



Planning,  
Industry &  
Environment

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## Plan finalisation report – PP-2020-3237

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Planning Proposal PP-2020-3237 to amend Fairfield Environmental Plan 2013 (Amendment No 44): 400 - 404 Cabramatta Road west, Cabramatta.

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# 1 Introduction

## 1.1 Overview

### 1.1.1 Name of draft LEP

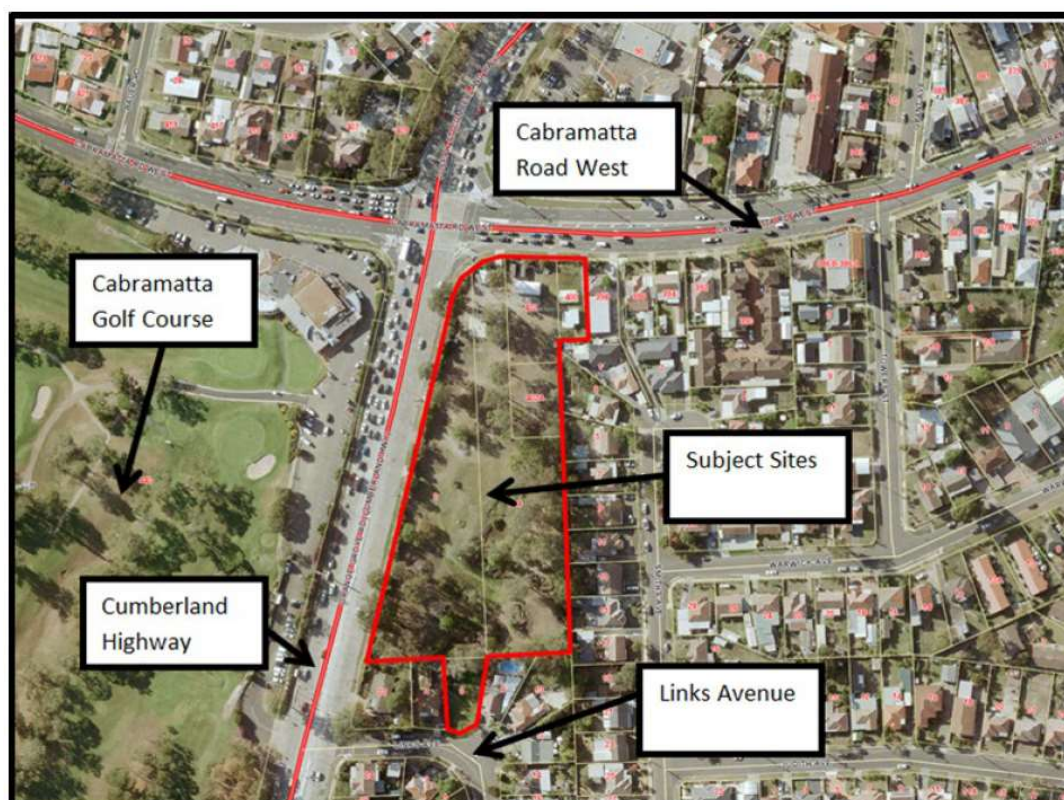
Fairfield Local Environmental Plan 2013 (Amendment No. 44).

This planning proposal (**Attachment A**) seeks to alter the development controls for land at 400, 402, 402A and 404 Cabramatta Road West, 2 Orange Grove Road and 6 Links Avenue, Cabramatta, by amending the Fairfield Local Environmental Plan (FLEP) 2013. This planning proposal has a complex history which is detailed in **Table 3**.

### 1.1.2 Site description

**Table 1 Site description**

Site Description	400, 402, 402A and 404 Cabramatta Road West, 2 Orange Grove Road and 6 Links Avenue, Cabramatta.
Type	Site
Council / LGA	Fairfield City Council
LGA	Fairfield



**Figure 1 Subject site**

### 1.1.3 Purpose of plan

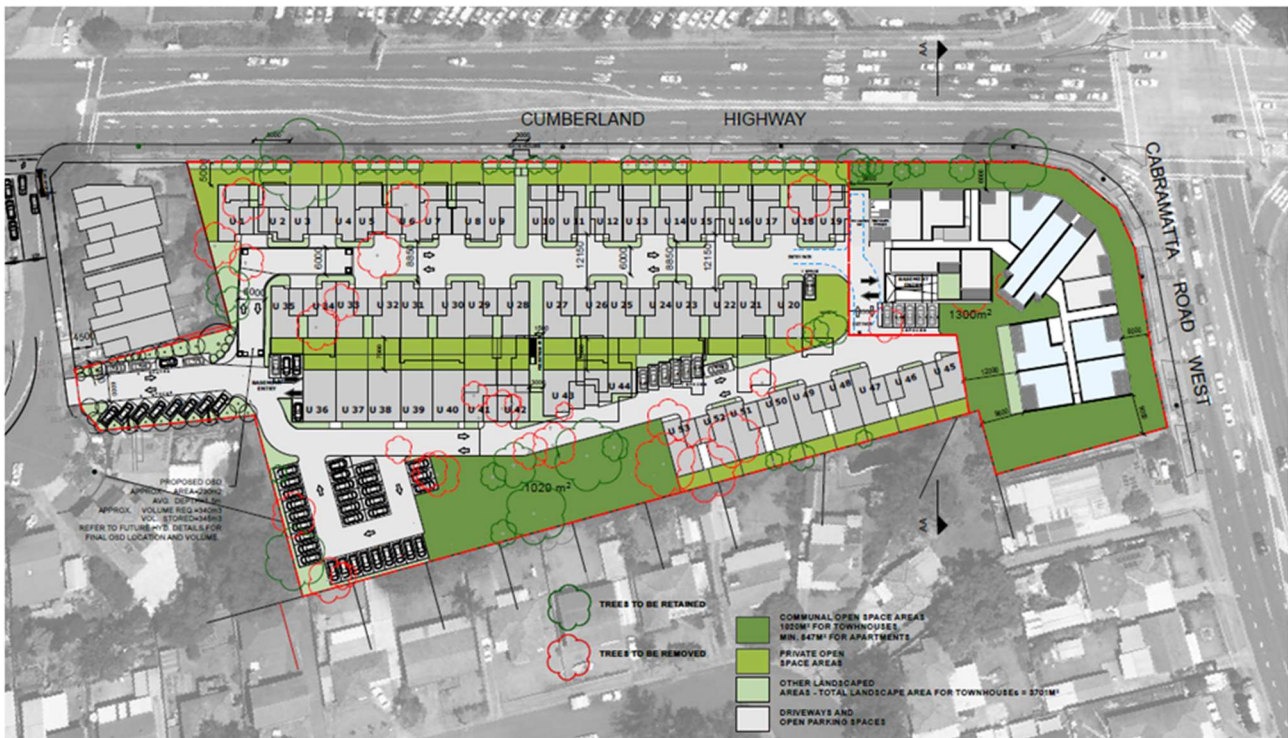
The planning proposal seeks to amend Fairfield LEP 2013 by rezoning the site (15,349m<sup>2</sup>) from R2 Low Density Residential zone to part R4 High Density Residential (3,386 m<sup>2</sup>) and part R3 Medium Density Residential (11,966 m<sup>2</sup>) zones to facilitate 84 dwellings in a six storey apartment building and 53 townhouse/terrace style development. The planning proposal also seeks to amend the relevant development standards (height of buildings and FSR) to facilitate the development. **Figure 1** shows the site location. **Table 2** shows the current and proposed development controls on the site.

