

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	1 April 2025
DATE OF PANEL DECISION	1 April 2025
DATE OF PANEL MEETING	Public meeting convened on 4 November 2024
PANEL MEMBERS	Justin Doyle (Chair), David Kitto, Louise Camenzuli
APOLOGIES	None
DECLARATIONS OF INTEREST	Kevin Lam and Ninos Khoshaba declared a conflict of interest as they voted on a site specific DCP in a Council meeting.

Public meeting held by videoconference on 4 November 2024.

Papers initially circulated electronically on 28 October 2024.

The Panel members conferred by video conference on 31 March 2024 to discuss the additional documents and reporting submitted for consideration by the Applicant and the Council, and additional plans and additional documents lodged on the Portal since the public meeting.

MATTER DETERMINED

PPSSWC-374 – Fairfield – DA 260.1/2023 at 402 Cabramatta Road, West Cabramatta - The application proposes to amalgamate and subdivide the existing 6 lots to create two Torrens Title lots to facilitate the staged development of the site as follows:

Stage 1: Construction of 52 Multi Dwelling Housing comprising 15 x three-storey and 37 x two-storey units, across 8 blocks (Block A to H), including 1 level of basement car parking and at-grade parking providing a total of 130 spaces; and ancillary works including demolition of existing structures, earthworks, tree removal, construction of a private internal access road, and landscaping

Stage 2: Construction of 6-storey Residential Flat Building containing 80 apartments (reduced from 87) with two levels of basement parking providing a total of 107 spaces (reduced from 109), and ancillary works.

Development application

The panel determined to approve the development application pursuant to section 4.55 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

PANEL CONSIDERATION AND DECISION

1. The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings listed at item 8 in Schedule 1.
2. In accordance with Section 147 of the Housing SEPP the Panel has considered and evaluated the quality of the design of the development in accordance with the design principles for residential development set out in Schedule 9 of the Housing SEPP and the Apartment Design Guide (ADG).
3. One matter that has received particular attention in reporting of the Panel's previous consideration of this DA is the fact that the site of this DA was the subject of a planning proposal which altered the zoning, height and density controls of the site from those applying to the surrounding R2 Low Density

Residential zoning to be partly R4 High Density Residential and partly R3 Medium Density Residential. As noted in previous reports, Council also adopted a site specific DCP at the time of the rezoning which was anticipated to serve as a guide to the redevelopment of the site, now forming clause 10.14 of Fairfield DCP 2024.

4. The DCP included at Figure 2 a layout plan depicting the site layout and anticipated landscaping around an anticipated residential flat building at the northern end of the site wrapping around the corner at the busy intersection of the Cumberland Highway (Orange Grove Road) and Cabramatta Road West. Multi-dwelling housing in the form of terraced townhouses was anticipated for the southern end of the site.
5. The location of the site on two busy classified roads presents a number of challenges for the development, and the distance of the site from the higher density areas of Cabramatta around the station and major transport nodes means that the height and density of the building permitted by the rezoning creates significant challenges for the transition to the adjoining detached housing. However, the rezoning is completed and the site specific DCP is adopted and must be given substantial weight when considering the proposed density and the general building form.
6. That Figure 2 is extracted below for reference.

