

DATE OF DEFERRAL	22 November 2024
DATE OF PANEL MEETING	4 November 2024
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto
APOLOGIES	Nil
DECLARATIONS OF INTEREST	Ninos Khoshaba and Kevin Lam declared conflicts of interest as they voted on a VPA and Planning Proposal for the site in Council meetings.

Papers circulated electronically on 28 October 2024.

MATTER DEFERRED

PPSSWC-337 – Fairfield – DA 167.1/2023 - 84 Broomfield Street, Cabramatta - 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 (as described in Schedule 1).

REASONS FOR DEFERRAL

The Panel considered the matters listed at item 6, the material listed at item 7 and the material presented at the meetings and observed at the site inspection listed at item 8 in Schedule 1.

Public Submissions

The Panel was addressed at the meeting by Ms Serafina Dunstan who made an oral submission in relation to negotiations with the Applicant for the purchase of the strata building located at 143-145 Cabramatta Rd, being one of the lots that do not form part of the proposal. The Panel has also reviewed Attachment AF to the Council's Assessment Report, which is a Statutory Declaration of Mr Castagnet summarising the negotiations process with the isolated land holders, which includes the details of the process followed to make offers to acquire the interests in the strata building.

Ms Dunstan generally supported the proposed development, but raised concerns regarding:

- compliance with the principle in *Karavellas* on site isolation; and
- her uncertainty in relation to the implications for the property at 143-145 Cabramatta Rd of not being included in the scheme.

Ms Dunstan remains prepared to sell her interest (Lot 1) in the scheme to the Applicant, but consensus on a purchase price for Lot 3 was unable to be reached.

Subsequent to the Panel meeting, Ms Dunstan also provided the Panel with a copy of the correspondence between Mr Dunstan and the Applicant dated 31 October, 2, 3 and 4 November 2023, which contains an offer to sell Lots 1 & 3 to the Applicant for the total amount of \$6,300,000, and associated terms.

In summary, the Applicant's response to that offer was that, following a 7 year negotiation period with the owner of Lot 3, the Applicant was "forced to completely revise our plans for the Cabramatta East development which, inter alia, had the result of excluding your and his properties from the development" and as a consequence was no longer able to "accommodate the offers" and, in any event, the proposed sale prices for Lots 1 and 3 had "no prospect" of being accepted.

Council Briefing

The Council indicated that its position in relation to the development application is as set out in the Council's Assessment Report, with the primary outstanding matters as set out on pages 5 and 6 of that Report being:

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 187m² of a public road. The Applicant has begun 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.*

The Panel was also informed that Transport for NSW maintains some objection to the development.

Finally, the Panel was informed that, in the opinion of the Council, the following jurisdictional pre-requisites to the grant of consent have not been satisfied:

▪ **The requisite state of satisfaction under clauses 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.

In relation to these provisions, the Panel notes that it is matter for it to be satisfied as to the adequacy of these measures having regard to all of the available assessment material, and requests that the Applicant and the Council continue to consider these issues and identify options to mitigate concerns for the Panel's consideration.

▪ **Non-compliance with clause 7.3(5A)(b) of the Fairfield LEP.** This issue arises as a consequence of the dispute concerning the proper construction of clause 7.3(5A)(b) of the Fairfield LEP.

The Panel has now been briefed with a clause 4.6 variation request for its consideration. The request is provided in the event the Panel agrees with Council's construction of the LEP.

▪ **Non-compliance with clause 6.12 of the LEP** with respect to design excellence, as Council considers that the residential flat building does not exhibit design excellence.

▪ **Owner's consent has not been obtained.**

As outlined above, the Panel agrees that this jurisdictional pre-requisite must be satisfied before any grant of approval could be considered. The Panel further understands that if the Council's consent to the sale of the relevant part of its land is not provided on 26 November 2024, this will necessitate amendments to the basement plans.

▪ **Satisfactory evidence as to the environmental condition of the land under SEPP (Resilience & Hazards)** for consideration of whether the land is contaminated.

The Panel notes that the Applicant disagrees that satisfaction of this requirement has not been discharged, as the Council has been provided with both a Preliminary Site Investigation report and a Detailed Site Investigation report.

Applicant Briefing

The Applicant stated that the application has had a long journey. The Applicant first met with the Council in 2016 to progress a TOD development. The proponent says that it has incurred \$4M in design and technical studies, \$12M in property acquisition costs and \$2.2M in interest. Moreover, the application presently benefits from savings provisions that it would lose the benefit of (with resulting additional costs) if the application is refused.