The proposal will remove the subject site from the Lot Size map, Minimum Lot Size Dual Occupancy Development Standards map and Key Sites map. The proposal will also remove the associated Clause 3 of Fairfield LEP 2013 Schedule 1 Additional permitted uses which allows multi dwelling development on the existing R2 Low Residential zoned land. **Figure 2** shows the indicative layout plan of the proposal.

**Table 2 Current and proposed controls**

Control	Current	Proposed
Zone	R2 Low Density Residential	Part R3 Medium Density Residential (11,963 m <sup>2</sup> ) Part R4 High Density Residential (3,386 m <sup>2</sup> )
Maximum height of the building	9m	9m (R3) and 20m (R4)
Floor space ratio	0.45:1	0.6:1 (R3) and 2:1 (R4)
Minimum lot size	450m <sup>2</sup>	Nil
Minimum lot size for dual occupancy	600m <sup>2</sup>	Nil
Number of dwellings	0 (Approved/valid DA 232/98 for 40 townhouses,)	137 (84 apartments and 53 townhouses)
Dual occupancy	Permissible (Clause 3, Schedule 1 Additional permitted uses)	Remove clause
Number of jobs	N/A	N/A





**Figure 2 Indicative layout plan**

#### 1.1.4 State electorate and local member

The site is within the Cabramatta state electorate. Mr Nickola Lalich MP is the State Member.

The site is within the Fowler federal electorate. Chris Hayes MP is the Federal Member.

To the team's knowledge, neither MP has made any written representations regarding the proposal. There are no donations or gifts to disclose, and a political donation disclosure is not required.

There have been no meetings or communications with registered lobbyists with respect to this proposal.

## 2 Gateway determination and alterations

The Gateway determination issued on 28/12/2020 (**Attachment B**) determined that the proposal should proceed subject to conditions. Council has met all the Gateway determination conditions.

In accordance with the Gateway determination (as altered) the proposal is due to be finalised on 28/09/2021.

### 2.1 Background

The planning proposal has a long and complex history dating back to March 2016 when it was first lodged with Council and was refused on grounds of overdevelopment. The proposal was also subject to rezoning review in 2017. It was also refused by the Sydney Western City Planning Panel on 11 April 2018. The Panel considered the proposal was incompatible with the surrounding low-density residential development, unacceptable impacts on traffic and parking and the lack of a citywide strategy.

The proposal was subsequently submitted to Council on 20 August 2018. A Gateway determination was issued in May 2019, however, post exhibition in March 2020 Council refused to proceed with the plan due to the fact Council had not completed a city wide strategy that supported the extent of

development proposed on the site, the inconsistency of the proposed 10m height control in the R3 zone with the 9m height control on surrounding sites and potential traffic impacts.

The planning proposal was submitted to Council in June 2020 without any changes. Council resolved to make changes to address the issues previously raised.

Council officers advise that there is a current approved DA (DA 232/98) which became operative on 24 October 2002 on the site for 40 townhouses.

**Table 3 Summary of previous proposals**

Key dates	Reason for refusal
<p><b>11 March 2016</b> – Application lodged to Council.</p> <p><b>12 September 2017</b> – Application refused by Council and applicant applies for rezoning review.</p> <p><b>11 April 2018</b> – The Sydney Western Sydney Planning Panel refuses application.</p>	<ul style="list-style-type: none"> <li>• Constituted an overdevelopment of the site.</li> <li>• A more appropriately scaled form of medium density development be demonstrated onsite</li> </ul>
<p><b>20 August 2018</b> – Application lodged with Council seeking to address reasons for refusal.</p> <p><b>November 2018</b> – Reported to Fairfield Local Planning Panel for advice.</p> <p><b>March 2019</b> – Reported to Council seeking Gateway Determination.</p> <p><b>May 2019</b> – Gateway Determination Issued by DPIE.</p> <p><b>June/July 2019</b> – Planning Proposal publicly exhibited.</p> <p><b>March 2020</b> - Planning Proposal refused by Council at the post exhibition stage.</p>	<ul style="list-style-type: none"> <li>• The proposed HOB of 10 metres was inconsistent with surrounding Low-density residential development.</li> <li>• Traffic and parking impacts to the local road network were unacceptable.</li> <li>• Council has not completed a citywide strategy that supports the extent of development proposed on the site.</li> </ul>
<p><b>June 2020</b> – Current planning proposal lodged without amendments. Council resolved to make changes to address the issues previously raised.</p>	

### 3 Public exhibition and post-exhibition changes

In accordance with the Gateway determination, the proposal was publicly exhibited by Council from 21/02/2021 to 23/03/2021, as required by the Gateway Determination.

A total of 14 community submissions and 1 petition (containing 25 signatures) were received, comprising of 15 objections and 0 submissions supporting the proposal (**Attachment D**).

No post exhibition changes have been made to the planning proposal as a result of submissions.

## 3.1 Submissions during exhibition

### 3.1.1 Submissions supporting the proposal

No submissions were made which supported the planning proposal.

### 3.1.2 Submissions objecting to and/or raising issues about the proposal

There were 14 submissions received from individuals which all objected to the proposal. A petition was also received by Council with 25 signatures objecting to the proposal. Council's assessment of the issues raised are at **Attachment I**. A summary of the key issues raised, and the Department's comments are discussed below in **Tables 3 and 4**.

