

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY WESTERN CITY PLANNING PANEL

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| <b>DATE OF DETERMINATION</b>    | 30 June 2025  |
| <b>DATE OF PANEL DECISION</b>   | 30 June 2025  |
| <b>PANEL MEMBERS</b>            | Justin Doyle (Chair), David Kitto, Greg Woodhams  |
| <b>APOLOGIES</b>                | None  |
| <b>DECLARATIONS OF INTEREST</b> | Louise Camenzuli declared a conflict of interest - her firm is currently acting for Moes NSW. She does not act for Traders in Purple but considers that there may be a reasonably perceived conflict of interest. The Council representatives voted on the VPA for the development and have also declared a conflict of interest. |

Papers circulated electronically on 29 June 2025.

#### MATTER DETERMINED

PPSSWC-541 – Fairfield – MA 384.3/2021- 2 Kamira Avenue, Villawood - Crown - S4.33 referral - Section 4.55(1A) modification to amend Development Consent No. 384.1/2021 for the purpose of internal and external modifications to the approved 8-10 Storey Mixed Use Development

#### PANEL CONSIDERATION AND DECISION

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

#### Application for modification of consent

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

The decision was unanimous.

#### REASONS FOR THE DECISION

On 23 March 2023 the Panel determined to grant deferred commencement development consent to Stage 1 of the Redevelopment of Villawood Town Centre, which included the Construction of an 8-10 Storey Mixed Use Development Comprising Community Facilities and Ancillary Cafe on the Ground Floor, 112 Residential Units, Public Open Space, a Podium Car Park Comprising 119 Car Parking Spaces, Associated Road Works and Landscaping. The DA was approved with reference to SEPP (Affordable Rental Housing) 2009.

The application now before the Panel is submitted under s 4.55(1A) for amendments described as “minor”. The Statement of Environmental Effects states that the amendments are intended to increase number of Land and Housing Corporation units, improve building efficiency and accessibility, make minor changes to the landscaping and car parking configuration to ensure consistency with all relevant regulations identified during the process of preparing the construction drawings.

However, in the Panel briefing the Applicant made it clear that with respect to the proposed changes to materials and finishes, the changes are intended at least partly to lower the cost of the development. The Applicant submitted that the intended use of the residential component of the development was now intended to be used 100% for affordable housing and that the project is now to be owned and managed by or on behalf of the Land and Housing Corporation. It said that the viability of the project for that use was at risk

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unless the construction cost could be lowered. It also said that there was urgency to the determination of the modification application because the approval was important to pending efforts to secure Commonwealth funding toward the proposal.

That background to the modification application was confirmed verbally at a briefing of the proposal by Mr Jury representing Homes NSW.

The Applicant advised that the anticipated construction cost of the detailed brickwork included in the originally approved development including the design changes it had agreed to through the DA process had drastically increased since the development consent was granted, and that it was concerned about work, health and safety issues said to be associated with constructing brickwork above ground level.

Specifically, the changes proposed are:

#### CAR PARKING

- Reconfiguration to the Ground Floor parking area and loading dock
- Removal of 3 visitor car parking spaces and minor carpark configuration amendments.
- Amendment to Level 1 & Level 2 parking areas to accommodate circulating swept paths.

#### PODIUM

- Brick Façade in Podium – Removed stepped brick detailing.
- Brick Balconies in Podium – Amended to metal balustrade with solid backing sheeting applied at the rear. Same colour as the approved in original application. Same colour as the metal balustrade.
- All dark brick in the podium is converted to Hebel panel with dark colour finish to match the former brick.
- Parapet of the podium is aligned to be a consistent datum across the entire podium.
- The horizontal brick banding has been amended to align with the slab edge thickness. The change assists in emphasizing the vertical brick banding in the podium.
- The balustrades adjacent the carparking on the south west side of the podium colour to be amended from grey to match the earthy colours of the ground floor finishes. Amended from grey to match the dark colour finish of the podium.

#### TOWER

- North and East Elevation – Brick tower portion has been amended to Hebel Power Pattern in a light cream colour finish.

#### FLOOR PLAN

- Floor plans are shown to be amended to illustrate minor changes to apartments comprising-
  - Removal of bath tubs to meet the operational requirements of Homes NSW;
  - Improved bathroom layouts to give greater efficiency and accessibility; and
  - Minor adjustments to kitchen furnishing to improve efficiency and workability.

Importantly, through the Statement of Environmental Effects the Applicant's consultant planners advise further that there are no changes to the overall unit yield of 112 dwellings, and the building envelope including the setback and building separation, landscaping and vehicular access arrangements will remain unchanged.