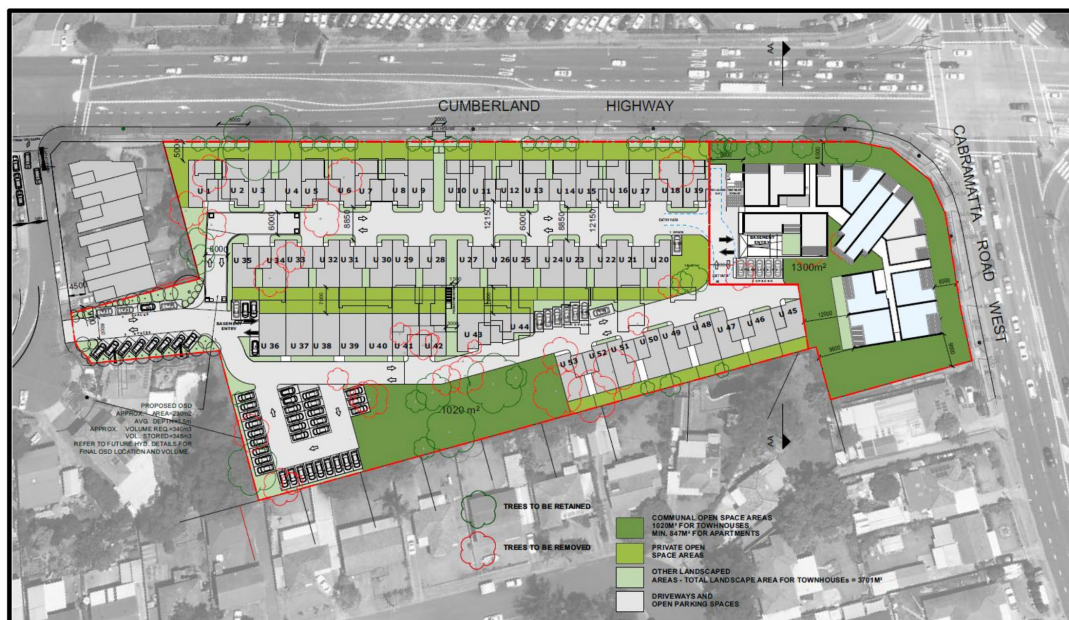


Figure 2 Site layout and building setbacks and Common Open Space

The Panel places particular weight upon the Council's acceptance of that general layout included in the site specific DCP.

7. The Council did not refer the DA for assessment by a design panel as relevant to Section 147(1)(c), but the Council has commissioned a report from an external 'urban design expert'. A number of criticisms and non-compliances of the proposed development were identified in that report.
8. After considering those matters, the issues raised at the public meeting convened on 4 November 2024 and the other considerations identified in s 4.15 of the *Environmental Planning and Assessment Act 1979*, the Panel published a report on 26 November 2024 setting out its reasons for unanimously "*concluding that the development application warranted approval but determined to defer its determination of the development application until the Council can provide draft conditions of consent, and the matters raised in this report could be responded to*" (the Panel's **2024 Reasoning Report**).
9. One significant matter requiring further consideration by the Council was the configuration of the apartments directly above apartment B106 as proposed in the DA (presenting from the southern façade of the RFB above ground level). In the 2024 Reasoning Report the Panel discusses the fact that

the building design in that location projects beyond the setback of the eastern façade depicted in the Figure 2 of the site specific DCP for the site. It is discussed that while that projection can yet be seen as consistent with the DCP given the high level of architectural attention that façade had received, issues of amenity arose in relation to the expected level of amenity for the single bedroom apartments as proposed in that location which had a severely restricted outlook due to the overlooking issues along that facade.

