 47 x 3 bedroom);
- 10 retail premises with a total area of 2145m<sup>2</sup>;
- A Tavern (including TAB) with an area of 831m<sup>2</sup> on the ground floor;
- Childcare for 80 Children;
- 2 medical centres with a total area of 528m<sup>2</sup>;
- Commercial premises with an area of 507m<sup>2</sup>; and
- Restaurant with a total area of 342m<sup>2</sup> including seating for 176 seats.

The following montages provides a graphical representation of the development as follows:





**Figure 24:** View of the development from the corner of Broomfield Street and Cabramatta Rd East





**Figure 25:** View of the development from Cabramatta Rd East.



**Figure 26:** View of Building B from the Market Square

## Tavern

Specific details of the tavern have been provided within a Plan of Management. Details are as follows:

- The tavern will be located on the ground floor of Building C and has an area of 831m<sup>2</sup>;
- The tavern will comprise of a Bar, restaurant and Game Room (including TAB);
- The tavern will operate 24 hours, 7 days per week;
- Have a maximum capacity of 300 people;



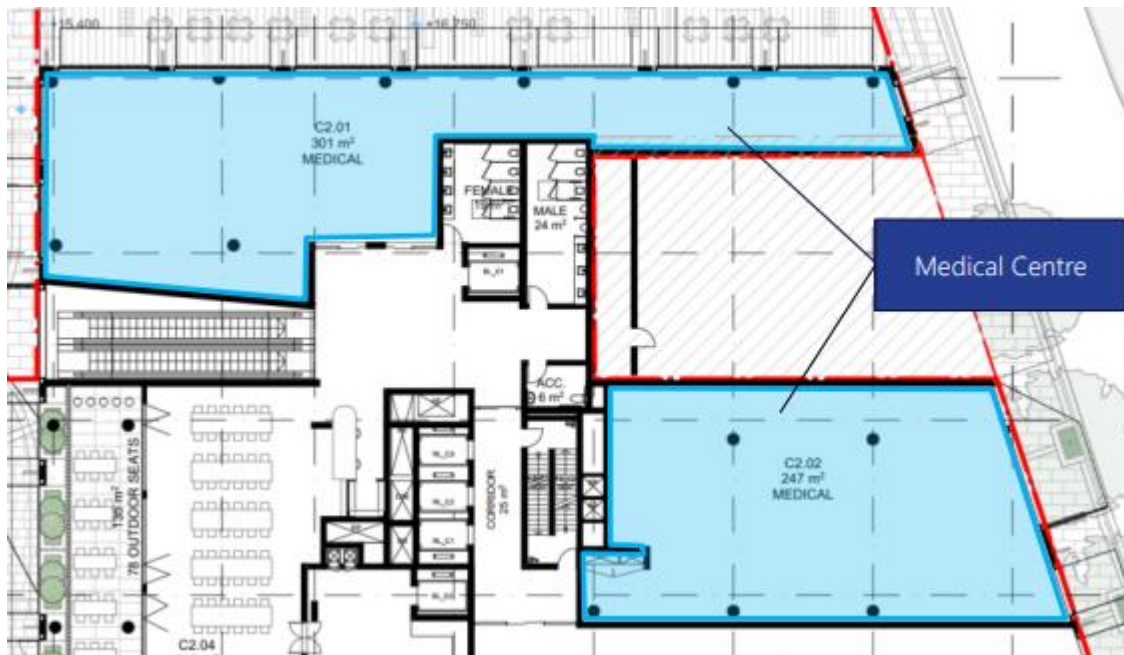
**Figure 27:** Area of Tavern located within Building C

## Medical Centre

Specific details of the medical centres have been provided within a Plan of Management. Details are as follows:

- 2 medical centres (279m<sup>2</sup> and 249m<sup>2</sup>) with a total area of 528m<sup>2</sup> on Level 1 of Building C;
- The submitted POM indicates that the plans do not show the fitout of the medical centre, however, the document indicates that there would be up to 10 consulting rooms;
- The types of health services would range from general practice, pathology, Dental, Physio, Audio, Optical and massage Therapy;
- The operating hours are 7:00am – 9:00pm Monday to Sunday (including public holidays).





**Figure 28:** Area of Medical Centres located within Building C

### Childcare Centre

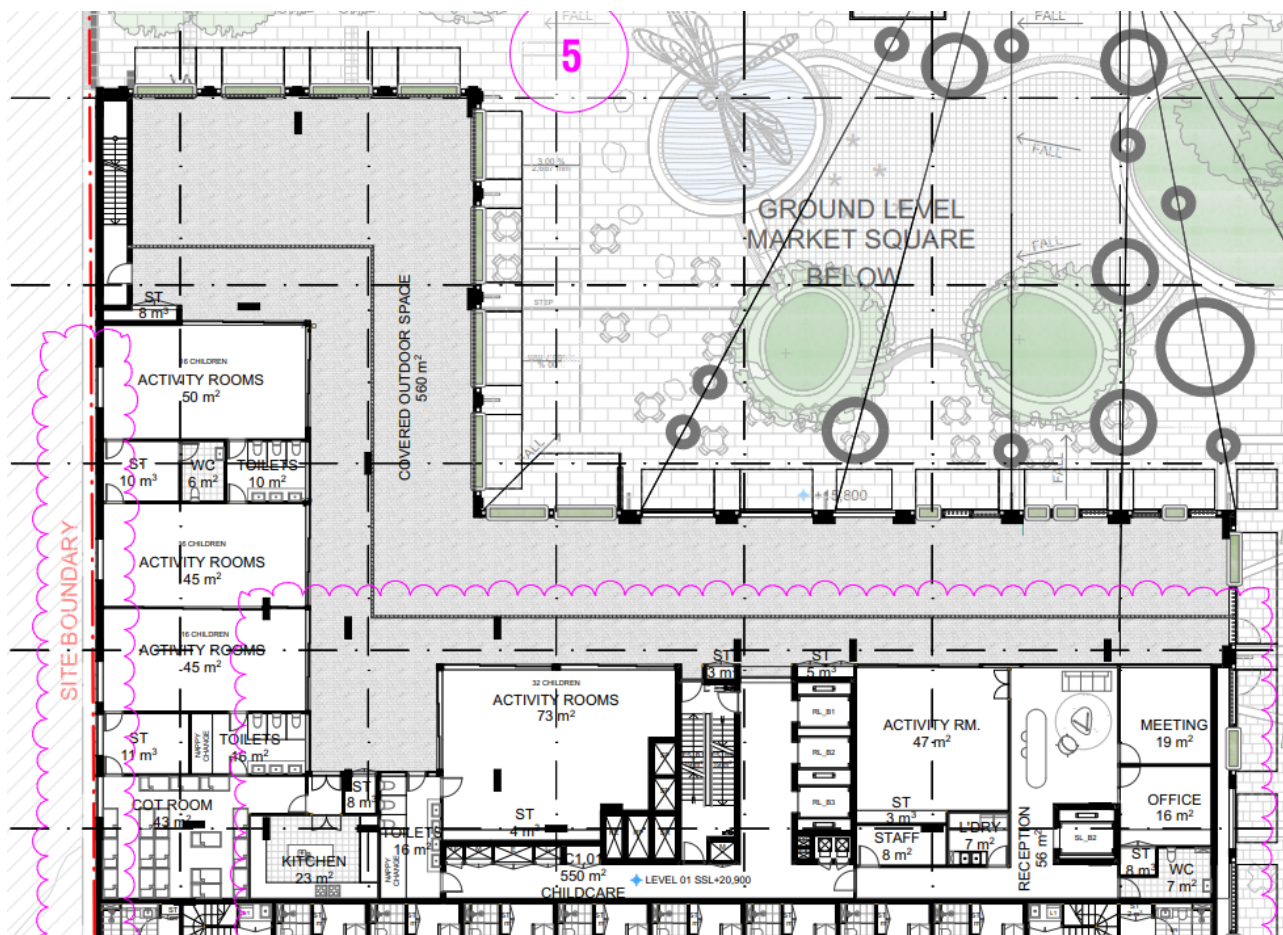
Specific details of the childcare centre has been provided within a Plan of Management. Details are as follows:

- The childcare centre has an area of 550m<sup>2</sup> and will accommodate up to 80 children;
- The centre will have 4 indoor rooms with 80 children (16 x 0-2 years and 64 2-3 years and 3-5 years);
- The overall development provides an unencumbered indoor area of 260m<sup>2</sup> and unencumbered outdoor area of 560m<sup>2</sup>;
- The operating hours are 7:00am – 6:00pm Monday to Friday;
- The POM states that there will be 11 child minding staff, a cook, centre manager and administrator;
- The acoustic report requires the following:
  - The number of children playing in the outdoor area at one time should be limited to 20 children
  - The roof directly above the outdoor play area should be solid with no gaps.
  - A one metre high barrier shall be installed above the finished floor level of the outdoor play area. There shall be no gaps in the fence or between the fence and the playground floor. The extent of the barrier is shown in the Figure below.



**Figure 29:** Extent of acoustic barrier for the childcare centre

- Acoustic barriers and the roof directly above the outdoor play area shall be constructed using a material that has a minimum mass of 8kg/m<sup>2</sup>. This can include: treated timber (lapped and capped), glass, precast concrete panels, lightweight aerated concrete, transparent acrylic panels, metal sheet cladding or fibre cement sheeting.
- Access to the centre is only provided via a lift located in the east part of Building B. Access will be from the first level in the basement, ground level and level 1.



**Figure 30: Area of Childcare Centre located within Building B**

#### Retail Premises, Commercial Premises and Restaurant

The proposal includes 10 retail premises with a total area of 2145m<sup>2</sup>, commercial premises with an area of 507m<sup>2</sup> and a restaurant with a total area of 342m<sup>2</sup> including seating for 176 seats. No details have been submitted in regard to the operation of the premises including hours of operation and number of people.

**Table 1: Development Data**

Control	Proposal
Site area	8,113m <sup>2</sup>
GFA	36,224m <sup>2</sup>
FSR	4.46:1
Clause 4.6 Requests	Yes, please see LEP assessment
No of apartments	358 dwellings
Max Height	66m
Deep soil zone	416m <sup>2</sup>



Car Parking spaces	428 car parking spaces within basement levels
--------------------	-----------------------------------------------

## 2.2 Background

### Existing Development

The subject site is currently occupied by a variety of single to 2-storey commercial buildings including a hotel, tutoring centre and business and retail premises, as shown in the figure below. The hotel “Stardust Hotel” has been located on the site since the 1980s. To the rear of the hotel is a private car park for the Hotel that compromises of approximately 70 car parking spaces.



**Figure 31:** existing development on the site

### Timeline of Development Application No. 167.1/2023

The development application was lodged on 6 June 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 2: Chronology of the DA**

Date	Event
6 June 2023	DA lodged
26 June 2023	Exhibition of the application
17 July 2023	A Preliminary Briefing was held with Regional Panel. The issues raised in the preliminary briefing are discussed further within this report.

25 September 2023	Panel Site Visit was conducted and the issues raised at the site visit are discussed further within the report.
1 December 2023	Council issued a letter to the Applicant raising concerns with the Development Application.
9 February 2024	Applicant provided a response to Council's letter
26 February 2024	An Assessment Briefing was held with the Regional Panel. The Panel requested that the Council and the Applicant provide further information to the Panel in regards to the interpretation of the LEP height clause, compliance with the DCP, site isolation justification and waste management for their consideration.
18 March 2024	The Council provided a response to the Panel regarding the matters raised in the Assessment briefing.
19 March 2024	The Applicant provided a response to the Panel regarding the matters raised in the Assessment briefing.
9 September 2024	A further Assessment briefing was held with the Regional Panel. The Panel requested that the Applicant submit further information in regards to details about owners consent, Clause 7.3(5A) of Fairfield LEP 2013 and site amalgamation/site isolation.
14 October 2024	The Applicant provided a response to the matters raised by the Panel in the briefing on 9th September 2024.
4 November 2024	Matter to be reported to a final determination meeting with the Sydney Western City Planning Panel

## 2.3 Site History

### **Planning Proposal and Development Control Plan**

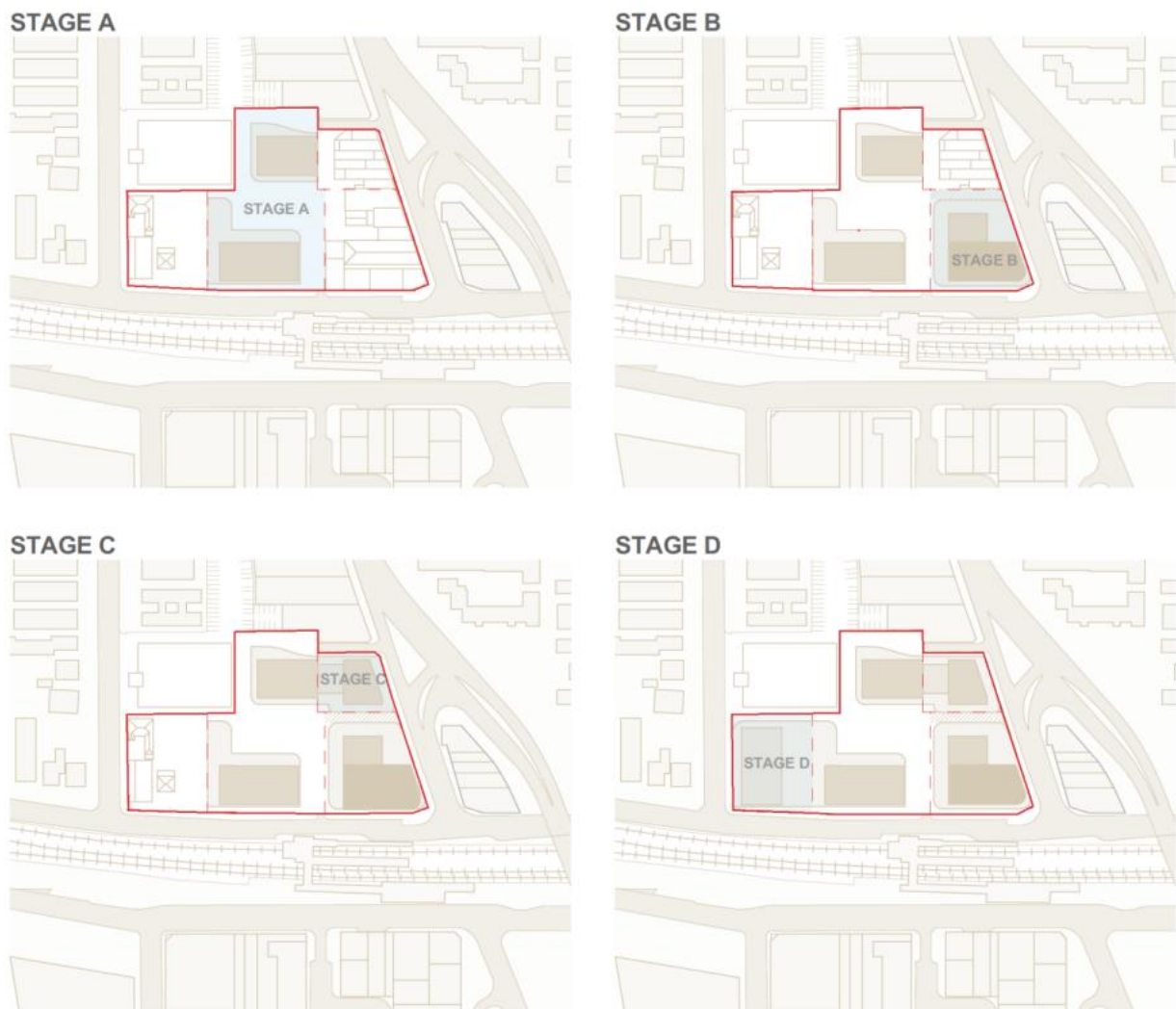
The Cabramatta East Redevelopment was subject to a Planning Proposal and a supporting Site Specific Development Control Plan (SSDCP). The Planning Proposal comprised of the area of 12,507m<sup>2</sup> as identified in the following figure;



**Figure 32:** Area of the planning proposal

The subject area of the planning proposal incorporated 22 privately owned parcels of land. Given the scale of development proposed and the complexity of land ownership of individual premises, the development was proposed to occur in four stages, as outlined in the figure below.