The Panel is satisfied that when comparing the development as originally approved, and the development as will be approved if the proposed modifications are adopted, the development will be "essentially or materially" the same as the (currently) approved development, and accordingly a fresh development application is not required. In substance the development will remain the same typology and the arrangement of the built form and uses around the site will stay consistent. (see the discussion of the relevant

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considerations provided by Bignold J at [55]-[56]*Moto Projects No 2 Pty Limited v North Sydney Council* [1999] 106 LGERA 298)

It is less immediately clear that this application is suitable for assessment under s 4.55(1A). In order to assess an application under this subsection, the consequences of the modifications must have only “minimal” environmental impact. In this case the modifications include an increase in the number of affordable housing units, and changes to finishes included in the development which were intended to address issues of design excellence. The site and the staged development will be important for the future character of the Villawood Town Centre.

However, after careful consideration, the Panel is satisfied that within the context of this staged development the changes will not lead to changes to the environmental effects of the development which are other than minor.

While the design treatment will be different, as assessed by the independent design consultant engaged to assist the Panel as discussed below, the buildings will still achieve a sufficient level of design excellence. The environmental effects of the building will not materially change in substance or degree. It is important to the Panel’s consideration in that regard both that the overall yield of the development will not increase, and that the building envelope (including both setback and building separation), landscaping and vehicular access arrangements will remain unchanged.

Accordingly, the Panel considers that it has the power to approve the application.

At the Panel’s briefing of the modification application reported on 2 June 2025, the Council raised a concern about the design modifications expressing a strong opposition to the design changes which it advised it saw as essential to maintaining the integrity of the scheme, and pointed to what it thought had been a negotiated outcome. The Panel agreed that the design and architectural integrity of the scheme was of high importance, but was accepting that this integrity might be achieved in different ways.

With the aim of efficiently and fairly resolving those concerns the Panel through the Secretariat commissioned an independent review of the changes proposed by Peter Smith of Smith & Tzannes architects, an architect and urban designer with a widely esteemed reputation based on work over 20 years. Mr Smith has already provided advice into the later stage of the development, and so is familiar with matters relevant to its design quality, and the cohesion of its urban design rationale.

Mr Smith provided a report dated 12 June 2025. While marked draft, the Panel understands the report to contain Mr Smith’s relevant opinions subject to feedback from the Applicant and the Council. The Panel understands Mr Smith to have advised that he sees the proposed modifications to the external facades to be in general acceptable, but said that some change was required given the importance of the external appearance of the buildings to the ultimate quality of the surrounding public domain. The “Summary” section of his report is reproduced in full as follows:

### **Summary**

It is recommended that the Panel consider that the modified design continues to demonstrate design excellence with a high standard of architectural design.

The modification provides a consistency of design intent with the approved development and demonstrates a refinement of the design.

I recommend the following changes that would further enhance the design integrity of the proposal:

- The introduction of a soldier course where there are thin rows of brickwork to cover the slab edge
- The part of the building highlighted purple in Figure 5 should be retained as face brick as in the original consent.

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These recommendations could be resolved by condition of consent that refers to a marked up drawing for clarity to enable the application to be resolved expeditiously.

The Panel accepts Mr Smith's advice, and the Applicant has indicated (by email of 18 June 2025) that it agrees to accommodate those changes in its modification proposal.

In response the Council said by email of 17 June 2025:

"It does not appear that the Design Review Report provides any discussion on how the removal of the brick work along the northern side of Building B (Stage 1) will interact with the southern side of Building A (Stage 2). It is noted that the building in Stage 2 that immediately fronts the area where the brick is proposed to be removed is a 5 storey building which will comprise of brickwork.

Whilst Council maintains the issues raised regarding the removal of brick work, the recommendations from the Design Review Report would assist in maintaining the design integrity of Stage 1."

That Council feedback was referred back to Mr Smith who advised that he had considered the impact of the changes on how it will interact with the Stage 2 buildings when preparing his report on the modification application.

He advised:

"The three buildings that make up the full site are like a family of buildings – while there are similarities, there are also differences."

One similarity is that the base of all buildings comprises face brick as the primary frame element. However, how this brick is expressed, the colour and proportions vary between each building, just like children in a family. This is appropriate because it provides variety and visual interest. Most traditional streetscapes have a combination of differences but with a common theme.

The expression of the buildings above the podium is also different between the three buildings.

My recommendation does not change."