**Table 3 Summary of Key Issues**

Issue raised	Council response and Department assessment of adequacy of response
Lack of access to recreational facilities	<p><u>Council Response:</u></p> <p>The site is within walking distance of the Cabramatta Creek public open space (400 metres) and proximate to recreational open space at Don Dawson Oval and Cabramatta Sportsground. Council officers acknowledge the lack of public open space within walking proximity of the site.</p> <p><u>Department comment:</u></p> <p>There are no open spaces and recreational facilities within 400m of the site. Bowden Park is 0.7km away and contains playground equipment to engage younger children. The entrance to the walking track through Cabramatta Creek is 450m away. The closest playing fields are Dwyer Oval and Don Dawson Oval which are 1.8 and 2.1kms away respectively.</p> <p>The proposal will enable 1,020m<sup>2</sup> of communal open space (COS) for R3 zoned land which is in line with Council's LEP requirement of 4% of the site area for COS for Medium density development and the 8% requirement in the Apartment Design Guide (ADG). The COS for the R4 zoned land component, 1,012m<sup>2</sup> exceeds the minimum 25% requirement in the ADG.</p> <p>The proposed development can achieve communal open space requirements in of the ADG and Fairfield LEP.</p>



Issue raised	Council response and Department assessment of adequacy of response
Vegetation removal	<p><u>Council response:</u></p> <p>The site does not contain urban bushland or remnant vegetation. It has previously accommodated residential dwellings but has since been cleared and has remained vacant for a significant period.</p> <p>It is currently zoned R2 Low Density Residential and is not identified on the Fairfield LEP “Terrestrial Biodiversity Map” or “Riparian Lands and watercourse map”. Council advises the communal open space will preserve more of the existing mature vegetation onsite and provide greater opportunity for onsite planting. The site specific as well as Fairfield DCP requires compliance with controls for tree protection.</p> <p><u>Department comment:</u></p> <p>An Ecological Considerations report (Gunninah, August 2028) was submitted with the planning proposal. The proposed development would require the removal of part of the existing vegetation, however the report stated that the land is highly modified, degraded and lacks any biodiversity significance.</p> <p>Any further biodiversity and vegetation impacts can be addressed at the DA stage.</p>
Exacerbation of local overland flooding	<p><u>Council response:</u></p> <p>Council's Catchment Branch advises that the site is not identified as being affected by overland flooding. However, there is an informal drainage channel that exists onsite due to the site's topography.</p> <p>Council's Catchment Branch has reviewed the proposal and has determined that in order to ensure the development does not cause excessive runoff, onsite detention tanks are to be provided by the development to contain site runoff. This requirement is to be implemented at DA stage.</p> <p><u>Department comment:</u></p> <p>The proposal was supported by a Flood Report (ANACivil Pty Ltd, May 2017) which was reviewed by Council as part of the flooding assessment.</p> <p>The site is not identified as flood prone land. It is noted that Council anticipates that the indicative location of OSD storage location can be resolved during the preparation of a site specific DCP or at the subsequent DA stage.</p> <p>It is considered Council's response is satisfactory.</p>

Issue raised	Council response and Department assessment of adequacy of response
Insufficient public transport	<p><u>Council Response:</u></p> <p>The western side of the site is serviced by the 819 – bus service travelling north to Cabramatta Station and south to Liverpool Station located on the footpath that runs parallel to the site. To the north there is a bus stop for the 815-bus service that travels west to Bonnyrigg approximately 251 metres walking distance from the site.</p> <p>The 819-bus service allows access to Liverpool station and arrives approximately every 30 minutes running between Monday and Saturday. The 815 bus service runs west to Bonnyrigg and east to Cabramatta station running once an hour from Monday to Sunday.</p> <p><u>Department comment:</u></p> <p>The site is serviced by regular bus services running south to Liverpool station (30 minutes), east to Cabramatta station (18 minutes) and west to the T-Way station at Brown Road, Bonnyrigg (25 minutes) along Orange Grove Road and Cabramatta Road. The services from Orange Grove Road also provide links between Badgerys Creek, Prairiewood, Wakeley and Liverpool. The site is serviced by public transport and is within 30 minutes to local services.</p>
Incompatible with adjoining zones	<p><u>Council Response:</u></p> <p>The indicative concept design submitted with the planning proposal has been prepared to be compatible with the surrounding urban context and allow the efficient and orderly development of the site. The current planning proposal seeks to primarily facilitate medium density townhouses (9 metres HOB) that are compatible with the adjacent detached dwellings. Details of the proposal are in the Urban Design Report Attached to the planning proposal at <b>Attachment A</b>.</p> <p>The mass, scale and siting of the single residential flat building onsite (located at the sites north west corner) is consistent with the principle 1 of SEPP 65.</p> <p><u>Department comment:</u></p> <p>The Department notes that the development will be supported by a site specific DCP. The draft DCP (<b>Attachment F</b>) has controls to address site design and layout, building heights, setbacks and separation, noise, privacy, sun access and scale to ensure compatibility and protect the amenity of the surrounding development.</p>

Issue raised	Council response and Department assessment of adequacy of response
Slip way access into Cabramatta Rd West or secondary site access	<p><u>Council Response:</u></p> <p>Cabramatta Road West is a classified road. Currently the SEPP (Infrastructure) 2007 regulates access to development from classified roads that are controlled by the consent authority (TfNSW in this case).</p> <p>TfNSW have previously indicated that access to and from the subject site from Cabramatta Road West and Orange Grove Road is not considered acceptable in this case as access to the site from Orange Grove Road would be located on a left turn slip lane which would result in potential adverse safety outcomes.</p> <p><u>Department comment:</u></p> <p>TfNSW does not support permitting access via a state road. As such, access can only occur via a local road (Links Avenue).</p>
Council not plan making authority	<p><u>Council Response:</u></p> <p>Council is the planning proposal authority for the proposal which means it can still determine the outcome of the planning proposal through the planning proposal process.</p> <p><u>Department comment:</u></p> <p>As per the Gateway determination, Council has not been delegated as the local plan making authority for the proposal.</p>
Housing diversity	<p><u>Council Response:</u></p> <p>The development will provide a range of housing at different price points including 1, 2 and 3 bedroom units, and 2 and 3 bedroom townhouses.</p> <p>Any future development on the site will be required to comply with the unit mix control in the Fairfield City Wide DCP 2013. The DCP requires for those sites with 11 or more town houses and or units, 10% of dwellings must provide 2 bedrooms and 10% of dwelling must provide 1-bedroom units. In addition to this the site specific DCP requires a minimum of 10% of the onsite townhouses to provide a bedroom, bathroom and kitchen on the ground floor to ensure that the development accounts for the needs of individuals with disabilities and the elderly.</p> <p>This is consistent with Chapter 6A – Multi Dwelling Housing of the Fairfield City Wide DCP 2013.</p> <p><u>Department comment:</u></p> <p>The Department acknowledges that the site specific DCP and Fairfield City Wide DCP (<b>Attachment F</b>) will guide the dwelling mix of this site to ensure housing diversity.</p>

