

COUNCIL SUPPLEMENTARY ASSESSMENT REPORT

SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	DA 167.1/2023 PAN-333433 PPSSWC-337
PROPOSAL	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 and a tavern, first floor commercial and a restaurant as well as 358 apartments above. The DA also includes public domain improvement and associated stormwater works.
ADDRESS	<ul style="list-style-type: none"> - 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
APPLICANT	Mr Stephen Castagnet / The Trustee for moon Investment Trust
OWNER	Moon Cre Pty Ltd, Lubo Medich Holdings Pty Ltd and Milperra Hotel Pty Ltd
DA LODGEMENT DATE	2 nd June 2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General Development over \$30 million
CIV	\$215,402,700.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Clause 7.3 (5A) of Fairfield Local Environmental Plan 2013
KEY SEPP/LEP	<ul style="list-style-type: none"> - Fairfield LEP 2013 - State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development 2002 - Apartment Design Guidelines - State Environmental Planning Policy (Transport and Infrastructure) 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 (Planning Systems) 2021
TOTAL & SUBMISSIONS ISSUES SUBMISSIONS UNIQUE KEY IN	The Council received a total of fourteen (14) unique submissions, comprising thirteen (13) objections and one (1) submission in favour of the proposal.

DOCUMENTS SUBMITTED FOR CONSIDERATION	ATTACHMENT A – Amended Architectural Plans ATTACHMENT B – Response Letter and Attachment ATTACHMENT C- TfNSW comments ATTACHMENT D – Draft conditions of Consent
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Not Applicable
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	Provided
PREPARED BY	Liam Hawke
DATE OF REPORT	2 April 2025

BACKGROUND

Council received Development Application No. 167.1/2023, which proposed 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 (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 sought consent for public domain improvement works and subdivision (by boundary adjustment) to incorporate as part of the development a small section of the existing cul de sac head at the end of the public lane in its previous consideration of the matter.

The Panel requested that the matter again be forwarded to the Panel for determination. A Final Briefing for the subject application occurred on 4 November 2024. A decision was made by the Panel on 22 November 2024 to defer the determination of the application, subject to the following actions being undertaken;

1. *Council to 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,*

The deferred determination also requires that the Applicant respond to the Draft conditions following which the matter will be referred to a further panel briefing.

Accordingly, the following advice is provided.

Road Closure and Owners Consent

At Council's Ordinary Meeting on 12 December 2024, the Council resolved to offer the sale of the land (a small section of the existing cul de sac head at the end of the public lane) subject to conditions. It is understood that the Applicant has not proceeded with the offer and has subsequently amended the subject application that now removes all proposed works from Council's land. Given this, the amended application does not require owners consent from Council and this matter with respect to the inclusion of the public road as part of the development is finalised.

Amended Application

In addition to the above, the applicant has submitted amended plans and associated documentation in response to point 2 of the Panels requested actions, making various changes to the overall development. The proposed amendments to the application are as follows:

- Reconfiguration of the basement level in order to remove all works from Council owned land. This has resulted in the introduction of tandem spaces and a reduction in the number of car parking spaces provided within the basement for the proposed development. Initially the number of car parking spaces was 428 and now the amended design has a total of 427 car parking spaces, however 18 spaces are now in a tandem arrangement.
- In response to the reduction of car parking spaces and the reduction in the site area, the proposed design has reconfigured several apartment units to alter the number of bedrooms, and the retail mezzanines have been deleted.
- The Level 1 windows along the northern façade of Building B have been deleted.
- The proposed childcare centre has been removed from the development and replaced with commercial area.

In this regard, the amended proposal now constitutes the following:

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 market square, three (3) buildings containing ground level retail and a tavern, first floor commercial and a restaurant as well as 358 apartments above. The DA also includes public domain improvement works and associated stormwater works.

A detailed breakdown of the amended proposal is provided below:

Site Area

The subject site now excludes part of the cul – de – Sac and therefore the site area has been reduced from 8,113m² to 7,929m².

Basement

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

Basement level 3

- 155 residential car parking spaces for Stage 1 including 9 Tandem Spaces (1 of which is an accessible space); and
- 45 residential car parking spaces for Stage 2 including 9 Tandem Spaces (2 of which are accessible spaces).

Basement Level 2

- 23 residential car parking spaces for Stage 1;
- 94 commercial car parking spaces for Stage 1; and
- 32 commercial car parking spaces for Stage 2.

Basement Level 1

- 22 residential car parking spaces for Stage 1;
- 34 commercial spaces for Stage 1;
- 22 commercial spaces for Stage 2; and
- One (1) loading area that can accommodate a Medium Rigid Vehicle (however the height clearance to the basement appears to be 4.3m, which does not comply with the relevant Australian Standard).

Total Carparking Provided

- A total of 245 car parking spaces are provided for the residential units (200 for Stage 1 and 45 for Stage 2);
- A total of 182 car parking spaces for the commercial/retail uses (128 for Stage 1 and 54 for Stage 2); and
- A total of 427 car parking spaces are provided for the entire development (18 of which are in a tandem arrangement).

Ground Floor

The amended proposal has removed the mezzanine levels within Stage 1 and this has reduced the retail floor area by 313m².

First Floor

The amended proposal has converted the two (2) medical centres within Building C to commercial area. In addition, the proposed childcare centre within Building B has been converted to now be commercial area with no nominated use. It is noted that the general layout of this commercial area is consistent with the layout of the childcare centre. The proposed northern elevation windows along the first floor of Building B have now been removed to address fire separation requirements.

Residential Dwellings

The amended proposal will maintain 358 residential dwellings, however, several of the dwellings have been altered to reduce bedrooms and have now been converted to studios instead. The amended proposal will therefore comprise 28 x studio apartments, 101 x 1 bedroom apartments, 190 x 2 bedroom apartments and 39 x 3 bedroom apartments.

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

- 358 dwellings (28 x studio, 101 x 1 bedroom, 190 x 2 bedroom and 39 x 3 bedroom);
- 10 retail premises with a total area of 1828m²;
- A Tavern (including TAB) with an area of 825m² on the ground floor;
- Commercial premises with an area of 1575m²; and
- Restaurant with a total area of 336m² including seating for 176 seats.

