

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-531
DA No.	DA 25.1/2025 PAN-497526
LGA	Fairfield City Council
Proposed Development	The application proposes demolition of existing structures and construction of an 11 storey shop top housing development comprising two towers over a single podium, 255 car parking spaces within three levels of basement parking, ground floor uses including 12 retail premises, 1 café and 1 kiosk with total commercial floor area of 1,792.4sqm; 148 apartments (27 x Infill affordable units and 121 units not for affordable housing) under SEPP (Housing) 2021 on Levels 1-11, and ancillary works such as tree removal, landscaping, consolidation of lots and dedication of land to the Respondent.
Street Address	896-898 Woodville Road and 15 Hilwa Street, Villawood Lot 100 DP 1070965, Lot 3 DP 208677, Lot 1 DP 217764 and Lot 13 DP 220348
Applicant/Owner	Mr Ahmad Diab (ABA Square Pty Ltd)
Date of DA Lodgement	22 January 2025
Total number of Submissions	0 submissions
Number of Unique Objections	0 submissions
Recommendation	Refusal
Regional Development Criteria	Cost of development: \$73,560,513 (excluding GST)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> Environmental Planning and Assessment Act 1979 (EP&A Act 1979) Environmental Planning and Assessment Regulation 2021 NSW Roads Act 1993, Section 138 Fairfield Local Environmental Plan 2013 State Environmental Planning Policy (Housing) 2021

	<ul style="list-style-type: none"> ▪ Chapter 2 Affordable Housing ▪ Chapter 4 Design of Residential Apartment Development ▪ State Environmental Planning Policy (Transport and Infrastructure) 2021 ▪ State Environmental Planning Policy (Resilience and Hazards) 2021 ▪ State Environmental Planning Policy (Planning Systems) 2021 ▪ State Environmental Planning Policy (Sustainable Buildings) 2022 ▪ State Environmental Planning Policy (Biodiversity and Conservation) 2021 ▪ Villawood Town Centre Development Control Plan 2020 ▪ Fairfield CityWide Development Control Plan 2024 ▪ Apartment Design Guide ▪ Fairfield City Council Stormwater Management Policy, September 2017
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> ▪ Attachment 1 – Draft Reasons for Refusal ▪ Attachment 2 – Statement of Facts and Contentions Filed with NSW LEC ▪ Attachment 3 – Architectural Plans ▪ Attachment 4 – Landscape Plans ▪ Attachment 5 – Stormwater Concept Plans ▪ Attachment 6 – Survey Plan ▪ Attachment 7 – Access Report ▪ Attachment 8 – Acoustic Report ▪ Attachment 9 – Arboricultural Impact Assessment ▪ Attachment 10 – Clause 4.6 Report (Height of Buildings) ▪ Attachment 11 – Clause 4.6 Report (Landscaped Area) ▪ Attachment 12 – BASIX Assessment Report ▪ Attachment 13 – BASIX Certificate Building A ▪ Attachment 14 – BASIX Certificate Building B ▪ Attachment 15 – BCA Capability Statement ▪ Attachment 16 – Design Report ▪ Attachment 17 – Detailed Site Investigation ▪ Attachment 18 – Estimated Development Cost Report ▪ Attachment 19 – Flood Design Statement ▪ Attachment 20 – NABERS Embodied Emissions Materials Form ▪ Attachment 21 – Planning Agreement Offer ▪ Attachment 22 – Preliminary Geotechnical Assessment ▪ Attachment 23 – Security and CPTED Report ▪ Attachment 24 – Statement of Environmental Effects ▪ Attachment 25 – Traffic Impact Assessment ▪ Attachment 26 – Waste Management Plan - Construction and Demolition ▪ Attachment 27 – Waste Management Plan - Operational ▪ Attachment 28 – Transport for NSW (TfNSW) Concurrence ▪ Attachment 29 – Endeavour Energy Comments ▪ Attachment 30 – Map of Properties Notified
Clause 4.6 Requests	<p>A Clause 4.6 Request was submitted to address the variations to:</p> <ul style="list-style-type: none"> ▪ the height of buildings standard prescribed in Section 18 of SEPP (Housing) 2021 and Clause 4.3 of Fairfield LEP 2013 ▪ the landscaped area standard prescribed in Section 19(2)(b) of SEPP (Housing) 2021 <p>A Clause 4.6 Request was not submitted to address the variation to:</p>

	<ul style="list-style-type: none"> the minimum internal areas criteria of the Apartment Design Guide as prescribed in Section 19(2)(g) of SEPP (Housing) 2021
Summary of key submissions	No submissions received
Report Prepared By	Venetin Aghostin, Executive Development Planner
Report Date	13 June 2025

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

1. EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 25.1/2025 (PAN-497526), proposing demolition of existing structures and construction of an 11 storey shop top housing development comprising two towers over a single podium, 255 car parking spaces within three levels of basement parking, ground floor uses including 12 retail premises, 1 café and 1 kiosk with total commercial floor area of 1,792.4sqm; 148 apartments (27 x Infill affordable units and 121 units not used for affordable housing) under SEPP (Housing) 2021 on Levels 1-11, and ancillary works such as tree removal, landscaping, consolidation of lots and dedication of land to the Respondent on the land at No. 896-898 Woodville Road and 15 Hilwa Street, Villawood.

The application seeks to utilise the 30% bonus height provisions under SEPP (Housing) 2021: Chapter 2 Affordable Housing by providing 27 infill affordable housing units representing 15% of the overall development. Accordingly, together the LEP and SEPP allow a height of 35.1m. The application seeks a height of 36.2m equivalent to a 3% variation.

The land is privately owned, zoned E1 Local Centre and RE1 Public Recreation under the Fairfield LEP 2013 and the development comprising shop top housing, affordable housing, retail premises, café and kiosk are permissible in the E1 zone subject to development consent.

The site has a total site area of 4,412.7m². The site is located toward the southern-most end of the Villawood Town Centre and has frontages to three roads being the classified Woodville Road to the east, the local Howatt Street to the north and the local Hilwa Street to the west.

The application is referred to the Sydney Western City Planning Panel (SWCPP) for determination pursuant to State Environmental Planning Policy (Planning Systems) 2021, as the proposal involves private infrastructure and community facilities over \$5 million which includes affordable housing development; and as the proposal involves Council related development involving an offer on behalf of the landowner to dedicate land to Council under a Voluntary Planning Agreement (VPA). Accordingly, the SWCPP is the consent authority in respect of the development application in accordance with Section 4.5 of the EP&A Act 1979.

This DA is the subject of a Class 1 Appeal lodged by the applicant who commenced Class 1 Land and Environment Court proceedings against the deemed refusal of the DA. A copy of Council's Statement of Facts and Contentions (SOFAC) which was filed with the Court on 20 May 2025 has been previously distributed to the Panel by Council's solicitors but is also attached to this report. It is noted that the Applicant's response to Council's SOFAC has not been filed or received to date.

As the SOFAC outlines the issues arising from Council's assessment of the application, this report should be read in conjunction with the SOFAC. However a summary of the key issues and contentions raised by Council in the attached SOFAC are as follows:

1. **Protection of air space:** The impact to the air space of Bankstown Airport was not addressed in the application despite the height of the development likely to impact the Obstacle Limitation Surface 50-60m above AHD.
2. **Building height variation:** The buildings exceed the maximum 30% bonus building height standard permitted by Clause 18 of SEPP (Housing) 2021. The accompanying Clause 4.6 justification submitted by the applicant seeking to justify the variation is not supported by Council given the extent and nature of issues raised in the SOFAC.
3. **Landscaped area variation:** Insufficient landscaped area is proposed and does not comply with the minimum landscaped area standard prescribed in Section 19(2)(b) of SEPP (Housing) 2021. The accompanying Clause 4.6 justification submitted by the application seeking to justify the variation is not supported by Council given the extent and nature of issues raised in the SOFAC.
4. **Internal areas:** Apartments have not been demonstrated to have sufficient internal areas and dimensions and as such have not demonstrated compliance with the minimum requirements identified in Section 19(2)(g) of SEPP (Housing) 2021. Additionally, no Clause 4.6 written request has been submitted by the applicant to justify any non-compliances.
5. **Non-compliances with Villawood Town Centre DCP 2020:** The proposal does not comply with the DCP controls and design amendments are required, or additional information, addressing the planning controls relating to building height; setbacks; percentage of frontages required as active street frontages; number of loading bays;

appropriateness of the design of breakthrough basement wall to access the future development over the neighbouring service station; inadequate design concepts to demonstrate that the neighbouring service station would not be prevented from being redeveloped independently; fencing; building materials; awnings; staging of interface to future Hilwa Park to the west; signage locations; ventilation stacks; and window displays.