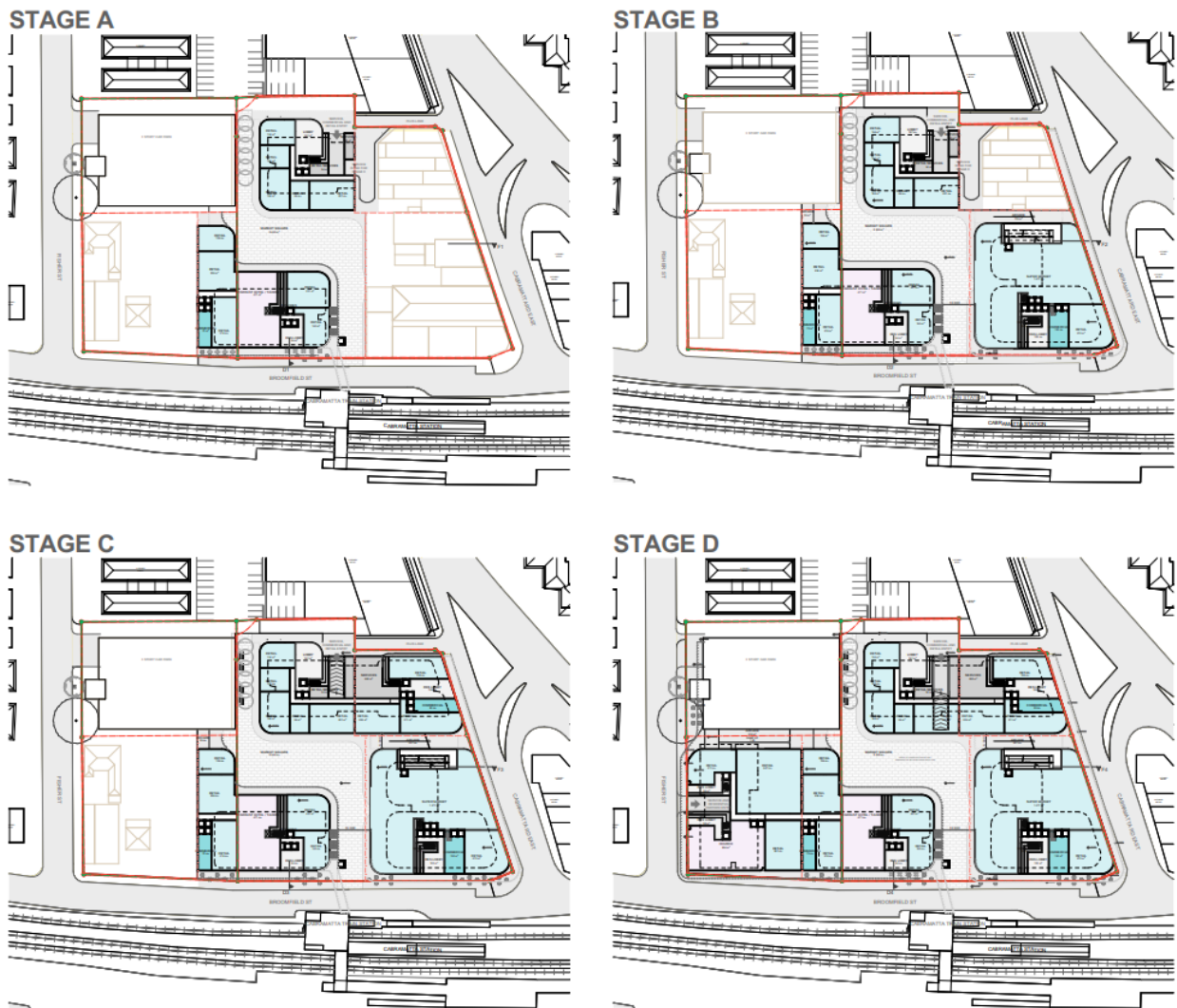




**Figure 33: Staging Plan within the Planning Proposal**

The subject Application only seeks the redevelopment of Stages A and B (Stages 1 and 2 in the subject Application). Whilst the Applicant has staged the Planning Proposal, it is important to note that it was designed with all individual lots being included in the development in order to ensure that the building forms envisaged would meet the relevant provisions.

In support of the Planning Proposal and the SSDCP, a detailed Urban Design Analysis (UDA) accompanied the Planning Proposal which included overall built forms and massing and a shadow study. Details of the built forms are below:



**Figure 34:** Typical Floor plans for the staging of the Redevelopment

STAGE A



STAGE B



STAGE C

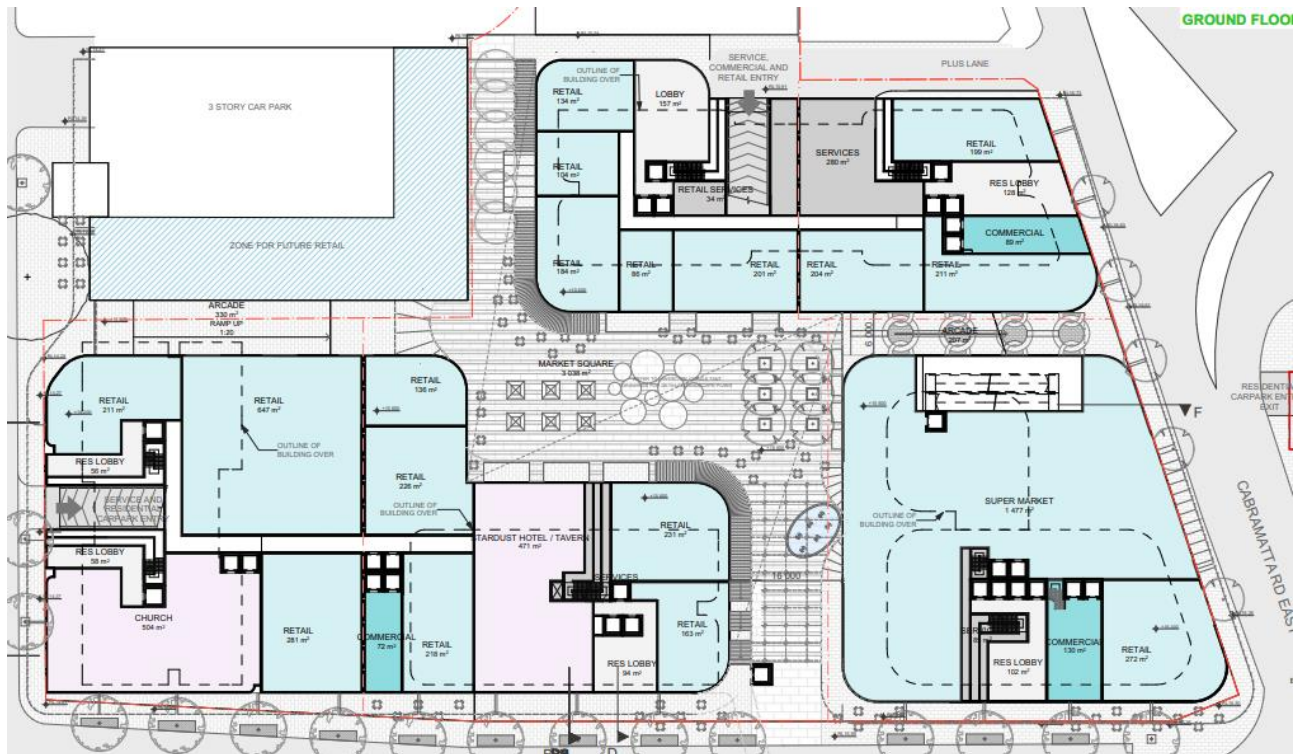


STAGE D



**Figure 35:** Built form massing for the staging of the Redevelopment





**Figure 36:** redevelopment of the Ground Floor



**Figure 37:** Redevelopment of the upper residential levels

The document informed the Planning Proposal and the SSDCP which provided for built forms and heights in order to renew the eastern town centre.

On 7 October 2023, Fairfield Local Environmental Plan (LEP) 2013 (Amendment No.42) was gazetted. The amendment amended the LEP as follows:

- Increase the maximum height of building from 14 metres to a range between 48 metres and 66 metres subject to minimum site areas being met;
- Increase the maximum floor space ratio from 2:1 to a range between 3.85:1 and 6:45:1;
- Insert a minimum site area on the Town Centre Precinct map to facilitate staged future re-development into four (4) sub-precincts and adequate provision for residential accommodation over the precincts; and
- Insert a new local clause to prohibit dwellings on the ground floor to allow for activation of the precinct.

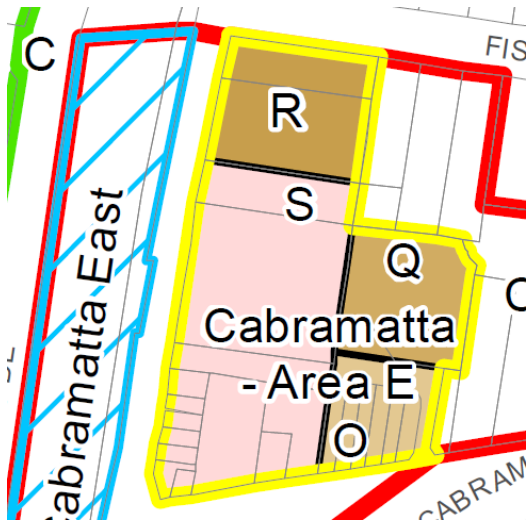
In addition, an amendment to the Cabramatta Town Centre Development Control Plan 2000 also came into effect upon finalisation of the Planning Proposal. It included a new Precinct 4A – East Side Market Square and Station Interface. The controls set a built form to be achieved under the FLEP 2013 and centred on a new market square for open and activated pedestrian connections through the site and to adjoining streets.

### **Erratum**

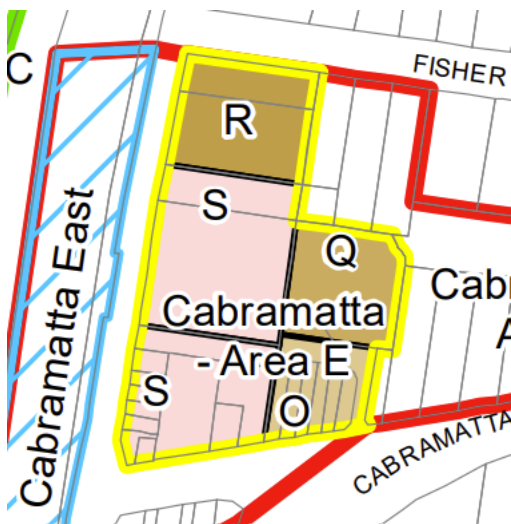
During the assessment of the Application, it became apparent that when Amendment No. 42 came into effect, there was an error in the Mapping. Accordingly, the Fairfield LEP 2013 was amended (Map Amendment No 06) on the 15<sup>th</sup> November 2023. The amendment was initiated in response to an error that Council became aware of subsequent to the submission of the Development Application. The amendment had the effect of amending the “Minimum Site Area Map Town Centre Precinct Map” in Fairfield Local Environmental Plan 2013 (FLEP 2013) by replacing a map sheet. Extracts of the omitted map and replacement map are reproduced below. A copy of the exhibited map is also shown below which clearly shows two (2) “S” notations to identify each of the amalgamation stages”.



**Figure 35:** Exhibited Map



**Figure 38:** Omitted Map drafted by the Department of Planning



**Figure 39:** Replacement Map

In essence a bold black line was inserted on the map in the Cabramatta – Area E and a second letter “S” was inserted below that line. The purpose of the thick black line that divides the two areas and the inclusion of the additional letter “S” is to provide clarity concerning the intent of clause 7.3(5A)(b) of the Fairfield LEP 2013.

It is noted that if it was intended that only 2,700m<sup>2</sup> be required for the whole of area marked “S” it would have been unnecessary to include the designation “S” twice in that area or to divide the area by a hard black line. The hard black line when read in context with other thick black lines on the map define the boundaries of an area to which a particular designation in the legend applies. Furthermore, the amended mapping is consistent with the Staging Plan that was supported as part of the Planning Proposal. When all the lots are included within each stage it would comply with the required 2,700m<sup>2</sup>.

Accordingly, the replacement Minimum Site Area Map shows that there are two (2) separate areas of land that are designated “S” and as such, a building that is proposed on the land within one of those designated areas must have a site area of 2,700m<sup>2</sup> within that designated area in order to exceed 14 m in height. As discussed within the assessment, whilst Stage 1



would meet the minimum site area requirement, Stage 2 would not meet the Minimum Site Area required under the LEP and therefore would not benefit from the additional Building Height pursuant to Clause 7.3 of the LEP.

### **Voluntary Planning Agreement and Pedestrian Bridge**

In order to cater for the increase in density allowed under the LEP and SSDCP, a Voluntary Planning Agreement (VPA) was submitted by the Applicant. The VPA involved the construction of a pedestrian bridge from the subject site to connect with Cabramatta Train Station in order to improve accessibility between Cabramatta East to the rest of the town centre west of the train line.

During this process, TfNSW (Sydney Trains) advised that despite a new \$4.2 million piece of infrastructure to help accessibility in Cabramatta Train Station, they did not support the bridge. It was indicated that the bridge may impact future planning of the redevelopment of Cabramatta Train Station when that occurs. Given this, the VPA included a fall-back position which would allow the developer to pay a monetary contribution equivalent to 110% of the cost of the pedestrian bridge towards community facilities in the Cabramatta area. Please note this is not Council's preference on the matter and as requested by the regional Panel at its Preliminary Briefing dated 17<sup>th</sup> July 2023, Council again contacted TfNSW regarding this matter and stated the following:

*"It is Council's position and preferred option for a pedestrian bridge to be delivered. This is an important connection and piece of infrastructure for the Cabramatta Town Centre, supported by the Cabramatta Town Centre Urban Design Study. The pedestrian bridge will improve east-west connections across the Cumberland Train line which separates the two sides of the town centre. Over recent years, the separation between east and west has been exacerbated by the construction of the Southern Sydney Freight Line and its associated noise wall."*

Despite further requests from Council, TfNSW does not support the pedestrian bridge. Notwithstanding this, it was requested that sufficient provisions be provided with the design to allow a pedestrian bridge to retrospectively be incorporated into the design, should this eventuate in the future.

Moon Investments Pty Ltd 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 VPA was signed and executed on the 24<sup>th</sup> May 2022.

### **Proposed Strata and Stratum Subdivision**

On 26 September 2023, the Applicant sought to amend the Application to include stratum and strata subdivision. It is proposed that the Stratum subdivision will provide for separate strata for the commercial and residential portions of the development which will then be subject to strata subdivision plans.

The reason for the amendment, is that the then Draft Ministerial Order for the Housing and Productivity Contribution (HPC), could have the effect of requiring the payment of the HPC for developments either lodged and undetermined or approved prior to the commencement of the HPC.

Since the Ministerial Order has been issued, the Applicant did not pursue the subdivision component of the application and does not form part of the application.

### **3. STATUTORY CONSIDERATIONS**

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When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*  
*that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered be the following:

- Requiring referral to Transport for NSW (TfNSW) (Sydney Trains)
- Requiring referral to Transport for NSW (TfNSW) (Roads)
- Requiring referral to Bankstown Airport
- Requiring referral to Endeavour Energy

It is noted that the proposal is not considered to be any of the following:

- Integrated Development
- Designated Development
- Crown DA.

### 3.1 Instruments and Controls Applicable to the Site

The relevant environmental planning instruments, development control plans and the matters for consideration under the EP&A Act and Regulation are considered to be:

- Fairfield LEP 2013
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Planning Systems) 2021:
- SEPP (Resilience & Hazards) 2021
- SEPP (Transport & Infrastructure) 2021
- Childcare Guidelines 2021
- SEPP (Housing) 2021: Chapter 4 Design of Residential Apartment Development
- Apartment Design Guide
- Cabramatta Town Centre DCP 2000
- Fairfield CityWide DCP 2013

A detailed assessment of the proposal against each provision is provided in the subsequent sections.

#### (a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

### 3.2 Fairfield Local Environmental Plan 2013

#### a. Zoning and Permissibility

The subject site is zoned MU1 Mixed Use High under the Fairfield LEP 2013.

The proposed development is characterised as follows:

- *Shop – Top Housing*
- *Centre-Based Childcare facility*
- *Medical Centre*
- *Commercial premises*
- *Retail premises*
- *Restaurant or café*
- *Subdivision*

The FLEP 2013 provides the following definitions of the landuses:

***shop top housing*** means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

***Centre-based child care facility*** means—

(a) *a building or place used for the education and care of children that provides any one or more of the following—*

(i) *long day care,*

(ii) *occasional child care,*

(iii) *out-of-school-hours care (including vacation care),*

(iv) *preschool care, or*



(b) an approved family day care venue (within the meaning of the [Children \(Education and Care Services\) National Law \(NSW\)](#)),

**medical centre** means premises that are used for the purpose of providing health services (including preventative care, diagnosis, medical or surgical treatment, counselling or alternative therapies) to out-patients only, where such services are principally provided by health care professionals. It may include the ancillary provision of other health services.

**commercial premises** means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

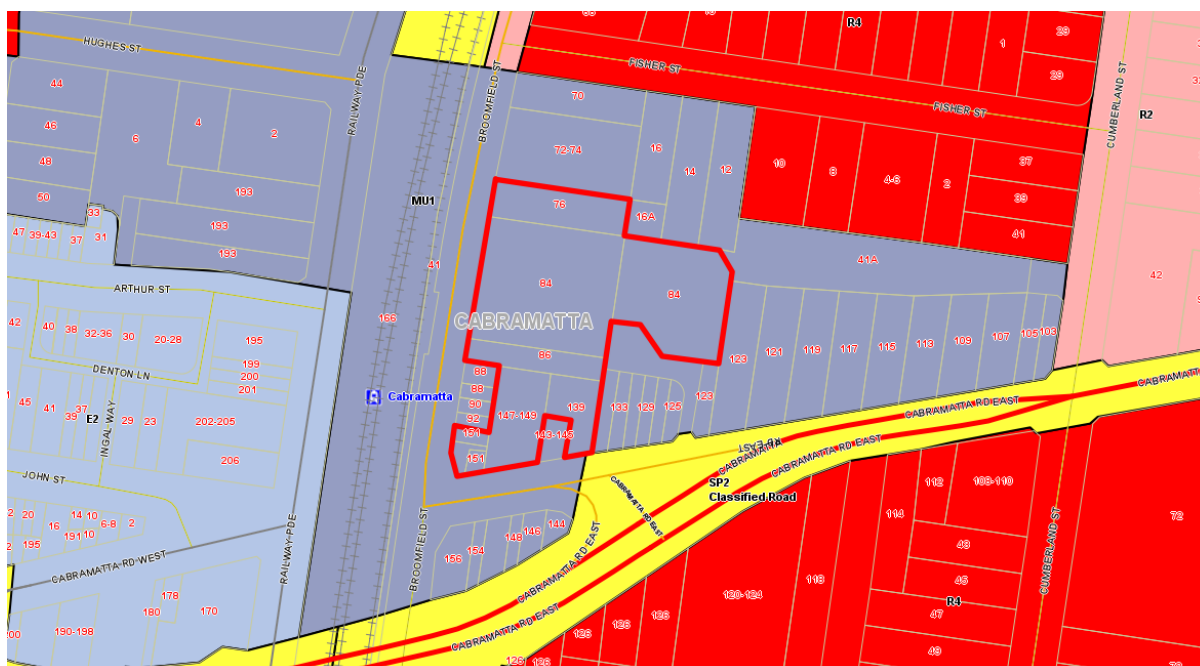
- (a), (b) (Repealed)
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include farm gate premises, highway service centres, service stations, industrial retail outlets or restricted premises.