Table 1: Development Data

Control	Original Proposal	Amended Proposal
Site area	8,113m ²	7,929m ²
GFA	36,224m ²	36,068 m ²
FSR	4.46:1	4.55:1
Clause 4.6 Requests	Yes	Yes
No of apartments	358 dwellings	358 dwellings
Max Height	66m	66m
Deep soil zone	416m ²	416m ²
Car Parking spaces	428 car parking spaces within 3 basement levels	427 car parking spaces within 3 basement levels

It is considered that whilst the changes have addressed some of the issues raised in Council's Assessment report, the fundamental issues with the development however remain. As requested by the Panel in its Deferral, a summary of the outstanding issues with the Application are provided below in this report. Based on a detailed assessment of the amended proposal, it is recommended that Development Application No. 167.1/2023 be refused subject to the reasons contained within Council's Assessment Report.

RESPONSE TO PANEL DEFERRAL DECISION

In The Panel decision, it was requested that Council provide the following:

- (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,

The Supplementary Report responds to each matter raised in the deferred decision below.

SUMMARY OF OUTSTANDING ISSUES

(a) A summary table of any outstanding issues arising from the present recommendation for refusal;

Details of Council's assessment of the amended application and the outstanding issues are discussed below.

Site Amalgamation and Isolated Lots within Stage 2

The proposed redevelopment of the precinct does not include a number of sites (Nos. 143-145 Cabramatta Road East and Nos. 88-92 Broomfield Street) considered to be essential to the overall development scheme as identified in the SSDCP within Stage 2. Council's Assessment report identified a number of issues due to these lots not being incorporated into the proposal. These are as follows:

- **Site amalgamation and isolated Sites within Stage 2:** It was 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 was 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.
- **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, has demonstrated that compliance would be unreasonable or unnecessary in this circumstance and there are sufficient environmental planning grounds to justify contravening the development standard. Incorporating the isolated lots into Stage 2 would mean the redevelopment of the site would not have to rely upon a Clause 4.6 Variation.
- **BCA Non-compliance:** 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 would not comply with Part C4D5 - Protection of openings of the BCA.

The amended application still has not incorporated the isolated lots and now excludes a portion of the laneway within Stage 1. Further information has been provided regarding BCA and a reassessment of these issues is provided below.

In August 2017, the applicant presented to Council a Concept Designed Planning Proposal for the Cabramatta Town Centre East precinct which included 22 privately owned allotments and a small area of Council owned land (laneway). The applicant owned/controlled 10 out of the 22 allotments. The proposal to amend the building height and FSR controls over the entire precinct was predicated on a 4 staged development outcome inclusive of all land identified within the precinct and relied on minimum site area standards for each stage.

Had the Planning Proposal proposed to increase the development standards not in an integrated and coordinated approach applying to the land under the planning proposal, the

gazetted development standards would likely have been different. Council would have taken into account the potential impacts on the future development of any potential isolated lots. Building heights, floor space ratios, minimum lot sizes, setbacks, and controls under the site specific DCP would have considered the fragmented parcels and the potential impacts of future development adjoining them and their potential re-development in the future. Development standards would have been much more varied taking into consideration the development potential of any isolated lots within the defined precinct.

It is clear that should the current application be approved in its current layout; it will not only reduce the development potential of the isolated sites but will also affect the privacy and amenity of future residences both under the proposed development application and any future development application for the isolated lots. An approval in its current form would adversely prejudice the development potential of these isolated allotments.

With reference to the non-compliance with the BCA, a further response from the Applicant has been submitted, which is as follows:

'The letter of 13 December 2024 included advice from the McKenzie Group received specifically to address the matter in Council's Assessment Report. That advice was also included in the presentation to the Panel which was subsequently forwarded to the Panel. The following commentary and extracts were included in these references to confirm the BCA compliance and are repeated below:

BCA Clause C4D3 notes that openings in external wall required to have FRL must be protected (external wall wetting sprinklers will comply as DTS), where the openings are within 3m from the side/ rear boundary.

C4D3 Protection of openings in external walls

[2019: C3.2]

- (1) Subject to (2), openings in an *external wall* that is *required* to have an FRL must be protected in accordance with *C4D5*, and if wall-wetting sprinklers are used, they must be located externally.
- (2) The requirements of (1) only apply if the distance between the opening and the *fire-source feature* to which it is exposed is less than—
 - (a) 3 m from a side or rear boundary of the allotment; or
 - (b) 6 m from the far boundary of a road, river, lake or the like adjoining the allotment, if not located in a *storey* at or near ground level; or
 - (c) 6 m from another building on the allotment that is not Class 10.
- (3) Openings *required* to be protected under (1), must not occupy more than 1/3 of the area of the *external wall* of the *storey* in which they are located unless they are in a Class 9b building used as an *open spectator stand*.

The west elevation wall appears to be non-loadbearing walls. In accordance with BCA Table S5C11b, the west elevation wall is to be fire rated and/or openings protected within sprinklers.

Table S5C11b: Type A construction: FRL of non-loadbearing parts of external walls

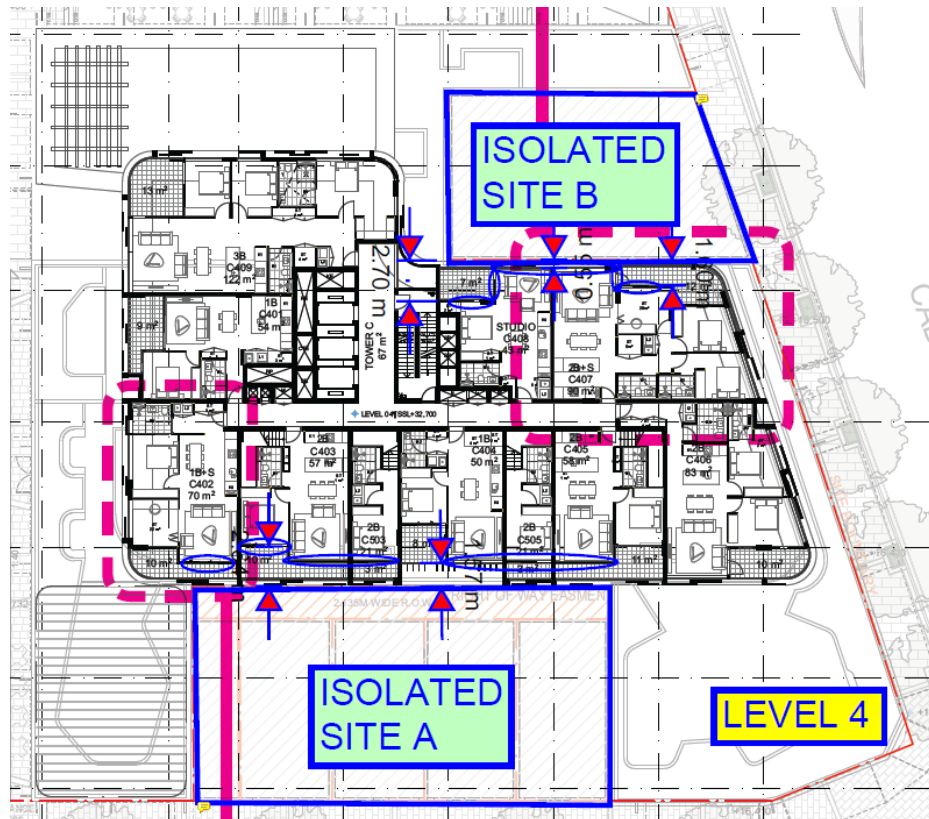
Distance from a fire-source feature	FRL (in minutes): Structural adequacy / Integrity / Insulation			
	Class 2, 3 or 4 part	Class 5, 7a or 9	Class 6	Class 7b or 8
Less than 1.5 m	–/90/90	–/120/120	–/180/180	–/240/240
1.5 to less than 3 m	–/60/60	–/90/90	–/180/120	–/240/180
3 m or more	–/–/–	–/–/–	–/–/–	–/–/–