6. **Character and context analysis:** The design and the built form and scale has not sufficiently demonstrated that it is compatible with the desired future character of the Villawood Town Centre precinct which has undergone major changes in recent years. The proposal seeks to adopt an extra 30% building height under the bonus provisions of SEPP (Housing) 2021 resulting in an 11 storey building within the southern-most edge of the town centre, where the DCP generally permits heights ranging from 3-8 storeys and otherwise identifies taller buildings of 11 and 12 storeys as being appropriate and limited to 3 sites only, located in the town centre hub and forming a taller street wall along Villawood Road to the north, and which leads to the train station. The proposed development must provide an appropriate design response having regard to the site constraints and its location on the end of the town centre and immediately adjoined by the R4 to the south and RE1 zone to the north and west. The current design will also need to be amended to address any negative impacts, particularly to the southern R4 zoned properties.
7. **Building envelopes:** The building envelopes in terms of built form and scale would result in unacceptable impacts on amenity, solar access and visual impacts and further consideration of envelopes is required to be given by the applicant.
8. **Amenity:** The proposal does not provide adequate amenity to future residents. Further consideration is required to be given by the proposal to elements such as building separations, setbacks, site analysis, envelopes, orientation, public domain interface, communal open space, deep soil zones, visual privacy, pedestrian access and entries, vehicle access ramps, solar and daylight access, ceiling heights, apartment sizes and layouts, private open space and balconies, common circulation spaces, facades, landscape design, planting on structures, awnings and signage, energy efficiency, and water management and conservation.
9. **Design excellence and active street frontage:** The proposal in its current form does not exhibit design excellence and does not address all the matters for consideration in Clause 6.12(3) of Fairfield LEP 2013, nor does it demonstrate that the building will have an active street frontage as required by Clause 6.10 of the LEP.
10. **Stormwater drainage:** The application has not demonstrated that there are adequate arrangements for management of stormwater and overland flow.
11. **Existing Council pipe and easement:** The impacts on existing easements and infrastructure have not been addressed and the building presently encroaches on easements which is not permitted.
12. **Consolidation of lots:** information was not submitted to address the consolidation of lots into one combined parcel nor to demonstrate how the existing and proposed easements and proposed land dedication will be facilitated.

13. **Existing sewer pipe:** The impacts on the existing Sydney Water infrastructure have not been addressed.
14. **Parking demand and provision:** The proposed parking provision is not adequate as a shortfall of 5 spaces are provided for the café; the calculation of retail gross floor area has not calculated all retail floor areas; and 12 stacked retail parking spaces are incorporated into the design which is not considered appropriate for retail uses.
15. **Traffic and vehicular access:** The application has not adequately demonstrated that there would be no unreasonable impacts on the local and classified network and inadequate vehicle access arrangements are proposed. SIDRA modelling was not provided.
16. **Land contamination:** The application has not adequately demonstrated that the site is or can be made suitable for the development having regard to the current use of the site revealed through Council inspections, involving storing oil drums, materials and vehicles.
17. **Acoustic and vibration impacts:** The application has not demonstrated that adequate acoustic amenity is achieved for residents and that there would not be unreasonable noise and vibration impacts to and from the development, including from noise sources within the vicinity of the site including traffic noise and vibration from the rail line and activity in the town centre.
18. **Air quality:** An air quality report was not submitted to demonstrate that the development would not be unreasonably impacted by vehicle emissions from the adjoining classified Woodville Road.
19. **Use of commercial premises:** Inadequate information was provided regarding the proposed non-residential tenancies to enable a proper consideration of any impacts.
20. **Playground:** Improvements are required to achieve a high quality playground and amenity for children residing at the development.
21. **Civic plaza and public domain:** Improvements are required to achieve a high quality civic plaza and public domain.
22. **Asset management:** Inadequate information was provided regarding crossings, footpath pavement, trees/landscaping, street furniture and street lighting.
23. **Waste management:** Inadequate information has been submitted to demonstrate that there will be adequate arrangements for waste management, storage and collection.
24. **Insufficient information:** Evidence documenting that land owner's consent has been sufficiently provided was not submitted with the application. Registration details evidencing that a registered community housing provider will manage the affordable housing component was not submitted. Additionally, a number of discrepancies with the plans have been identified which require amendments.

25. Public interest: The proposal in its current form is not in the public interest as the development is likely to result in unacceptable impacts, as presently submitted.

On 2 June 2025, a briefing meeting was held with the Panel to provide an update on the status of the application following the filing of Council's SOFAC. Given the Court proceedings, the Panel requested that the application be reported to the Panel for consideration and determination of the application.

An Urban Design expert was engaged by Council to assess the proposal against the design quality provisions of SEPP (Housing) 2021 (SEPP 65), the ADG and the design excellence provisions in the Fairfield LEP 2013. Based on an assessment of the plans, the Urban Designer has concluded that the proposal in its current form does not achieve an acceptable standard and has not sufficiently demonstrated that the development would be compatible with the desired character of the Villawood town centre as required by the affordable housing provisions of SEPP (Housing).

Compliance Tables addressing the areas of compliance or non-compliance with the planning controls such as the DCP and ADG have not been included in this report, on the basis that the SOFAC has identified the non-compliances that are raised with the proposal, with any other matter not identified in the SOFAC deemed to be either acceptable or compliant.

The application has been considered in accordance with the relevant planning provisions including but not limited to SEPP (Housing) 2021: Chapter 2 Affordable Housing and Chapter 4 Design of Residential Apartment Development; the Apartment Design Guide (ADG); SEPP (Resilience and Hazards) 2021: Chapter 4 Remediation of Land; Fairfield LEP 2013; Villawood Town Centre DCP 2020 and Fairfield CityWide DCP 2024. The application is considered to be unacceptable with respect to the planning provisions that apply to the subject site.

A Clause 4.6 written request to vary the SEPP (Housing) 2021 development standards relating to building height and landscaped area was provided. As already noted above, a Clause 4.6 request was not submitted to justify variations to the internal apartment areas standards identified in Section 19(2)(g) of SEPP (Housing). Given the extent of contentions raised in the SOFAC, Council is not satisfied that the submitted Clause 4.6 requests demonstrate that the variations are reasonable based on the current proposal. Council considers that there are presently insufficient planning grounds to support the variations, and the Clause 4.6 requests are not supported.

The application was publicly notified however no submissions were received.

Council's technical officers have assessed the application and concerns have been raised by Assets, Engineering, Landscape Advisor, Place Manager, Public Health & Environment, Strategic Planning, Subdivision, Traffic Engineer and Waste Management sections. Any concerns raised have been outlined as contentions in Council's SOFAC. No concerns were raised by Building, Property and Tree Management.

The application was also referred to external agencies including TfNSW who has provided its concurrence subject to conditions; Endeavour Energy who has provided comments and no concerns; Fairfield Police who did not provide comments; and Airservices Australia (ASA)

and the federal Civil Aviation Safety Authority (CASA) who have advised that they will assess the request however no submission has been received to date.

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

1. The application requires concurrence under Section 138 of the Roads Act as alterations are required to existing vehicular crossings from the classified Woodville Road. The development is also a Traffic-Generating development under SEPP (Transport & Infrastructure) 2021 and was referred to Transport for NSW (TfNSW) who has provided concurrence subject to conditions.

The following jurisdictional prerequisites to the grant of consent imposed by the following controls are considered **not satisfied**:

2. Protection of air space of the Bankstown Airport with respect to Clause 5.10 of the Villawood Town Centre DCP 2020. The application was referred to ASA and the federal CASA for comments. CASA have advised that they will assess the request however no submission has been received to date.
3. Clause 4.6 of the LEP with respect to exceptions to development standards has not been satisfied pertaining to building height, landscaped area and internal apartment areas of SEPP (Housing) 2021.
4. Clause 6.9 of the LEP with respect to essential services including but not limited to water, sewer, stormwater drainage and vehicular access have not been satisfied.
5. Clause 6.10 of the LEP with respect to active street frontage has not been satisfied.
6. Clause 6.12 of the LEP with respect to design excellence has not been satisfied.
7. SEPP (Resilience & Hazards) for consideration of whether the land is contaminated has not been satisfied.
8. Whilst TfNSW has provided concurrence under Section 138 of the Roads Act, Council considers that the matters in Clause 2.119, 2.120 and 2.122 of SEPP (Transport & Infrastructure) have not been satisfied and require further information as outlined in Council's SOFAC.
9. Clause 2.48 of SEPP (Transport & Infrastructure) where the work is in the vicinity of electrical infrastructure. The application was referred to Endeavour Energy and correspondence was received which supports the proposal, and provides comments for Council to further review. Endeavour's comments have been considered but are not considered to raise any further issues that require investigation.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act 1979, given the issues identified with the application and as outlined in Council's SOFAC, Council cannot support the application and it is considered that the proposal is not in the public interest.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, DA 25.1/2025; it is recommended that the Panel determine the subject application by way of refusal subject to the reasons contained at Attachment 1 of this report. A refusal determination does not prevent the ability of the Court proceedings to continue to conciliation or to be mediated positively in the event that the applicant responds to Council's contentions.