**restaurant or cafe** means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided, but does not include the preparation and serving of food and drink to people that occurs as part of—

- (a) an artisan food and drink industry, or
- (b) farm gate premises.

The proposed land uses are permitted within the zone, subject to consent.



**Figure 40: Zoning Map: MU1 Mixed Use zone Fairfield LEP 2013.**

## **b. Objectives of the Zones**

The objectives of the zone are as follows:

- *To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.*
- *To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*
- *To support the development of Bonnyrigg, Prairiewood, Fairfield and Cabramatta as the principal locations for specialist cultural, retail, business, tourist and entertainment facilities and services.*

It is considered that the application as submitted has not demonstrated that the proposed commercial land uses will not impact the proposed residential dwellings. In this regard, it is considered that the proposal has not had sufficient regard to the objectives of the zone.

## **c. Additional Provisions of Fairfield LEP 2013**

The following additional provisions of the Fairfield LEP 2013 are relevant to the proposal and are addressed below:

**Table 3.** Fairfield LEP 2013

<b>Clause</b>	<b>Development Standard</b>	<b>Proposal</b>	<b>Compliance</b>
2.6 Subdivision – Consent Requirements	Land to which this Plan applies may be subdivided, but only with development consent.	The application proposes to subdivide a portion of a public road to be incorporated into the subject site. Council, as the owner, has not consented to this.	No
2.7 Demolition Requires Development Consent	The demolition of a building or work may be carried out only with development consent.	The application includes proposed demolition of existing structures.	Yes
4.1 Minimum Subdivision Lot Size	The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.	No minimum subdivision lot size applies to the subject site.	Not applicable
4.3 Height of Buildings	59m maximum building height permitted in Stage 1	Maximum 58.55m building height and complies.	Yes
	66m maximum building height permitted in Stage 2	Maximum 65.85m proposed and complies	Yes
4.4 Floor Space Ratio (FSR)	3.85:1 maximum FSR permitted in Stage 1	3.75:1 proposed and complies	Yes
	6.45:1 maximum FSR permitted in Stage 2	6.44:1 proposed and complies	Yes
4.4A Exceptions to Maximum FSR in Zone R4	(1) This clause applies to land in Zone R4 High Density Residential (excluding any land in Bonnyrigg, Cabramatta, Canley Vale and Fairfield Heights)	The site is excluded from this Clause as it is located in Cabramatta.	Not applicable
4.5 Calculation of FSR and site area	This clause sets out the provisions for calculation of site area and floor space ratio	The site areas have been calculated in accordance with this clause.	Yes
4.6 Exceptions to development standards	This Clause enables council to exercise an appropriate degree of flexibility in applying	The application is accompanied by a Clause 4.6 Request for Variation of development standard 7.2(4A) and 7.3(5A) which allows a greater	No



	certain development standards to achieve better outcomes for and from development	FSR and height if certain minimum site area is met. Stage 2 of the proposed development does not meet the minimum site area and therefore cannot rely upon the increased height and FSR. This is further discussed below.	
5.10 Heritage Conservation	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.	<p>The subject site is located within the vicinity of Heritage listed Item 15 which is identified in Schedule 5 of the LEP as locally significant. The item is the Pai Lu gateway located within the heart of Cabramatta town centre.</p> <p>Council's Heritage Advisor assessed the potential impacts of the development on the heritage item and has raised no issues.</p>	Yes
6.2 Earthworks	<p><i>(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—</i></p> <p><i>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p><i>(b) the effect of the development on the likely future use or redevelopment of the land,</i></p> <p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p> <p><i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p><i>(e) the source of any fill material and the</i></p>	Council has considered the matters in this clause as outlined below and raises no concern to the proposed earth work activity.	Yes

	<p><i>destination of any excavated material,</i></p> <p><i>(f) the likelihood of disturbing relics,</i></p> <p><i>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i></p> <p><i>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i></p>		
6.9 Essential Services	<p>This Clause prescribes that: <i>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 adequate arrangements have been made to make them available when required—</i></p> <p><i>(a) the supply of water,</i></p> <p><i>(b) the supply of electricity,</i></p> <p><i>(c) the disposal and management of sewage,</i></p> <p><i>(d) stormwater drainage or on-site conservation,</i></p> <p><i>(e) suitable vehicular access.</i></p>	It is considered that essential services or amplification of those services can be provided.	Yes
6.12 Design excellence	<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>Following an assessment of the application, it is considered that the development would not exhibit design excellence.</p> <p>Development consent must not be granted as it is considered that the</p>	No

		shop top housing does not exhibit design excellence.  Further discussion is provided under the Key Issues section.	
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### **Variation to Clause 4.3 Height of Building Standard**

As outlined in the table above, a Clause 4.6 variation has been submitted which requests a variation to Clause 7.2(4A) and Clause 7.3(5A) of the Fairfield LEP 2013. The clauses specify a FSR and height of buildings located within Area E of Cabramatta that have a certain minimum land size.

Stage 1 complies with the development standard. Accordingly, the Clause 4.6 request relates to Stage 2.

The Clauses are as follows:

#### **7.2 Cabramatta—floor space ratio**

(1) *This clause has effect despite clause 4.4.*

....

(4A) *The maximum floor space ratio for a building on land identified as “Cabramatta—Area E” on the Town Centre Precinct Map is—*

(a) *if the building is not used for the purposes of residential accommodation—1.5:1, or*

(b) *if less than 10% of the floor space is used for the purposes of residential accommodation—2:1, or*

(c) *if 10% to 50% of the floor space is used for the purposes of residential accommodation—2.2:1.*

#### **7.3 Cabramatta—height of buildings**

(1) *The objective of this clause is to allow development to be built to the maximum permissible building height only if certain development standards are met.*

(2) *This clause has effect despite clause 4.3.*

....

(5A) *The height of a building on land identified as “Cabramatta—Area E” on the Town Centre Precinct Map must not be greater than—*

(a) *10m, unless at least 50% of the building will be used for the purposes of residential accommodation, and*

(b) *14m, unless the site area will be at least the minimum site area shown for the land on the Minimum Site Area Map.*

The submitted Clause 4.6 identifies the following variations to the Clauses:

#### **Site Area Variation**

*The extent of the variation of the minimum site area for Stage 2 is 445m<sup>2</sup> or 16.48%. As noted above the total area of Stage 2 defined by the contended effect of newly inserted line is only 2,800m<sup>2</sup> which would enable the creation of an isolated parcel of land of less than 100m<sup>2</sup> and the requirements of the Clause would be met enabling the higher FSR and Height of Building Controls anticipated by Clauses 7.2(4A) and 7.3(5B).*

**FSR Variation**

*Based on a site area of 2,255m<sup>2</sup>, the maximum FSR of 2:1 under Clause 7.2 permits a maximum GFA of 4,510m<sup>2</sup> within Stage 2. The total proposed FSR of Building C on Stage 2 taken from the Development Schedules prepared by Plus Architecture in the DA Design Report totals 9,646m<sup>2</sup>. This represents a variation of 213.9% to the 2:1 default FSR.*

**Height Variation**

*The maximum height under Clause 7.3 is 14m within Stage 2. The maximum height of Building taken from the Section through Building C taken prepared by Plus Architecture in the DA Design Report is 65.85m which represent a variation of 370.36%.*

Clause 4.6(3) of the LEP prescribes that:

- (3) Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
- (a) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
  - (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.*

The submitted Clause 4.6 Variation has provided the following reasons that compliance with the development standard is unreasonable or unnecessary in the circumstances:

*The site specific Planning Proposal was for an overall site area which comprised Stages to enable the delivery of the redevelopment of the site in a structured manner. The overall development site exceeds the 2700m<sup>2</sup> minimum site area providing for the redevelopment of the site as anticipated.*

*Compliance with the minimum site area for Stage 2 of the development will not achieve overall site consolidation in that the owners of land within Stage 2 have been approached to be acquired to be included within the overall redevelopment. For reasons relevant to those landowners they have chosen not to participate. Every effort as set out in Karavellas has been made and documented, the punitive impact upon the remaining engaged and involved landowners is fundamentally and unreasonably restrictive of the redevelopment of the bulk of the site.*

*For reasons of viability, the restriction of Stage 2 will have an undue impact on the ability to realise any redevelopment of the site either under this Development Application or future development applications.*

*The Applicant has been engaged with Council for an extended period and with landowners within the site to achieve the site specific rezoning and development site for Stages 1 and 2 in this DA. The approach of Council, to amend the LEP after the lodging of the DA and without any consultation or notification is unfair to the Applicant. An alternative interpretation of the line on the minimum site area mapping of the LEP to that of Council is available and should be applied in the interests of fairness. The underlying planning intention of the controls is to enable and facilitate redevelopment of the site not achieve consolidation of all sites. If*



*consolidation was intended to be the desired outcome a suitable standard should be applied to any redevelopment of the land.*

*Compliance with the development standards as discussed above would not result in an improved planning outcome, in that the site would not be consolidated and will in all likelihood sterilise the development potential of the overall site.*

*The development standard is unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not be subjected to requirement for Stage 2 to achieve a minimum site area of 2700m<sup>2</sup>, where the overall development site is 6043m<sup>2</sup> is proposed ensuring the orderly and economic development of the land.*

*The restriction of height within the Stage 2 site will compromise the design outcomes of the overall scheme and the intent of the LEP height of buildings and FSR Maps as well as the DCP which seek a more prominent tower to place mark the corner site.*

*For these reasons, the interpretation and so application of development standard is both unreasonable and unnecessary to achieve the desired planning outcomes anticipated by the overall planning controls.*

The submitted Clause 4.6 Variation has provided the following reasons that there are sufficient environmental planning grounds to justify the contravention of the development standard:

*The environmental planning grounds which support the variation of the development standards relate to:*

- Redevelopment of the site in a manner consistent with the site specific Planning Proposal.*
- Public Benefits including the planning agreement for the delivery of pedestrian bridge and streetscape improvements and the establishment of the centre square.*
- Redevelopment of aging and fragmented commercial development.*
- Increase in housing provided in an accessible location adjacent to the existing railway station and associated infrastructure in Cabramatta Town Centre.*

After reviewing the applicant's written request for a Clause 4.6 Variation to the development standard, it is considered that the Applicant's written request for variation of the standard does not meet the tests set out in Clause 4.6 of the LEP. It is considered that the submitted Clause 4.6 has not considered how the proposed development will impact and prejudice the development potential of the other stages within the precinct as well as the isolated lots.

### **3.3 State Environmental Planning Policy (Transport and Infrastructure) 2021**

#### **Chapter 2 Infrastructure**

The following Clauses of Chapter 2 Infrastructure are relevant to the site and the proposal and have been taken into consideration:

The development application was referred to NSW Sydney trains for comment in accordance with Clause 2.99 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. Sydney Trains have responded and raise no concern to the proposal subject to compliance with a number of conditions.

The Application is supported by an Acoustic report that has considered Clause 2.100 Impact of rail noise or vibration on non-rail development of the SEPP. Subject to recommendations within the report, the proposed residential dwellings will meet the threshold decibel levels and will not be exceeded.

It is therefore considered that the application will unlikely be impacted by the nearby rail corridor subject to the recommendations of the Acoustic Report being met.

The development application was referred to TfNSW for comment in accordance with Clause 2.122 (Traffic Generating Development) of the State Environmental Planning Policy (Transport and Infrastructure) 2021. TfNSW have responded to the latest package and still raise concerns with the proposed development. Clause 2.122 Subclause (4) is as follows:

*(4) Before determining a development application for development to which this section applies, the consent authority must—*

*...*

*(b) take into consideration—*

*(i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and*

*(ii) the accessibility of the site concerned, including—*

*(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*

*(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*

*(iii) any potential traffic safety, road congestion or parking implications of the development.*

Given the comments from Council's traffic engineer and TfNSW, a number of issues remain unresolved with respect to traffic safety and road congestion matters.

### **Chapter 3 Educational Establishments and Child Care Facilities**

The proposal includes a childcare centre for 80 children on the first floor level of Tower B. A detailed assessment of the State Environmental Planning Policy (Transport and Infrastructure) 2021: Chapter 3 – Educational Establishments and Child Care Facilities and Child Care Planning Guideline 2021 is provided in Attachment AH. The assessment has revealed concerns regarding safety/privacy of the children, insufficient information in order to determine if there is sufficient unencumbered indoor and outdoor play area, sufficient fire refuge, insufficient staff numbers and impractical management practices. It is considered that the proposed childcare centre in its current form is not in accordance with the SEPP provisions nor the guidelines.

### **3.4 State Environmental Planning Policy (Planning Systems) 2021**

#### **Chapter 2 State and Regional Development**

In accordance with Chapter 2 State and Regional Development of SEPP (Planning Systems) 2021, development is declared to be regionally significant development for the purposes of the Act if the development is specified in Schedule 6 Regionally Significant Development. Schedule 6 states that General Development with a Capital Investment Value (CIV) of over \$30 million is regionally significant development.

At the time of lodgement, the application declared the estimated cost of development excluding GST to be \$215.4 million. Accordingly, the CIV will exceed the SEPPs \$30 million threshold and as such the application is referred to the Sydney Western City Planning Panel for determination.

Council notes that the application was lodged on 6<sup>th</sup> June 2023 and the SEPP was amended on 4 March 2024, after the lodgement of the application. The current version has removed the reference to CIV and replaced it with a reference to Estimated Development Cost (EDC) which is calculated differently as defined in the Environmental Planning & Assessment Regulation 2021.

Notwithstanding the above, a revised EDC Report was not considered necessary to be submitted by the applicant for the purpose of updating the EDC due to the transitional provisions contained in Part 2.5 Miscellaneous (Section 2.22 (2) and (3)). This Part provides that existing regionally significant development applications that have not been determined when this Chapter was amended do not cease to be regionally significant development upon the Chapter amendment.

### **3.5 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (repealed)**

The Applicant has submitted a BASIX Certificate in support of the application and based on the original plans as lodged in June 2023, however has not submitted an amended BASIX to reflect the current amended plans lodged in February 2024. Amended BASIX Certificates reflecting the application are necessary.

Council notes that SEPP (BASIX) 2004 has since been repealed when SEPP (Sustainable Buildings) 2022 commenced in October 2023. However as the application was lodged on 6<sup>th</sup> June 2023 prior to the commencement of the new SEPP, SEPP (BASIX) 2004 applies.

### **3.6 State Environmental Planning Policy (Resilience and Hazards) 2021**

#### **Chapter 4 Remediation of Land**

Chapter 4 Remediation of Land is applicable to the site and the proposal. Section 4.6 of the SEPP requires Council to consider a number of matters including whether the land is contaminated; and if contaminated whether Council is satisfied that the land is suitable in its contaminated state or can be made suitable for the purpose of the proposed development. Section 6.6 also requires Council to consider and be satisfied that where the land requires remediation that the land will be remediated before the land is used for the proposed development.

A Preliminary Site Investigation (PSI) Report was submitted with the application to assess the potential for contaminants across the site. Furthermore a Detailed Site Investigation (DSI) and Remediation Action Plan, was submitted in support of the application. After consideration of the assessment of the established hierarchies for soil remediation options, the preferred remediation strategy is the excavation and offsite disposal to a licensed waste facility of the fill materials.

Council's Public Health and Environment (PH&E) Section has reviewed this aspect of the application and raise concern. Council's initial assessment requested a hazardous building material survey. This has not been provided and no justification was provided in regards to this request.

It is important to identify the existence of any potentially hazardous materials within the existing on-site structures. In the PSI report, the consultant recommended that a hazardous building material survey should be undertaken. Therefore, a hazardous material survey should be prepared.

Accordingly, it has not been demonstrated in the documentation provided that the site is suitable or can be made suitable in accordance with Clause 7 of the SEPP.

### 3.7 State Environmental Planning Policy (Housing) 2021

#### Chapter 4 Design of Residential Apartment Development

SEPP No. 65 – Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide (ADG) applies to the proposed residential flat building. Council notes that SEPP 65 and all its original provisions have been transferred to Chapter 4 of SEPP (Housing) 2021 and accordingly SEPP 65 was recently repealed. The transferred provisions now under Chapter 4 of SEPP (Housing) 2021 remain applicable to this proposal and is referred to as SEPP 65 within this report.

A detailed assessment of the nine design quality principles established in SEPP 65 has been undertaken. A detailed assessment against the criteria of the Apartment Design Guide (ADG) has also been undertaken and is outlined in Attachment AI to this report.