If sprinklers with fixed glazing are provided to Levels 3 and above, compliance with BCA DTS provisions can be achieved.

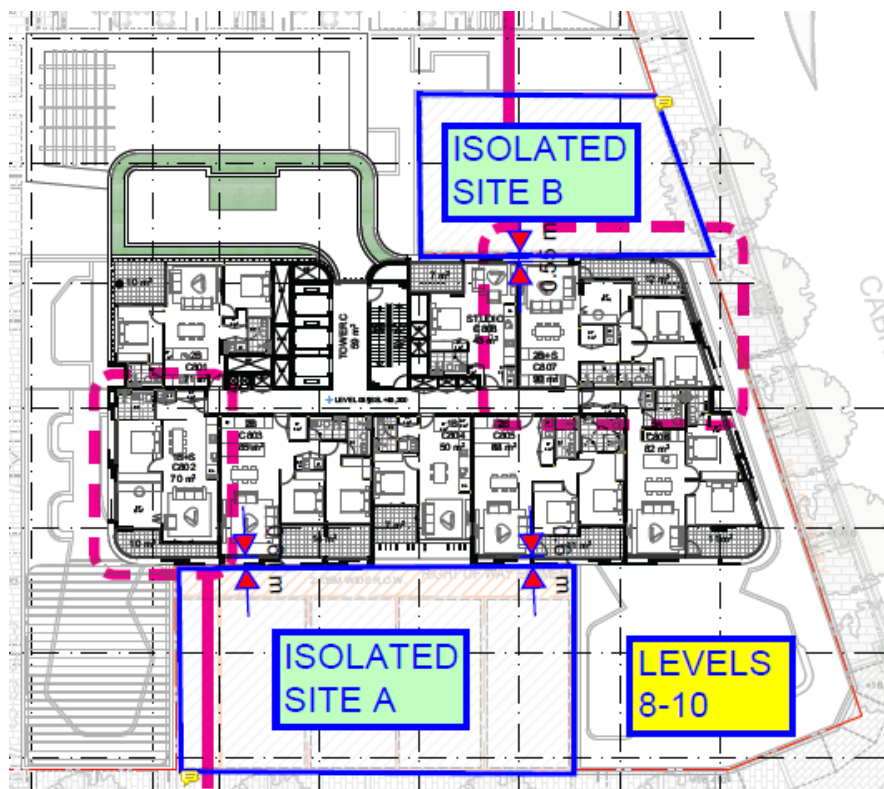
With the removal of the windows to the northern elevation of the child care centre level, there are no other outstanding BCA issues.'

The amended documentation was reviewed by Council's Building Control (Certification) Branch for assessment. It is considered that the amended documentation does not address the issues raised in Council's Assessment, due to the following reasons:

1. The proposal to protect external wall openings by '*sprinklers with fixed glazing*' will require:
 - a. Windows of affected rooms to be non-openable and balcony doors to be fitted with self-closing or automatic closing devices (as specified in BCA C4D5), and
 - b. Provision of mechanical ventilation to affected rooms.
2. This means some habitable rooms will not have access to natural ventilation which is contrary to the Apartment Design Guide.
3. By reference to an extract from the Tower C Level 4 floor plan below, there are:
 - a. Window and door openings less than 3m from the boundary with isolated site B, with some openings scaled at approximately 0.55m from the east boundary.
 - b. Window/door openings less than 3m from the boundary with isolated site A, with some openings scaled at approximately 1.6m from the west boundary.
4. External wall openings at Levels 05-07 have similar boundary setbacks to Level 4.
5. By reference to an extract from the Tower C Level 08-10 floor plan below, there are:
 - a. Window and door openings less than 3m from the boundary with isolated site B, with some openings scaled at approximately 0.55m from the east boundary.
 - b. Window/door openings less than 3m from the boundary with isolated site A, with some openings scaled at approximately 0.55m from the west boundary.
6. External wall openings at Levels 11-16 have similar boundary setbacks to Levels 08-10.
7. The potential for loss of natural ventilation and loss of natural light to Tower C units from a future development of isolated sites A or B has not been adequately considered.



TOWER C (LEVEL 4)



TOWER C (LEVELS 8-10)

Based on this, it is considered that the BCA matters have not been resolved and solutions to address the matters would impact Tower C and its compliance with the ADGs. Given the above, it is considered that the amended application has not resolved this matter.

Built form Inconsistencies with the Site Specific DCP

As part of the Planning Proposal for the precinct, a 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. Council's assessment report considers that the proposed development has not been designed in accordance with the built forms envisaged within the SSDCP. Given this, it was considered that the proposal as designed would impact the ability of Stages 3 and 4 to be developed in accordance with the SSDCP. Council's report summarised the issues as follows:

- 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 buildings 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 appears 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.

The amended Application does not make any changes to the proposed development that would address this matter, except in relation to the removal of the openings along the northern boundary on Level 1.

As stated in Council's Assessment Report, Building B within Stage 1 in its current form does not adequately consider the interface of proposed units within future adjoining development under Stage 4. This is inconsistent with the NSW Apartment Design Guide. It appears that the proposed building setback on the northern side of Building B is approximately 4 metres to the proposed Stage 4 which is a non-compliance. The setbacks do not meet ADG requirements and therefore will more than likely compromise the future development of Stage 4.

Accordingly, the proposed development in its current form would more than likely impact the ability of Stage 4 to develop in a manner that is consistent with the LEP controls and SSDCP, which allowed for a 4 storey podium up to the boundary of Stage 1. Given the current proposal differs from the DCP, this would not be considered an appropriate outcome given its impacts on this stage.