Figure 1: Photomontage view from Woodville Road illustrating the two proposed buildings wrapping around the existing service station located at No. 896A Woodville Road.



Figure 2: Photomontage view from Woodville Road illustrating to the left the civic plaza proposed to be dedicated to Council; and to the right the future Hilwa Park which is currently occupied by dwelling houses.



Figure 3: Photomontage view from Hilwa Street illustrating residential driveway access to the right and the future Hilwa Park to the left.

2. THE SITE AND LOCALITY

Subject Site

The site as illustrated in Figure 4 below is known as 896-898 Woodville Road and 15 Hilwa Street, Villawood, and is legally described as Lot 100 DP 1070965, Lot 3 DP 208677, Lot 1 DP 217764 and Lot 13 DP 220348. The site is presently occupied by a single storey commercial building formerly occupied by Gospel Pianos and 2 single storey detached dwellings.

The site is irregular in shape and has a total combined area of 4,412.7m². The site has northern frontage to Howatt Street of 59.4m, eastern frontage to Woodville Road of 46.36m and western frontage to Hilwa Street of 14.8m. All frontages have pedestrian access and Howatt and Hilwa Street's also have vehicular access. Woodville Road is a classified road and is zoned SP2 Infrastructure pursuant to Fairfield LEP 2013.

The site has a slope to the north and east of the site by approximately 2m; and the site is burdened by an easement to drain water 1.829m wide.

The site and its surrounds are predominately located within Zone E1 Local Centre in the Fairfield LEP 2013. A small portion of the site is located within Zone RE1 Public Recreation. An extract from the Land Zoning Map is provided at Figure 5.

Council's mapping identifies the following environmental constraints affecting the site:

- Part of the site is affected by low risk overland flooding as shown in Figure 6.
- The site is affected by the Bankstown Airport Obstacle Limitation Surfaces (OLS) height limit of 50-60m AHD.

Surrounding Area

The site is located on the southern end of the Villawood Town Centre and is approximately 275m walking distance from the Villawood Railway Station and 100 metres from bus services along Woodville Road.

To the north of the site, the land is Zoned E1 Local Centre and presently comprises the Villawood Town Centre. The neighbouring development to the north of the site which is located within Zone E1 comprises a shop top housing development.

The surrounding land to the east, south and west predominately comprises R4 High Density Residential Zoning and R3 Medium Density Residential Zoning pursuant to FLEP 2013. These zones are presently characterised by 1 to 2 storey residential dwelling houses of predominately traditional styles.

To the east, the site adjoins 896A Woodville Road, which is presently occupied by Apex Petroleum, being a service station.

The site also adjoins Hilwa Park which is located within Zone RE1 Public Recreation, located to the west. On the opposite side of Woodville Road (to the east), is land within the Canterbury-Bankstown LGA including a further strip of land Zoned RE1 Public Recreation as identified at Figure 5 below.



Figure 4: Aerial image of site outlined (Source: NSW Planning Portal SDT Explorer).

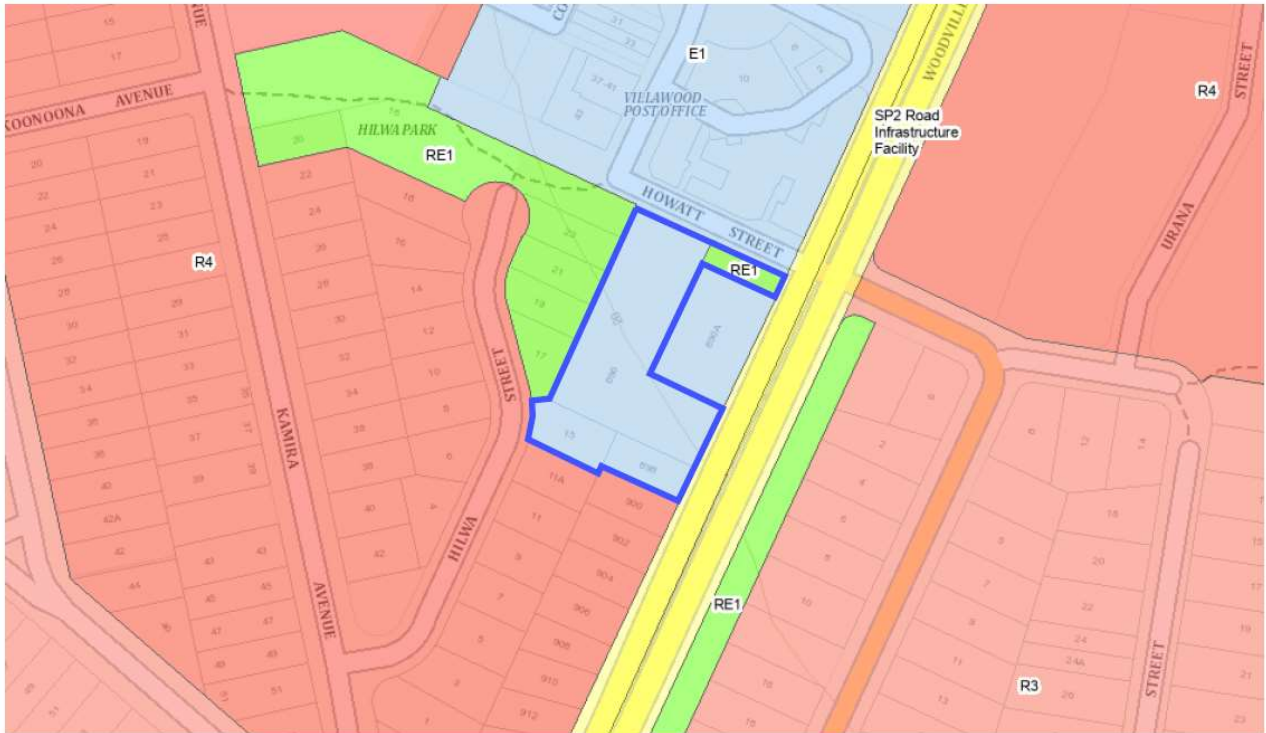


Figure 5: Land Zoning Map (Source: NSW Planning Portal Spatial Viewer).



Figure 6: Low-risk overland flooding affecting 896 Woodville Road, Villawood (Source: Council mapping).

3. DESCRIPTION OF THE PROPOSAL

Summary of Development

The proposed development seeks consent for demolition of existing structures and construction of an 11 storey shop top housing development comprising two towers over a single podium, 255 car parking spaces within three levels of basement parking, ground floor uses including 12 retail premises, 1 café and 1 kiosk with total commercial floor area of 1,792.4sqm; 148 apartments on Levels 1-11 (27 x Infill affordable units and 121 units not used for affordable housing) under SEPP (Housing) 2021, and ancillary works such as tree removal, landscaping, consolidation of lots and dedication of land to the Respondent on the land at No. 896-898 Woodville Road and 15 Hilwa Street, Villawood.

Diagrams illustrating the proposed development are provided at the end of this section.

Specifically, the development application proposes the following:

Commercial/retail

- 12 x retail premises and 1 x kiosk with 1,615.10sqm of floor space
- 1 x café with floor area of 177.30sqm
- 4 storage rooms for the retail tenancies are provided within the basement
- The application seeks approval for the use of the building as a mix of retail premises and food shops operating between 7am to 10pm, 7 days per week however no further usage or operational details are provided.

Residential units

- 148 residential units designated as follows:
 - 27 x infill affordable units (these are on Levels 4, 5 and 6 of Building B and include Units 401B, 402B, 403B, 404B, 405B, 406B, 407B, 408B, 409B, 410B, 501B, 502B, 503B, 504B, 505B, 506B, 507B, 508B, 509B, 510B, 602B, 604B, 605B, 606B, 607B, 608B, 609B), and
 - 121 x units not used for affordable housing.
- The unit mix is designated as follows:
 - 26 x 1-bedroom units,
 - 97 x 2-bedroom units,
 - 25 x 3-bedroom units.