10. The Panel repeats and adopts the reasoning in that 2024 Reasoning Report for the purposes of the decision recorded in this minute of the Panel's determination to grant consent to the DA, including the Panel's consideration of the views of the community there set out.
11. In particular, the Panel recorded its conclusions concerning that issue at that time (which it requested be picked up in an amended DA plan) to be:
 - (a) Apartments B206, B306, and B406 ought to be amalgamated with the adjoining apartment so that the combined 2 bedroom apartment will have a living area which allows a reasonable outlook and cross ventilation. Apartment B106 which does not have the screening issues can be retained. That layout is notably closer to the layout in the DCP indicative scheme.
 - (b) The existing footprint which adopts the 9 metre staggered setback can be retained on the basis, that the high level of architectural detailing shown in the DA plans (such as the subtly curved south eastern corner which softens the transition between housing types) is retained in construction.
 - (c) Windows above the ground floor in the eastern façade (including the first floor) ought to be clerestory or suitably screened to prevent overlooking.
12. It was after reaching those preliminary conclusions, that the Panel determined to defer its determination of the development application until March 2025. That decision was unanimous.
13. On 3 March 2025, a revised version of the plans was published on the Portal, together with other responsive material. The updated plans provided (amongst other things) an amended layout for apartments B206, B306, and B406 to reflect the Panel's comments in the 2024 Reasoning Report. However Council has queried whether the same issues that the Panel raised in relation to apartments B206, B306, and B406 should also apply to apartments B506 and B606. The Panel is convinced by the Council (but taking into account the responsive submissions of the Applicant) that similar concerns do apply to those levels and that other issues are presented by the Applicant's latest material.
14. Specifically, the Panel has examined the changes made to apartments B206, B 306 and B406, and is concerned that the changes have not been fully resolved with the apartments presently designed above them (noting for example the conflicting line of the façade in the location of the bathroom and Bedroom 1 evident from comparing the details extracted below). It is also apparent that the new layout for levels 2 – 5 has not *"retained the high level of architectural detailing shown in the DA plans (such as the subtly curved south eastern corner which softens the transition between housing types)"* which the Panel's 2024 Reasoning Report at paragraph [53(b)] emphasised to be important to the Panel accepting the incursions beyond the setback depicted in the site specific DCP figures.



Figure 1 - Revised south eastern units at levels 2-4

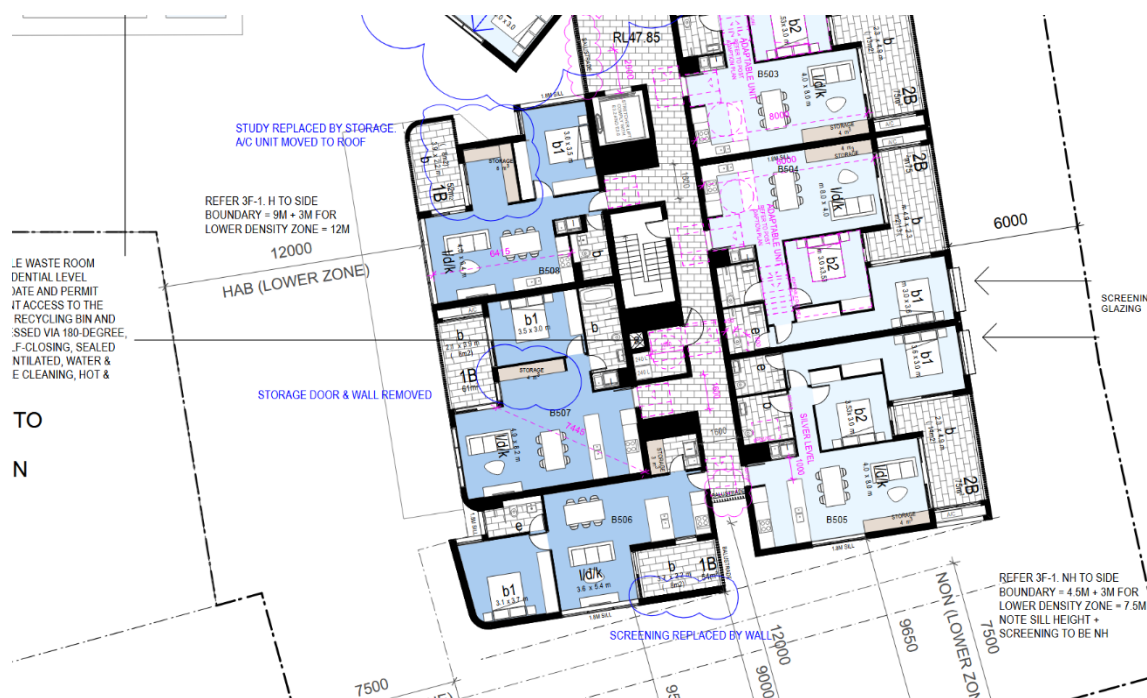


Figure 2 - Comparable plan for level 5

15. On that basis, the Panel agrees with the substance of the deferred commencement condition as proposed by Council in that regard, but the deferred commencement condition should be updated to read as follows (with changes marked up).