Issue raised	Council response and Department assessment of adequacy of response
Breach of notification policy	<p><u>Council Response:</u></p> <p>The proposal was placed on 28 days public exhibition from 24 February to 23 March 2021.</p> <p>Residents received 2 letters from Council officers dated 23 February and 01 March 2021. The letters contained information about the planning proposal and how to access the exhibition documentation online. Information about how to make a submission including public interest disclosure (political donations) declaration was also provided in this letter.</p> <p>An additional time was given to multiple residents who requested until 24 April 2021. Council also uploaded on the website and sent a link to the submission authors the updated Traffic Impact Assessment (TIA) (<b>Attachment E</b>) on 30 April 2021 giving public until 20 May 2021 for comment.</p> <p><u>Department comment:</u></p> <p>Council has satisfactorily met the exhibition requirements.</p>
Emergency vehicle access	<p><u>Council Response:</u></p> <p>The ingress egress at 6 Links Avenue will be able to facilitate emergency vehicle access. The site contains two-way internal road access that can facilitate the simultaneous movement of vehicles into and out of the site at the AM and PM peaks.</p> <p>In order to ensure that access to the site and existing dwellings in the Links estate are not blocked “no parking” restrictions will be placed from the entrance of Links Avenue to the developments entry point as specified in the site specific DCP.</p> <p><u>Department comment:</u></p> <p>Council's response is satisfactory.</p>
Removal of certain development standards onsite	<p><u>Council Response:</u></p> <p>The additional uses of multi dwelling residential on the site was aimed to allow this use within R2 zone. This will be redundant when the site will be zoned to R3 and R4 which allows this use.</p> <p>The development controls (minimum lot size) are to be removed for R2 zones as the LEP has no minimum lot sizes for R3 and R4 zones.</p> <p><u>Department comment:</u></p> <p>Council's response is satisfactory.</p>

Issue raised	Council response and Department assessment of adequacy of response
Amenity impacts for existing residents	<p><u>Council Response:</u></p> <p>The overall proposed height, mass and scale of the residential flat building is compatible with the surrounding urban context and provides a modest amount of additional apartment housing in an appropriate location that will not result in any unreasonable changes to the existing character of the area.</p> <p>The development will be supported by a site specific DCP. The DCP (<b>Attachment F</b>) has controls to address site design and layout; building heights, setbacks and separation; noise; privacy, sun access and scale to ensure compatibility and protect the amenity of the surrounding development.</p> <p>There will be opportunity for the development to provide further visual and acoustic buffering through landscaping at DA stage.</p> <p><u>Department comment:</u></p> <p>The proposed DCP has satisfactory controls to prevent and mitigate the amenity impacts. Further details are discussed in 5.1</p>
Concerns regarding proposed roundabout	<p><u>Council Response:</u></p> <p>Council has not proposal to place a roundabout on Links Avenue or in the broader Links estate.</p> <p><u>Department comment:</u></p> <p>Council's response is satisfactory.</p>
Non-compliance with the Low-Rise Housing Diversity Code	<p><u>Council Response:</u></p> <p>Complying development under the housing diversity code is permitted in the RU5, R1, R2 and R3 zones only. The RFB is proposed on land to be zone R4, which does not apply under the Low-Rise Housing Diversity Code. However, compliance against the provisions of the apartment design guide will be assessed for the DA.</p> <p><u>Department comment:</u></p> <p>Council's response is satisfactory.</p>
Traffic congestion – potentially caused by traffic exiting the development on traffic on Links Avenue	<p><u>Council Response:</u></p> <p>Council's traffic engineers have reviewed the proposal. As a result of this review the site specific DCP for the site was amended to include traffic calming measures at the sites exit. Give way signs will be installed at the exit of the development to ensure that Links Avenue traffic has priority. Speed bumps and traffic calming measures will be required to be installed in the internal road network and at the exit to the development to reduce speed at the developments exit. Consideration of site access arrangements will be required at DA stage including the option to signalise the exit of the development.</p> <p><u>Department comment:</u></p> <p>The site specific DCP (<b>Attachment F</b>), clause 1.5.1 Vehicular and Pedestrian Access addresses this issue and will be required to be considered at DA stage.</p>

**Table 4 Summary of Traffic Issues**

Issue raised	Council response and Department assessment of adequacy of response
Vehicle wait times exiting Links Avenue	<p><u>Council Response:</u></p> <p>The SIDRA intersection analysis indicates that the Level of Service at Links Avenue does not change in the post development scenario, remaining at an F.</p> <p>Council Officers reviewed the SIDRA intersection analysis and do not raise issue with the trip generation rate or modelled impact to the Links Avenue intersection.</p> <p><u>Department comment:</u></p> <p>Council's response is based on the proponent's Traffic Impact Assessment (updated in April 2021) (<b>Attachment E</b>) which was reported to Council.</p> <p>The TIA was peer reviewed by Stantec (GTA) in May 2021 (<b>Attachment J</b>) but Council officers advise the review was not reported to Council at its June 2021 meeting. Council's peer review is discussed in detail under the heading - Traffic Modelling accuracy below in this table.</p>
Traffic circulation	<p><u>Council Response:</u></p> <p>The traffic modelling (<b>Attachment E</b>) has indicated that the greatest trip generation period for vehicles leaving the development would be during the AM peak, approximately 53 vehicle trips per hour.</p> <p>This will cause the queue length at the Links Avenue intersection to increase to 50.4 metres (4.5 cars) queueing from the current queue length of 19.6 metres (2-3 cars) queue. The vehicle wait times will also increase from 76.7 seconds to 103.3 seconds in the post development scenario. Despite the increase in the vehicle wait times the level of service (LOS) of the intersection at Links Avenue remains unaffected in the post development scenario being an F.</p> <p>TfNSW and Council's traffic engineers have reviewed the modelling and have deemed the impact to the Level of Service 'F' at Links Avenue acceptable.</p> <p><u>Department comment:</u></p> <p>As discussed under vehicle wait times exiting Links Avenue, details are discussed under the heading - Traffic Modelling accuracy in this table.</p>
Increased traffic accident risk	<p><u>Council Response:</u></p> <p>The submitted Traffic Impact Assessment (TIA) found that the traffic generated as a result of the development is able to be absorbed into the local road network through the intersection in question and concluded that development traffic is not considered to have a material impact on the road safety at the key intersections.</p> <p>Despite this finding Council officers have included the requirement for traffic control measures in the site specific DCP for the site.</p> <p><u>Department comment:</u></p> <p>The site specific DCP (<b>Attachment F</b>), clause 1.5.1 Vehicular and Pedestrian Access addresses this issue and will be required to be considered at DA stage.</p>



Traffic modelling  
accuracy

Council Response:

Council requested the Applicant undertake a revised traffic study due to council amendments to the planning proposal including updating the existing SIDRA intersection analysis. A revised modelling was provided in April of 2021 by Ason Group (**Attachment E**) and indicated that the vehicle trip generation in the AM peak increased from 150 to 159 vehicle trips as a result of the proposed dwelling yield increase onsite to 137 dwellings.