Vehicular access and servicing

- Vehicular access from Howatt Street is limited to retail access and heavy vehicles including access to the loading dock and waste storage areas.
- Vehicular access from Hilwa Street is limited to residential access and for light vehicles only.
- Dedicated service and loading area in Basement 1 proposed to accommodate a 12.5m Heavy Rigid Vehicle (HRV).
- Waste storage and collection areas for retail and residential are within Basement 1.

- A breakthrough wall is proposed at Basement 1 to facilitate access to future Basement 1 of the adjoining property which is currently a service station, to facilitate its future redevelopment and to reduce the need for multiple access points over the RE1 zone.

Parking

- A total of 255 car parking spaces over 3 basement levels (including an additional mezzanine basement level) designated as follows:
 - 60 retail spaces including 2 accessible spaces and 12 retail spaces which stacked
 - 159 residential car parking spaces including 14 accessible spaces
 - 36 visitor parking spaces including 1 accessible visitor space
- Parking is distributed as follows:
 - Basement 1 contains 36 retail customer spaces including 2 accessible spaces; and 4 retail staff spaces which are stacked.
 - Basement 1 Mezzanine contains 12 retail customer spaces and 9 staff spaces, 8 of which are stacked.
 - Basement 2 contains 59 residential spaces including 7 accessible residential spaces; and 36 visitor spaces including 1 accessible visitor space.
 - Basement 3 contains 100 residential parking spaces including 7 accessible residential spaces.
- 2 motorcycle spaces
- 11 bicycle spaces
- 1 residential car wash bay.

Landscaping and communal open space

- The site contains 21 trees of which 20 are proposed for removal and replacement; and 1 tree identified as T1, a Spotted Gum (*Corymbia maculata*) located at the northern corner is suitable for retention and protection.
- Landscaping, paving and bench seating to the civic plaza and pedestrian walkways along the retail frontage to future park.
- Communal open spaces (COS) on the podium/Level 1 with an area of 1,436.9sqm and COS on the Level 10 roof with an area of 248.3sqm including landscaping, seating, play area and barbeque facilities.

Dedication of land and Voluntary Planning Agreement

- An Offer by way of a Voluntary Planning Agreement (VPA) has been submitted with the application on behalf of the landowner which includes dedication of land partly zoned E1 Local Centre and RE1 Public Recreation pursuant to Fairfield LEP 2013 along the Howatt Street frontage, and the undertaking of works in kind to facilitate the extension of Hilwa Park to become the civic plaza (thereby with the intention of increasing the public domain and infrastructure in the locality). The VPA seeks to offset any developer contributions that might be payable, and a balance of value paid to the land owner prior to dedication of the land.

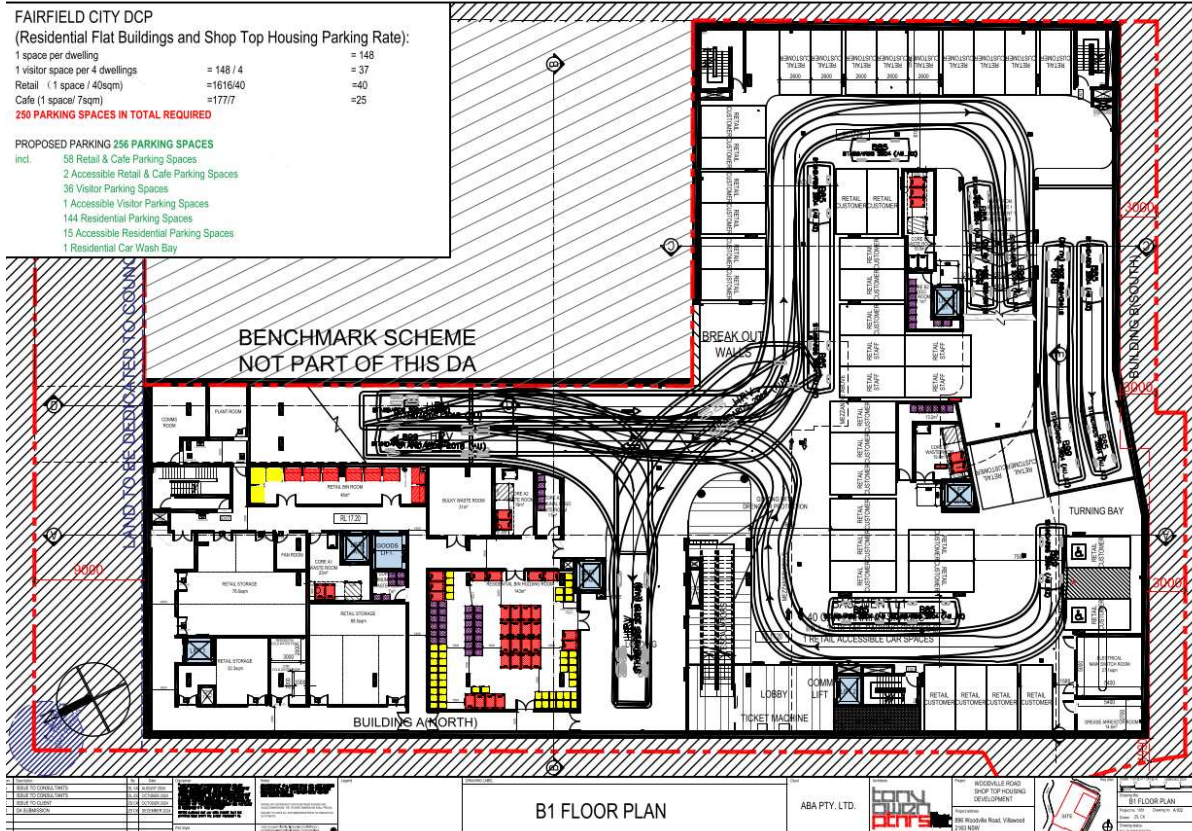


Figure 7: Proposed Basement 1 out of 3-4 basement levels, being the retail level, also illustrating break out wall to facilitate future redevelopment of neighbouring site.

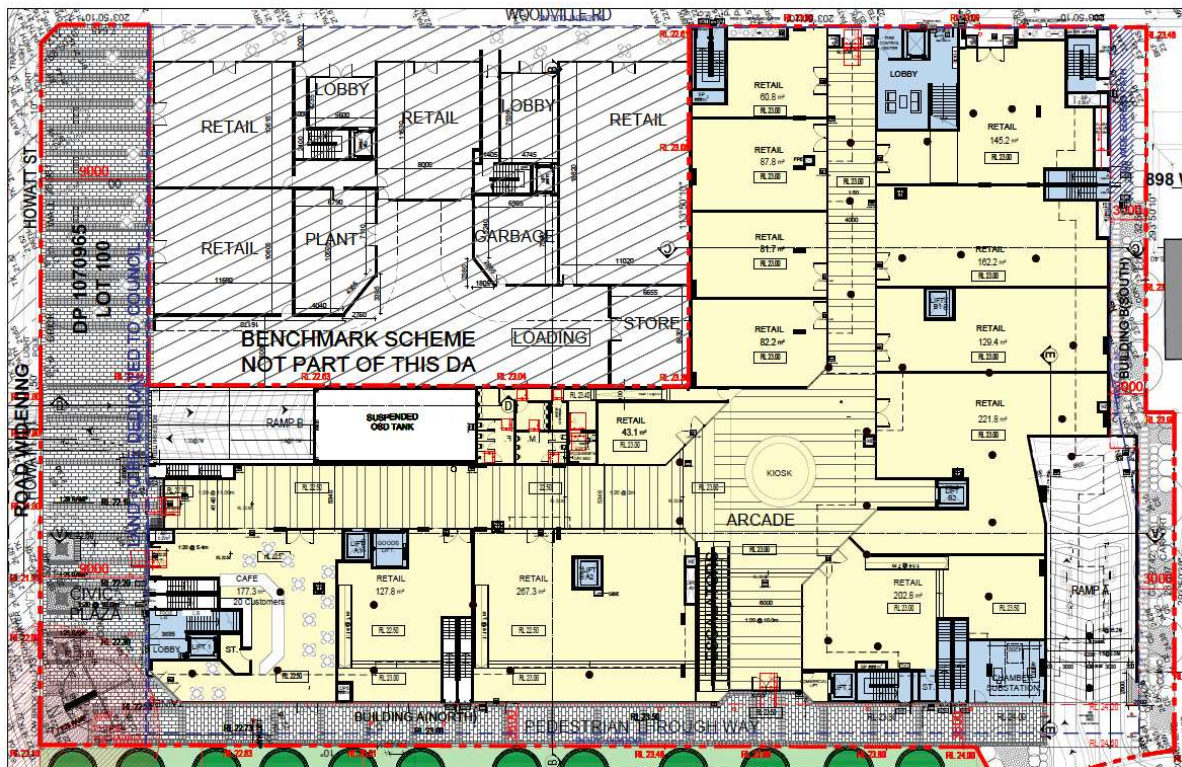


Figure 8: Proposed Ground Floor Plan including a concept illustrating how the neighbouring service station can be developed in future; and the land proposed to be dedicated to Council on the northern frontage of the site (shown to the left of the image).