“Amended architectural plans shall be submitted to satisfy Council to address that the following matters have been resolved:

- a) Unit B506 located on Level 5 shall be amalgamated with the adjoining Unit B507 to form a three bedroom apartment with a living area which allows a reasonable outlook and cross ventilation.
- b) Unit B606 located on Level 6 shall be amalgamated with the adjoining Unit B607 to form a three bedroom apartment with a living area which allows a reasonable outlook and cross ventilation.

- c) Retention or adaption of the “high level of architectural detailing shown in the edition of the DA plans lodged on the portal on 28 October 2024 (such as the curved south eastern corner which softens the transition between housing types).”

16. **For the avoidance of doubt, it is both intended and anticipated that in the resolution of the deferred commencement conditions, some amendment to the layout and exterior detailing of apartments 05 and 06 on each of the levels can be explored where it will maintain or improve amenity or design.**

CONDITIONS

17. At the Panel’s request, the Council supplied draft conditions to the Applicant, and the Applicant conferred with a view to resolving issues of disagreement. The Applicant requested numerous changes to the conditions to:
- (a) Reflect updated documents supplied to the Council addressing Council concerns and supplying additional requested information.
 - (b) Correct what the Applicant saw as errors.
 - (c) Object to what the Applicant saw as onerous, inappropriate or unfair conditions as proposed in Council’s draft.
18. Council agreed to a number of changes and supplied its most recent updated draft of the conditions marked up with changes made during the conferral process under cover of the email from Council’s Executive Development Planner sent Friday, 14 March 2025 at 11:06 am.
19. Even that version of the conditions has been the subject of further emails from Council and the Applicant addressing issues in dispute and also recording some matters of agreement.
20. Where matters are recorded by the Council as having been agreed, the Panel accepts the agreed position.
21. In relation to the matters identified as still being in dispute, the following table sets out the condition or matter in issue, the respective positions as advised by the Applicant and the Council, and the Panel’s determination.
22. The Conditions are to be updated in accordance with those determinations and the discussion in the body of this determination report prior to the issue of a notice of determination.

Condition	Applicant’s position	Council’s position	Panel’s decision
Deferred commencement condition	Proposes deletion of condition -	Council has agreed to delete all of the condition except where it requires changes to the plans to address consolidation of the floor space of Units B506 on Level 5 and Unit B606 on level 6 apartments	The Condition is to be retained – see discussion in main report
Condition 1	Proposes various changes to the approved documents	Many of the changes have been agreed. Some are not agreed.	The Conditions should refer to the most recent edition of all documents

			<p>submitted with the DA which have not been superseded or withdrawn. Where matters of detail are resolved between the Council and the Applicant then any document recording that resolution may be added to the approved DA set described in the conditions before the issue of the notice of determination. For example, the email correspondence between Council and the Applicant refers to "Revision 5 Acoustic Report nor the Survey Plans dated 11/08/2022" but Council advises it is not aware of receiving that report. The most recent available acoustic report ought to be referenced in the conditions.</p>
<p>Condition 8 Requires "An amended detailed Landscape Plan is to be submitted to Fairfield City Council prior to the issue of a construction certificate, for written approval from Fairfield City Council."</p>	<p>Applicant proposes the Plan be submitted to Council or the certifier</p>	<p>Retain condition</p>	<p>Noting that the condition sufficiently documents the matters to be included in the construction plans, and requires "a certificate from an <i>independent play certifier</i>" and details the matters of concern, it is sufficient that the</p>