The updated TIA was reviewed by TfNSW who noted that the development will result in an additional delay in the local network and 26 seconds on the Links Avenue approach to the signalised intersection on Cumberland Highway with an additional queue of approximately 30m in the AM peak. No objections were raised.

Council further engaged Stantec to peer review the Transport Impact Assessment (TIA) and supporting SIDRA Intersection models prepared/updated in April 2021 by Ason Group. Details of this review is in the memo dated 21 May 2021 at **Attachment J**.

Stantec identified some shortcomings of the proponent's TIA not accurately reflecting the existing/future intersection/network scenarios and the assumptions in the SIDRA models. Stantec did not consider the TIA to be fit for purpose to understand the impact of the proposal to Links Avenue.

Council officers advised that the peer review by Stantec was not reported to Council. The memo was forwarded to the proponent for comments on 25 May 2021. Council did not receive any comments from the proponents to date.

Department comment:

The anticipated level of traffic impact resulting from the proposed development on Links Avenue has been assessed and supported by the Council's traffic engineers and TfNSW.

It is understood that Council engineers have nominated additional traffic remedial options for any future development of the site to reduce the impact on the existing local traffic as follows:

- give way signs at the exit of the development to formalise exit arrangements and give priority to existing traffic on Links Avenue;
- no stopping signs along Links Avenue to ensure that on-street parking does not affect the line of sight for vehicles travelling east along Links Avenue from the intersection, and for vehicles exiting the site;
- ongoing monitoring post occupation by Council's traffic engineers to determine if further remediation measures are warranted.

The Department forwarded Stantec peer review memo to TfNSW for comments on 26 August 2021. TfNSW advised that it has reviewed the TIA and SIDRA models submitted by Council previously (Links Avenue TCS networked with Cabramatta Rd West TCS using an appropriate traffic generation rate) and reiterated that the proposed development would result in an additional 30 metre vehicular queue and an additional 26 seconds delay on the Links Avenue approach to Orange Grove Road (Cumberland Highway) in the AM peak period. No additional comments or concerns were raised. TfNSW's comments are at **Attachment N**.

Issue raised	Council response and Department assessment of adequacy of response
	<p>It is understood that Council has prepared a LGA wide transport study (GTA, May 2021) in consultation with TfNSW. The study found the major road network surrounding the LGA have adequate capacity. The study did not look at the intersections of Cumberland Road with Cabramatta Road West in particular, however Cabramatta Road and Cabramatta Road West (north of Cabramatta Golf Club) was identified as one of the four areas of congestion by 2041.</p>
Traffic congestion	<p><u>Council Response:</u></p> <p>Council's traffic engineers have reviewed the proposal. As a result of this review the site specific DCP for the site was amended to include traffic calming measures at the sites exit. Stop signs will be required to be installed at the exit of the development to ensure that Links Avenue traffic has priority. Speed bumps and traffic calming measures will be required to be installed in the internal road network and at the exit to the development to reduce speed at the development's exit.</p> <p>Consideration of site access arrangements will be further considered at DA stage.</p> <p><u>Department comment:</u></p> <p>The site specific DCP (<b>Attachment F</b>), clause 1.5.1 Vehicular and Pedestrian Access addresses this issue and will be required to be considered at DA stage.</p>

### 3.1.3 Other issues raised

Other matters of concern raised by submissions largely referred to DA issues, including:

- Construction noise
- Dust and contamination during construction
- Car parking
- Design excellence
- Cabramatta Road West road safety
- Acoustic issues in proposed dwellings
- Construction traffic
- Waste storage
- Pedestrian access
- Geotechnical landslip

These issues are considered to be matters which can be addressed at the development approval stage by Council. The site specific DCP controls and requirements in the Fairfield LEP 2013 can satisfactorily guide the proposed development on the site.

## 3.2 Advice from agencies

In accordance with the Gateway determination, Council was required to consult with agencies listed below in Table 4 who have provided the following feedback.

**Table 4 Advice from public authorities**

Agency	Advice raised	Council response
Transport for NSW	No objection to the proposal was raised ( <b>Attachment K</b> ).  TfNSW was forwarded the updated Traffic Impact Assessment and noted that the development will result in an additional delay in the local network and 26 seconds on the Links Avenue approach to the signalised intersection on Cumberland Highway with an additional queue of approximately 30m in the AM peak.	Response acknowledged.
Liverpool City Council	Liverpool Council noted the Planning Proposal amendments and did not raise any objection to the proposal. Requested to be informed on the outcome of consultation with TfNSW ( <b>Attachment L</b> ).	Council forwarded a copy of TfNSW letter to Liverpool Council.

The Department considers Council has adequately addressed matters raised in submissions from the two public authorities.

## 4 Council refusal

Councils Outcomes Committee meeting on 8 June 2021 considered the planning proposal report supporting the proposal. Both the Outcomes Committee and full Council meeting were provided Council officers' report that addressed submission concerns and how these concerns could be mitigated.

Council advised the Department (**Attachment D**) that on 22 June 2021 Council meeting, Council resolved to refuse the Planning Proposal for the following reasons:

- The traffic impact to the local road network is unacceptable as the existing intersection already performs poorly having a Level of Service of "F". The proposed development will exacerbate this issue by increasing wait times and queue lengths for vehicles waiting to exit Links Avenue.
- The site is not within reasonable walking distance of significant transport infrastructure such as the T-way at Brown Road or Cabramatta Railway Station. As such the development will create an overreliance on private vehicle use.
- Impacts to the amenity of existing local residents is unacceptable as the density of the proposed development is out of character with the existing low-density housing stock in the Links Estate.