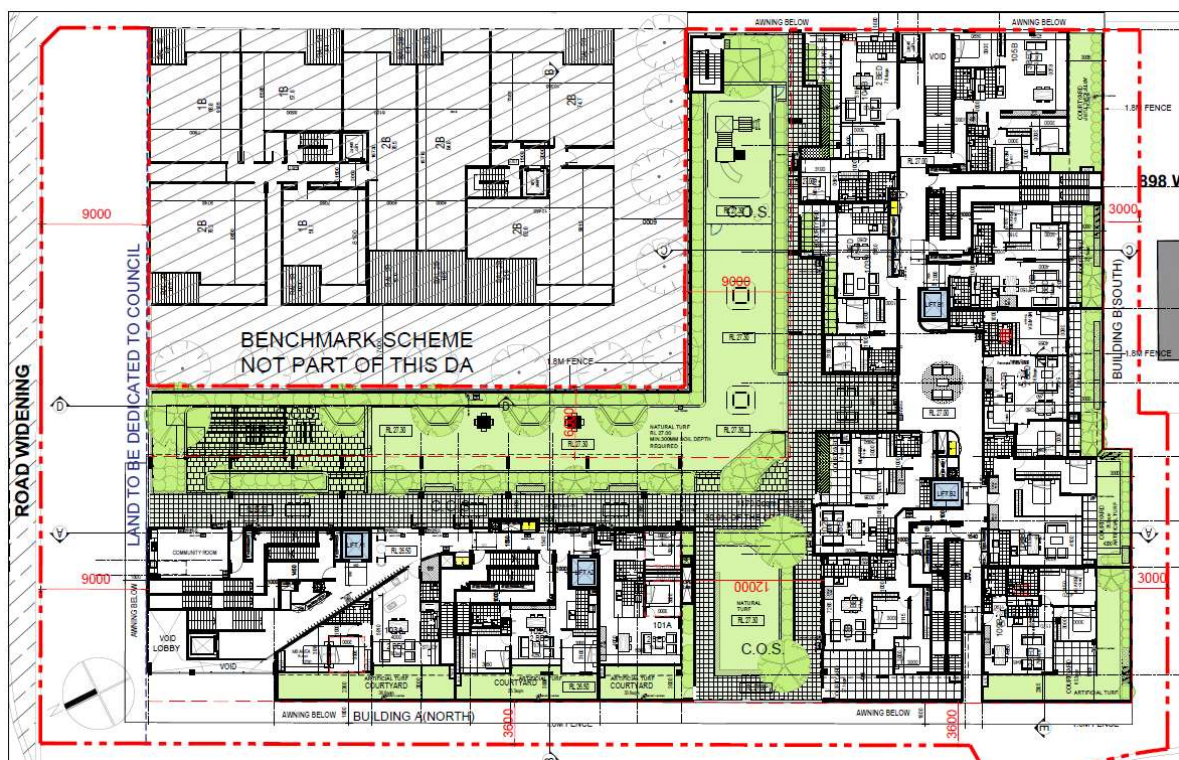


Figure 9: Proposed First Floor Plan including a concept illustrating how the neighbouring service station can be developed in future.

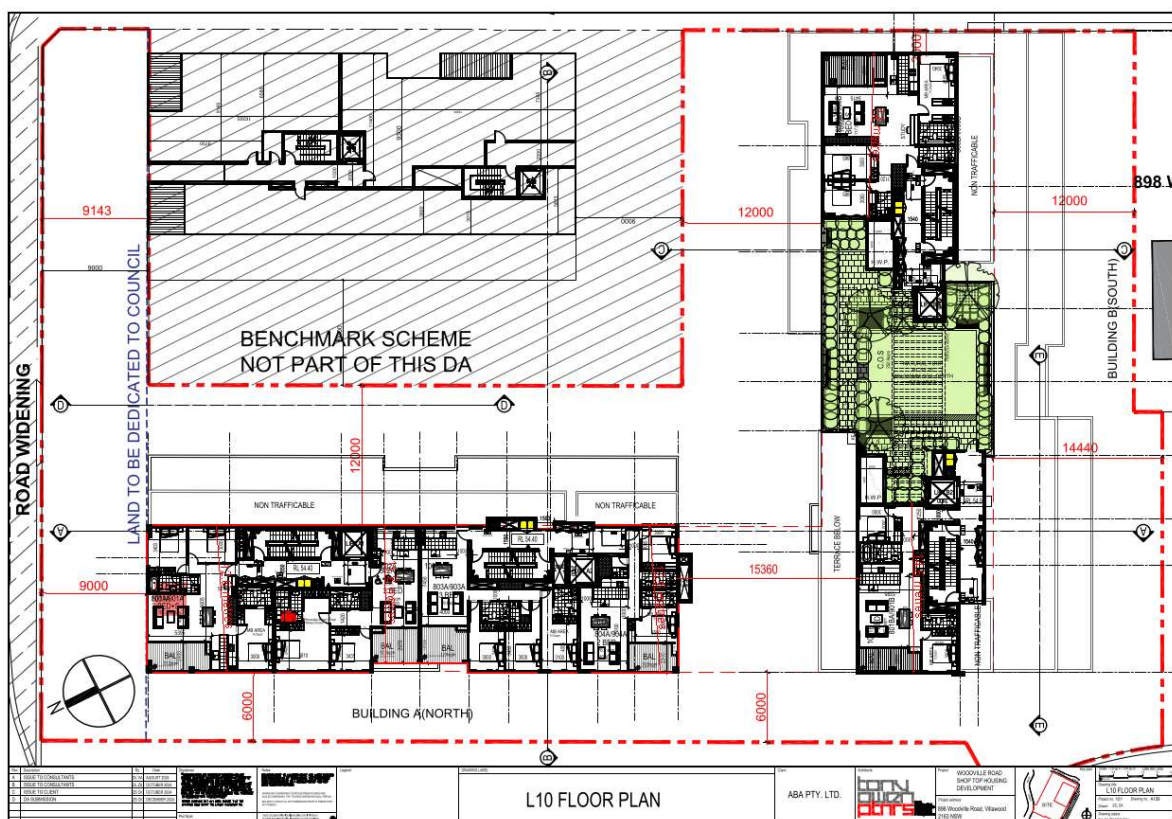


Figure 10: Proposed Level 10/11th storey including a concept illustrating how the neighbouring service station can be developed in future.



Figure 11: Proposed West Elevation of Buildings A and B facing future Hilwa Park.