As to the issues raised by the Council as set out above, the Applicant's responses in the meeting were as follows:

Owner's Consent: The Applicant agreed that the Council's owner's consent would be required to approve the DA in its current form. The Applicant indicated that the purchase price for the relevant parcel of land is agreed, but not all of the terms. If Council's consent is not forthcoming, the DA is still capable of approval, but the basement carpark would need to be reconfigured.

Site Isolation: The Applicant acknowledged the submission of Ms Dunstan, but noted that the difficulty has been that agreement of all 3 lot owners was required to facilitate inclusion of the strata lot in the development. The Applicant stated that negotiations have been ongoing over an 8 year period with the owner of Lot 3 and, as a consequence of a failure to reach agreement, the Applicant was left with no option but to re-design its plans without Lot 3 included. After this re-design occurred to exclude the strata lot, the owner of Lot 3 has agreed to sell. However, at a purchase price of \$4M for this Lot, the Applicant stated that it was "so far out of the ball park" that it did not warrant any further consideration. Further, the Applicant also stated that, beyond price, the owner of Lot 3 wanted guarantees around certain controls on the development that presented a financial risk to the development.

Finally, the Applicant noted that letters were provided to the owners, which set out in some detail the basis upon which offers were being made. In addition, a detailed outline of the development potential of their lots in the absence of agreement to sell was also provided. A chronology of the correspondence received and sent is provided in the Statutory Declaration comprising Attachment AF to the Council's Assessment Report.

Contamination: The Council's report is in error. A PSI and a DSI have been submitted that fully meet the requirements of the Resilience and Hazards SEPP.

Compliance with DCP Controls: The Applicant referenced the EPA Act, noting the requirement that the controls be applied flexibly and alternative solutions considered. In any event, the Applicant stated that it is its position that the application is generally compliant with the DCP controls. In particular:

- The GFA on site not is not completely taken up.
- ADG setbacks are capable of being achieved.
- Building envelopes are 25-30% larger than they need to be.

- The Applicant is close to compliance with the FSR requirement.
- The Applicant does not consider anything about its application compromises future development.

Solar Access: Appropriate levels of solar access for adjacent and surrounding development and ADG compliance in relation to solar access can be achieved.

Design Excellence: Page 57 of Council's Assessment Report notes that Council's architect is of the view that the application is very detailed and of a quality that provides a good outcome for the precinct. A concern is raised about sufficiency of breathing spaces and, as a consequence, the Applicant has introduced further space.

Pedestrian Bridge: While the DCP proposes a pedestrian bridge, TfNSW has formally stated that it is not supportive of the Bridge.

Planning Agreement: Pursuant to the planning agreement with Council, in the alternative to the pedestrian bridge, 110% of the estimated costs to complete the bridge will instead be provided by way of monetary contribution towards other community public benefits. This is required to be paid on approval of stage 1.

Site servicing: The Applicant proposes entering into its own commercial arrangements to deal with waste servicing. While the basement is not designed to take into account a HRV, the basement would take a medium rigid vehicle. The Applicant stated that it would enter into its own commercial arrangements to pay for this. The Panel Chair noted that the authority in *Courallie Pty Ltd and Strathfield Council* may be relevant to deliberations regarding appropriate waste servicing arrangements.

Parking and traffic: In response to issues regarding parking, the Applicant stated that TfNSW specifically instructed that parking in this location should be reduced to align with the RMS Guide to Traffic Generating Development and Housing SEPP rates. The current shortfall in parking is associated with the tavern use, which has a very high parking ratio requirement. Further, parking spaces can be shared. E.g. the childcare and tavern are not going to use the car spaces at the same time.

TfNSW has an outstanding concern relating to the possibility of queuing at an intersection. The Applicant's position is that one to two additional trips per minute will be generated by the site. No intersections will be significantly impacted. If a delay does arise associated with a right turn to Cabramatta Rd, people will just drive up to the next intersection to turn right. The Applicant also considers that TfNSW SIDRA modelling, requirements are very onerous.

Childcare –The Panel queried whether the childcare space could meet the requirements of the Child Care Facilities and Child Care Planning Guideline 2021. In particular, the Panel noted that the acoustic report recommends that only 20 of the 80 children can be accommodated within the outdoor play area at any one time and that it is not clear how the centre would operate with a restriction of this kind. The Applicant acknowledged there are a number of questions in the Assessment Report relating to matters concerning the proposed childcare space and stated that it would accept a condition requiring that another DA is required to be lodged for the design and use of this space.

Overland Flow: The Applicant acknowledges that this needs to be dealt with and says that it has been addressed as part of an RFI response.

Light Spill: The Applicant says that is a matter that is capable of being dealt with by way of condition of consent.