- The proposed residential flat building and terraced housing will not be adequately serviced by community open space and local services and is therefore not considered to be in the public interest.

Detail assessment of Council's refusal is discussed at Section 5.1 of this report. Council report and resolution are at **Attachments C and D**.

## 4.1 DPIE consultation with the proponent

Following notification on the 28 June 2021 that Council had resolved not to support the planning proposal, the Department provided the proponent with an opportunity to respond to the reasons for Council's refusal. DPIE officers met with the proponent on 15 July 2021. The proponent has provided response to the Council's reasons for refusal (**Attachment M**).

## 5 Department's assessment

The proposal has been subject to detailed review and assessment through the Department's Gateway determination (**Attachment B**) and subsequent planning proposal processes. It has also been subject to public consultation and engagement.

The following reassesses the proposal against relevant Section 9.1 Directions, SEPPs, Regional and District Plans and Council's Local Strategic Planning Statement. It also reassesses any potential key impacts associated with the proposal (as modified).

As outlined in the Gateway determination (**Attachment B**), the planning proposal submitted to the Department for finalisation:

- Remains consistent with the regional and district plans relating to the site.
- Remains consistent with the Council's Local Strategic Planning Statement.
- Remains consistent with all relevant Section 9.1 Directions.
- Remains consistent with all relevant SEPPs.

The following **Tables 5 and 6** summarise whether the proposal is consistent with the assessment undertaken at the Gateway determination stage. The proposal remains consistent with all applicable strategies, SEPPs and Section 9.1 Directions.

**Table 5 Summary of strategic assessment**

	Consistent with Gateway determination report Assessment	
Regional Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
District Plan	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Strategic Planning Statement	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Local Planning Panel (LPP) recommendation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Section 9.1 Ministerial Directions	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
State Environmental Planning Policies (SEPPs)	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

**Table 6 Summary of site-specific assessment**

Site-specific assessment	Consistent with Gateway determination report Assessment	
Social and economic impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Environmental impacts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1
Infrastructure	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No, refer to section 4.1

## 5.1 Detailed assessment of Council's refusal

The following section provides details of the Department's assessment of key matters and any recommended revisions to the planning proposal to make it suitable.

### 5.1.1 Issue 1 - The traffic impact to the local road network is unacceptable

The traffic impact to the local road network is unacceptable as the existing intersection already performs poorly having a Level of Service of "F". The proposed development will exacerbate this issue by increasing wait times and queue lengths for vehicles waiting to exit Links Avenue.

#### Council Strategic Team advice:

Due to the concerns raised during public exhibition and the changes made to the planning proposal, the Traffic Impact Assessment (Ason Group, 2016) was updated in April 2021 (**Attachment E**). The updated TIA considered the traffic impacts to key intersections including Links Avenue/Cumberland Highway and Cumberland Highway Cabramatta Road West, be modelled in a pre and post development scenarios. The impact to the local road network at Links Avenue was also modelled.

The modelling found that the overall impact to Links Avenue in a post development scenario for vehicles exiting Links Avenue in the AM peak is an increase in vehicle wait times of approximately 25 seconds (from existing 72 – 76 seconds) and an increase in vehicle queue length of approximately 4.5 vehicles or 25 metres to the existing 10 - 20 metres (2 - 3 cars). This will decrease the existing level of service from an E to an F for vehicles exiting Links Avenue. No changes to the level of service for vehicle movement was recorded for Cumberland Highway southbound and north bound.

Overall, the updated TIA demonstrates that the planning proposal:

- does not have a material impact on the performance of the network and the modelled level of service (LOS) for key intersections remain unchanged with only minor changes to average delays;
- will not reduce the performance of the Cumberland Highway and Links Avenue intersection significantly; and
- will have an acceptable and manageable impact on the performance of the Links Avenue approach during the weekday AM peak period.

Council's traffic engineers reviewed these findings and considered the level of impact in a post development scenario acceptable. Council also advised that the TfNSW reviewed the revised TIA and advise that the latest SIDRA modelling is 'fit for purpose' to test the traffic impacts of the planning proposal on the intersection of Cumberland Highway/ Links Avenue and Cumberland Highway/ Cabramatta Road West Intersections and that the SIDRA models have been calibrated and correctly reflect the existing traffic systems. Based on the latest SIDRA models, TfNSW raised no objection to the planning proposal.

Notwithstanding the above consideration, Council engaged Stantec (GTA) to peer review the revised Transport Impact Assessment (TIA) and supporting SIDRA Intersection models by Ason Group (**Attachment J**).

In summary, Stantec identified some shortcomings of the proponent's TIA and the SIDRA models and are not considered fit for purpose to understand the impact of the proposal to Links Avenue.

The concerns raised by the recommendations in the memo are as follows:

- the queues at the Cabramatta Road West/ Cumberland Highway intersection (northbound) exceeds the available distance to the Cumberland Highway/ Links Avenue intersection in both peak periods and this queue interferes with the performance of Links Avenue. Following acceptance of some or all the modelling comments, the queues may increase further resulting in greater interference to the Links Avenue intersection performance.
- the SIDRA intersection model is further refined to better reflect existing conditions and inform the impact of the proposal. This is to include:
  - modelling the sensitivity scenario as a network rather than in isolation;
  - ensuring the degree of saturation for existing condition model does not exceed 1.00;
  - ensuring the lane geometry reflects existing conditions, including provision of short lanes rather than full length lanes;
  - ensuring pedestrian protection is coded into the model where appropriate; and
  - reviewing potential coordination between intersection.
- the SIDRA intersection model includes an additional scenario considering the impact of background traffic growth. As a minimum, this could include year of opening, resulting in at least five years of background traffic growth from the 2019 survey data.

#### Proponent response:

A detailed response has been prepared by Ethos Urban on Council's concern (**Attachment M**). In summary:

- The Cumberland Highway and Links Avenue intersection performs at Level of Service A during both AM and PM peak, which is the best Level of Service (LoS).
- The average queuing time on the Links Avenue approach to the intersection during the weekday AM peak is 72-76 seconds. This is a result of the traffic signals prioritising the traffic flow along the Cumberland Highway which is a main arterial road and has priority.
- The average queuing distance on the Links Avenue approach to the intersection during the weekday AM peak is approximately 10 – 20 metres, which translates to an average queuing distance of 2 – 3 cars.
- Several site inspections were undertaken by Ason Group and Council officers during morning and afternoon peak period to verify the intersection performance and it was observed that vehicles queuing on the Links Avenue approach were able to clear the intersection within the allocated green time for Links Avenue. .