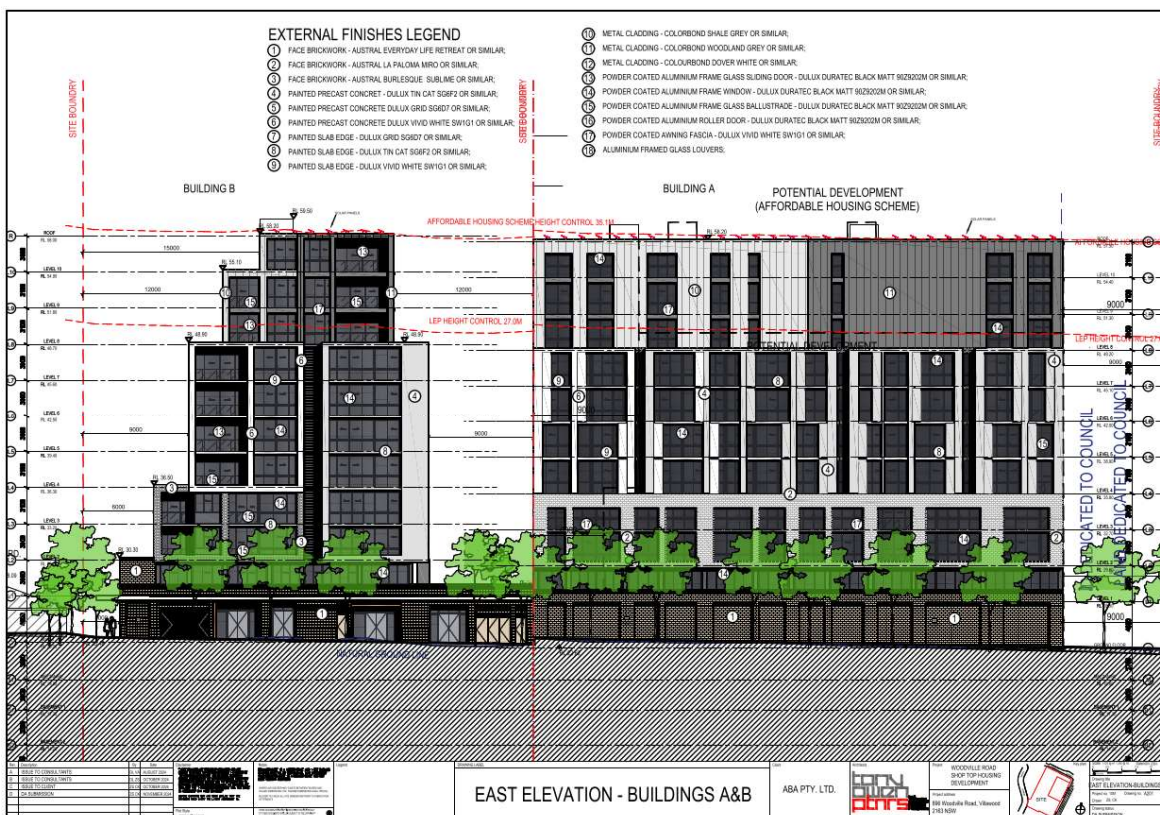


Figure 12: Proposed East Elevation of Buildings A and B facing Woodville Road.

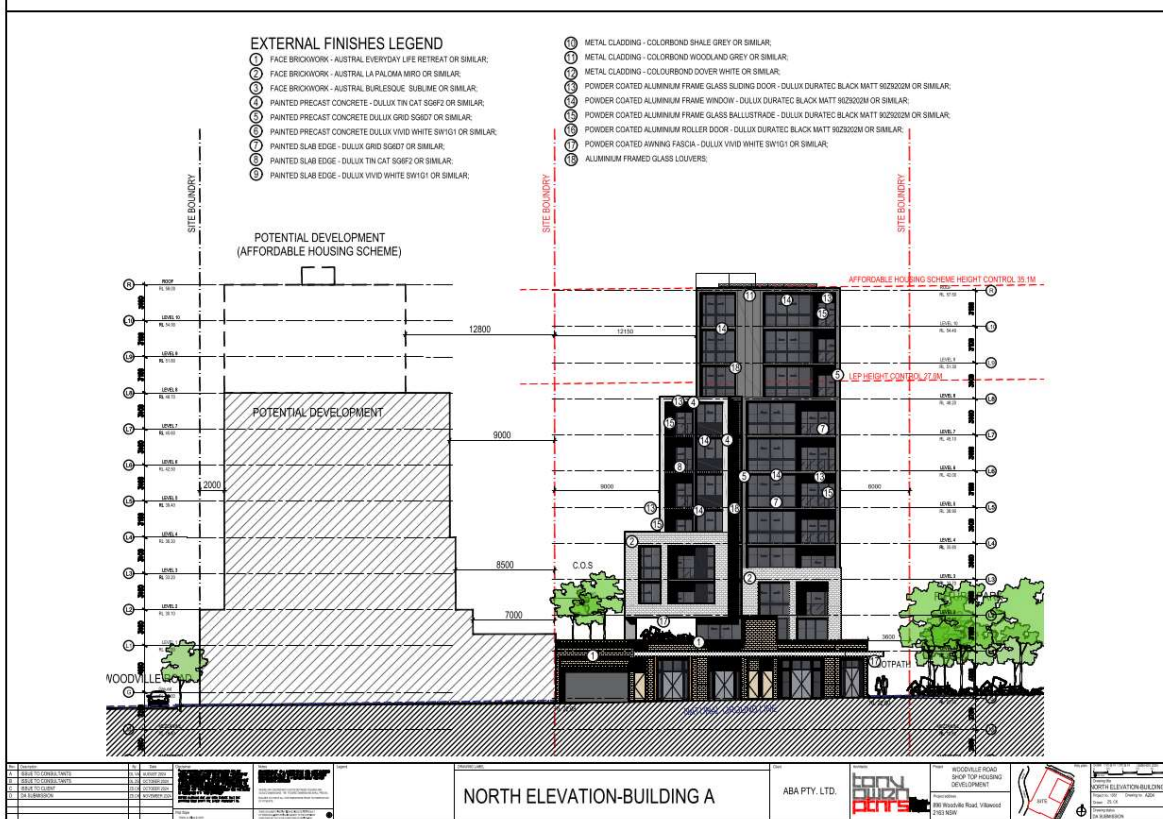


Figure 13: Proposed North Elevation of Buildings A facing Hilwa Street and including a concept illustrating how the neighbouring service station can be developed in future.



Figure 14: Proposed South Elevation of Buildings B facing the southern adjoining R4 zoned properties.

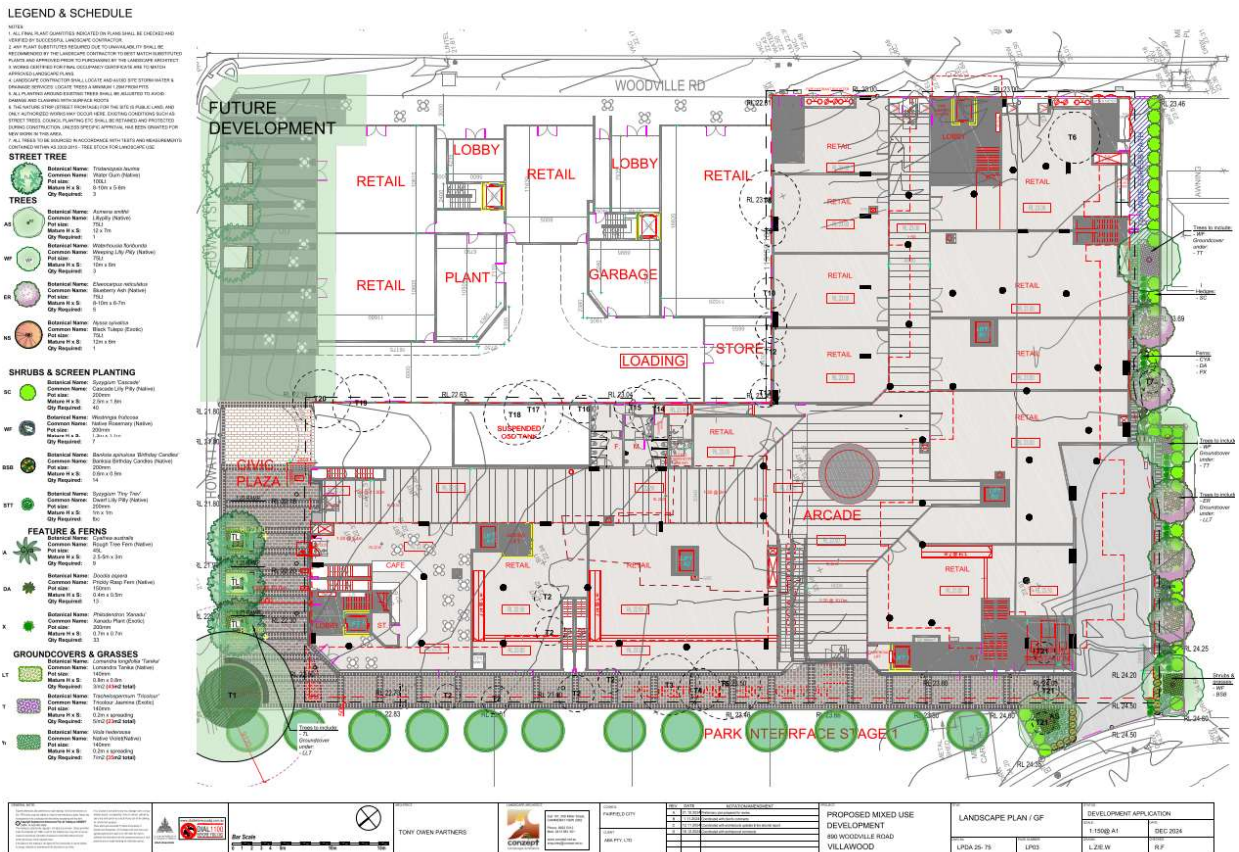


Figure 17: Extract of proposed landscape concept for the ground floor level.