The amended proposal also indicates that Stage 3 of the Precinct will be unable to comply with the development controls adopted under the Planning Proposal for that area. The

maximum site area that can be achieved for future redevelopment of this stage is now approximately 1,000m², which does not comply with the required 1,300m² under the newly amended Fairfield LEP 2013.

It is therefore considered that the ability of Stages 3 and 4 to comply with the development controls under the LEP and Cabramatta Town Centre DCP will more than likely be compromised by the current layout of the proposed development. 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 are unlikely to 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.

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. The subject application 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 to maximise the pedestrian linkage. It is noted that the amended plans continue to propose a pedestrian linkage that is only 12m wide instead of the required width of 18m.

Whilst the application may not seek the construction of the bridge under the current application, if the bridge were to be retrofitted at a later date, based on the current design and documentation submitted it would appear that the bridge may 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.

Apartment Design Guidelines and Design Excellence

The application was initially reviewed by Council's Architect who raised various issues with the proposed development and it was considered that the proposed development did not exhibit design excellence when considered against the matters in Clause 6.12 of the LEP. In addition, it was 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, would unlikely meet the principles of good design.

The amended application has been reassessed by Council's Architect. Whilst some of the issues previously raised in Council's Assessment Report have been addressed there are two (2) issues that remain, which are as follows:

Solar Impact to Stage 3

Initial concern was raised that documentation was to be submitted that demonstrated the overshadowing impacts of Stages 1 and 2 on the development of 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). Furthermore,

Tower A is greater in height than envisaged in the SSDCP and therefore the impacts on solar compliance for Stage 3 needs to be considered in detail.

No additional detail has been provided in the amended application and given the above, overshadowing impacts relating to future stages will need to be considered given the amended design of Stage 1 (Building A) and Stage 2 (Building C).

Separation between Stage 1 and future Stage 4

As discussed above and in Council's Assessment Report, Council's Architect had identified that Tower B contains habitable rooms and openings that are located less than 6m from the northern boundary (between Stage 1 and 4). This would not comply with the Apartment Design Guidelines and therefore this is likely to compromise the future development of Stage 4. The amended application does not alter the location of the development and this issue remains.

Cabramatta Town Centre DCP 5/2000

Council's Assessment Report identified that the proposed development does not meet the controls contained within Cabramatta Town Centre DCP 2000. Issues were 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. The amended application has not addressed these matters and therefore these issues remain.

Acoustic Impacts

Council's Assessment Report stated that it did not support the proposed development as the acoustic report did not demonstrate acceptable noise impacts from the childcare centre, tavern, medical centres and restaurant. The amended application has removed the childcare centre and medical centres and therefore potential noise impacts from these 2 uses has been addressed. Notwithstanding this, noise impacts from the tavern and the restaurant have not been satisfactorily addressed in the amended application. Details of this are as follows:

Tavern

The revised acoustic report dated 08 February 2024 and Response to RFI letter dated 13 December 2024 as well as the subsequent documentation has been reviewed by Council's Public Health and Environment Section. An assessment of this and the amended application has identified that the following issues remain.

Patron Noise

The revised acoustic report has only assessed amplified music associated with the proposed licensed premises. In Section 7.3 of the Acoustic Report, the acoustic report provided clarification for not assessing any other noise source, stating that music noise was selected for evaluation as it is expected to be louder than patron noise. An extract of the response is attached below.

<p>Noise Impact – Licensed premises (Tavern)</p> <ul style="list-style-type: none"> 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. 	<p>1. Section 7.3 of the acoustic report states that music noise would be louder than patron noise. Music noise was used as a worst case scenario. Noise mitigation measures used to mitigated the worst case scenario would also reduce noise from less noisy activities (ie. patron noise, gaming room noise).</p> <p>2. We note that there are no outdoor smoking areas.</p> <p>3. Recommendations were also provided in the acoustics response to RFLs (see column C in this spreadsheet for the extract)</p> <p>4. Mechanical service noise was not assessed, as the mechanical design has yet to be finalised. Council can condition that an acoustic assessment of mechanical plant shall be undertaken prior to CC</p>	<p>The Tavern operators will be able to manage this through a noise management plan. The following management measures can be incorporated into the noise management plan:</p> <ul style="list-style-type: none"> - Utilise the internal layout to ensure that queuing occurs within the building - Have security at the doors to avoid patrons from loitering - Have designated smoking rooms for patrons and restrict smoking to these areas
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This approach in the Acoustic report is not accepted. The proposed licensed premises will be operate 24/7 with a maximum capacity of 300 patrons. The site is surrounded by both residential and commercial receivers. While amplified music noise can be effectively controlled, patron noise is influenced by many factors such as the behaviour of patrons, which can potentially exceed the noise level of amplified music.

It is important to consider the overall acoustic environment, taking into account not just single source (amplified music), but also other noise sources such as the gaming area, patron noise, mechanical ventilation. This is critical, as combined noise levels from individual sources may result in greater than expected impact, even if each individual source remains below the permissible threshold. Therefore, it is important that all noise sources associated with the proposed development and cumulative impacts are considered and addressed.

Identify all Sensitive Receivers

The proposed licensed premises is located within the Building C. It is considered that the report has not identified all sensitive receivers within the proposed development. As such, it has been requested that all sensitive receivers be identified. As previously noted, the report does has not adequately identify all sensitive receivers, particularly those within Building C. It is recommended that the report identify all sensitive receivers, establish the acceptable noise levels for each of these sensitive receivers, and then provide a detailed discussion on how the proposed façade upgrade will mitigate the noise impact associated with the proposed tavern. This assessment is critical to ensure that the noise levels from the tavern remain within acceptable limits for surrounding sensitive receivers.

Noise Associated with the Outdoor Area

The Tavern is proposed to operate 24/7 with a maximum capacity of 300 patrons. It is noted that the premises will not have an outdoor area. However, it is likely that patrons will gather outside for activities such as smoking, waiting for taxi or queuing to enter the premises. The noise impact from the use of the outdoor area was requested however has not been provided. It is noted that the report recommends that a noise management plan be implemented to address such noise impacts. At this stage, a noise management plan has not been submitted and the current Plan of Management does not specifically address these matters.

Restaurant and Outdoor Dining

The proposed development includes a restaurant with an outdoor dining area. The proposed outdoor dining area consists of 10 tables and 60 chairs which is located within close proximity of residential receivers. No acoustic assessment of the proposed restaurant has been provided in the amended applicant. This issue remains.

Car Parking Assessment

The Application has been amended and the car parking demand for the site has been reassessed and is provided below.