To assist in understanding the issues there discussed, Mr Smith referred to this image from the modified proposal:



Based on the advice of Mr Smith (which the Panel accepts and with which it concurs), reference to the material supporting the application (including the above image), and the agreement of the Applicant to that position, the Panel has determined to approve the modification. The changes other than in relation to external

design matters will not change the environmental impact of the development and are acceptable.

However the Panel’s assessment that the proposal is acceptable is made in the context of advice from the Applicant that the entire development will be managed as affordable housing, presumably within the meaning of the Housing SEPP 2021 (although the Panel understands that the original development was approved under the repealed SEPP (Affordable Rental Housing) 2009) (although the Panel is aware that the requirements under the Housing SEPP 2021 for commitment to a fixed time period for that management do not apply to development carried out by or on behalf of the Land and Housing Corporation.)

**Accordingly, the Panel’s unanimous determination is:**

The application made under Section 4.55(1A) modification to amend Development Consent No. 384.1/2021 for the purpose of internal and external modifications to the approved 8-10 Storey Mixed Use Development as described in this report is **approved**.

**CONDITIONS**




The Development Application was approved subject to additional conditions to:

- Implement the design changes discussed in the “Design Review – External Materials” report by Peter Smith of Smith & Tzannes architects (REV – 12-06-2025).

The Applicant has supplied the form of the conditions which it says will pick up the modifications proposed. However, the Panel will leave it to the Council to prepare the form of Notice of Determination reflecting this determination. In the hopefully unlikely event of any further disagreement in that regard, the Panel Chair is delegated the authority to resolve that matter on behalf of the Panel.

**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel notes that there were no public submissions on the modification application and therefore no issues of concern were raised.

| PANEL MEMBERS  |  |
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| <div>Justin Doyle (Chair)</div> <div></div> | <div>David Kitto</div> <div></div> |
| <div>Greg Woodhams</div> <div></div>        |  |

| SCHEDULE 1 |                                   |  |
|------------|-----------------------------------|--|
| 1          | PANEL REF – LGA – DA NO.          | PPSSWC-541 – Fairfield – MA 384.3/2021   |
| 2          | PROPOSED DEVELOPMENT              | Section 4.55(1A) modification to amend Development Consent No. 384.1/2021 for the purpose of internal and external modifications to the approved 8-10 Storey Mixed Use Development   |
| 3          | STREET ADDRESS                    | 2 Kamira Avenue, Villawood   |
| 4          | APPLICANT/OWNER                   | Applicant: Traders in Purple (Michael Teoh)<br>Owner: Homes NSW  |
| 5          | TYPE OF REGIONAL DEVELOPMENT      | Crown development referred under section 4.33 of the EP&A Act  |
| 6          | RELEVANT MANDATORY CONSIDERATIONS | <ul style="list-style-type: none"> <li>Environmental planning instruments: <ul style="list-style-type: none"> <li>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>State Environmental Planning Policy (Resilience and Hazards) 2021</li> <li>State Environmental Planning Policy (Transport and Infrastructure) 2021</li> <li>State Environmental Planning Policy (Biodiversity and Conservation) 2021</li> <li>State Environmental Planning Policy No. 65 – Design of Quality Residential Apartment Development</li> <li>State Environmental Planning Policy (Planning Systems) 2021</li> <li>State Environmental Planning Policy (Housing) 2021</li> <li>Fairfield Local Environmental Plan 2013</li> </ul> </li> <li>Draft environmental planning instruments: Nil</li> <li>Development control plans: <ul style="list-style-type: none"> <li>Villawood Town Centre Development Control Plan 2020</li> <li>Fairfield Development Control Plan 2013</li> </ul> </li> <li>Planning agreements: Nil</li> <li>Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>Coastal zone management plan: Nil</li> <li>The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>The suitability of the site for the development</li> <li>Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>The public interest, including the principles of ecologically sustainable development</li> </ul> |
| 7          | MATERIAL CONSIDERED BY THE PANEL  | <ul style="list-style-type: none"> <li>Design Review completed by Peter Smith Reference 24_072 dated 12-06-2025</li> <li>Design Review and advice received from Peter Smith by email on 19 June 2025</li> <li>Marked up conditions received from the applicant by email on 23 June 2025</li> </ul>   |

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| 8 | MEETINGS, BRIEFINGS AND<br>SITE INSPECTIONS BY THE<br>PANEL | <ul style="list-style-type: none"><li>• Briefing: 2 June 2025<ul style="list-style-type: none"><li>○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Greg Woodhams, Kevin Lam, Ninos Khoshaba</li><li>○ <u>Council assessment staff</u>: Sunnee Cullen</li><li>○ <u>Applicant Representatives</u>: Michael Teoh</li></ul></li></ul> |
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