

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	10 June 2025
DATE OF PANEL DECISION	9 June 2025
DATE OF PANEL BRIEFING	14 April 2025
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto
APOLOGIES	None
DECLARATIONS OF INTEREST	Council nominated members as Councillors declared a conflict of interest as they voted on the VPA associated with this site.

Council and Applicant briefing convened Monday, 14 April 2025 (following upon public meeting held by teleconference on 4 November 2024, opened at 2:00pm and closed at 3:00pm separately reported).

MATTER DETERMINED

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 (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.

PANEL CONSIDERATION AND DECISION

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

Development application

The Panel determined to refuse the development application (DA) pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The site is appropriate for a high-density mixed-use development

This DA proposes a major mixed residential and commercial investment in the upgrade of Cabramatta through the reinvigoration of the commercial area in the eastern portion of Cabramatta Town Centre.

The site is positioned within Precinct 4A of Cabramatta Town Centre comprising approximately 1.3ha of land bounded by Fisher Street, Broomfield Street and Cabramatta Road East and was the subject of a targeted rezoning through Fairfield Local Environmental Plan 2013 (Amendment No 42) that was gazetted on 7 October 2022 (**East Cabramatta Commercial Precinct Rezoning**). Work on the East Cabramatta Commercial Precinct Rezoning commenced in 2018, with the LEP ultimately gazetted relodged in 2021.

Cabramatta has established itself as a major multicultural, commercial and hospitality destination. This is despite its building stock and infrastructure being aged and in pressing need of upgrade. Various strategies to upgrade the west of Cabramatta have been stymied by the significant costs required to fund road upgrades and parking infrastructure. Reporting referred to during the rezoning of the eastern side of the

railway expressed the hope that the comparatively fewer traffic and infrastructure constraints will allow the eastern side of the Cabramatta town centre to progress in advance of the western side. If that is accomplished, it will hopefully allow the investment and attraction of capital to advance improvements to Cabramatta Town Centre more generally.

Situated immediately adjacent to Cabramatta Station – a major transport node on the juncture of two train lines - the site is ideally placed to locate high density residential development urgently needed in Western Sydney and commercial uses to support the wider advancement of the expanding population of the area. Upgrade of the run down and moribund building stock on the site with well-planned redevelopment offers great potential to contribute to the positioning of Cabramatta as a modernising, increasingly vibrant metropolitan destination within the wider district spanned by the Liverpool and Fairfield local government areas.

Further deferment of the DA is inappropriate

The application is a major DA with a 'capital investment value' estimated at \$215,402,700 that has raised several significant planning issues that have delayed its determination. While the Panel has allowed a number of deferments in the hope of achieving a level of agreement between the Applicant and the Council, the extensive delay well beyond the target processing period for regionally significant DAs is of concern. The Panel is eager to determine the DA, while ensuring that issues of urban design and the public interest are sufficiently resolved if the DA is to be approved.

The DA has been considered by the Panel on a number of occasions already. A preliminary kick-off briefing was convened on 17 July 2023. The Panel conducted a tour of the site with Council staff on 9 October 2023 and convened a joint briefing on 26 February 2024. At that briefing (now 14 months ago), specific directions were made in the hope of encouraging discussion between the Applicant and the Council to reach a compromise on the outstanding matters.

Unfortunately, the Panel's efforts in that regard have been far from successful with a long list of criticisms directed to the present design set out in Council's determination reporting on the DA, leading to a recommendation for refusal. If the DA were to be approved by the Panel, there is also extensive dispute as to the content of the consent conditions that would be imposed.

The Panel is therefore pessimistic of receiving plans which resolve the matters raised to Council's satisfaction within an acceptable timeframe, and it is therefore appropriate to determine the DA based on the present plans.

The DA must therefore be determined now, rather than being deferred to invite further changes.

Reasons for refusal

While the Panel sees merit in several aspects of the DA, it is nonetheless of the view that the DA as currently presented remains unacceptable with respect to the following essential matters when assessed against the considerations required by s 4.15 of the *Environmental Planning & Assessment Act 1979*:

- (a) The DA proposes insufficient building separation to the boundary from the northern façade of Tower B, the western façade of Tower C, and the eastern façade of Building C to satisfactorily address the ADG design guidelines, with the consequence of constraining the development potential of adjacent allotments.
- (b) The interfaces of the proposed development with the smaller adjacent isolated lots (on both Broomfield Street and Cabramatta Road East) are not adequately resolved such that they would unsatisfactorily constrain future development of those allotments.
- (c) While the Panel was open to a flexible approach to the maximum heights permitted for buildings on the DA site as regulated by s 7.3(5A) of the *Fairfield Local Environmental Plan 2013 (LEP 2013)* to the extent it would be consistent with the planning objectives of the control, the departures in the

DA design from the envelopes anticipated by the precinct specific DCP controls again poses substantial negative impacts on the remaining stages of the development and the isolated sites.