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

- 358 dwellings (28 x studio, 101 x 1 bedroom, 190 x 2 bedroom and 39 x 3 bedroom);
- 10 retail premises with a total area of 1828m²;
- A Tavern (including TAB) with an area of 825m² on the ground floor;
- Commercial premises with an area of 1575m²; and
- Restaurant with a total area of 336m² including seating for 176 seats

The required car parking in accordance with the 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

The proposed development would require 246 car parking spaces for the residential dwellings and 71.6 (72 rounding up) car parking spaces for residential visitors. It should be noted that the proposed bedroom numbers for 22 units have been altered and converted into studies. It is considered that the studies are capable of functioning as bedrooms and therefore should be included as bedrooms for the purposes of calculating the car parking rate for the development. Accordingly, the dwelling calculation should be based on the initial proposal of 28 x studio, 94 x 1 bedroom, 189 x 2 bedroom and 47 x 3 bedroom apartments. The car parking requirements for this is 249.75 (250 rounding up) spaces to be provided. If a different view is formed and the studies are not considered bedrooms then the initial calculation of 246 car parking spaces would be required, resulting in a difference of 4 parking spaces

A total of 245 residential car parking spaces are provided for the residential units (200 for Stage 1 and 45 for Stage 2). The amended application therefore requires 324 car parking spaces (based on the studies being included as bedrooms) which is deficient by 79 spaces.

Whilst the applicant has provided a written response to justify the variation sought, it is considered that the variation proposed in this instance is not insignificant. It is noted that this is a new and substantial development, and there does not seem to be any known constraints or impediments as to why the required parking could not be accommodated as part of the proposed development.

In addition to this matter, the amended application now includes 18 tandem car parking spaces for the residential apartments. No documentation has been provided that details the management and allocation of car parking spaces within the development. Given this, the tandem car parking spaces are not considered appropriate and would exacerbate the non-compliance with the car parking requirements.

Non-residential land uses

- 10 retail premises with a total area of 1828m²;
- A Tavern (including TAB) with an area of 825m² on the ground floor;
- Commercial premises with an area of 1575m²; and
- Restaurant with a total area of 336m² including seating for 176 seats

As the amended proposal only specifies commercial on the plans, the car parking rate for retail, commercial and the restaurant has been considered against the rate of 1 space per 25m². Therefore 3,739m² would require a total of 149.56 (150 rounded up) car spaces.

The tavern should be calculated at a rate of 1 space per 5m² and therefore would require 165 car parking spaces.

In this regard, a total of 315 car parking spaces is required for the non – residential car parking spaces to be provided onsite. A total of 182 commercial car parking is provided and therefore the amended proposal does not comply by 133 car parking spaces.

A total of 639 car parking spaces are required and only 427 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.

In regard to the non-compliance with non – residential car parking spaces, this is able to be addressed through a car parking contribution in accordance with Council's contribution plan and therefore a draft condition has been provided on this basis.

Servicing and Waste Arrangements

Council's Assessment Report indicated that the design of the basement would not allow access for a Heavy Rigid Vehicle (HRV), to the servicing area located within the basement. It was considered appropriate that servicing for a HRV be accommodated in the design in order to allow Council's waste vehicles to service the site in the event that the proposed private arrangement ceases and to service the commercial tenancies within the development. Based on the nature and extent of the development including the types of commercial activities proposed on the site, it remains necessary that the site be serviced by a heavy rigid vehicle.

The amended application does not address this matter and therefore remains outstanding, and of concern. In order to address access to the basement by a HRV and to incorporate the waste services infrastructure as requested by Council's waste officer, the floor plate of the proposed development would need to change.

Basement Car Park Layout

The amended Application was referred to Council's Traffic Engineer who did not support the revised basement layout. The following issues still remain:

- Vehicles exiting from the basement B1 (east of fire water storage) onto the ramp off Broomfield Street will not be able to make a sharp 90 degree turn. Adequate corner splay shall be provided at the fire storage tank to enable the vehicle can exit without encroaching onto opposite traffic entering the premises from Broomfield Street.
- The intersection of basement B2 ramp (retail area) with basement B1 (south of fire storage tank) is directed straight onto two-way traffic from three directions. This is not considered a safe intersection very close to the entry / exit and therefore the layout shall be redesigned to streamline traffic flows.

- A number of stacked parking is proposed at Basement B3 residential parking areas which is not in accordance with Council's DCP requirements. Furthermore, accessible parking spaces have been incorporated into the stacked parking spaces. No justification has been submitted in order to support the proposed stacked arrangement, particularly access to the accessible spaces.
- The accessible parking spaces are proposed as 3.8m wide and do not comply with AS2890.6:2009. These spaces shall be provided with a shared space.