#### Department comment:

The anticipated level of traffic impact resulting from the proposed development on Links Avenue has been assessed and supported by the Council's traffic engineers and TfNSW.

Council engineers have also nominated the following remedial options to coincide with any future development of the site to reduce the impact on the existing traffic:

- give way signs at the exit of the development to formalise exit arrangements and give priority to existing traffic on Links Avenue;



- no stopping signs along Links Avenue to ensure that on-street parking does not affect the line of sight for vehicles travelling east along Links Avenue from the intersection, and for vehicles exiting the site;
- ongoing monitoring post occupation by Council's traffic engineers to determine if further remediation measures are warranted.

TfNSW was further consulted on Stantec's memo to Council on 26 August 2021. TfNSW advised that it has reviewed the TIA and SIDRA models submitted by Council previously (Links Avenue TCS networked with Cabramatta Rd West TCS using an appropriate traffic generation rate) and reiterated the resultant additional 30 metre vehicular queue and an additional 26 seconds delay on the Links Avenue approach to Orange Grove Road (Cumberland Highway) in the AM peak period. No additional comments or concerns were raised by TfNSW in response (**Attachment N**).

It is understood that Council forwarded Stantec's memo to the proponent for comments on 25 May 2021. Council did not receive any comments in response from the proponent.

### 5.1.2 Issue 2 - The site is not within reasonable walking distance of significant transport infrastructure

The site is not within reasonable walking distance of significant transport infrastructure such as the T-way at Brown Road or Cabramatta Railway Station. As such the development will create an overreliance on private vehicle use.

#### Council Strategic Team advice:

The western side of the site is serviced by the 819 bus service travelling north to Cabramatta Station, arriving every 30 minutes during the peak hour taking a total of 18 minutes from the subject site to Cabramatta station. The 819 bus service also provides access to Liverpool Station arriving every 30 minutes during peak hour taking approximately 24 minutes from the subject site to Liverpool Station. 251 metres from north of the site is a bus stop for the 815 service that travels west to the Bonnyrigg Town Centre taking approximately 25 minutes from the subject site and east to Cabramatta Station running once an hour from Monday to Sunday.

Regular bus services connect the site directly to a few town centres serviced by heavy rail including Cabramatta and Liverpool Town Centres.

#### Proponent response:

The proponent advises (**Attachment M**) that the site is within reasonable walking distance to appropriate public transport infrastructure. The site is close to bus stops that provide direct access to the Liverpool, Cabramatta and Bonnyrigg town centres. These bus routes operate frequently during the weekday peak.

The Fairfield City Council's technical staff, the Fairfield Local Planning Panel and the DPIE have determined the site's proximity to transport infrastructure is reasonable.

The TIA survey evidence indicates that the existing Links Avenue estate resident's reliance on private vehicles is 31% less than typical figures for low density housing (i.e. 1 trip/ dw during the am peak).

There is no evidence to suggest that the reliance of the future residents on private vehicle use would be any greater than the existing level of reliance in other areas in the LGA. The suggestion that the future development will create an overreliance on private vehicle use is not supported.

#### Department comment:

There are bus services which run along Orange Grove Road and Cabramatta Road. The site is well served by regular bus services arriving every 30 minutes, running south to Liverpool station (30 minutes), east to Cabramatta station (18 minutes) and west to the T-Way station at Brown Road, Bonnyrigg (25 minutes).

The services from Orange Grove Road provide links between Badgerys Creek, Prairiewood, Wakeley and Liverpool. The site is serviced by public transport and is within 30 minutes to local services.

### 5.1.3 Issue 3 - Impacts to the amenity of existing local residents is unacceptable

Impacts to the amenity of existing local residents is unacceptable as the density of the proposed development is out of character with the existing low-density housing stock in the Links Estate.

#### Council Strategic Team advice:

The indicative concept design submitted with the current planning proposal has been prepared for the proposed development to be compatible with the surrounding urban context and allow the efficient and orderly development of the site. The current planning proposal seeks to primarily facilitate medium density townhouses of a form and scale (9 metres HOB) that are compatible with the adjacent detached dwellings.

The predominant existing residential interface, Links Avenue and Smith Avenue are partly buffered by the 1020 m<sup>2</sup> communal open space proposed onsite and the proposed 32 at grade parking spaces. The northern Smiths Avenue interface is buffered by the town houses private open space and the Common open space for the residential flat building.

The mass, scale and siting of the single residential flat building onsite (located at the sites north west corner) is consistent with the principle 1 of SEPP 65.

#### Proponent response:

Consistency with the surrounding development: The indicative architectural concept that informs the planning proposal has been designed to be compatible with the surrounding urban context and allow for the efficient and orderly development on site. The planning proposal seeks to primarily facilitate medium townhouses of a scale and form that is compatible with the adjacent detached dwellings. The overall proposed height, mass and scale of the residential flat building is compatible with the surrounding urban context and provides a modest amount of additional apartment housing in an appropriate location that will not result in any unreasonable changes to the existing character of the area.

The proposal is also consistent with Principle 1 of SEPP 65 – Context and Neighbourhood Character in terms of streetscape, mass, height and setbacks proposed and are in keeping with the surrounding development for the following reasons:

- The site is large and currently vacant; it is located on a major arterial road intersection on a prominent ridgeline at the southern gateway to the Fairfield LGA. It is a unique location. The immediate surrounding context comprises a range of uses including a highway service centre, fast food outlet, golf club and golf course, low density detached dwellings and multi dwelling houses. The existing maximum height limit on the immediately adjoining land is 9m.
- The indicative concept for the residential flat building responds to the surrounding context in the following manner:
  - The proposal is setback 6m from the public domain which is consistent with the front building line setback established by the lower density dwellings to the east. The Cabramatta Road West building façade at the ground plane and upper levels can be broken down vertically and horizontally to respond to and reflect the scale of the adjacent low-density dwellings. By implementing these mechanisms, the proposal can respond and contribute to the aesthetic and architectural character of the existing streetscape.

- The proposal is setback by 18m at the fifth storey from the adjoining low-density dwellings, and 9m from the fourth storey to the adjoining low-density dwellings. These distances allow the form and scale to transition between the 9m low density zone to the four storey (12m) component without resulting in an abrupt change in the streetscape. The addition of a detailed landscaping strategy at the DCP or development application stage will further soften the transition between the two zones.
- The recessive fifth storey 'pop-up' element is set back 3m from the building's street façade (9m from the street boundary) and between 18m – 14m from the side facades. The proposed built form will read as a four-storey building from the immediate surrounds, and it will create a landmark that addresses the corner, which will improve geographical legibility and create a distinct identity for the immediate area.
- The proposal respects the residential amenity of its immediate neighbours. The proposed mass and height are arranged to avoid creating any adverse overshadowing or overlooking impacts to the existing low-density dwellings, maintaining the quality of their existing daylight access and privacy.