			<p>plan be submitted to the certifier.</p> <p>However “<i>shaded seating around any active play zones</i>” should be added to the matters to be included in the certificate from the independent play certifier.</p>
<p>Condition 31</p> <p>Concerning the location of plant and equipment</p>	<p>Proposes deletion of the condition requiring plant and equipment within the basement</p>	<p>Council proposes</p> <p>“Before the issue of a Construction Certificate, the Certifying Authority must be satisfied that all plant and equipment is located in accordance with the approved plans.”</p>	<p>Panel agrees with Council’s proposed amendment</p>
<p>Condition 62 and 158</p> <p>Concerning minimum pot sizes for plants</p>	<p>Applicant proposes deleting condition</p>	<p>Council presses minimum pot sizes</p>	<p>Insufficient information has been provided as to why Council’s required pot sizes are excessive. Council’s condition is to be imposed. Any change might be the subject of a future modification application and sufficiently justified at that time to the satisfaction of the consent authority.</p>
<p>Conditions 83 and 179</p> <p>Propose a registered covenant purporting to remove all liability from the Council when exercising its rights in relation to</p>	<p>Applicant proposes deletion of the conditions requiring registration of the positive covenant</p>	<p>Council agrees to that change</p>	<p>The Panel is of the view that both the covenant and indemnity are an inappropriate attempt through consent conditions to remove Council’s liability and that of its contractors for negligence (which might</p>

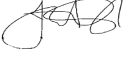


waste removal and the like, and to bestow a complete indemnity in that regard.			include serious personal injury or damage to property) when collecting waste. Both are to be deleted.
Condition 101 and 198 Restricts the use of colorbond fencing at the frontages “in accordance with the approved plans”	Applicant proposes deletion	Council presses condition	The Panel sees nothing unacceptable about the condition noting it only requires compliance with the approved plans
Condition 104 and 163 Detailing requirements for the “mosaic wall”	Applicant proposes deletion in the interests of flexibility	Council presses the condition	The Panel accepts Council’s condition as the mosaic wall was specified in the DA plans without reservation. The following words can be added “The mosaic treatment can be substituted for an equivalent treatment of an alternative medium if approved by Fairfield Council in writing.”
Condition 123 Requires a barrier between the drive and landscaping	Applicant proposes deletion saying Condition could be read to apply to the basement	Council presses saying it only applies to at grade portion of drive	Panel agrees to retain the condition but adding the words “This condition only applies to at grade driveway areas.”
Condition 128 Requires all plant and equipment to	Applicant proposes amendment to be clear it permits	Council in substance agrees	Panel directs words to the effect “except where specified in the approved DA

be in the basement	departure where specified in the plans.		plans” be included in the condition.
<p>Condition 192</p> <p>Requires the applicant to prepare updated SIDRA modelling of the intersection (current and future scenarios) to reflect the traffic of the development post occupancy, at the sole cost of the developer when the development is 80% occupied to inform traffic light periods..</p>	Applicant proposes deletion referring to what happened at the rezoning stage.	Council presses.	The Panel is not convinced to delete the condition requiring the modelling to be produced at the applicant’s expense, and sees an advantage in Transport for NSW advising the format and requirements of the modelling. The condition should be worded to require TfNSW to be notified 21 days before the modelling is undertaken, and for the modelling to address any requirements of TfNSW notified within that period. The modelling outcome should then be supplied to TfNSW.
<p>Condition 242</p> <p>Requires a restrictive covenant to be registered prohibiting access to the classified roads</p>	Applicant opposes covenant because it says the requirement is sufficiently regulated by TfNSW	Council presses conditions pointing to different access proposed in DA	The Panel agrees that no restrictive covenant is necessary and the requirement for a registered instrument should be removed, but the condition can otherwise be retained to make it clear that access (including temporary access) to the classified roads is not approved by this development consent, and any construction

			access in that regard is prohibited at all times without prior TfNSW written approval.
Condition 245 Condition proposes general condition requiring a registered covenant enforcing all conditions of consent	Applicant opposes on the basis that the Act regulates the issue	The Council presses the condition on the basis that the northern lot would be landlocked	<p>The Panel agrees that a condition is appropriate to require the registration of an instrument in the form of an easement permitting use by the northern lot of all relevant driveways and relevant access infrastructure, and other infrastructure intended to be available for the use of occupants of any remaining stage in the development before an occupation certificate issues. This should include the playground. The instrument should include words to the substantive effect "The owners of the land benefitted and burdened by this instrument acknowledge that upon registration of this instrument all of that land is land to which staged DA {insert DA number} relates."</p> <p>That final wording of that condition is to be resolved by Council's general manager</p>