Contamination

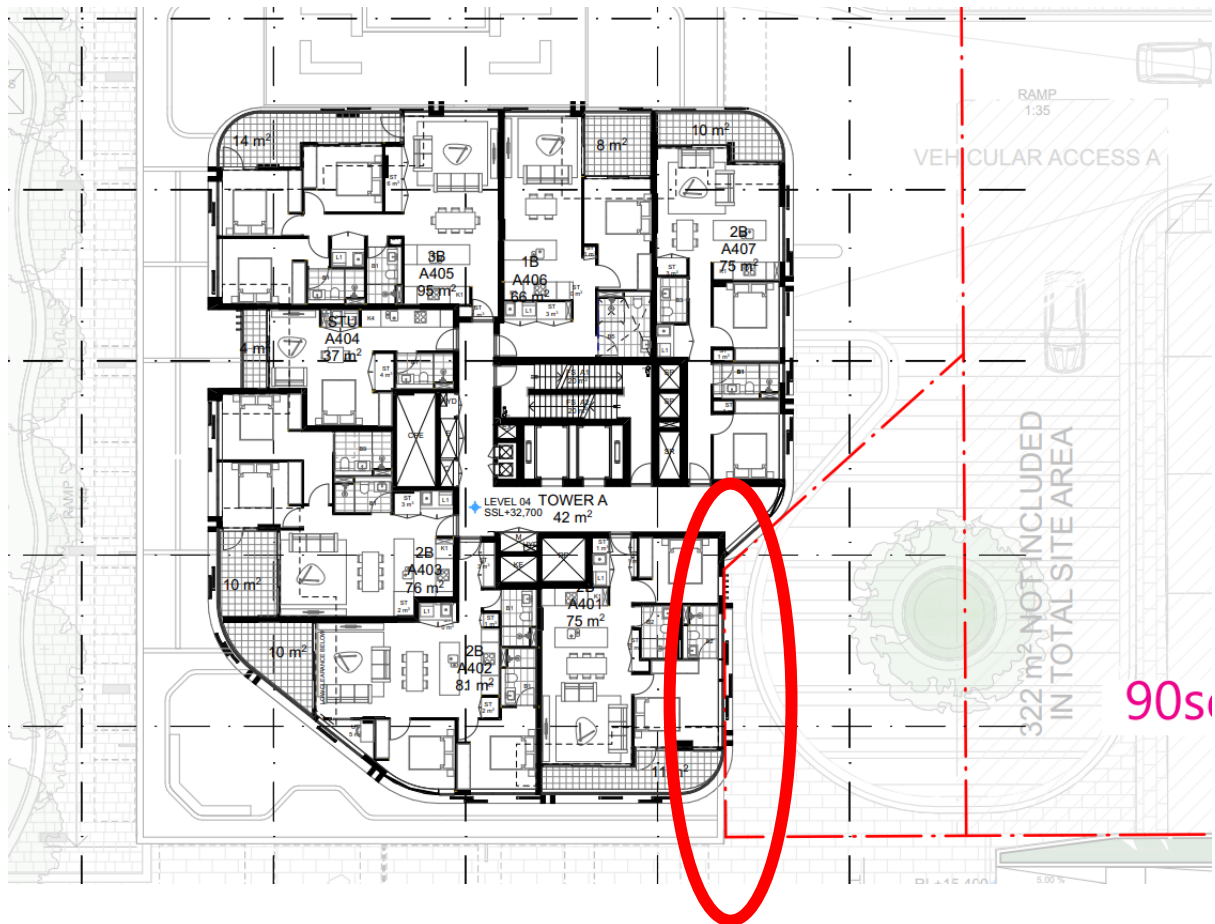
A Detailed Site Investigation (DSI) and Remedial Action Plan (RAP) has been submitted in support of the application. As per the recommendations of the DSI and RAP it was concluded that, subject to the successful implementation of the measures described in this RAP and limitations outlined in Section 12, the site can be made suitable for the proposed development. A recommendation is that a Hazardous Building Material Survey be prepared. Accordingly and based on the recommendations of the DSI and RAP, it was requested that a Hazardous Building Material Survey be provided. This has not been provided in the amended application and therefore this issue remains.

Further Issues

The amended application has resulted in changes to the design. Some of the changes to the design has resulted in further issues, which are outlined below:

Building Encroachment over the Boundary

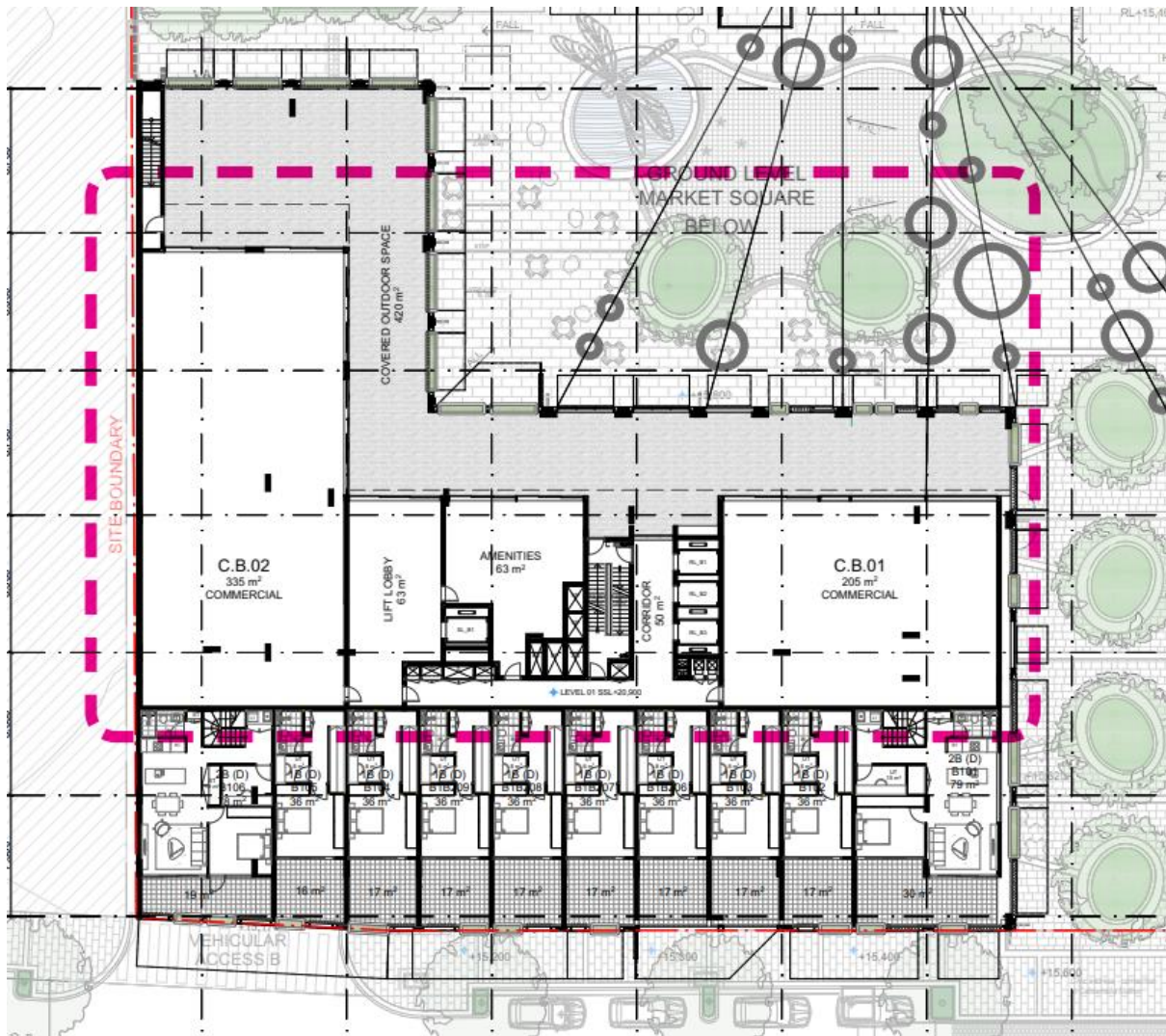
The amended application has been specifically amended in order to remove the proposed development outside of the Council owned land (being part of the head of the cul de sac). The amended plans have relocated the basement level wholly within the confines of the subject site, however, there are some minor encroachments of Tower A. This is depicted in the following figures:



The proposed development would need to be setback wholly within the subject site and not encroach into Council land. In order to satisfactorily address this matter, the dwellings that are affected by this change may not meet the minimum floor areas required under the Apartment Design Guidelines.