Council engaged an Urban Design expert to assess the proposal and provide advice on the quality of the design of the development, including the nine (9) design quality principles of the SEPP. Whilst improvements have been made to the design, the proposed development still does not address all principles. An assessment of these principles is provided below:

**Table 4: Design Quality Principles**

ADG design quality principle	Response
<b>1. Context</b>	<p>The subject site forms part of the Cabramatta Town Centre. The Cabramatta Town Centre DCP 2000 was formed to guide the development of the Town Centre. The site is part of a staged redevelopment of the Cabramatta East precinct.</p> <p>Assessment of the application revealed significant issues in relation to the potential impact that the proposal may have on the remaining stages as well as the isolated lots. Accordingly, it is considered that the proposal is not in accordance with the principle.</p>
<b>2. Built form and scale</b>	<p>The DCP allows the subject site to be developed as a podium style development with three (3) mixed use towers. Notwithstanding this, the proposed development is inconsistent with the building location and heights as envisaged within the SSDCP. Accordingly, the scale and built form is not considered appropriate and therefore not consistent with this principle.</p>
<b>3. Density</b>	<p>The FLEP 2013 allows a maximum FSR of 3.85:1 and 6.45:1. The proposal seeks an FSR of 3.75:1 and 6.33:1. The density of the proposal is considered appropriate.</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.</p>



<b>5. Landscape</b>	Council's Landscape Architect has assessed the submitted landscape plan and supports the design subject to conditions of consent.
<b>6. Amenity</b>	The proposal provides the required solar access and ventilation requirements in accordance with the Apartment Design Guidelines. The proposal however does not provide the required separation distances within the design from the isolated lots and the adjoining Stages. Accordingly, the amenity of future residents could be impacted based on the design as submitted.
<b>7. Safety &amp; security</b>	The proposal is considered to be satisfactory in terms of future residential occupants overlooking public and communal spaces while maintaining internal privacy. A CPTED report was submitted in support of the Application.
<b>8. Social dimensions/housing affordability</b>	The proposed development provides 358 residential dwellings, however, no affordable housing is proposed as part of the application.
<b>9. Aesthetics</b>	Council's architect considers that the design generally is very detailed and of a quality that provides a good outcome overall for the precinct. Notwithstanding, given the non compliance with separation distances, then there may be insufficient breathing spaces around the development.

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 all of the requirements of the SEPP and the ADGs.

**(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

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

**(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

**3.8 Cabramatta Town Centre Development Control Plan 2000**

A detailed assessment against the relevant controls of Cabramatta Town Centre Development Control Plan (DCP) 2000 is provided in Attachment AJ. The proposed development does not meet the building location and heights in accordance with Figure 4 of the DCP. This has resulted in issues regarding the impact and the ability for the remaining stages to be developed in accordance with the DCP. The Assessment also identified issues with Part C Active Street Frontages, Part D Safety and Security and Part G Flooding and Overland flow paths. This is discussed in Section 5 of this report. Accordingly, it is considered that these controls have not been satisfied and therefore it is considered that the proposal is inconsistent with the DCP and its objectives.

**3.9 Fairfield City Wide Development Control Plan 2013**

The application has been assessed against the relevant controls of Fairfield CityWide DCP 2013 including but not limited to:

- Chapter 3 Environmental Management and Constraints
- Chapter 7 Residential Flat Buildings
- Chapter 13 Childcare Centres

A detailed assessment of the application against the DCP controls has been undertaken and is outlined in Attachment AK to this report.

Council's assessment has raised concern regarding waste infrastructure proposed for the development and the Childcare centre. This is discussed in Section 5 of this report.

**(d) Section 4.15(1)(a)(iia) – Planning agreements under Section 7.4 of the EP&A Act**

A Voluntary Planning Agreement (VPA) was submitted by the Applicant. The VPA involved the construction of a pedestrian bridge from the subject site to connect with Cabramatta Train Station in order to improve accessibility between Cabramatta East to the rest of the town centre west of the train line. Notwithstanding this, TfNSW (Sydney Trains) advised that they did not support the bridge. Given this, the VPA included a fall-back position which would allow the developer to pay a monetary contribution equivalent to 110% of the cost of the pedestrian bridge towards community facilities in the Cabramatta area. Moon Investments Pty Ltd 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 VPA was signed and executed on the 24th May 2022.

The proposal is consistent with this Planning Agreement as discussed in this report.

**(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

Any relevant matters prescribed in the regulations have been considered.

**3.10 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below. Accordingly, it is considered that the proposal will likely result in unacceptable impacts in the locality, as submitted

**3.11 Section 4.15(1)(c) - Suitability of the site**

Given the assessment of the application, it is considered that it has not been demonstrated that the site is suitable for the development in its current form and that the proposal fits in within the locality. Furthermore, it has not been demonstrated that the development has taken into account the natural constraints.

**3.12 Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 4 of this report.

**3.13 Section 4.15(1)(e) - Public interest**

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

## 4. REFERRALS AND SUBMISSIONS

### 4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment as required by the EP&A Act and outlined below.

#### Transport for NSW (Sydney Trains)

The development application was referred to NSW Sydney trains for comment in accordance with Clause 2.98 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. Sydney Trains have responded and raised no objection to the proposal subject to compliance with a number of conditions.

#### Transport for NSW - Roads

The development application was referred to TfNSW for comment in accordance with Clause 2.122 (Traffic Generating Development) of the State Environmental Planning Policy (Transport and Infrastructure) 2021. TfNSW have responded to the latest package and still raise concerns with the proposed development as discussed below:

##### **SIDRA modelling**

##### Comment:

TfNSW has identified that there is degradation in the Level of Service (**LoS**) for the 2033 scenarios and assumptions in the modelling. Specifically:

- Cabramatta Road East / Cumberland Street (LoS "E" to "F" in AM and PM peaks) and right-turn out of Cabramatta Road (**local road**) to Cabramatta Road (**classified road**). The latter LoS being "D" and "E" in AM and PM peaks).
- TfNSW has identified that the development has a low site traffic generation rate without any justification or Travel Demand Management (**TDM**).

##### Recommendation:

TfNSW recommends that Council considers imposing robust TDM measures to ensure that the future users of the development utilise sustainable transport options. Considering that this development is directly opposite Cabramatta transport interchange with heavy rail and bus services, development of sustainable transport options that encourage and support future users of the development to sustainable transport options should be encouraged.

Any development contributions collected as part of this DA should be utilised to support regional transport infrastructure that addresses the future LoS issues.

##### **Impacts to the classified road network**

##### Comment:

Any proposed civil works required on Cabramatta Road (classified road) requires TfNSW concurrence under section 138 of the *Roads Act, 1993*. As such, TfNSW advises that no modification to the median between Cabramatta Road (**classified road**) and Cabramatta Road East (**local road**) that encourages additional right-turn movements at this location to the subject development will be accepted by TfNSW.

##### Recommendation:

Prior to any proposed mitigation works as part of the DA, the Applicant should be conditioned to undertake an independent Local Area Traffic Management Plan (**LATMP**) that reviews the access arrangements on the local and classified network, undertaking any recommended treatments to the satisfaction to Council and TfNSW.

The Applicant has responded to the TfNSW comments by indicating that no mitigation works are required on the local road system for the proposed development. The Applicant further indicates that all of the comments from TfNSW are addressed and the conditions recommended do not appear to pass the Newbury test as they are not reasonably related to either the assessment completed or to the address the impacts associated with the proposed development.

### 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.

### Council's Architect

Council's independent Architect reviewed the Application in accordance with Clause 6.12 Design Excellence of Fairfield LEP 2013, Chapter 4 of SEPP (Housing) 2021 and the Apartment design Guidelines. Details of the assessment is provided further within the report.

### Endeavor Energy

The development application was referred to Endeavour Energy for comment in accordance with Clause 2.48 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. Endeavour energy have responded and raised no objection to the proposal subject to compliance with a number of conditions.

## **4.2 Council Officer Referrals**

The development application has been referred to various Council officers for technical review as outlined below.

### Building Control (Certification) Branch

The development application was referred to Council's Building Control (Certification) Branch for assessment. A BCA assessment was undertaken and it was noted that 77 of the proposed dwellings located from levels 4 - 18 within Building C have openings within 3m of a property boundary. Accordingly the proposed development does not comply with Part C4D5 - Protection of openings of the BCA.

The original DA submission included a draft Fire Engineering Brief Questionnaire (FEBQ), prepared by E-LAB Consulting (see 3rd attachment). Although this is draft undated document, it includes a summary of the proposed fire engineering BCA performance solutions that will be referred to Fire & Rescue NSW as part of the consultation process required by Section 26 of Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021.

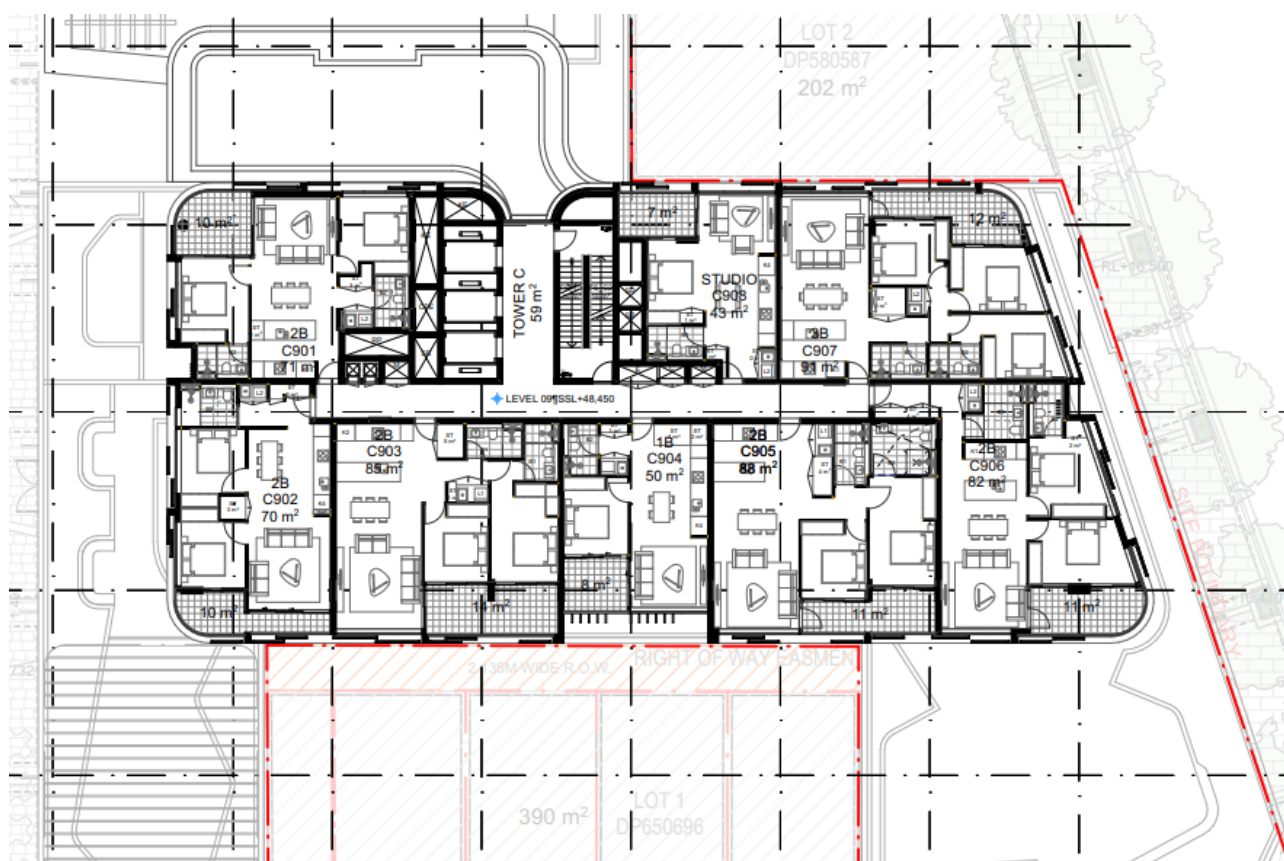
It is noted the draft FEBQ does not include a proposed fire safety strategy to protect wall openings from spread of fire at Level 4 and above, that are less than 3m from the boundaries with isolated sites A & B (some openings are estimated to be approximately 0.4m from the side boundary). This is evidenced by reference to:

1. Figure 5 (page 8) is labelled '**Level 3 layout (indicative of all residential levels except topmost)**'. Please note that this is not correct as by reference to the submitted DA plans, Tower C floor area increases in size from Level 4 and which results in reduced building setbacks from the boundaries of isolated site A (88-92 Broomfield Street) and site B (143-145 Cabramatta Road).





Figure 5: Level 3 layout (indicative of all residential levels except topmost)



**Figure 41:** Level 3 and Level 9 of Building C and the distance to the isolated sites along Cabramatta Road East and Broomfield Street.

Accordingly, at Level 4 and above of Building C, the proposed design will not comply with BCA deemed to satisfy provisions for habitable rooms in a class 2 building, as many windows are proposed to be located approximately 0.4m from the side boundary with isolated sites. This is further discussed within the report. Given the breach in the BCA and that it would require significant amendments to the design in order to meet compliance, Council's Building Control (Certification) Branch do not support the application.

## Development Engineering

The development application was referred to Council's Development Engineering Branch for assessment. Council's engineer has reviewed the documentation and raise the following concerns regarding the proposed development:

### **Stormwater Drainage and Flood Affection**

Council's engineer has raised the following matters with the proposed development.

1. In order to ensure that Council is able to manage the stormwater runoff generated by the laneway, it is necessary to relocate Council's stormwater asset currently situated within the lot that will be created upon completion of the proposed Subdivision/Road Closure. No plans have been submitted from a qualified engineer outlining the relocation of Council's stormwater assets outside the proposed lot boundaries. These plans should also include the extension of the kerb and gutter along the proposed boundary to effectively capture the stormwater runoff from the laneway, considering that the existing pit is the lowest point within the laneway.
2. Once the excavation of the basement levels takes place, all of Council's stormwater assets within Lot 10 DP 255023, including the stormwater pit located at the north-western corner, will be removed. No details on how the stormwater runoff from the laneway will be directed and managed during the construction stage has been submitted.
3. The proposed Civil Engineering Plans, prepared by Northrop (Revision 02, Dated 11.05.23), outline a box culvert line that begins at Cabramatta Road East and connects to Council's stormwater asset downstream on Fisher Street. The following is required:
  - a. The box culverts will connect to Council's stormwater asset which will discharge into two, 300 Diameter pipes across the street, which do not possess sufficient capacity to handle the flows. Consequently, this situation leads to surcharging in Fisher Street and the pits located upstream. The drains model submitted by the applicant does not take into consideration of the flooding at the tailwater level and is not considered acceptable.
  - b. The proposed 1200x600 Box Culvert line is intended to run along the perimeter of the existing lot boundaries and in some sections will be located within the basement level, which is considered unacceptable. To ensure clear access for future maintenance purposes, the box culverts shall be located outside of the basement level. The proposed culvert system along the perimeter will require a drainage easement in accordance with Council's Stormwater Management Policy.
  - c. The proposed Civil Engineering Plans include a Kerb Inlet Pit at the cul-de-sac's end; however, there are no specific details regarding its connection to Council's stormwater system. No information on how this pit will be connected to Council's stormwater system has been submitted. Please note that stormwater pipes should not be underpinned to the ceiling of the basement level.
  - d. Council does not accept the proposed construction of an 8000mm x 1200mm grated drain (Pit 01/01) within the laneway facing Cabramatta Road East. Grated drains are susceptible to blockages due to collection of debris and are not considered acceptable to capture overland flows along the street.

4. The subject site is affected by overland flooding as noted in the Stormwater Management report prepared by Northrop Consulting dated 12 May 2023. Capturing all of the overland flow from Cabramatta Road East catchment and conveying through underground drainage system does not appear to be feasible. Due to inadequate capacity of Council's drainage system in Fisher Street, the proposed drainage arrangement will result in surcharge on drainage pit in Fisher Street and pits along proposed trunk drainage line. The development shall allow for overland flow through the site in addition to the underground drainage system.
5. The basement must be protected from overland flooding by providing a minimum 300mm freeboard from the 100 Year ARI flooding. The proposed freeboard of 100mm is not considered acceptable for a three (3) level basement carpark.
6. Providing freeboard to habitable areas by installing flood gates is not supported by Council since it will be difficult to guarantee proper working of this device in the long run.
7. The Drains model submitted is not acceptable in its current form. The tailwater level at the connection point shall be taken as the 100 Year ARI flood level for the system to work hydraulically for all rain events up to 100 Year ARI.

#### **Site Access, Parking and Manoeuvring**

1. The ramp and manoeuvring areas intended for service trucks shall have 4.5m vertical clearance. The architectural plans at basement B1 do not demonstrate adequate clearance. ARC traffic response of use of private waste collection of lesser height clearance is not acceptable.
2. Vehicles exiting from Basement 1 retail parking area onto the Broomfield Street ramp do not have adequate space to turn left. A splay would need to be incorporated at the location of fire water storage tank.
3. It is noted there will significant congestion at the intersection of B1 ramp and the retail aisle adjacent to fire water storage tank at Basement B1. The parking layout should be redesigned to avoid congestion.
4. Shared spaces provided for the accessible parking spaces Nos 19 and 34 do not comply with AS2890.6 requirements due to inadequate space for a wheelchair access in and out of the shared space.
5. The development does not allow for Council's garbage trucks to service the site with regard to manoeuvrability and headroom clearance.

#### **Public Environment and Health Branch**

The development application was referred to Council's Public Environment and Health Branch for assessment. The application has been considered and is not supported for the following reasons:

#### **Noise Impact – Childcare centre**

- The proposed childcare centre is located within Building – B. However, the noise impact from the proposed childcare centre has not been assessed on the receivers

located immediately above the proposed childcare centre. All nearest sensitive receivers within the proposed development must be labelled and identified correctly. The submitted acoustic report does not include the elevation of the proposed development and elevation of the nearest sensitive receivers.

