

BRIEFING DETAILS

BRIEFING DATE / TIME	Monday, 26 February 2024, 11:30 to 12:30am
LOCATION	MS teams

BRIEFING MATTER(S)

PPSSWC-372 – Fairfield – DA 294.1/2023 – 17 Lupin Avenue, Fairfield East - Demolition of existing structures, tree removal and construction of a residential flat building containing thirty-nine (39) affordable housing dwellings over basement car parking containing 40 parking spaces and associated landscaping in accordance with State Environmental Planning Policy (Housing) 2021.

PANEL MEMBERS

IN ATTENDANCE	Justin Doyle (Chair), David Kitto, Louise Camenzuli, Hugo Morvillo, Kevin Lam
APOLOGIES	NIL
DECLARATIONS OF INTEREST	NIL

OTHER ATTENDEES

COUNCIL ASSESSMENT STAFF	Tia Mills, Liam Hawke, Sunnee Cullen
APPLICANT	Gareth Bird
PLANNING PANELS SECRETARIAT	Sharon Edwards, Renah Givney, Tim Mahoney

KEY ISSUES DISCUSSED

The Council and the Applicant reported a minor difference of opinion about how the development standard for FSR is relevantly to be applied, with the Council's calculation being in the order of 2.19:1 and the Applicant's being approximately 2.16:1 (based on Council's own measurements and application of the exclusions). That discrepancy is unlikely to be determinative in the Panel's view.

A difference of opinion between the Council and the Applicant remains in relation to the application of clause 4.4A of Fairfield LEP which (as noted during the preliminary briefing) allows for a staggered FSR bonus dependent upon the length of the "street frontage" that the DA site has.

Clause 4.4A reads relevantly (noting additional bonuses are available under the Housing SEPP):

- CI 4.4A(2) Despite clause 4.4, the maximum floor space ratio for a building on land to which this clause applies is as follows--
- (a) if the building has a street frontage of less than 30 metres--0.8:1,
 - (b) if the building has a street frontage of at least 30 metres, but less than 45 metres--

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- (i) 1.25:1 if the site has a depth of less than 40 metres, or
- (ii) 1.5:1 if the site has a depth of at least 40 metres,
- (c) if the building has a street frontage of at least 45 metres--
 - (i) 1.5:1 if the site has a depth of less than 40 metres, or
 - (ii) 2:1 if the site has a depth of at least 40 metres.

An issue arises because of the different ways in which the word “frontage” is used in the English language

The Statement of Environmental Effects reads relevantly:

“The subject site is a corner allotment that fronts Lupin Avenue (41.55m) and Belmore Street (41.29m), generating a total frontage of 82.84 metres.

The depth of the site from Lupin Avenue to the eastern boundary is 40.255 metres.

Given these dimensions, the applicable maximum floor space ratio is 2:1.

In total, the permitted FSR is 2.5:1, as an additional 0.5:1 is permitted under Clause 17 (1)(a)(i) of the Housing SEPP.

The total gross floor area of the development is 3,054m². The proposed development has a compliant FSR of 2.16:1. (refer to discussion below).”

A “frontage” is generally understood to be the presentation of a parcel of land to a particular street. A corner site such as the land to which the DA relates might be relevantly and correctly said to have ‘two street frontages’, with each respective frontage presenting to one of the two streets making the corner. Indeed, where it discusses required setbacks the Applicant’s own Statement of Environmental Effects refers to the site’s primary frontage, and separately to its secondary frontage.

That would seem to be inconsistent with their being a single street frontage exceeding 45 metres in length. If that sense of the word “frontage” were to be adopted in the application of clause 4.4A, the Applicant’s calculation of FSR would be wrong, and the development would be prohibited unless a cl 4.6 variation was properly made and upheld by the Panel.

However, it is also possible to refer to a “combined frontage” or “total frontage”.