Further comment on each of those issues with the application is provided separately below.

While the Panel accepts the planning arguments for maximising the development potential of this site, it should not be at the expense of curtailing the development potential of the remainder of the rezoned precinct.

Discussion of issues

Precinct specific DCP controls were adopted for the site concurrently with the assessment and ultimate gazettal of the East Cabramatta Commercial Precinct Rezoning which has now been incorporated into the Cabramatta Town Centre DCP in the section headed '*Precinct 4A East Side Market Square and Station Interface*'.

These controls were prepared by the proponent for the planning proposal and provide fine grain guidance for the development of the precinct taking into account its far more generous controls.

The DCP controls and the additional height controls staggered across the precinct in the amended LEP were planned around an anticipated 4 Stage development to occupy the whole of the parcel affected. This DA proposes a scheme which would align closest with Stages 1 and 2 of that 4 Stage development envisaged in the DCP. For reference, this is the staging plan at Figure 18 from the Town Centre DCP covering the eastern side of the station:



Figure 1 - DCP Staging plan

It was also plainly important to the urban design analysis which informed the assessment of the planning proposal and the adoption of the bespoke planning provisions that each of the 4 stages would be permissible only if the minimum lot size identified in the controls for that particular stage was available. That is, it seems to have been important in the planning for the precinct that each stage would progress when (and only when) there was sufficient land to deliver that stage.

An issue arises because levels 3 to 16 of Building B have a uniform setback of just 4m from the northern boundary. Each of those levels propose residential bedrooms with openable windows relied upon for light and ventilation as shown in this northern elevation (noting that this elevation is taken from the 2024 plan set as the latest plan set does not include elevations):



Figure 2 - Northern facade of Building B

The ADG minimum building separation controls are:

Up to four storeys (approximately 12m):

- 12m between habitable rooms/balconies
- 9m between habitable and non-habitable rooms
- 6m between non-habitable rooms

Five to eight storeys (approximately 25m):

- 18m between habitable rooms/balconies
- 12m between habitable and non-habitable rooms
- 9m between non-habitable rooms

Nine storeys and above (over 25m):

- 24m between habitable rooms/balconies
- 18m between habitable and non-habitable rooms
- 12m between non-habitable rooms

To comply with those controls, a tower development constructed on the adjacent site which similarly proposed habitable rooms would have to locate 8 metres from the boundary up to 4 storeys, 14 metres from levels 5 to 8, and 20 metres from storeys 9 to 16.

The Panel surmises that the reduced setback in that location may be referencing the massing plan that was included in the urban design analysis which informed the East Cabramatta Commercial Precinct planning proposal referred to in the Council's briefing material as part of the history of the planning context. This image is extracted from that information:



Figure 3 - Feasibility study massing image

The difficulty is that this massing plan (presumably produced by the Applicant's consultant during the rezoning process) does not have any statutory or policy force, and there is no evidence that the proponent of the present application controls the site to the north. At the very least the Panel would require a basis for concluding that the ADG would be met on the adjoining site without constraining its development potential.

There are similar concerns over the nil setback proposed to the isolated sites on Broomfield Street and Cabramatta Road East which appears to assume that the site will only ever be redeveloped to its existing 2 storeys (assuming commercial floor to ceiling heights). These images from the original plan package show how the DA design has assumed a maximum height for future development of both isolated sites of two storeys.



Figure 4 - Current and potential development of Broomfield Street isolated sites

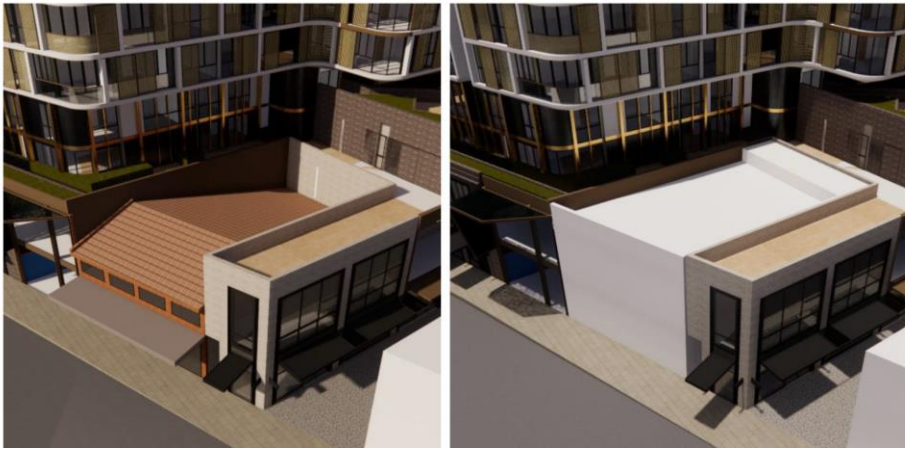


Figure 5 – Current and potential development of isolated site on Cabramatta Road East