- Sleep disturbance assessment is required at the DA stage so the impact of the proposed childcare centre can be assessed effectively. Childcare staff would likely arrive potentially up to 30 minutes prior to the opening of the centre. The noise impact of staff arrivals, setup, cleaning, or other on-site activities will be conducted during night-time hours (prior to 7:00 am). Therefore, a sleep disturbance assessment was requested in Council's letter dated 1 December 2023. Without a sleep disturbance assessment, Council is unable to make a complete assessment of the proposed development.
- It is not clear if the assessment has considered noise impacts associated with children at play on various elevated equipment within the outdoor play area. The consultant is required to consider children playing on elevated equipment.
- Outdoor noise scenarios should include all age groups of children and demonstrate that a worst-case acoustic scenario has been modelled. It is unclear that out of 80 children which age groups of 20 kids will be playing outside.
- The plan of management does not include an indicative daily timetable that seeks to demonstrate that the 20 children restriction arising from the amended acoustic report can be accommodated by the childcare provider.
- The Australian Government Guidelines for Healthy Growth and Development for Your Child (Guidelines for Growth) recommends for toddlers and pre-schoolers at least 180 minutes spent in a variety of physical activities. Therefore, a total of 12 hours of active playtime is required to achieve compliance. Considering the proposed opening hours are 7 am – 6 pm (11 hours). The proposed solution by the consultant does not provide a practical solution. Further, the outdoor play area will not be usable during morning tea, lunch, and rest/nap time.
- No acoustic assessment has been undertaken on the mechanical plant (air conditioning units, extraction/supply fans mechanical ventilation etc) to be utilised by the proposed development. The consultant shall undertake a typical preliminary acoustic assessment (where assumptions are made on typical mechanical equipment to be installed and the approximate noise level dB(A) of equipment) to demonstrate that compliance can be achieved for the proposal.

#### **Noise Impact – Licensed premises (Tavern)**

- The submitted Acoustic report has only assessed amplified music associated with the proposed licensed premises. Other noise sources such as patron noise, gaming room noise, mechanical services noise and any other noises from the outdoor smoking areas have not been included in the assessment. A detailed noise impact assessment will need to include all noise sources associated with the proposed licensed premises.



- The proposed licensed premises is located within Building – C, however, noise impact from the proposed licensed premises has not been assessed on the receivers located within Building - C. All nearest sensitive receivers within the proposed development must be labelled and identified correctly. The submitted acoustic report must include the elevation of the proposed development and elevation of the nearest sensitive receivers.
- It is likely that patrons will gather outside for smoking or queuing to enter the premises. The noise impact assessment has not considered this and any report should demonstrate that a worst-case acoustic scenario has been modelled for the proposed licensed premises.
- No acoustic assessment has been undertaken on the mechanical plant (air conditioning units, extraction/supply fans mechanical ventilation etc) to be utilised by the proposed development. The report should undertake a typical preliminary acoustic assessment (where assumptions are made on typical mechanical equipment to be installed and the approximate noise level dB(A) of equipment) to demonstrate that compliance can be achieved for the proposal.

#### **Noise Impact – Commercial tenancies/medical Centres/Restaurant**

- No acoustic assessment has been undertaken on proposed commercial tenancies (including restaurants and medical centre). Commercial tenancies are likely to cause adverse noise impact on the nearby sensitive receivers. The consultant shall undertake a typical preliminary acoustic assessment (where assumptions can be made on typical noise associated with the proposed use with approximate noise level dB (A) to demonstrate that compliance can be achieved.

#### **Food Premises – food preparation areas**

- The applicant has not submitted the following information regarding the proposed food premises.
  - The architectural plans shall include the location of cooking equipment, commercial grade dishwasher, hand wash basins, grease trap and mechanical exhaust ventilation hood
  - Also, provide the elevation which displays the location and height of the mechanical ventilation dispersion point.

#### **Hazardous Material Survey**

- Council's letter dated 1 December 2023 requested A hazardous building material survey and this has not been submitted. The Preliminary Site Investigation report recommended that a hazardous building material survey should be undertaken. It is important to identify the existence of any potentially hazardous materials within the existing on-site structures in order to ensure that the development complies with the requirements of SEPP (resilience and Hazards) 2021 and that the site is suitable or can be made suitable.

### Strategic Land Use Planning branch

Council's Strategic Land Use Planning Branch have reviewed the application and provide the following comments;

- During the Planning proposal stage the whole Cabramatta Town Centre East precinct would be developed in a co-ordinated and strategic manner, the purpose of the current DA is for two specific stages (1 and 2) only. The planning proposal sought to revitalise the eastern side of Cabramatta Town Centre in a wholistic manner. The DA as presented is at risk of significantly impacting the urban design outcomes. The desired character of the area was to be a precinct where amalgamation of sites facilitated mixed-use development incorporating shops, commercial premises, religious and residential uses whilst conveying high levels of pedestrian permeability through activated laneways linking to a central market square.
- Whilst the applicant has stated that the isolated sites A and B would only achieve a future developable building height of 14m, consideration needs to be given to recent SEPP (Housing) amendments relating to Affordable Housing. The reforms introduce a new bonus Floor Space Ratio (FSR) of up to 30 per cent and a height bonus of up to 30 per cent where a proposal includes a minimum of 15 per cent of the gross floor area (GFA) as affordable housing. This needs to be a consideration of the design of Buildings A, B and C to ensure future stages and infill of isolated sites A and B can achieve best and highest use under all relevant planning legislation.
- It is still considered that the proposal will likely prejudice the development potential of the isolated/excluded lots (sites A and B) given the proposed building setbacks of Tower C. The application still proposes balconies and openings on the boundary to the isolated parcels which would not comply with the setback requirements required under the Apartment Design Guidelines for future development of these sites and impact future redevelopment of these sites. The Planning Proposal and Site Specific DCP were formulated on the basis that all lots/parcels of land would be incorporated as part of the overall development of the precinct. On this basis, it is considered essential that all parcels of land are incorporated as part of the overall development of Stage 2. The current development proposal is considered to significantly vary from the original concept plans submitted with the planning proposal, subsequent Fairfield LEP 2013 development controls and site specific DCP provisions formulated for the site.
- During the Planning Proposal Stage the acquisition of the Council owned laneway was to incorporate this land strategically into the whole development to promote efficient access to all stages. This has now changed in the current application. Not only have building footprints and envelopes for Buildings A and D (stage 1 eastern half and stage 3) changed significantly from the concept plans submitted with the Planning Proposal, the combined site area for stage 3 has been significantly reduced to approximately 855m<sup>2</sup> (incorporating sites 127-135 Cabramatta Road East). Future development of Stage 3 will not be able to meet the Minimum Site Area requirements under Fairfield LEP 2013 (1300m<sup>2</sup>) without acquisition/incorporation of the Council owned laneway off Cabramatta Road East. It is unlikely this would be economically feasible for such a small development site and it is unclear if future development of this stage could in fact achieve the intended building heights and FSR initially intended under the Planning Proposal. As part of this application, no documentation has been provided to demonstrate how this site could achieve redevelopment.
- Further to the above point, if the laneway is not incorporated into the design, then it will need to be demonstrated that the development would not impact the safe, efficient and effective movement of vehicles and pedestrians to the satisfaction of Council, including the movement of medium rigid vehicles for the collection of waste and delivery of goods to the residences and commercial premises.

### Tree Preservation Officer

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

### Council Landscape Architect

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

### Waste Management Branch

The development application was referred to Council's Waste Management Branch for assessment. The Waste Branch has raised concerns as below:

#### **1. On-site Loading Infrastructure**

Section 7.7.1.1 of FCC DCP outlines:

*"The site must allow for waste collection vehicles to enter and exit in a forward direction and provide an adequate and safe manoeuvring space once on site."*

The current configuration proposes a 8.8m MRV to service this site. The current configuration will inhibit the provision of a safe and efficient waste collection by Fairfield City Council. Noting Councils obligations to service residential domestic waste under section 496 of the *Local Government Act*. Access for a Heavy Rigid Waste vehicle is required.

#### **2. Swept Paths**

Swept path models have not been provided illustrating how Council's standard heavy rigid waste collection vehicle will enter, service and exit the site. A 0.5m unobstructed clearance is required from all obstructions for the vehicle's ingress and egress manoeuvres responsive to AS2890.2. The model is to provide on-street parking on both sides of the road adjacent to the development to demonstrate unobstructed access during a 'business as usual' configuration.

#### **3. Elevation & Clearances**

Detailed elevations have not been provided of all on-site manoeuvres of Councils standard heavy rigid waste collection vehicle. Additionally, a detailed cross section of the basement ramp to be provided outlining the maximum gradients/rate of change.

#### **4. Bin Allocation**

The bin allocation below is based upon 358x units:

- 66x 660L Garbage Bins (weekly)
- 44x 240L Recycling Bins (fortnightly)
- 60x 240L Organics Bins (weekly)

**Note:** the provision Organics (FOGO) waste stream is provided responsive to NSW Government 'Waste and Sustainable Material Strategy 2041'.

Additionally, section 4.1.1 of the WMP outlines *"contingency needs to be built into this waste management system for the future addition of another residential tower during Stage 3 of the development"*

No contingencies have been accommodated within the submitted architectural inhibiting the provision of on-site waste collection and service infrastructure supporting the future Stage 3 development.

The WMP does not outline how the proposal will support the increase waste volumes proposed for stage 3. Noting the existing proposal is based upon collections occurring four times weekly, inhibiting the provision of a safe and efficient service for the existing density proposed.

## **5. Waste Cupboard/Room**

A designated waste cupboard/room (infrastructure) is required on each residential level within proximity to the central elevator core. The infrastructure is to be designed to accommodate and permit unobstructed resident access to the chute inlet (garbage), chute inlet (recycling) and organics bin (240L).

The infrastructure to incorporate:

- Accessed via 180-degree, outwards opening, self-closing, sealed doors
- Mechanically ventilated
- Water & tile to permit schedule cleaning
- Hot & cold tap facilities

The proposed development does not demonstrate accessible resident access will be provided to all waste streams within each of the respective towers.

## **6. Chute Room**

A waste chute room is to be provided within basement 1 to accommodate the bin infrastructure (660L) proposed to service the Garbage chute system. The chute room is required to incorporate the following infrastructure:

- Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm
- Circular Carousel system large enough to accommodate 4x 660L bins for each waste stream (General & Recycling)
- Bunted bin wash bay to permit scheduled washing of bin infrastructure (660L & 240L)
- Room enclosed, walled, and not permit through access to other on-site infrastructure

## **7. Bulk Goods Room**

The bulky goods room is not located within close proximity to the proposed loading bay. The architectural plans have not incorporated the following infrastructure:

- Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm
- Minimum internal area of 55m<sup>2</sup>
- Room enclosed, walled, and not permit through access to other on-site infrastructure.

## **8. Waste Collection Room**

The waste collection room is not located within close proximity to the proposed loading bay. The architectural plans have not incorporated the following infrastructure:

- Room large enough to accommodate the entire bin allocation (660L) with 200mm clearance between each bin for manoeuvrability



- Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm
- Room enclosed, walled, and not permit through access to other on-site infrastructure.

## **9. Bin Tug/Towing Device**

The WMP outlines in section 5.5.7:

*“The approved Mobile Bin Towing Device will be designed and manufactured to transport at least 8 x 240-litre waste and recycling bins (with the trailer), with a weight of 1,000kg’s”*

The architectural plans do not show the device and trailer proposed to permit the movement of the full bin allocation from basement 1 (waste storage room) to ground floor (waste collection room).

The storage area for the Bin Tug/Towing Device does not incorporate the following infrastructure:

- Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm
- Room enclosed, walled, and not permit through access to other on-site infrastructure.
- Sufficient size to accommodate tug/towing device and trailer proposed
- Electrical charge capabilities (specific to system proposed) to permit scheduled charging

## **10. On-site Waste Infrastructure**

All on-site waste infrastructure (chute room, waste storage, waste collection and bulky waste) do not incorporate the following infrastructure:

- Floor grade to central drainage point (connected to sewer)
- Floors waterproofed and extended 1200mm high on walls
- Hot & Cold water tap/s
- Mechanical ventilation
- Sensor lighting
- Unobstructed minimum height clearance of 2700mm

## **11. Retail/Commercial Waste**

The retail/commercial waste collection room is located in basement 1. A ‘path of travel’ has not been provided outlining the movement of bins infrastructure from respective tenancies to the communal waste collection room located in basement 1.

### 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.

### Property Strategy and Services Division

The development application was referred to Council’s Property Strategy and Services Division for assessment. Council’s Property Strategy and Services Division, representing Council as the owner of the subject road, has objected to the development application insisting that the road closure and sale issues should be resolved prior to any approval.

Any discussions regarding the terms of any future road sale with Council officers do not constitute a binding agreement. The sale is contingent upon a formal report being submitted to Council and receiving Council's approval. Accordingly, a formal resolution by Council is required to approve the sale of the subject closed road, on terms deemed acceptable by Council. This decision can only be made by the Council and no agreement to sell the subject parcel exists, until Council approval is granted.

Given that no formal approval has been obtained from the Council, owners consent has not been granted.

Furthermore, in accordance with Sections 38 and 43 of the Roads Act 1993, a formal road closure process must also be completed successfully before the public road can be legally closed (where a Lot and DP is created), and Council being able to sell the closed road (Operational land held in fee simple). This process can take up to 12 - 18 months to complete and includes public notification with an opportunity for public submissions. Any unresolved objections may result in the road remaining open, thereby preventing the sale.

### Traffic Engineer

The development application was referred to Traffic Engineering for assessment. The Traffic engineer has advised that the following matters remain outstanding:

#### Signals

For each site the 'Phase Transitions' have not been applied in the signal phasing. It is recommended these be updated per the following:

- Hume Highway & Lansdowne Avenue:

B Phase – Lansdowne Avenue approach left turn

- Hume Highway & Hollywood Drive & Chadderton Street:

B Phase – Hollywood Drive and Chadderton Street approach left turns

- Hume & Cabramatta Road East:

B Phase – Cabramatta Road East approach left turn

Failure to include the phase transition results in more green time being provided for the left turn movements which can overstate the capacity and reduce queues and delays

For each site the 'Undetected' movements have not been defined in the signal phasing. It is recommended these be updated per the following:

- Hume Highway & Lansdowne Avenue:

C Phase – Lansdowne Avenue approach left turn

- Hume Highway & Hollywood Drive & Chadderton Street:

C Phase – Hollywood Drive and Chadderton Street approach left turns

- Hume & Cabramatta Road East:

C Phase – Cabramatta Road East approach left turn

#### Volumes

Discrepancies are shown in the volumes presented in Figure 14 within the report and the volumes within the SIDRA models. For the Hume Highway / Hollywood Drive / Chadderton Street intersection the AM peak north approach volumes presented in the report show 67 and 65 vehicles for the left and right turns respectively. Within the model 62 and 61 vehicles are entered respectively. It is recommended this be amended for consistency, although it is noted that the change will likely have a negligible impact on the outcomes of the assessment.

### Heritage Officer

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

The outstanding issues raised by Council officers are considered in more detail in the Key Issues section of this report.

### **4.3 Community Consultation**

In accordance with Council's 2024 Community Engagement Strategy, the subject Development Application was notified for a period of twenty-one (21) days via written notification letters to surrounding properties and via Council's website on 26th June 2023. Nine (9) submissions were received by way of objection in response to the Development Application.

Following receipt of an amended application, the subject Development Application was renotified in accordance with Council's 2024 Community Engagement Strategy, for twenty-one (21) days via written notification letters to surrounding properties and via Council's website on 29th February 2024. Five (5) submissions were received in response to the amended Development Application.

The Council received a total of fourteen (14) unique submissions, comprising thirteen (13) objections and one (1) submission in favour of the proposal. The issues raised in these submissions are considered in the Table below.

**Table 5: Community Submissions**

<b>Issue</b>	<b>No of submissions</b>	<b>Council Comments</b>
<b>Traffic and parking</b>  Submissions raised concern the development will adversely impact traffic and parking within the locality.	8	The Traffic and Parking impacts of the development have been taken into consideration for the proposed development and have not been suitably addressed.
<b>Affordable housing</b>  Submission raises concern that no Affordable housing is proposed.	1	There is no legislative requirement to enforce the Applicant in this circumstance to provide affordable housing.
<b>Density with changes in development plot size</b>  Submission raises concerns regarding the changes to the size of the site.	1	This matter is discussed further within the Key issues section of this report.
<b>Size, scale and density</b>  Submission raises concern regarding the scale and	1	This matter is discussed further within the Key issues section of this report.

density of the proposed development.		
<b>Impact to Unique identity of Cabramatta.</b>  Submissions raise concern regarding the impact the proposed development would have on the unique identity of Cabramatta.	3	The subject site does allow the redevelopment of the precinct subject to the development standards contained within the Fairfield LEP 2013 and the Cabramatta Town Centre DCP 2000.
<b>Impact on existing infrastructure</b>  Submissions raise concern regarding the proposed development would have on existing infrastructure.	2	The application is subject to a VPA which requires additional infrastructure (or a monetary contribution) in order to cater for the proposed development.
<b>Increase in Crime Rates</b>  Submissions raise concerns regarding the proposed development will increase the population and therefore increase the crime rate within the locality.	3	The application was accompanied by a Crime prevention Through Environmental Design Report. It is not considered that the proposed development would result in an increase in crime.
<b>More Public Recreation Centres</b>  Submissions seeks that there should be more playgrounds, parks and the like instead of commercial premises.	4	The proposed development is permitted and would need to be considered by the consent authority.
<b>Childcare Centre Drop off</b>  Submission raises concern regarding the difficulty for parents to undertake drop off and pick up during school hours.	1	This matter is discussed further within the Key issues section of this report.
<b>Negotiations and site isolation</b>  Submissions raise concern regarding the negotiation process and site isolation issues in accordance with the relevant court principles and will prejudice the future development.	2	This matter is discussed further within the Key issues section of this report.