BCA Compliance: The Applicant stated that the Council's Assessment Report references dated information on BCA and that BCA compliance can and will be achieved.

Council Response:

Council raised a final concern that some of the outstanding technical matters would require further changes to the DA – e.g. overland flow needs to be clear of the basement, but agreed that some of the other matters could be dealt with by way of conditions of consent.




Actions

The Panel is concerned about the lengthy time taken to assess the DA which remains unresolved. To hopefully bring the assessment process to a close, the Panel proposes the following steps:

1. Council is to promptly provide a written update to the Secretariat as to whether the sale of the Council owned land that forms part of the DA is endorsed by the Council following its meeting on 26 November 2024 at which that issue is due to be considered.
2. If the Applicant believes that there are any amendments that could be incorporated into its design considerations now arising from matters raised in the Council's Assessment Report, or as a consequence of the Council meeting on 26 November, these must be incorporated promptly. The Applicant should advise the Secretariat by Friday 13 December 2024, as to the further information and plan amendments proposed to be provided. It is expected that the amended material will be provided to the Council and lodged on the portal by 5 February 2025.
3. Council is to provide:
 - (a) a summary table of any outstanding issues arising from the present recommendation for refusal;
 - (b) a clear outline of any residual concerns of Transport for NSW, concerns regarding compliance with clauses 2.119 and 2.122 of SEPP (Transport & Infrastructure) and residual concerns relating to overland flow, including options to address those concerns;
 - (c) an assessment of whether the childcare space could achieve compliance with State Environmental Planning Policy (Transport and Infrastructure) 2021: Chapter 3 – Educational Establishments and the Child Care Facilities and Child Care Planning Guideline 2021 either as part of approval under this DA or a separate DA; and
 - (d) draft conditions of consent,by 28 February 2025.
4. The Applicant is to respond to the proposed conditions within 7 days of notification of those draft conditions, with a table of any disagreements on draft conditions to be provided, with supporting comments by both the Applicant and the Council to be provided to Panel 7 days in advance of the next Panel meeting.
5. The Panel is targeting a further and probably Panel briefing on this matter in early March 2025.

The Panel agreed to defer the determination of the matter until an update on the above matters

The decision to defer the matter was unanimous.

PANEL MEMBERS	
Justin Doyle (Chair) 	 Louise Camenzuli
 David Kitto	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-337 – Fairfield – DA 167.1/2023
2	PROPOSED DEVELOPMENT	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.
3	STREET ADDRESS	Lot: 7 Sec: E DP: 4420 No. 76 Broomfield Street, Cabramatta Lot: 1 DP: 205759 and Lot: 10 DP: 255023 No. 84 Broomfield Street, Cabramatta Lot: 2 DP: 205759 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
4	APPLICANT/OWNER	Mr Stephen Castagnet / The Trustee for moon Investment Trust
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Housing) 2021 Fairfield Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Cabramatta Town Centre Development Control Plan 2000 Fairfield City Wide Development Control Plan 2013 Planning agreements: Nil Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i> Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council Assessment Report: 25 October 2024 Clause 4.6 variation requests: cl. 7.2 (4A) floor space ratio and cl. 7.3 (5A) height of buildings of Fairfield Local Environmental Plan 2013. Written submissions during public exhibition: 14 Verbal submissions at the public meeting:

		<ul style="list-style-type: none"> ○ ○ Council assessment officer - ○ On behalf of the applicant –
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Total number of unique submissions received by way of objection: 13 • Briefing: 17 July 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Kevin Lam, Hugo Morvillo ○ <u>Council assessment staff</u>: Sunnee Cullen ○ <u>Applicant representatives</u>: Jim Castagnet, Stephan Castagnet, Peter Lawrence, Mahtab Bahrami • Site inspection: 25 September 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli ○ <u>Council assessment staff</u>: Liam Hawke • Briefing: 26 February 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli ○ <u>Council assessment staff</u>: Sunnee Cullen, Liam Hawke ○ <u>Applicant representatives</u>: Jim Castagnet and Anthony Parisi, Peter Lawrence • Briefing: 9 September 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli ○ <u>Council assessment staff</u>: Sunnee Cullen, Liam Hawke ○ <u>Applicant representatives</u>: Stephen Castagnet, Jim Castagnet, Peter Lawrence, Michael Simone, Anthony Parisi, Anton Reisch • Public determination meeting: 4 November 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto ○ <u>Council assessment staff</u>: Liam Hawke, Sunnee Cullen ○ <u>Applicant representatives</u>: Anthony Parisi, Peter Lawrence, Jillian Sneyd, Anton Reisch, Jim Castagnet, Rido Pin, Michael Simone
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not applicable