While the latest plans allow a setback to the isolated sites to 4 storeys, if those sites are developed to that height then the undercroft will be essentially walled in as tunnels. Apartments C209 and C203 - C205 for example would have no natural light at all if the isolated sites rose above the podium floor level. This can be observed from the details below from the “Laneway Feasibility Study” plan set:



Figure 6 - Level 2

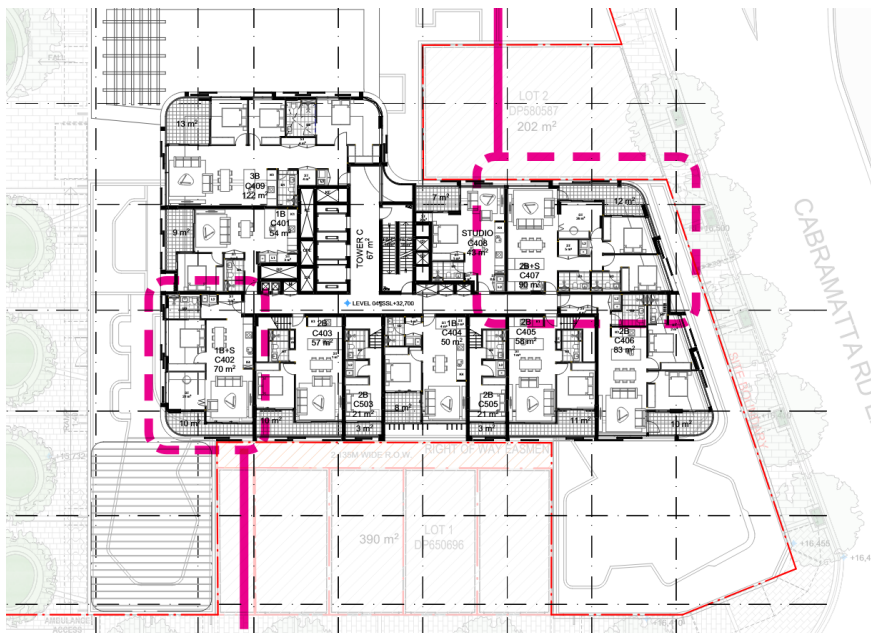


Figure 7 - Level 4

One problem with constraining the development potential of the isolated sites is that it removes any incentive for their redevelopment leaving, particularly in the case of the Broomfield Street, isolated sites as a permanent eyesore immediately opposite the station.

Council says that this proposed site arrangement has a further consequence that 77 of the proposed dwellings located from levels 4 - 18 of Building C will have openings within 3m of a property boundary with consequences under fire regulations (see Part C4D5 - Protection of openings of the BCA). The Applicant says that this can be addressed by a mechanical system that closes all of those windows in the event of a fire presumably when the sprinkler system is engaged. The Panel is uncertain as to the cost and maintenance impacts of such a system into perpetuity and does not attempt to resolve that matter.

A further related issue is the fact that the development site extends to include part of the land marked in the site specific DCP staging as Stage 3, with the result that Council advises that the remaining area available for Stage 3 is just 1,000 m² which would reduce below the 1,300m² site area necessary to achieve the height limits under the LEP planning proposal. Consequently, without a breach of the LEP minimum site area provision the height for Stage 3 would be limited to 14 metres. That would be a poor result because it would depart substantially from the staged development planned in the feasibility study underlying the East Cabramatta Commercial Precinct Rezoning.

Council issues

With the above matters unresolved, the Panel is not in a position to grant approval for the current scheme.

As already discussed the extensive delay in working through plan amendments to get to the present design leaves the Panel pessimistic that these issues can be resolved within an acceptable timeframe to justify further deferral of its determination.

As the DA is refused, the Panel has not attempted to fully resolve its position in relation to the numerous other reasons given by the Council for refusing the DA particularly in its Supplementary Report to the Panel following the latest revision of the plans.

They include most significantly the Council complaint that the relocation of building mass which has resulted from the departure from the DCP staging plan will have substantial consequences for the impacts of the proposal on adjoining sites and the public domain particularly in relation to solar impact. Tower A for example is substantially different from the form originally proposed in the feasibility study which informed the planning proposal.