In the interpretation of a provision in a planning instrument, context and the evident purpose is encouraged by s 33 of the Interpretation Act (NSW) 1987 and numerous cases such as *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at [78] *Hecar Investments No 6 Pty Limited v Lake Macquarie Municipal Council* (1984) 53 LGRA 322 at (323). Reliance on the use of the singular rather than the plural in a statutory provision must also be approached cautiously noting s 8 of the Interpretation Act.

In its preliminary briefing note, the Panel suggested that the Applicant consider preparing a cl 4.6 variation request to address what the panel saw as an available reading of clause 4.4A (while necessarily reserving its position as to whether such a cl 4.6 request would be accepted and whether it is required).

That has now been done and Council is considering the merits of the variation request.

Council’s urban designer has queried whether the proposal meets all relevant requirements of the ADG and Council’s DCP.

One issue raised by Council’s urban designer in that regard is the plan to locate all communal open space on the roof. The ADG also requires ground floor communal open space. The Panel is not aware of objectives or design guidance in the ADG which expressly nominates where communal open space is to be located, but notes that Objective 4H-1 requires active communal open space to be located 3 metres from

bedrooms for reasons of acoustic privacy. The location of open space will be assessed on merit noting that the amenity offered by communal open space adjacent to a main road is also constrained.

The appropriate application of cl 7.4.3 of the DCP to regulate setbacks from streets was also discussed. Under that clause the 6m front setback area of a Residential Flat Building development to a frontage is not to be used for any purpose other than landscaping. Development is permitted to within 3 metres of any secondary street frontage for no more than 25% of the secondary street frontage only.

Those numerical and pictorial controls are not strictly met by the proposal. These images show the relevant details:

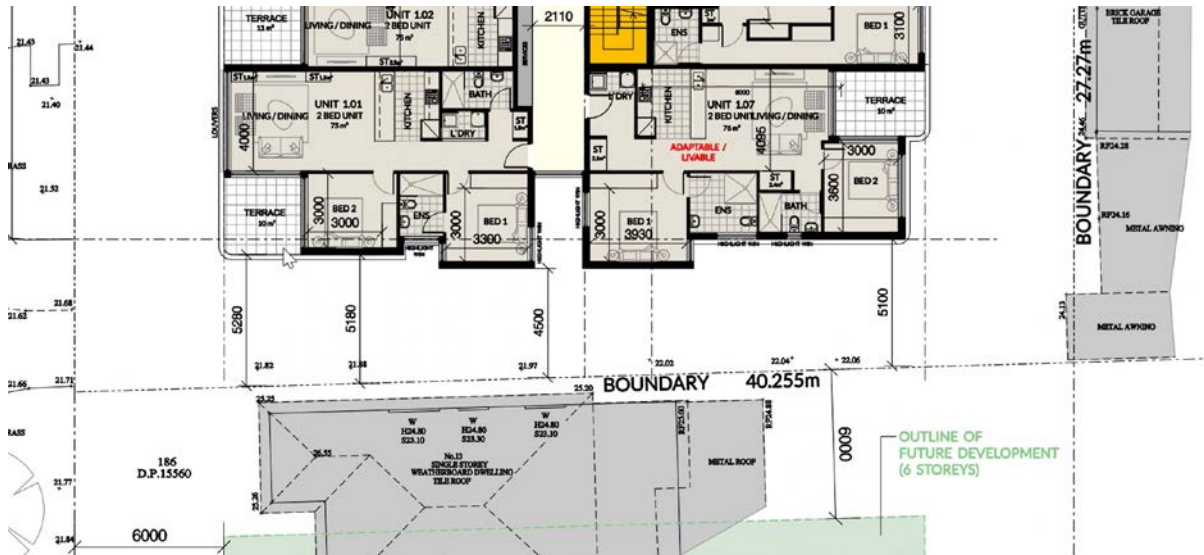


Figure 1 - first floor

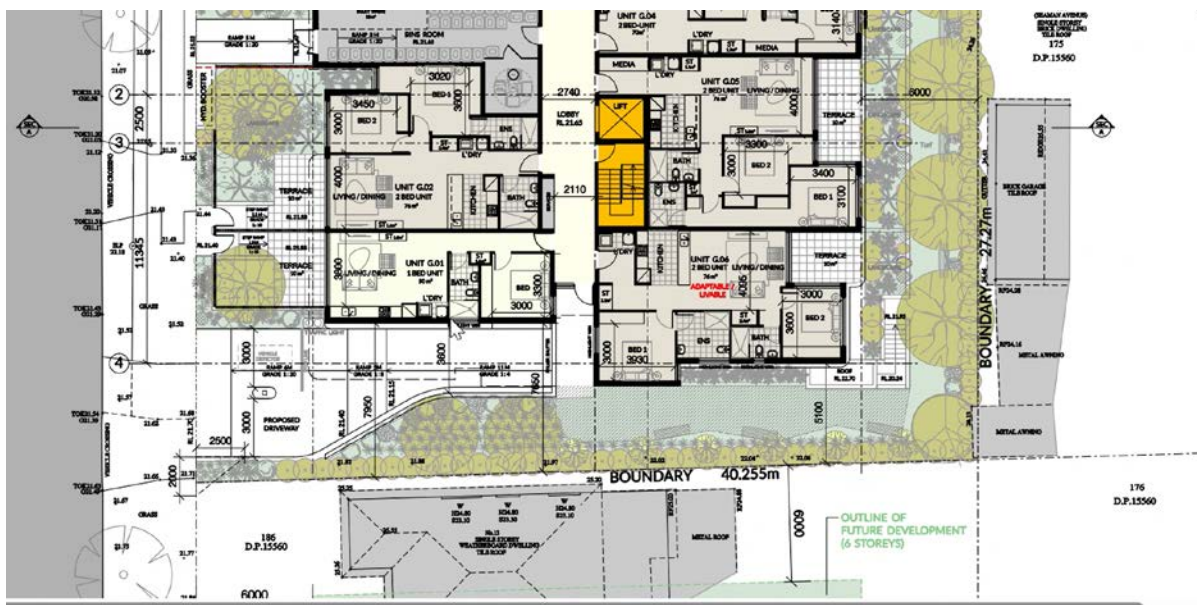


Figure 2 - ground floor

Those details can be compared to the guidance in the ADG:

Minimum required separation distances from buildings to the side and rear boundaries are as follows:

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Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

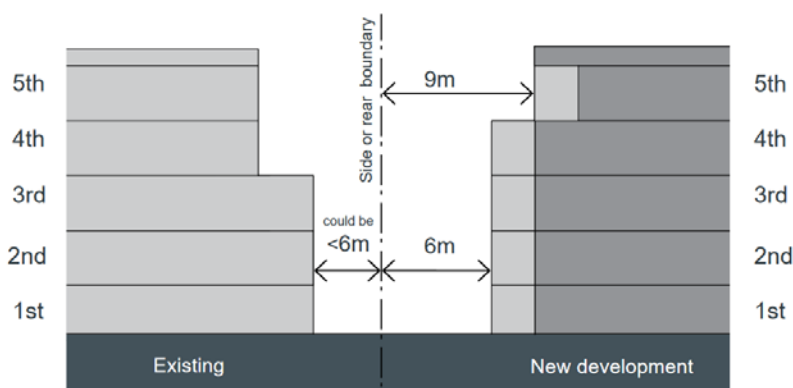


Figure 3F.3 New development adjacent to existing buildings should provide adequate separation distances to the boundary in accordance with the design criteria

Council has suggested that one way to ameliorate the non-compliances with the encouraged setbacks and associated privacy issues would be to relocate the basement driveway under the building to open up the adjacent setback for landscaping and tree planting.

The Applicant indicated that it was willing to consider that change, and the Panel encouraged discussions to that end.

The Panel is mindful that 8 public submissions were received, and that the proposal would allow for 100% of the site to be managed for affordable housing.