Removal of Childcare Centre

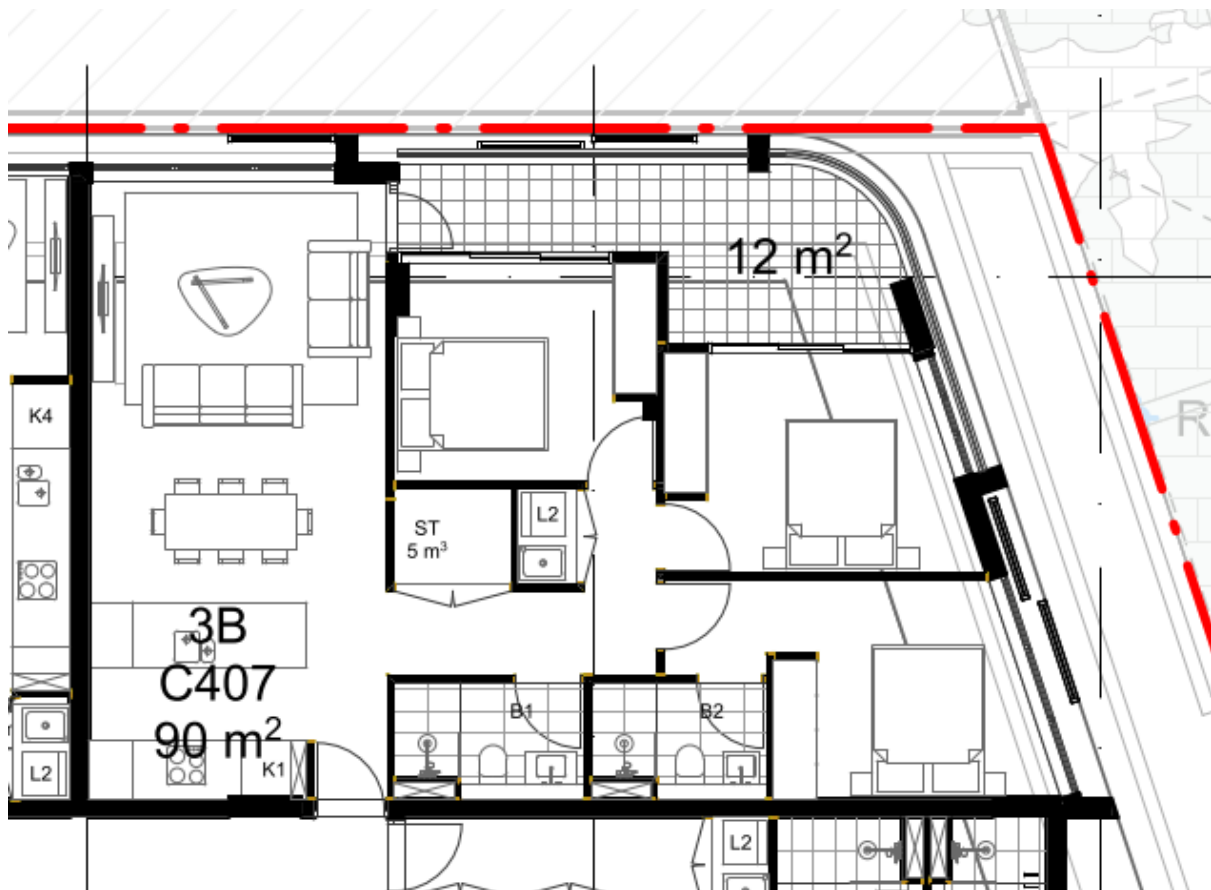
The amended application has removed the childcare centre from the proposed development and replaced this area with commercial space. Despite this, there has been no change to the layout or building for the proposed commercial premises. This is depicted below:



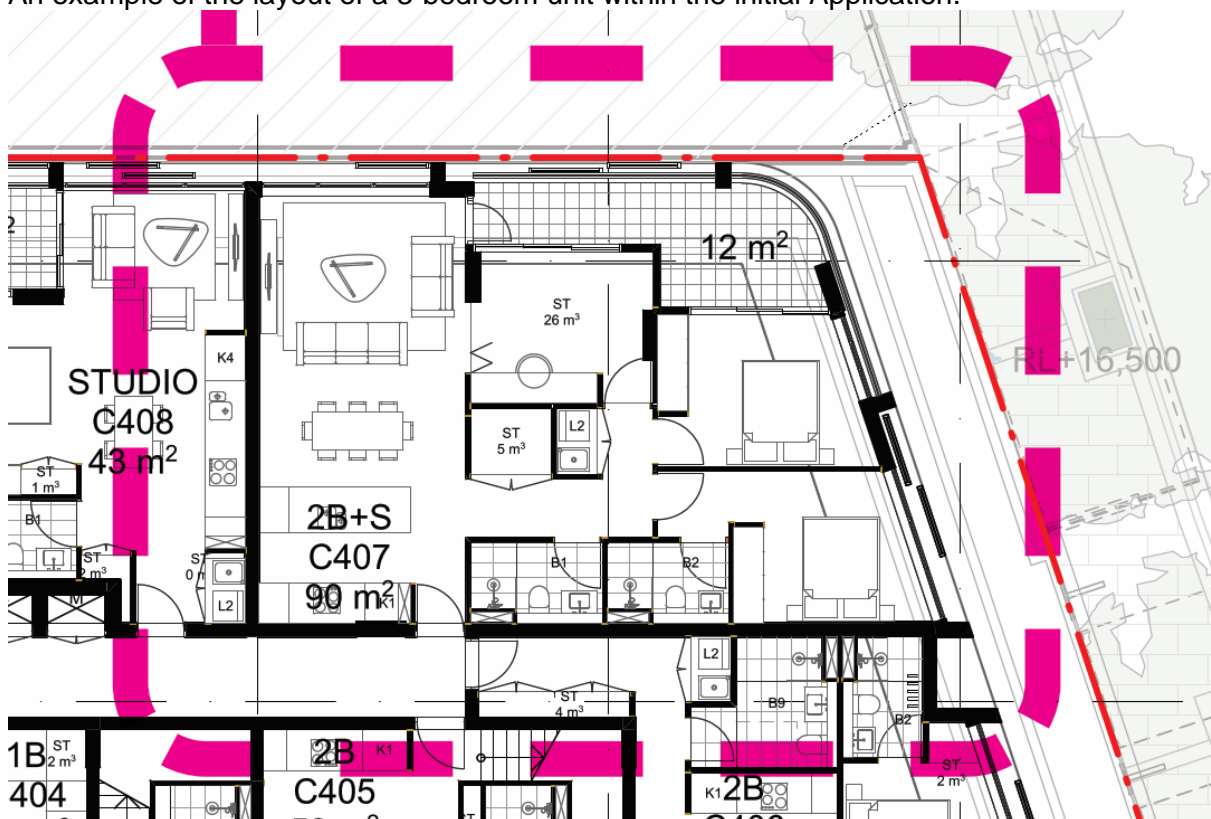
The proposed commercial area will have a large 420m² covered outdoor space. An outdoor area of this size is considered to be unusual for a commercial premises and no information has been submitted to provide details of how this area will operate and would not impact the residential dwellings located within the development.