4. HISTORY AND BACKGROUND

Development Application Background

On 27 August 2024, a Planning Proposal was gazetted resulting in the amendment to Fairfield LEP 2013 minimum site areas map, to enable the subject development site to be developed independently of the adjoining service station at 896A Woodville Road.

On 22 January 2025, the development application was lodged with Council.

The development application was notified from 7 February 2025 to 21 February 2025. No submissions were received.

On 1 April 2025, the applicant commenced proceedings in Class 1 of the Land and Environment Court appealing against the deemed refusal of the application.

On 20 May 2025, Council filed its Statement of Facts and Contentions (SOFAC) with the Court.

On 2 June 2025, a briefing meeting was held with the Regional Panel to provide an update on the status of the application following the filing of Council's SOFAC. Given the Court proceedings, the Panel requested that the application be reported to the Panel for consideration and determination.

A conciliation conference has been Ordered by the Court to be held on 15 August 2025.

5. REFERRALS AND SUBMISSIONS

Agency Referrals and Concurrence

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

Bankstown Airport authorities

The application was referred to Airservices Australia (ASA) and the federal Civil Aviation Safety Authority (CASA) for comments as the site is mapped under the Bankstown Airport Obstacle Limitation Surfaces (OLS) 50-60m above AHD. CASA have advised that they will assess the request however no submission has been received to date.

Transport for NSW (TfNSW)

The application was referred to Transport for NSW (TfNSW) who has provided its concurrence subject to conditions. The application was referred to TfNSW as the development is a traffic-generating development and has frontages to a classified road in accordance with SEPP (Transport and Infrastructure) 2021 and also under Section 138 of the Roads Act as alterations are required to existing crossings from Woodville Road.

Endeavour Energy

The site is in the vicinity of electrical infrastructure and as such the application was referred to Endeavour Energy for comments, in accordance with SEPP (Transport and Infrastructure) 2021. Correspondence was received from Endeavour Energy which supports the proposal, and provides comments for Council to further review. Endeavour's comments have been considered but are not considered to raise any further issues that require investigation.

Fairfield Police

The application was referred to the Fairfield Police however no submission was received.

Urban Design Consultant

An Urban Design expert was engaged by Council to assess the proposal against the design quality provisions of SEPP 65, the ADG and the design excellence provisions in Clause 6.12 of the Fairfield LEP 2013. Additionally, the Urban Designer assessed the compatibility of the proposal against the character and context of the site and locality which is a requirement of the SEPP (Housing) 2021.

Based on an assessment of the plans, the Urban Designer has concluded that the proposal in its current form does not achieve an acceptable standard and has not sufficiently demonstrated that the development would be compatible with the desired character of the Villawood town centre as required by the affordable housing provisions of SEPP (Housing). The issues raised by the Urban Designer have been included in Council's SOFAC.

Council Officer Referrals

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

Officer	Comments
Assets	Concerns are included in SOFAC.
Building	No issues with the proposal.
Engineering	Concerns are included in SOFAC.
Landscape Advisor	Concerns are included in SOFAC.
Place Manager	Concerns are included in SOFAC.
Property	No issues with the proposal.
Public Health & Environment	Concerns are included in SOFAC.
Strategic Planning	Concerns are included in SOFAC.
Subdivision	Concerns are included in SOFAC.
Traffic Engineer	Concerns are included in SOFAC.
Tree Management Officer	No issues with the proposal.
Waste Management	Concerns are included in SOFAC.

Public Consultation and Submissions Received

The application was notified in accordance with Council's Community Engagement Strategy 2024 by way of letters and/or advertisements on Council's website however no submissions were received.

6. STATUTORY CONSIDERATIONS

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

(a) *the provisions of—*

- (i) *any environmental planning instrument, and*
- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
- (iii) *any development control plan, and*

- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (v) *(Repealed)*
- that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

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

- Requiring concurrence and referral from Transport for NSW (TfNSW)
- Requiring referral to Endeavour Energy

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

- Designated Development
- Crown DA.

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

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

- Fairfield LEP 2013
- SEPP (Planning Systems) 2021
- SEPP (Resilience & Hazards)
- SEPP (Sustainable Buildings) 2022)
- SEPP (Transport & Infrastructure) 2021
- SEPP (Housing) 2021:
 - Chapter 1 Preliminary
 - Chapter 2 Affordable Housing
 - Chapter 4 Design of Residential Apartment Development
 - Apartment Design Guide
- Villawood Town Centre DCP 2013
- Fairfield CityWide DCP 2024

A detailed assessment of the proposal against each provision has been undertaken by Council and any issues have been identified in the SOFAC. A brief summary is provided below.

A. Fairfield Local Environmental Plan (LEP) 2013

Zoning and Permissibility

The subject site is zoned E1 Local Centre and RE1 Public Recreation under the Fairfield LEP 2013.

The proposal development is characterised as follows:

- *Shop Top Housing*
- *Commercial Premises* (including *Retail Premises, Café* and *Kiosk*)

Shop top housing and commercial premises are permitted with consent in the E1 zone.

The portion of the land zoned E1 Public Recreation is proposed to be dedicated to Council and proposed to contain a civic plaza and pathways. The works have not been characterised by the applicant however Council notes that a *recreation area* is permissible with consent in the RE1 zone.

A detailed assessment of the application against the LEP provisions has been provided in the SOFAC including assessment against the additional provisions of the LEP.

It is noted that the site is not subject to an FSR standard but is subject to a maximum building height standard that allows a maximum 27m height pursuant to Clause 4.3. However, the applicant is seeking to utilise the 30% height bonus under affordable housing provisions of SEPP (Housing) 2021 which would allow 11 storeys instead of 8 storeys at the subject site.

The height of the proposed buildings further exceeds the bonus building height standard. The accompanying Clause 4.6 justification submitted by the applicant seeking to justify the variation is not supported by Council given the extent and nature of issues raised in the SOFAC.

The development is also subject to the design excellence provisions in Clause 6.12 which have not been satisfied as the development has not demonstrated that it exhibits design excellence in its current form and requires amendments.

B. State Environmental Planning Policy (Housing) 2021: Chapter 1 Preliminary and Chapter 2 Affordable Housing

The application has been assessed against the relevant provisions of SEPP (Housing) 2021, Chapter 1 Preliminary and Chapter 2 Affordable Housing and issues were identified by Council as outlined in the SOFAC.

While the site is not subject to a floor space ratio (FSR) standard under the LEP or SEPP, the application seeks to utilise the 30% bonus height provisions permitted by Clause 18 of the SEPP on the basis that the development provides 27 infill affordable housing units representing 15% of the whole development. Accordingly, together the LEP and SEPP allow a height of 35.1m. The application seeks a height of 36.2m equivalent to a 3% variation.

The application also seeks a variation to the landscaped area standard prescribed in Section 19(2)(b) of the SEPP which requires a minimum of 30% of the site area equating to

1,323.81sqm be provided as a landscaped area. Only 211.6sqm of landscaped area is provided at the ground level, equal to 4.80% of the site area, resulting in a breach of this standard.

Clause 4.6 written requests to vary the SEPPs development standards relating to building height and landscaped area were submitted by the applicant. Given the nature and extent of contentions raised in the SOFAC, Council is not satisfied that the submitted Clause 4.6 requests demonstrate that the variations are reasonable based on the current proposal. Council considers that there are presently insufficient planning grounds to support the variations and that design amendments addressing other matters raised in the SOFAC may lead to reduction in building height and increase in landscaped areas.

Council also identified that the proposed apartments have not been demonstrated to have sufficient internal areas and dimensions and as such have not demonstrated compliance with the minimum requirements identified in Section 19(2)(g) of the SEPP. Additionally, no Clause 4.6 requests were submitted by the applicant to justify any non-compliances and provisions of Clause 4.6 prevent consent from being granted unless a written request has positively addressed the matters in the Clause.