<b>Construction Impacts</b>  Submissions raise concerns regarding the impact the development will have on the existing commercial properties during construction. This includes access to the property, landslip and demolition impacts.	2	No details have been provided regarding how the construction of the development will be managed during the construction process.
<b>Contamination</b>  Submission raises concerns regarding asbestos within the existing structures.	1	Council's letter dated 1 December 2023 requested the submission of a hazardous building material survey and this has not been submitted. The Preliminary Site Investigation report recommended that a hazardous building material survey should be undertaken. It is important to identify the existence of any potentially hazardous materials within the existing on-site structures in order to ensure that the development complies with the requirements of SEPP (resilience and Hazards) 2021 and that the site is suitable or can be made suitable.
<b>Noise and Vibration</b>  Submissions raise concerns regarding noise and vibration impacts.	2	Council's Public Health and Environment officer has raised objection to the Application and has requested further information regarding potential acoustic issues.
<b>Flood modelling</b>  Submission raises concern regarding the flood impacts of the proposed development.	1	Council's Development Engineer has raised concern regarding how the proposed development will manage overland flow through the site.
<b>Stormwater Management</b>  Submission raises concern regarding the stormwater management of the proposed development.	1	Council's Development Engineer has raised concern regarding how the proposed development will manage stormwater drainage.
<b>Streetscape Improvements and Footpath</b>  Submission raises concerns regarding streetscape and footpath impacts.	1	Conditions of Consent can be imposed to ensure that streetscape improvements and the footpath are reinstated after the construction of the proposed development.
<b>Heat Island Affect</b>  Submission raises concerns regarding the proposal will	1	The subject site is located with an existing built up commercial area. It is not considered that the proposed development would exacerbate the heat island effect within the locality.



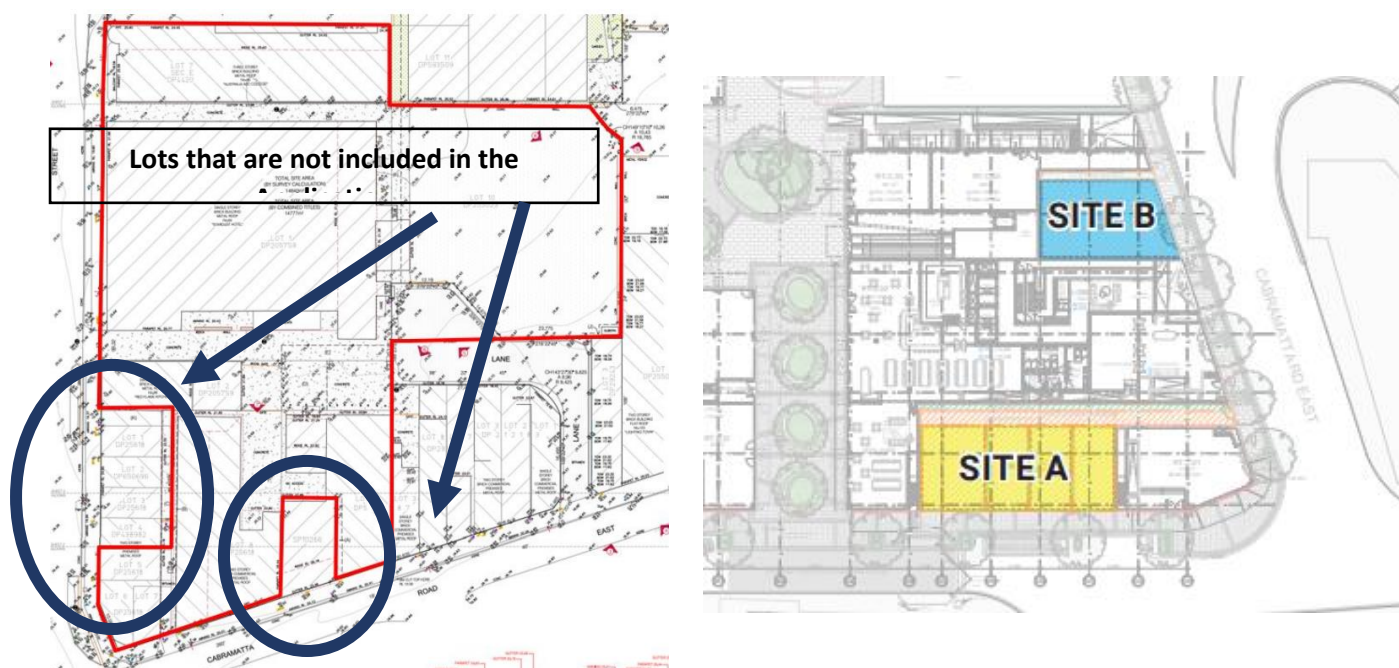
increase the heat island effect.		
<b>Block view and natural light</b>  Submission raises concern regarding the overshadowing and the impact views.	1	As discussed in the Key Issues section, the proposed development is inconsistent with the built form envisaged within the SSDCP and therefore the overshadowing impacts will be different.

## 5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

### 5.1 Site Amalgamation and Isolated Lots within Stage 2

The redevelopment of the precinct will be a landmark for Cabramatta and will transform the locality. It is noted that the application for Stage 2 does not include a number of sites (Nos. 143-145 Cabramatta Road East and Nos. 88-92 Broomfield Street).



**Figure 42:** Five (5) lots not included in the Application that are within Stage 2.

These lots were included in the master planning for the precinct and do not currently form part of the Proposal. It is noted that the Panel in its record of its site visit, advised that it 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. Furthermore, Council advised in two (2) previous Pre DA meetings, concerns in regards to developing Stage 2 in the absence of these lots.

In response, the applicant has sought to address this issue by submitting documentation that seeks to address the Court principles established in the *Karavellas v Sutherland Shire Council* [2004] NSW 251 (*Karavellas*) case. The Court Principles established in *Karavellas*, is a 2-step process, in which, the consent authority must be satisfied that a reasonable offer has been made and that the proposed development would not prejudice and/or sterilise the future

development of the undeveloped parcels of land and/or render future development non compliant with the building envelopes within the site specific DCP.

## 1. Reasonable Offer

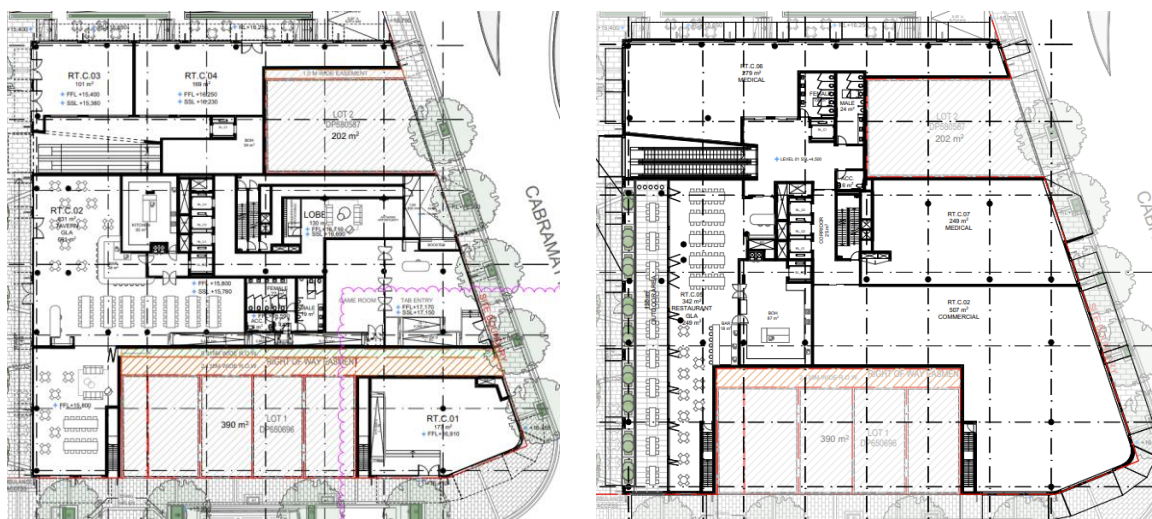
Council in its initial assessment of the Application raised that the information submitted included negotiations between the Applicant and four (4) landowners of the isolated/excluded lots. It was noted that three (3) of the landowners had not formally responded in writing or verbally. No documentation had been submitted that demonstrates that the isolated/excluded lots received the offers from the Applicant. It was also noted that the details including addresses of two (2) of the isolated/excluded landowners were different to those in Council's system. Accordingly, at that time Council could not establish that reasonable offers had been made to the isolated/excluded lots.

In response to this comment the Applicant submitted a Statutory Declaration by Mr Castagnet which includes details of negotiations between the Applicant and the various isolated lot owners. Furthermore, attached to the declaration included photos of registered post receipts and that the offers had been sent to the owners or representatives of the owners. Whilst the Statutory Declaration and the attachments provide evidence that offers were made, it is noted that some of the offers were directed to other family members who (accordingly to the declaration) had been nominated by owners. It is noted that no documentation has been submitted that demonstrates or confirms that the owners of the isolated lots have provided their authority to the persons that have been nominated in the declaration.

During the second notification period, a submission was received from the owner of one of the isolated lots who expressed that since the lodgement of the application further discussions were held with the Applicant in regards to purchasing their property. The submission asserts that an offer was made, however, the Applicant was not proposed to revise the application and as such were unable to accommodate the offer.

## 2. Prejudice Development Potential

As discussed earlier in this report, the proposed development does not include four (4) lots that front Broomfield Street and one (1) lot that faces Cabramatta Road East as part of Stage 2. In addition to this, the proposed development seeks a 19 storey mixed building (Building C) that is located directly adjoining the isolated lots as described in the Figures below:





**Figure 43:** Ground, Level 1, Level 3, Level 4 and the southern elevation of Building C and its location adjacent to the isolated lots.

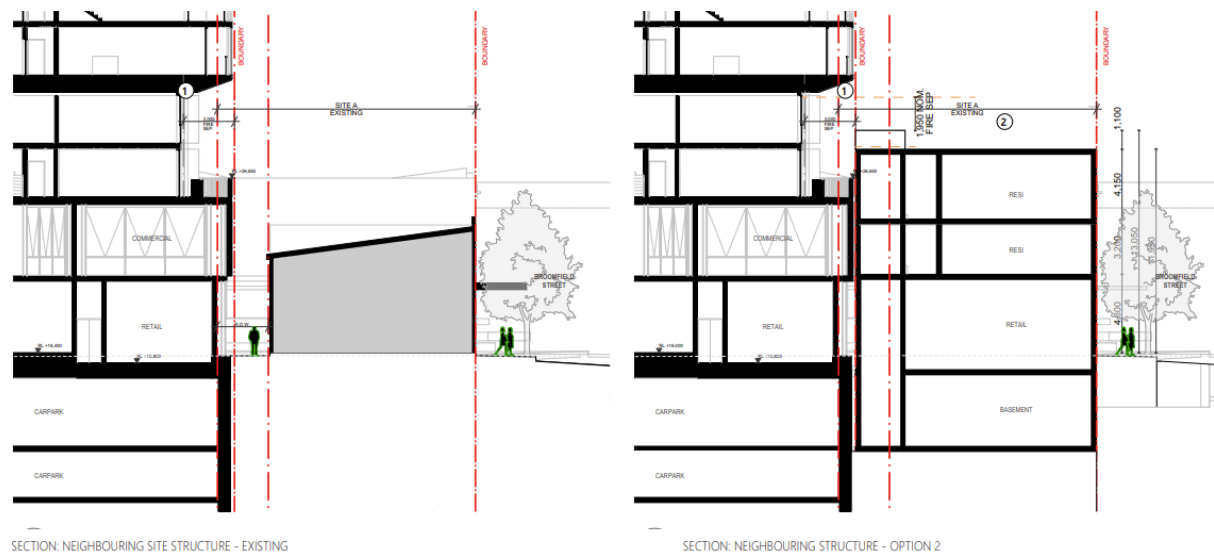
Building C will be built to the boundary of both isolated lots for the ground level and the first floor. The building will then be setback on levels 3 and 4 (the communal open space located on level 2) will be up to the boundary. From level 4 to 18 Building C is built to the boundary of the isolated lots. It is also noted that the isolated lots on Broomfield Street have a Right of Way (ROW) located within the rear of these lots. The proposed development will maintain the



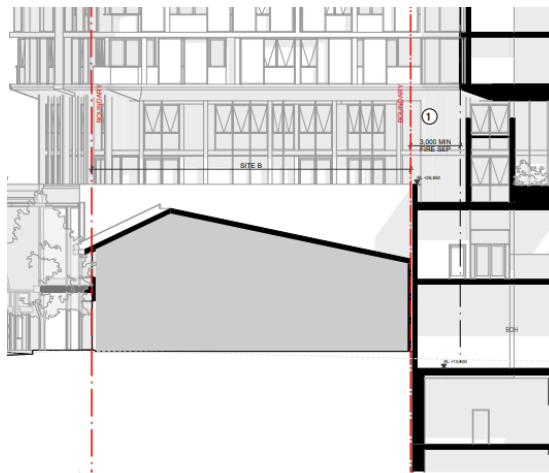
ROW at ground level, however, will build over and underneath the ROW at the podium level and basement levels.

Given that the Building C is proposed immediately adjacent to the isolated lots and includes balconies and windows, Council raised concern in its initial assessment that this arrangement would likely prejudice the development potential of these lots that have not been included.

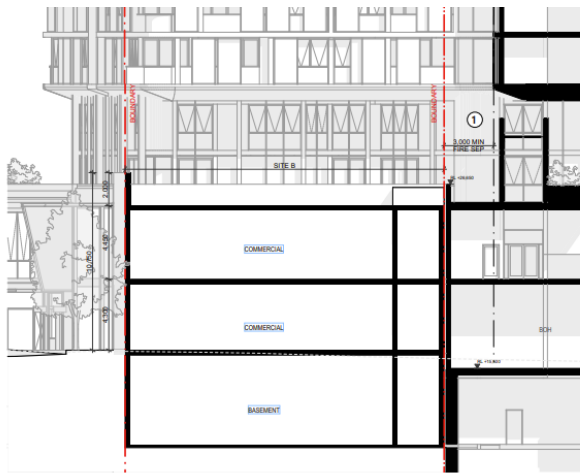
In response to this, further documentation was submitted to support this arrangement. In the architectural response, built forms were provided that showed how these sites could be developed. This is shown in the figures below:



**Figure 44:** Develop the existing 2 storey commercial isolated site along Broomfield Street to a 3 storey Mixed use building.



TOWER C + NEIGHBOURING SITE B - EXISTING



TOWER C + NEIGHBOURING SITE B - OPTION 1



**Figure 45:** Develop the existing 2 storey commercial isolated site along Cabramatta Road East to a 2 storey commercial building.

In addition to the development modelling provided in the documentation, the design of the building allows vehicle access from Basement Level 1 within Stage 2. It must be noted that access to the isolated lot on Cabramatta Road East if built will remove a loading bay and car space.

Lastly, the Applicant has obtained BCA advice for any future development on the isolated lots. Council officers reviewed the BCA advice and raise concerns as discussed earlier in the report.

Whilst the information submitted states that the isolated sites could be developed within the building height of 14m, this only provides a scheme based on the current controls contained within the Fairfield LEP 2013. The design of Building C does not take into account if the isolated sites were to be developed greater than 3 storeys. It is noted that, because they would not meet the minimum site area required under Clause 7.3(5A) of the LEP then a maximum height of 14m would apply, however, an owner may seek to vary this requirement through Clause 4.6, which is consistent with the current application.



In addition to this, it is noted that recent amendments to the SEPP (Housing) 2021 can allow up to a 30% building height bonus where a proposal includes a minimum of 15% of housing as affordable housing. Under the current LEP provisions, a maximum height of 14m would therefore become 18.2m if the SEPP was utilised. Lastly, the design has not considered if any future changes to the LEP or SEPP that may allow additional heights given its location near a train station.

Accordingly, whilst the proposed concepts show a scheme based on the LEP requirements could work with the design the design has not considered alternatives that may be available to these isolated lots. Given this, if the isolated lots were to develop beyond 3 levels then there would be direct conflict with the balconies and openings from levels 4 and above. The building would not meet the relevant separation distances within the Apartment design Guidelines nor the required fire separation within the Building Code of Australia. In order to ameliorate those conflicts blank walls would need to be proposed and this would in turn affect natural light and ventilation to any units that adjoin the isolated sites. Thus, it is considered that the proposal will likely prejudice the development potential of the isolated/excluded lots given the proposed building setbacks of Tower C.

It is considered that the information submitted does not satisfactorily address the Court Principles established in Karavellas. Fundamentally, the Applicant's response to not acquiring the isolated/excluded lots is simply to relocate the 19 – storey tower (Building C) away from the corner of Broomfield Street and Cabramatta Road West as well as removing the 7-storey portion of the development. Whilst a number of improvements have been made to the design of the proposed built form since the Pre DA meetings, the proposal is considered to present an inadequate response to the issue of prejudicing/sterilising the development potential of the isolated sites. It is considered that the exclusion of these lots from the proposal will ultimately result in the failure to deliver the built forms envisaged in the Site-Specific DCP. The matter of not being able to acquire the lots does not appear to sufficiently justify the departure to the DCP of this significance and as currently presented to Council.

The Planning Proposal and Site Specific DCP has been formulated on the basis that all lots/parcels of land being incorporated as part of the overall development of the precinct. On this basis, it is considered essential that all parcels of land are incorporated as part of the overall development of Stage 2.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

## **5.2 Built form Inconsistencies with the Site Specific DCP**

As part of the Planning Proposal for the precinct, a Draft SSDCP was prepared and submitted by the Applicant in order to support the Planning Proposal primarily seeking to increase the Building Heights and FSR in the precinct. The SSDCP was exhibited concurrently with the Planning Proposal and the aim of the SSDCP was to:

- Set an appropriate urban structure centred on a new market square and promoting open and activated pedestrian connections through the site to adjoining streets, car parks and new overhead link to Cabramatta Rail Station.
- Articulate an appropriate built form that can be achieved under Fairfield LEP 2013 where the siting and massing of buildings maximises solar access into the market square and future dwellings both within and adjoining the precinct.