The assessment of the planning proposal's relationship to the existing character was accepted by Council's technical officers, the Local Planning Panel and the Department previously.

Impact to the amenity of the existing residents: The indicative design concept has been designed to maintain visual and acoustic privacy to neighbouring dwellings. This is achieved by locating the proposed four-storey building on the corner of Cabramatta Road West and Orange Grove Road away from the existing dwellings to the east to prevent opportunities for direct overlooking.

Appropriate setbacks in accordance with the Apartment Design Guide design criteria have been adopted to achieve good visual and acoustic separation between the existing and proposed dwellings.

Solar access is maintained to the neighbouring Smiths Avenue properties in mid-winter between 9am and 1pm and a minimum of three hours of reasonable solar access to the Links Avenue properties is also maintained during mid-winter. For further detail, refer to the shadow diagrams included with the Urban Design Report appended to the Planning Proposal lodged 3 June 2020.

The planning proposal includes a comprehensive site-specific development control plan that will be adopted as part of the Fairfield City Wide DCP and will be a matter for consideration during the assessment of any future development application for the site. The site-specific DCP contains objectives and controls whose fundamental purpose is to ensure compatibility and to protect the existing amenity of the neighbouring dwellings.

#### Department comment:

The Department notes that the development will be supported by a site specific DCP. The DCP (**Attachment F**) has controls to address site design and layout; building heights, setbacks and separation; noise; privacy, sun access and scale to ensure compatibility and protect the amenity of the surrounding development.

The planning proposal was considered by the Fairfield Local Planning Panel on 21 November 2018. The Panel considered the merits of the planning proposal and supported, in principle, the rezoning, subject to the proposal being amended to adequately address a number of concerns including excessive site coverage, impact on biodiversity, height of building, traffic and local networking issues and amenity issues.

The planning proposal was subsequently revised. The issues raised were addressed and is consistent with the recommendations of Fairfield Local Planning Panel.

#### 5.1.4 Issue 4 - Inadequate community open space and local services

The proposed residential flat building and terraced housing will not be adequately serviced by community open space and local services and is therefore not considered to be in the public interest.

##### Council Response:

The site is within walking distance of the Cabramatta Creek public open space (400 metres) and proximate to recreational open space at Don Dawson Oval and Cabramatta Sportsground. Council officers acknowledge the lack public open space within walking proximity of the site.

##### Proponent's response:

The indicative design and site-specific DCP will deliver significant open space on site for future residents. It will include:

- The site-specific development control plan that has been prepared with the Planning Proposal lodged on 3 June 2020 contains objectives and controls to ensure a minimum of 8% of the R3 Medium Density Residential component of the site area for communal space;
- 1,012 m<sup>2</sup> of communal open space for the R4 High Density Residential zoned land (29.9% of the site area) which exceeds the minimum 847 m<sup>2</sup> (25%) required by the design criteria under Objective 3D-1 of the ADG;
- 1020m<sup>2</sup> of communal open space for R3 Medium Density Residential zoned land (8% of the site area) which exceeds the minimum requirement of 478.5 m<sup>2</sup> (4%) for R3 zoned land in the Fairfield City Wide DCP; and
- The Planning Proposal will facilitate the provision of 2,032 m<sup>2</sup> of communal open space on site, which is 706.55 m<sup>2</sup> greater than the requirement of the relevant planning controls.

##### Department comment:

There are no open spaces and recreational facilities within 400m of the site. Bowden Park is 0.7km away and contains playground equipment to engage younger children. The entrance to the walking track through Cabramatta Creek is 450m away.

The closest playing fields are Dwyer Oval and Don Dawson Oval which are 1.8 and 2.1kms away respectively.

The proposal will enable 1,020 m<sup>2</sup> of communal open space (COS) for R3 zoned land which is in line with Council's LEP requirement of 4% of the site area for COS for Medium density development and the 8% requirement in the Apartment Design Guide (ADG). The COS for the R4 zoned land component, 1,012 m<sup>2</sup> exceeds the minimum 25% requirement in the ADG. The proposed development can achieve communal open space requirements in the ADG.

## 6 Post-assessment consultation

The Department consulted with the following stakeholders after the assessment.

**Table 7 Consultation following the Department's assessment**

Stakeholder	Consultation	The Department is satisfied with the draft LEP
Mapping	Six maps have been prepared by the Department's ePlanning team and meet the technical requirements.	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Council	<p>Council was consulted on the terms of the draft instrument under clause 3.36(1) of the <i>Environmental Planning and Assessment Act 1979 (Attachment G)</i> whether the draft LEP reflects the proposed changes.</p> <p>Council confirmed on 10/09/2021 that it approved the draft and that the plan should be made <b>(Attachment H)</b></p>	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details
Parliamentary Counsel Opinion	On 14/09/2021, Parliamentary Counsel provided the final Opinion that the draft LEP could legally be made. This Opinion is provided at <b>Attachment PC</b> .	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No, see below for details

## 7 Recommendation

It is recommended that the Minister's delegate as the local plan-making authority determine to make the draft LEP under clause 3.36(2)(a) of the Act because:

- The draft LEP has strategic merit being consistent with the Western City District Plan.
- It is consistent with the Gateway Determination.
- Issues raised during consultation have been addressed, and there are no outstanding agency objections to the proposal.



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Assessment officer

Cho Cho Myint

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## 7.1 Attachments

Attachment	Title
Report	Plan finalisation report
A	Planning proposal
B	Gateway determination
C	Council officer's report
D	Council's letter to the Department
E	Updated Traffic Impact Assessment
F	Draft Site Specific DCP
G	Section 3.36(1) consultation with Council
H	Council comments on draft LEP
I	Council's Assessment of submissions
J	Peer Review of Traffic Impact Assessment
K	TfNSW submission
L	Liverpool Council submission
M	Proponent's response to Council's refusal
N	TfNSW email response to DPIE
Report	Plan finalisation report
PC	Parliamentary Counsel's Opinion
Maps	Draft LEP maps
LEP	Draft LEP
MCS	Map cover sheet
Council	Letter to Council advising of the decision