Changes to the Bedrooms

The amended application has not reduced the number of dwellings onsite, however, has amended 22 of the proposed dwellings in order to reduce the number of bedrooms. Notwithstanding this, it is considered that the amended layout which substitutes 'studies' for bedrooms in name only are still capable of being used as bedrooms and an example of this is provided below:



An example of the layout of a 3-bedroom unit within the initial Application.



An example of the layout of a 2 bedroom plus study unit within the amended Application.

In the case above, the amended application has not reduced the size of the unit/room and has removed part of an internal wall and replaced it with what appears to be a bifold/concertina door. The room has been labelled as study and still includes a wardrobe. Given that the 10m² room can be closed off it is still considered to be capable of being a bedroom. Merely changing the name of the room from bedroom to study in order to reduce the car parking requirement is not appropriate and is not considered acceptable.

It is considered that the proposed studies within the amended application are capable of functioning as a bedroom and therefore should be considered as a bedroom.

TfNSW AND STORMWATER/OVERFLOW PATH

(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;

Transport for NSW - Roads

The amended application was again referred to TfNSW for comment in accordance with Clause 2.122 (Traffic Generating Development) of the State Environmental Planning Policy (Transport and Infrastructure) 2021. A copy of TfNSW response is provided in Attachment C of this report, however, it is noted that TfNSW have stated the following:

- In response to TfNSW previous comments, and with reference to additional information provided to the Planning Panel by the Applicant the DA has been modified to remove the child care centre from the development, and revisions to some apartments (with resulting reductions in parking requirements) and the use of commercial space, the additional trips generated by the Site when compared to the Site's existing trip generation would be minor compared to the existing in the order of 30 vehicles per hour in the AM peak and a negligible reduction in the PM peak is not expected to have a detrimental impact on the surrounding classified road network.

As such TfNSW has no further comment on the DA.

Given this, it is considered that the amended application has addressed this matter and the issues raised by TfNSW have been addressed.

Stormwater Drainage and Overland Flow

The amended application was considered once again by Council's Development Engineer who has provided the following comments regarding the stormwater management of the site and overland flow matters.

Overland Flow / Culvert

The subject application seeks a box culvert located within the basement level in order to cater for an overland flow path through the site. Council has advised through the course of its assessment that the overland flow entering the site from a sag point in Cabramatta Road East is to be conveyed through the site via an overland flow path, in addition to an underground drainage system. This is required in accordance with Council's Stormwater Management Policy. In this regard, the proposed culvert along the eastern boundary without an associated surface flow path is not considered acceptable to Council. Any blockage in the grated drain proposed at the Street entry will result in failure of this system. A clearly defined surface flow path from Cabramatta Road East entry up to the easement towards Fisher Street should be incorporated in the design.

The proposed culvert will drain runoff from public land and therefore it will become a Council asset with an easement created over it. For future maintenance and to allow for any upgrading of Council assets, the easement shall be clear of the building footprint and the perimeter of the basement.

In addition, no details have been provided as to how the culvert will function to convey the flow during construction stages given piling and excavation will be undertaken along the eastern and north eastern boundaries.

The proposed grated drain at site entry off Cabramatta Road East is not considered an acceptable inlet structure at a sag point since it will be prone to blockages and will not have adequate capacity.

In order to cater for the overland flow through the subject site the basement and development would need to be setback from the eastern boundary for the overland flow to be conveyed. The proposed basement is located immediately to the eastern boundary and the proposed box culvert system through the basement is not considered to be in accordance with Council's Stormwater Management Policy.

Stormwater Drainage / Flood Risk Management

In regards to the stormwater drainage system, the OSD design and location does not comply with Council's Stormwater Management Policy. The 100 Year ARI flood level at the location of the OSD is 15.5m AHD. The OSD tank has a top level of 15.2m which means the whole system will be submerged during this flood event. The drains model submitted by Northrop has not considered the appropriate tailwater conditions and therefore is not considered acceptable. It is suggested that the OSD tank shall be located at level 1 to cater for roof areas with podium level by passing the system.

The retail units RT-A-02, RT-A-03 , RT-B-04 and RT-C-03 have not been provided with 500mm free board from the 100 Year ARI flood level of 15.5m. It is noted that due to inadequate capacity of Council's drainage system downstream of the site, the podium level is likely to become inundated. It is therefore considered appropriate that all retail units be provided with adequate freeboard from external areas.

The basement should be protected from overland flooding by providing 300mm freeboard to the 100 Year ARI flood level. The response supporting the 100mm freeboard is not acceptable. Although Council's DCP does not specifically stipulate the freeboard to basements, the risk of any ingress of flood waters into a three-level basement is considerably high and it is Council's view that a minimum 300mm freeboard will more appropriately address this matter.

CHILDCARE CENTRE

- (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:*

In response to the Panel's deferral, the application has been amended and has removed the Childcare Centre from the subject application. In this regard, an assessment is now not required, and this matter has been resolved.

DRAFT CONDITIONS OF CONSENT

(d) Draft conditions of consent,

Draft conditions have been requested by the Panel in its deferral. Draft conditions have been provided in Attachment D of this report.

CONCLUSION

This report has been prepared in response to the Panel decision to defer the subject application on 22 November 2024. The Application has been amended and Council officers have undertaken an assessment in accordance with the requirements of the EP&A Act and the Regulations. Following a thorough assessment of the relevant planning controls and the key issues identified in Council's Assessment Report, it is considered that the application is unable to be supported in its current form as the key issues as outlined above have not been resolved satisfactorily. In order to address these key issues, it would necessitate a significant redesign of the proposal which would need to be considered and assessed against the relevant legislation.

It is noted that Council has consistently raised the above issues and non-compliances during the course of the assessment of the application. The amended application is considered to have addressed some of the matters raised, however, the proposal in its current form does not address all the issues raised. Based on a detailed assessment of the amended proposal, it is recommended that Development Application No. 167.1/2023 be refused subject to the reasons contained within Council's Assessment Report.