The intent of the SSDCP was to provide guidance on the future re-development of the precinct and provided a built form that included the location of buildings within the site, the heights of

the buildings and a general building envelope for the whole precinct. The built form envisaged in the draft SSDCP was supported by Urban Design analysis/advice and this was also peer reviewed by Council. Accordingly, when the planning proposal was gazetted, the SSDCP was incorporated in the Cabramatta Town Centre Development Control Plan No. 5/2000. The SSDCP seeks the built form of the precinct as per the following Figures:

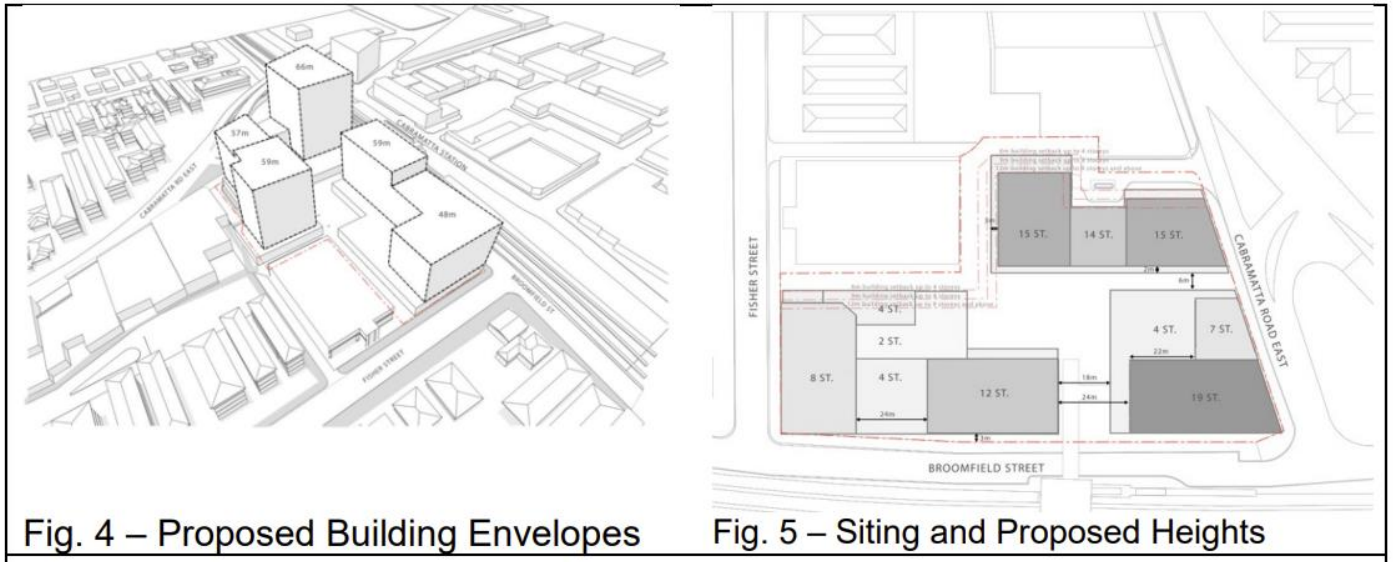


Figure 46: Figure 4 and 5 of the Cabramatta Town Centre DCP 2000.

It is relevant to note that during the Planning Proposal, the construction of the SSDCP was designed in a manner that required the incorporation of all lots in order to deliver the outcomes envisaged in the Planning Proposal and SSDCP. If it were the case that not all lots were required to be incorporated as part of the future development of the site, then the DCP would have been constructed differently to that which has been adopted by Council. It must be acknowledged that this DCP was prepared by the Applicant and subsequently adopted in the form as proposed.

The proposed built forms under the current application for Stages 1 and 2 are as follows:

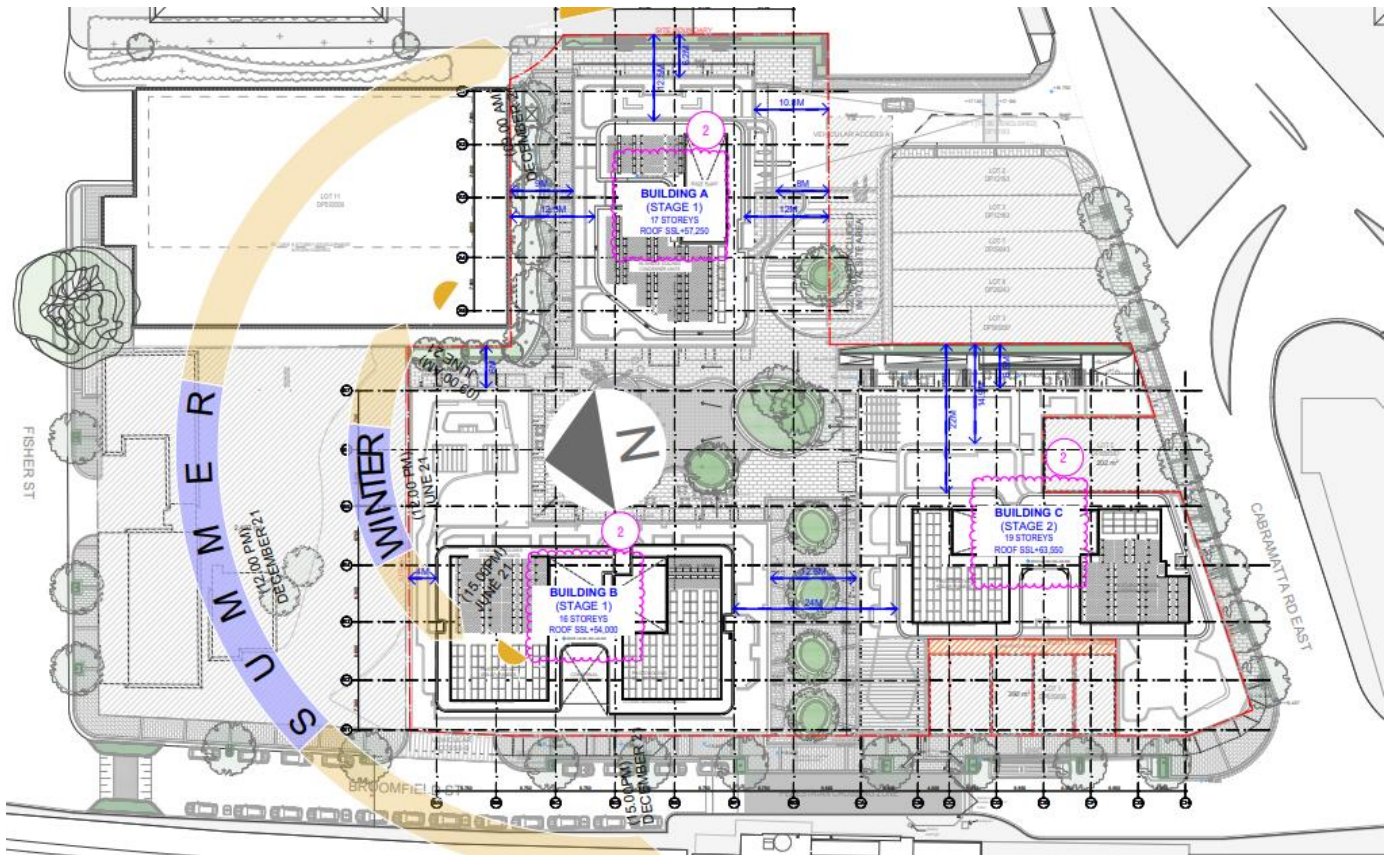
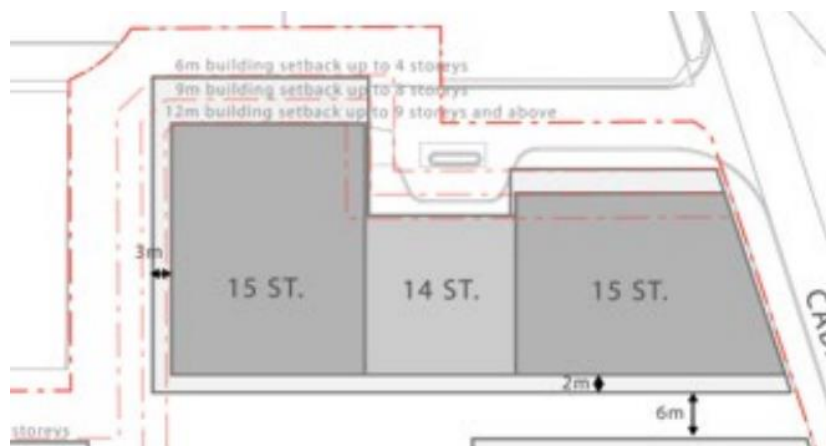


Figure 47: Layout of Buildings A, B and C.

i. Building A within Stage 1

Building A is designed as an 18 – storey building whilst the SSDCP allows only a 15 – storey building. The building is also designed in a way that would not allow for a 14 storey building that connects with Stage 3. The proposal also relies on the acquisition of part of Council’s laneway in order to provide vehicle access to the future Stage 3 development. The laneway has not been acquired at this stage. In addition, it is noted that the southern elevation of Building A contains balconies and habitable space and therefore is likely to have adverse design implications for any future development within Stage 3. This is described in the figures below:



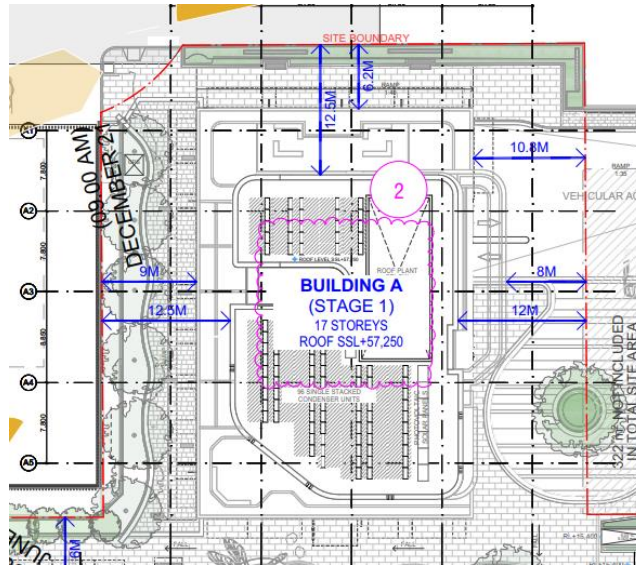
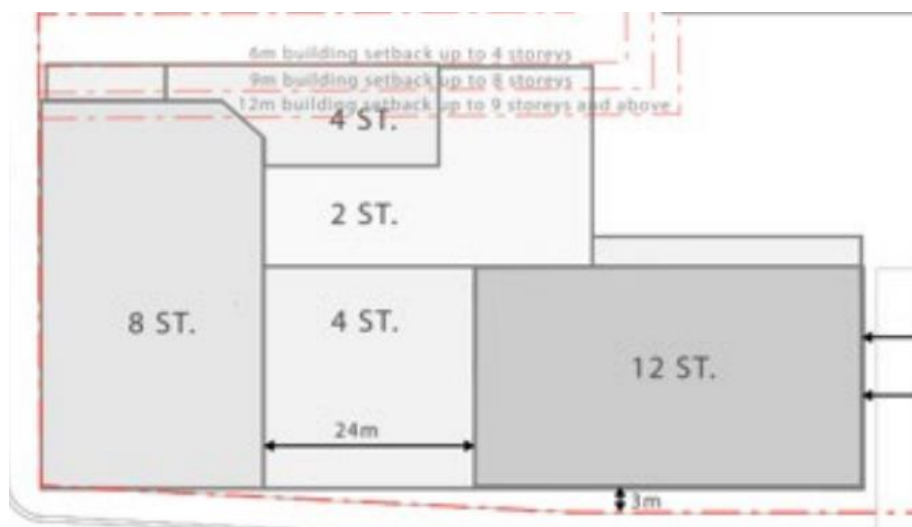


Figure 48: SSDCP layout of Building A and Stage 3 and the proposed arrangement for Building A.

In response to this concern, documentation has been submitted, to demonstrate that Stage 3 could be developed, however, in a manner that is inconsistent with the SSDCP built form layout. Given this, concern is raised that the proposed development would impact the ability of Stage 3 to develop in a manner that is consistent with the SSDCP.

ii. Building B within Stage 1

Building B is designed as a 16 – storey building whilst the SSDCP allows only for a 12 storey building. The building is also designed in a way that would not allow a connection to a part 2 and 4 storey building in Stage 4. Furthermore, it is designed with openings and units facing the northern boundary of the site with only a 4m setback and therefore would not comply with the building setbacks required by the Apartment Design Guidelines. Lastly, It is also noted that there are openings directly along the northern boundary of level 1 which would not comply with the Apartment Design Guidelines and fire separation requirements of the BCA. This is considered to be unacceptable. This is indicated in the figures below:





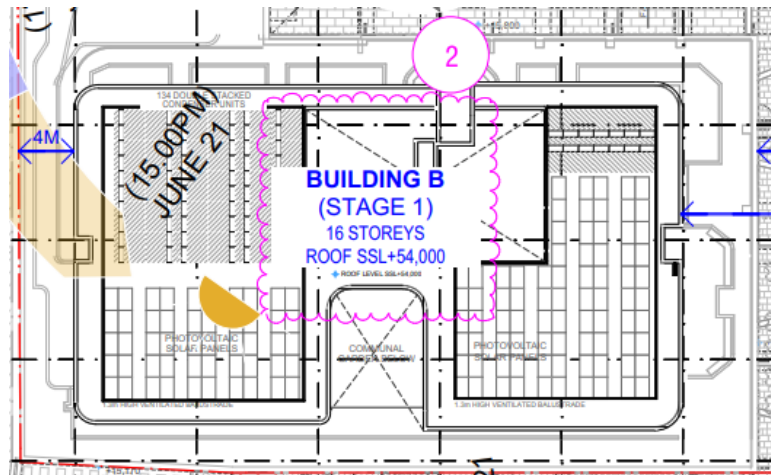


Figure 49: SSDCP layout of Building B and Stage 4 and the proposed arrangement for Building A.







Figure 50: There are openings on the Northern boundary of level 1 and openings/habitable areas within 4m of the northern boundary for Building B.

Part of the Applicant's response to this matter is contained in the Amended Architectural Report pages 11 and 12, which indicate that the development in Stage 4 *"The final building heights on Stage 4 will obviously marry with the blank wall built to boundary of the proposed development (Building B) in Stage 1 and noting that this will cap the maximum height in this part of the Stage 4."* The amended Architectural response then provides an alternative layout to the DCP which is as follows:



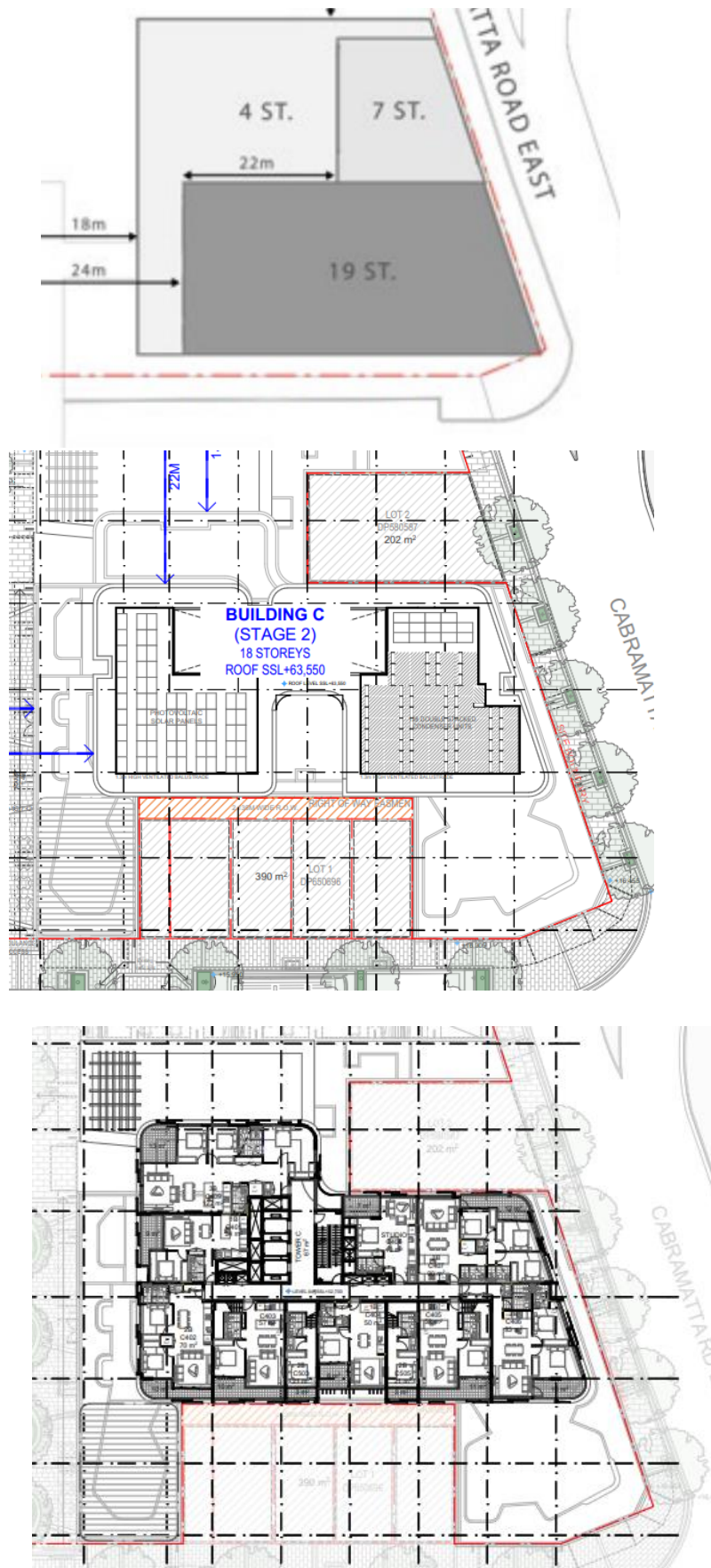


Figure 52: SSDCP layout of Building C and the proposed arrangement for Building C with opening/balconies directly adjacent to the isolated sites.