The 'proposed building envelopes' and 'height and siting of building envelopes' diagrams below (again presumably authored by the rezoning proponent) are included in the precinct specific portions of the DCP at Figures 4 and 5.

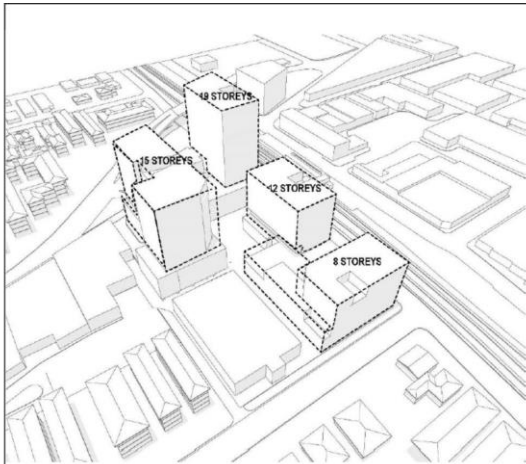


Fig. 4 – Proposed Building Envelopes

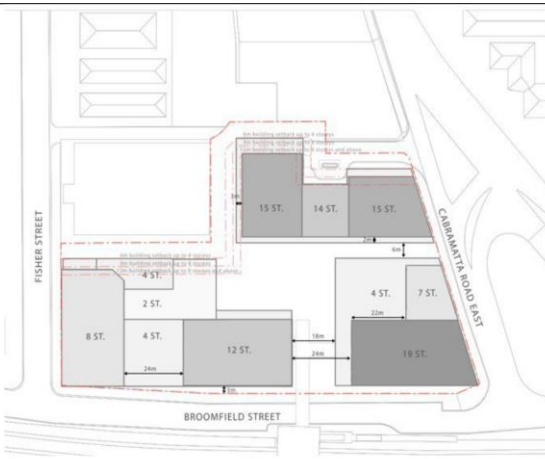


Fig. 5 – Heights and siting of building envelopes

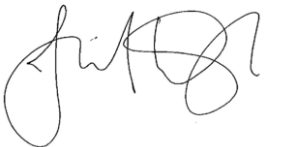


The 12 storey element in the location of what is now proposed as Building B has become 16 storeys in the new scheme. Building A which was to be a maximum of 15 storeys, but with a lower 14 storey element to allow a transition to the Stage 3 building has become in the revised proposal 16 storeys without any transition element. The 7 storey element on Cabramatta Road East would now be impossible because of the design choices fronting the isolated site discussed above.

The additional height of Building B would have consequences for the solar impacts upon the public square, but the Panel has not attempted to determine whether they would be acceptable.

Other matters contended by the Council concerning which the Panel has not resolved its position include:

- a) The sufficiency of information to demonstrate a reasonable offer has been made to facilitate the incorporation of the isolated lots having regard to the Court's decision in *Karavellas v Sutherland Shire Council [2004] NSWLEC 251* - at 17-19. On one view the Council's laneway is also an isolated site which should be included in the development if at all possible.
- b) The effectiveness of access and connectivity within the precinct, with particular note of the reduction in width of the 18m wide pedestrian link between Towers B and C planned in the precinct specific portion of the DCP in anticipation of a bridge being constructed over the railway which at present is not supported by Sydney Trains.
- c) The sufficiency of the activity of the frontage to the Market Square described in the DCP.
- d) Engineering concerns about the overland flow path through the site.
- e) Acoustic Impacts of the proposed tavern, restaurant and outdoor dining area (10 tables and 60 chairs) given their proximity to adjacent residences, with the Council being critical of the acoustic report that has been submitted and the likely need (at least) for a management plan.
- f) An alleged parking deficiency.
- g) A minor encroachment over the boundary arising at the basement level adjacent to the portion of the public lane no longer to be acquired into the site.
- h) The fact that design issues raised in relation to the originally proposed childcare centre have not been resolved, except that the nomination of the childcare use has been removed, while leaving the floorplan tailor designed for the childcare in place leaving the Council concerned about whether it would be suitable for any other use if the childcare centre does not proceed.

The Panel would expect that these matters could be resolved by further amendment of the design, the supply of additional information, or condition. Given the position taken by the Panel it has not attempted to resolve them in this report.

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 (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.
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	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
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 (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 Council Supplementary Assessment Report: 2 April 2025 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 Total number of unique submissions received by way of objection: 13

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • 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 (Applicant) Peter Lawrence (GLN) • 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), David Kitto, Louise Camenzuli ○ <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 • eDetermination Briefing: 14 April 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli ○ <u>Council assessment staff</u>: Liam Hawke ○ <u>Applicant representatives</u>: Jim Castagnet, Peter Lawrence, Michael Simone, Anthony Parisi, Anton Reisch
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not applicable