			in accordance with this determination before the Notice of Determination issues.
Parking numbers for each stage	Applicant pointed to apparent errors in the nomination of the numbers of parking spaces required for each stage of the development	Council email correspondence accepts some of those errors.	The Panel accepts Council's advice as responsive to the Applicant's position set out in the email from its Executive Development Planner sent to the Secretariat on Tuesday, March 25, 2025 at 10:46 am, and requires the Conditions to be updated accordingly (or as otherwise agreed with the Applicant.
Engineering specification for driveway concrete	Applicant Disputes whether heavy vehicle standard is required for infrequent use of drive.	Council presses for concrete to the heavy vehicle standard	The Panel requires a condition to the effect that prior to the issue of a construction certificate, a certification of the driveway and vehicular crossing specifications is to be provided by an accredited civil engineer with at least 10 years of experience in driveway design to the effect that it is sufficient to withstand loads from three heavy rigid vehicle trips per week consistent with a laden Council garbage truck for a minimum of 20 years (or alternatively written approval

			of the design from Fairfield Council).
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PANEL MEMBERS	
Justin Doyle (Chair) 	David Kitto 
Louise Camenzuli 	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-374 – Fairfield – DA 260.1/2023
2	PROPOSED DEVELOPMENT	<p>The application proposes to amalgamate and subdivide the existing 6 lots to create two Torrens Title lots to facilitate the staged development of the site as follows:</p> <p>Stage 1: Construction of 52 Multi Dwelling Housing comprising 15 x three-storey and 37 x two-storey units, across 8 blocks (Block A to H), including 1 level of basement car parking and at-grade parking providing a total of 130 spaces; and ancillary works including demolition of existing structures, earthworks, tree removal, construction of a private internal access road, and landscaping</p> <p>Stage 2: Construction of 6-storey Residential Flat Building containing 80 apartments (reduced from 87) with two levels of basement parking providing a total of 107 spaces (reduced from 109), and ancillary works.</p>
3	STREET ADDRESS	400 Cabramatta Road West, Cabramatta (Lot 1 in DP 29449) 402 Cabramatta Road West, Cabramatta (Lot 1 in DP 503339) 402A Cabramatta Road West, Cabramatta (Lot 2 in DP 503339) 404 Cabramatta Road West, Cabramatta (Lot 7 in DP 709126) 2 Orange Grove Road, Cabramatta (Lot 6 in DP 709126) 6 Links Avenue, Cabramatta (Lot 3 in DP 30217)
4	APPLICANT/OWNER	Ahmed Taleb/ TCON Constructions
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 (Building Sustainability Index: BASIX) 2004 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience & Hazards) 2021 State Environmental Planning Policy (Transport & Infrastructure) 2021 State Environmental Planning Policy (Housing) 2021 Apartment Design Guide Fairfield Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Fairfield Development Control Plan 2013 Planning agreements: Nil

		<ul style="list-style-type: none"> • 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: 4 November 2024 • Written submissions during public exhibition: 52 • Verbal submissions at the public meeting • Total number of unique submissions received by way of objection: 34 • Submissions made by the Applicant • Supplementary material and reporting supplied by both the Applicant and the Council following the public meeting convened on 4 November 2024
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Preliminary Briefing: 11 December 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Kevin Lam, Hugo Morvillo ○ <u>Council assessment staff</u>: Venetin Aghostin ○ <u>Applicant representatives</u>: Ahmed Taleb • Briefing: 09 September 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>: Ahmed Taleb, Jim Murray, Aaron Hogan, Orhan Kaba, Michelle Jelcic, Hany Takla • The Panel Chair attended the site on 17 November 2024. • Panel members conferral by video conference on 31 March 2025
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Supplied by email Friday, 14 March 2025 11:06 am read with subsequent correspondence referred to by Council and the Applicant