As discussed above, from levels 4 and up, Building C will have balconies and fire source features directly abutting the boundary with the excluded lots. The Applicant's response to this is to demonstrate that a mixed commercial/residential building within 14m building height could be built on the isolated sites and provides vehicle access within the basement. It is noted that this approach does not consider other design options nor contemplate other applicable legislation such as the recently amended State Environmental Planning Policy (Housing) 2021, which allows an additional 30% height in certain circumstances. The BCA report and Fire safety report submitted also do not consider the fire source features on the boundary from levels 4 and up. Given this, it is considered that the proposal would likely prejudice the development potential of the adjoining excluded lots.

Accordingly, the proposed inconsistencies with the built forms as depicted in the SSDCP have resulted in the following issues:

- Given the design of Buildings A and B, Stages 3 and 4 are unable to be developed in accordance with the SSDCP.
- There are additional storeys proposed on Buildings A and C and Tower C has been relocated. The overshadowing impacts are therefore different including the impacts to the rest of the stages within the precinct and the southern neighbours including the residential flat building across Cabramatta Road.
- Building B and C has been located closer together which has narrowed the pedestrian link between Cabramatta Train Station and the Market Square.
- The amount of Communal Open Space and potential deep spoil in Stage 1 has been reduced.
- Building B has a setback of 4m from the northern boundary which does not comply with the minimum setback required in the Apartment Design Guidelines. In addition, there appear to be openings along the northern boundary for Level 1 which would not comply with the Apartment design Guidelines nor fire separation under the Building code of Australia.
- Tower C has a nil setback to the isolated/excluded lots which does not comply with the minimum setback required in the Apartment Design Guidelines nor fire separation under the Building code of Australia.

Given this, Council raises concerns regarding the proposed built forms, as they do not comply with the building envelopes envisaged in the SSDCP. It is considered that these inconsistencies would likely prejudice and/or sterilise the future development within Stages 3 and 4 as Stages 3 and 4 cannot be designed in accordance with the SSDCP. Accordingly, this would prevent the delivery of the SSDCP and the urban design principles that were carefully considered during the master planning of the precinct. Accordingly, substantial amendments would need to be undertaken in order for the proposal to meet the built forms envisaged in the SSDCP.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

### **5.3 Pedestrian Bridge**

The Site Specific DCP seeks to facilitate pedestrian access between Cabramatta Station and the Market Square through a Pedestrian Bridge over Broomfield Street. It is noted in the documentation that the proposal does not seek to construct the bridge however includes concepts of retrofitting the pedestrian bridge within the design. The built forms indicated in the

SSDCP require a 18m wide pedestrian link between Towers B and C to allow for the bridge and maximise the pedestrian linkage. It is noted that the proposed development does not comply with this requirement and the pedestrian linkage is only 12m wide instead of the required width of 18m.

Insufficient information has been provided that demonstrates that a reduction in the width of the pedestrian linkage is appropriate and will continue to meet the public domain and urban design objectives of this space. Based on the design as proposed, it would seem that the pedestrian bridge may potentially conflict with the deep soil landscaping and outdoor dining arrangements within this area. Furthermore, the pedestrian bridge may have visual and acoustic impacts to the amenity/privacy of unit B101 within Building B. Given this, further detailed design and consideration of this area would be necessary before a variation to the width of the pedestrian linkage could be considered further.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

#### **5.4 Apartment Design Guidelines and Design Excellence**

The Application has been reviewed and considered by an External Architect. The assessment has considered State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development, the Apartment Design Guidelines and Clause 6.12 Design Excellence of Fairfield LEP 2013. The following issues have been identified:

##### Local Character and Context

It is important that developments especially in the early stages of change set a benchmark for future development within the planning structures and ADG guidelines. A key component of character outcome is scale which includes building size and proportion relative to neighbourhood, street and site scales.

Further clarification is required in relation to the impacts of Stages 1 and 2 on Stage 3. Overshadowing diagrams have been provided, however, the impact from the future redevelopment of Stage 3 is not shown in detail. Furthermore, it is anticipated that this tower under Stage 3 will have the greatest impact on adjoining properties and it is unclear if the location and/or bulk and scale of this tower has been changed due to the redesign of Stage 2 (Building C). Therefore, overshadowing impacts relating to future stages will need to be considered given the amended design of Stage 2 (Building C). Furthermore, the result of having old commercial stock within the podium of a new development needs to be further considered.

##### Precincts and individual sites

The development is to occur over 4 stages. The DA however is for Stages 1 and 2 only with Stages 3 and 4 massed only and with limited design input as part of this DA. This does raise the issue about what constitutes an acceptable outcome should the proposed development stall. i.e. Stage 2 not proceed. Should the Stages not develop then each Stage needs to be assessed independently, which includes the impact upon roads and other interfaces. To some extent the impacts can be drawn by examination of the current DA documents, it is however preferred that the applicant outline any issues and their response should the staging not proceed. This is particularly relevant where certain concessions are made at Stage 1 on the basis that the overall development will be delivered or where flow on impacts have not been assessed. As discussed above, the impact to Stage 3 from Stages 1 and 2 has not been



demonstrated in detail. No Solar compliance capability has been completed from Stage 3 and therefore this has not been tested in the current design.

#### Built form and scale

The proposed development along the north boundary adjacent to Stage 1 Tower B has been improved with the inclusion of windows to the upper level of the podium. However, this concrete wall on the boundary ideally would include strong patterning to break down the scale into smaller legible proportions.

#### Primary Controls height, FSR, depth, separation, setback

Tower B façade to north is less than 6 metres from the boundary (appears to be approx. 4.0metres) this is a non compliance. The setbacks do not meet ADGs and therefore this can compromise the development of Stages 4.

#### Public domain interface

The 12 metre wide pedestrian area/access from the station across Broomfield will require further detailed review. The reduced width together with the future rail bridge is likely to impact the planter areas. Furthermore, very clear design intent around the support structures for any future bridge needs to be considered. The current perspectives show structure columns which block pedestrian access and useability of the pedestrian area. It is recommended that a more detailed design approach be agreed for the future bridge if this reduced width is to be adopted for the DA. The bridge design ideally would be a cantilevered support from building B podium and not require extensive columns to ground level/ pedestrian plaza level. However, this needs to be assessed against pedestrian loads and dwell times to ensure safe and effective egress at peak time. It is recommended that this area be developed in more detail as the design progresses and more information becomes available.

#### Communal and public open space

The updated response does not describe additional use for the spaces or change the design of these spaces. It does provide validation around why the design is an acceptable outcome. The current design does not indicate any specific child play areas within the COS. The current design does provide a comprehensive description of the distribution and access to the variety of COS facilities to be provided and a complying allocation to each stage. It is likely that a satisfactory design can be achieved with additional design input.

#### Deep soil zones

The amended design provides more detail on deep soil planting structures and strata vault systems for tree growth. The plans however do still include a planter at the new bridge location which will most likely be removed to facilitate pedestrian access. The inclusion as temporary until/if the bridge eventuates should be clarified. Furthermore, the stormwater plans indicate that a box culvert will be located within the deep soil areas around the north and east of Building A. It would appear given Council's engineer maintenance and access requirements for the drainage system that the usability of this space for deep soil planting would be limited.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

## 5.5 Owners Consent Laneway Acquisition

The proposal incorporates 187m<sup>2</sup> of a public road as part of the proposed development. The proposed development will maintain a road on the ground floor, however, 3 levels of basement car parking will encroach underneath this area. It is noted that there have been negotiations between the Applicant and Council in regards to the purchasing of this part of the public road. It is noted that at the time of writing this report, owners consent has not been granted from Council. Given that owners consent has not been obtained for all aspects of the proposed development the consent authority is therefore unable to determine the subject application favourably.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

## 5.6 Servicing and Loading Arrangements

The proposed development includes two (2) vehicle access points into the basement for Stages 1 and 2. One (1) vehicle access point is provided along Broomfield Street which is proposed to accommodate trucks and cars and one (1) vehicle access point along Cabramatta Road that can accommodate cars only. One (1) truck loading bay is provided on basement Level 1 that can only be accessed via Broomfield Street and appears to service the entirety of both Stages.

The loading space and manoeuvring area within basement level 1 proposes to accommodate a medium rigid vehicle only, however, it has not been demonstrated that there is sufficient height clearance of 4.5m in order to cater for this type of vehicle.

In addition, Council has advised that given the nature and extent of this development, servicing must be provided by Heavy Rigid Vehicles specifically in order for Council's waste servicing vehicle to enter the basement and collect waste. Accordingly, the design of the proposal would need to be amended in order to cater for a heavy rigid vehicle. Furthermore, it is considered that on-site loading and infrastructure should be designed to accommodate multi-use loading, supporting service requirements for the commercial tenants, scheduled waste collections (commercial & residential), removalists, services, and emergency vehicles. Given the scale and size of the proposed development, the proposal is not considered to be constrained or restricted and would not inhibit a heavy rigid vehicle from accessing the site to service the whole development.

The proposed development as submitted relies upon a private waste collection system. During the Assessment Briefing the Applicant indicated that this was because the development cannot accommodate Council's large waste collection vehicles within the basement. Please note that in accordance with section 496 of the Local Government Act (1993):

‘A council must make and levy an annual charge for the provision of domestic waste management services for each parcel of rateable land for which the service is available’

As domestic waste is levied for each parcel of rateable land, any costs associated with a proposed private waste collection arrangement is in addition to the levy charged for domestic waste by residents. Should a private waste collection cease service, Council through the domestic waste charge would be required to undertake scheduled collections in perpetuity for residents. To support this provision, Councils policies/provisions are designed to support unobstructed access for an industry standard waste collection vehicle (HRV) responsive to the Australian Standards (AS2890.2). Based on the design of the proposal Council's vehicles would be unable to access the basement which would then force any waste collection (if a

private arrangement ceased) onto Broomfield Street and the laneway which would result in an unsatisfactory arrangement, particularly given the number of dwellings proposed. Furthermore, Council's waste officer has also advised that currently there are no Bulky Goods Waste vehicles that are a SRV and therefore any bulky goods waste must be undertaken outside of the basement.

Whilst Council does not object to the proposed private collection arrangement (that is a decision for the Applicant), concern is raised that the site is unable to be appropriately serviced by a heavy rigid vehicle given the scale and size of the development including any future waste collection arrangement for the residents in perpetuity.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

## **5.7 Cabramatta Town Centre DCP 5/2000**

An assessment of Cabramatta Town Centre DCP 5/2000 and the Site Specific DCP contained within Precinct 4A of this DCP has revealed the following:

### Part C Active Street Frontages, Awnings & Materials

A tavern is proposed on the ground floor of Building C. Part of the tavern located on the north western corner of the building does not have any external access and only provides internal access. The submitted plans do indicate some outdoor seating within this area, however, it is unclear how access to the outdoor seating will occur. Given this, it appears that the section of Building C does not provide a sufficient active frontage facing the Market Square.

### Part D Safety and Security

An external lighting strategy/plan has not been provided in support of the proposed development. A Light Spill impact assessment prepared by a qualified consultant also has not been submitted demonstrating that the proposed, adjoining or nearby dwellings would not be impacted by light spill. A CCTV plan has also not been provided showing the locations of all CCTV around the development. This information was requested during Council's initial assessment of the application, and has not been provided.

### Part G Flooding and overland flow paths

Council's Development Engineer has maintained their objection to the proposal given that the proposed method of conveying the overland flow path through the site which is not considered appropriate. Accordingly, it is considered that the proposed development in its current form is not in accordance with the controls contained in Part G of the SSDCP.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

## **5.8 Childcare Centre**

The proposal includes a childcare centre for 80 children on the first floor level of Tower B. Council's assessment of the of State Environmental Planning Policy (Transport and Infrastructure) 2021: Chapter 3 – Educational Establishments and Child Care Facilities and Child Care Planning Guideline 2021, has revealed the following issues:

- The proposed childcare centre is located on level 1 and a 1m balustrade is provided around the outdoor play area. This is not considered appropriate to ensure the safety of children and staff within the outdoor play area.
- The details of the fitout of the indoor play areas as well as the outdoor play areas is limited and therefore it cannot be confirmed that the proposed development would meet the required unencumbered indoor and outdoor play requirements within the guideline. It is noted that details about nappy changing areas and craft sinks are not identified on the plans.
- It appears that the children's outdoor play area can be viewed from the residential podium above. It is not considered appropriate that residents from the residential dwellings would be able to interact and see children within the childcare centre.
- Details of a safe refuge to accommodate all the children and staff (0.25m<sup>2</sup> per person) in the event of an emergency has not been provided. The doors, walls, floors and ceiling of the refuge shall have a minimum Fire Resistance Level (FRL) equal to that required for the fire stairs.
- The submitted plan of management indicates that there will be 11 educators on the site, however, the proposed numbers do not appear consistent with the educator to child ratios as required by Clause 123 of the regulations.
- The acoustic report recommends that only 20 of the 80 children can be accommodated within the outdoor play area at any one time. No details have been provided to determine how a centre could practically and reasonably operate with this restriction imposed. It is noted that the play rooms are lower than 20 or higher than 20 which would mean that in order to maintain only 20 children, classrooms would need to be divided. This is not considered reasonable nor practical to operate.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

## 5.9 Acoustic Impacts

The development application was referred to Council's Public Environment and Health Branch for assessment. The acoustic report was not supported and concerns were raised regarding potential noise impacts from the childcare centre, tavern, medical centres and restaurant. Particular concern has been raised regarding the impact of the non residential uses to the residential uses that are proposed as part of the development. The proposal seeks 24 hour approval 7 days a week for some of the non residential uses and therefore the potential acoustic impacts could significantly impact the amenity of the residents.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

## 5.10 Car Parking Assessment

A parking assessment of the proposed development is provided below.

Overall the Proposed development of both Stages 1 and 2 (Buildings A, B and C) will comprise of the following:

- 358 dwellings (28 x studio, 94 x 1 bedroom, 189 x 2 bedroom and 47 x 3 bedroom);
- 10 retail premises with a total area of 2145m<sup>2</sup>;
- A Tavern (including TAB) with an area of 831m<sup>2</sup> on the ground floor;
- Childcare for 80 Children;
- 2 medical centres with a total area of 528m<sup>2</sup>;
- Commercial premises with an area of 507m<sup>2</sup>; and
- Restaurant with a total area of 342m<sup>2</sup> including seating for 176 seats.

The required car parking in accordance with SSDCP is as follows:

#### Residential Dwellings

*One bedroom – 0.5 spaces per dwelling  
Two bedroom – 0.75 spaces per dwelling  
Three or more bedrooms – 1 space per dwelling  
Visitor car parking – 0.20 spaces per dwelling*

358 dwellings (28 x studio, 94 x 1 bedroom, 189 x 2 bedroom and 47 x 3 bedroom) require 250 car spaces for the residents and 72 car parking spaces for visitors.

#### Non-residential land uses

*Retail premises, food and drink premises require 1 space per 25m<sup>2</sup> of gross leasable floor area.*

2994m<sup>2</sup> / 40 = 75 car parking spaces are required

*Medical centres 4 spaces per 100m<sup>2</sup> of gross floor area*

Medical centres require 21 car parking spaces

*Hotel require 1 space per 5m<sup>2</sup> of customer area bar/lounge/dining area/restaurant/function room plus 1 space per 40m<sup>2</sup> gross leasable area of any office/administration area plus 1 space per 3 bedrooms accommodation (if applicable)*

The Tavern requires 138 spaces

*Childcare centre require 1 space per 4 children*

80 children require 20 spaces

The proposal development provides all car parking within the basement level and is as follows:

- A total of 244 car parking spaces are provided for the residential units (205 for Building A and B and 39 for Building C);
- A total of 163 car parking spaces for the commercial/retail uses (106 for Building A and B and 57 for Building C);
- 21 car parking spaces for the Childcare centre;
- A total of 428 car parking spaces are provided for the entire development.

A total of 576 car parking spaces are required and only 428 car parking spaces are provided. Accordingly, the proposal does not meet the rates for car parking as required in the Cabramatta Town Centre DCP 2000.

It is acknowledged that there is a note within the SSDCP that is as follows:

*Note: Car parking can be reduced where there are other uses sharing the same parking area that are not in operation at the same time (such as a child care centre or office premises) and/or where existing street parking or public car parking is available within 400m of the site as demonstrated by a parking survey.*



The submitted documentation provides parking surveys to demonstrate that visitors to the site can rely upon existing car parking spaces on the street or public car parks, in order to cater for this noncompliance.

Notwithstanding this, it is considered appropriate that the car parking demand for the proposed development be provided on the site based on the rates as described within the SSDCP. Accordingly, the proposed car parking arrangement is not supported.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

## **6. CONCLUSION**

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported, in its current form. It is considered that the key issues as outlined in Section 5 have not been resolved satisfactorily.

## **7. RECOMMENDATION**

That the Development Application DA 167.1/2023 for the demolition of existing buildings and staged (Stages 1 and 2) 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 including a tavern, Childcare Centre for a maximum of 80 children, two (2) medical centre and restaurant as well and 358 apartments above at Nos. 76 – 86 Broomfield Street and 139 - 152 Cabramatta Road East, Cabramatta be refused pursuant to Section 4.16(1) (b) of the Environmental Planning and Assessment Act 1979 subject to the draft reasons for refusal attached to this report at Attachment AM.