Additionally, the design and the built form and scale of the development has not sufficiently demonstrated that it would be compatible with the desired future character of the Villawood Town Centre precinct. Given the proposal seeks to adopt the height bonuses permitted by the SEPP within the town centre, the proposed development must provide an appropriate design response having regard to the constraints. The site is on the southern edge of the town centre and abuts the R4 High Density Residential zone to the south and the current design would negatively impact the southern properties.

The proposal is considered to be inconsistent with the SEPP provisions and is unable to be supported in its current form.

C. State Environmental Planning Policy (Housing) 2021: Chapter 4 Design of Residential Apartment Development

SEPP No. 65 – Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide (ADG) applies to the development. A detailed assessment of the application was undertaken against Chapter 4 and the ADG and Council's SOFAC outlines the issues identified in Council's assessment. Compliance Tables addressing Chapter 4 and the ADG outlining areas of compliance or non-compliance with the provisions have not been attached with this report since the SOFAC identifies the non-compliances with the proposal, with any other matter not identified in the SOFAC deemed to be either acceptable or compliant.

An Urban Design expert was engaged by Council to assess the proposal against the design quality provisions of SEPP (Housing) 2021 (SEPP 65), the ADG and the design excellence provisions in the Fairfield LEP 2013. Based on an assessment of the plans, the Urban Designer has concluded that the proposal in its current form does not achieve an acceptable standard and has not sufficiently demonstrated that the development would be compatible with the desired character of the Villawood town centre as required by the affordable housing provisions of SEPP (Housing).

D. Villawood Town Centre DCP 2020 and Fairfield CityWide DCP 2024

As the site is located in the Villawood Town Centre, the application has been assessed against the relevant controls of the Villawood Town Centre DCP 2020. The application has also been assessed against the relevant controls of Fairfield CityWide DCP 2024.

Based on an assessment of the application, Council has identified a number of inconsistencies or non-compliances with the DCP which have been identified in Council's SOFAC in Attachment 1.

It is considered that design has not adequately addressed issues relating to parking, building height; setbacks; percentage of frontages required as active street frontages; number of loading bays; appropriateness of the design of breakthrough basement wall to access the future development over the neighbouring service station; inadequate design concepts to demonstrate that the neighbouring service station would not be prevented from being redeveloped independently; fencing; building materials; awnings; staging of interface to future Hilwa Park to the west; signage locations; ventilation stacks; and window displays.

E. Offer of Voluntary Planning Agreement

An Offer by way of a Voluntary Planning Agreement (VPA) has been submitted on behalf of the landowner which includes dedication of land partly zoned E1 Local Centre and RE1 Public Recreation pursuant to Fairfield LEP 2013 along the Howatt Street frontage, and the undertaking of works in kind to facilitate the extension of Hilwa Park to become the civic plaza (thereby with the intention of increasing the public domain and infrastructure in the locality). The VPA seeks to offset any developer contributions that might be payable, and a balance of value paid to the land owner prior to dedication of the land.

The Offer or any draft or final VPA that may be entered into is a matter that is considered separate to the subject development application process.

F. State Environmental Planning Policy (SEPP) (Planning Systems) 2021

Chapter 2 State and Regional Development

Chapter 2 State and Regional Development of SEPP (Planning Systems) 2021 states in Part 2.2 Development is declared to be regionally significant development for the purposes of the Act if the development is specified in Schedule 6 Regionally Significant Development. Schedule 6 states that private infrastructure and community which includes affordable housing development with an estimated development cost of more than \$5 million as regional development.

Additionally, Schedule 6 states that Council related development over \$5 million is also regional development if: *"...(b) the council is the owner of any land on which the development is to be carried out, or ...(d) the council is a party to any agreement or arrangement relating to the development (other than any agreement or arrangement entered into under the Act or for the purposes of the payment of contributions by a person other than the council)."*

The application is referred to the Sydney Western City Planning Panel (SWCPP) for determination pursuant to the SEPP as the proposal involves private infrastructure and community facilities over \$5 million involving the affordable housing development; and also as the proposal involves an Offer by way of a VPA where Council may become a party to an agreement relating to the development, although it is noted that the process of preparing or entering a VPA is conducted outside of the development application process.

Accordingly, the SWCPP is the consent authority in respect of the development application in accordance with Section 4.5 of the EP&A Act 1979.

G. SEPP (Sustainable Buildings) 2022

The applicant has submitted BASIX Certificates for the residential development and a completed NABERS embodied Emissions Materials Form in support of the application, thereby satisfying the provisions of SEPP (Sustainable Buildings) 2022.

H. SEPP (Resilience and Hazards) 2021

Chapter 4 Remediation of Land

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

Council's Public Health and Environment section assessed this aspect of the application and advised that the application has not adequately demonstrated that the site is or can be made suitable for the development having regard to the current use of the site revealed through Council inspections, involving storing oil drums, materials and vehicles. These concerns have been included in the SOFAC.

I. SEPP (Transport & Infrastructure) 2021

Chapter 2 Infrastructure

The application has been assessed against the provisions of SEPP (Transport & Infrastructure) 2021 including but not limited to the following provisions:

- Clause 2.48 Determination of development applications—other development
- Clause 2.119 Development with frontage to classified road
- Clause 2.120 Impact of road noise or vibration on non-road development
- Clause 2.122 Traffic-generating development

Clause 2.48 of the SEPP is considered to be satisfied and requires that where the work is in the vicinity of electrical infrastructure, that the application be referred to Endeavour Energy. Council received correspondence from Endeavour which supports the proposal, and provides comments for Council to further review. Endeavour's comments have been considered but are not considered to raise any further issues that require investigation.

Whilst TfNSW has provided concurrence under Section 138 of the Roads Act, Council considers that the matters in Clause 2.119, 2.120 and 2.122 of SEPP (Transport & Infrastructure) have not yet been satisfied and require further information as outlined in Council's SOFAC.

J. Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments that are relevant to the proposal.

K. Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The Villawood Town Centre 2020; and the Fairfield CityWide DCP 2024 are the relevant DCPs and an assessment of the proposal against these DCPs has identified a range of inconsistencies or non-compliances which require amendments or information, as identified in Council's SOFAC in Attachment 1.

L. Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

The Offer and any draft VPA or final VPA that may be entered into is a matter that is considered separately to the subject development application process.

M. Section 4.15(1)(a)(iv) - Provisions of Regulations

Any relevant matters prescribed in the regulations have been considered.

N. Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development have not been adequately addressed or mitigated, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP, ADG and DCP controls outlined above and as outlined in Council's SOFAC. It is considered that the impacts of the proposal in its current form are unreasonable.

O. Section 4.15(1)(c) - Suitability of the Site

The application in its current form has not demonstrated that the site is suitable for the development, nor that the proposal fits in within the locality.

P. Section 4.15(1)(d) - Public Submissions

There were no submissions received.

Q. Section 4.15(1)(e) - Public interest

The proposal is not considered to be in the public interest as the potential impacts have not been adequately mitigated, and the proposal has not demonstrated appropriate level of compliance with the relevant planning controls, nor demonstrated good design principles, or design excellence in its current form.

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in Council's SOFAC filed with the NSW LEC.

Following an assessment of the relevant planning controls and the issues identified in the SOFAC, it is considered that the application cannot be supported as the following matters and impacts remain unsatisfactorily addressed:

- Protection of Bankstown Airport air space
- Building height variation
- Landscaped area variation
- Internal areas of apartments
- Non-compliances with Villawood Town Centre DCP 2020
- Character and context analysis
- Building envelopes
- Amenity
- Design excellence and active street frontage
- Stormwater drainage
- Existing Council pipe and easement, and Sydney Water sewer pipe
- Consolidation of lots and new easements to facilitate development
- Parking demand and provision
- Traffic and vehicular access
- Land contamination
- Acoustic and vibration impacts and air quality
- Use of commercial premises
- Waste management
- Information deficiencies including land owner's consent.

8. RECOMMENDATION

That the Development Application DA 25.1/2025 which proposes demolition of existing structures and construction of an 11 storey shop top housing development comprising two towers over a single podium, 255 car parking spaces within three levels of basement parking, ground floor uses including 12 retail premises, 1 café and 1 kiosk with total commercial floor area of 1,792.4sqm; 148 apartments (27 x Infill affordable units and 121 units not used for affordable housing) under SEPP (Housing) 2021, and ancillary works such as tree removal, landscaping, consolidation of lots and dedication of land to the Respondent, be determined by the Panel by way of refusal pursuant to Section 4.16(1) (b) of the Environmental Planning and Assessment Act 1979 subject to the draft reasons for refusal attached to this report at Attachment 1.