

6 December 2024

Attention: Mr L Hawke, Coordinator – Development Planning
Fairfield City Council
86 Avoca Road
Wakeley NSW 2176

Dear Mr Hawke,

RE: AMENDED PROPOSAL
DEVELOPMENT APPLICATION NO: DA 294.1/2023
ADDRESS: 15-17 LUPIN AVENUE & 82 BELMORE STREET, FAIRFIELD EAST

Development Application No: DA 294.1/2023 seeks approval for *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* at 15-17 Lupin Avenue & 82 Belmore Street, Fairfield East which is currently under the assessment of Fairfield City Council ('Council').

The correspondence within this letter has been prepared in response to a Request for Additional Information sent by Council dated 5 June 2024 (herein referred to as "the second RFI"), as well as subsequent emails and discussions associated with potential design amendments. The applicant requests that Council accept the amended application pursuant to clause 37 of the *Environmental Planning and Assessment Regulation 2021*. Accompanying the amended application is the following:

1. Amended Architectural Plans prepared by Loucas Architects, including:
 - a. Site plan;
 - b. Floor plans;
 - c. Elevations;
2. Amended Traffic Impact Assessment, prepared by TTPP Traffic Engineers.
3. Amended Civil Design prepared by Jones Nicholson
4. Amended Landscape Design prepared by Botanique Landscape Design
5. Amended Section 4.6 Variation request (floor space ratio), prepared by Creative Planning Solutions.

Note also that an updated urban design report was submitted to Council previously which maintains the same merits as those previously provided.

For simplicity, rather than responding to each issue raised in the second RFI, this letter focuses on the design changes and how they have improved the development. Note that the discussion focuses on changes made to the plans submitted in February, and therefore does not account for any concept plans provided to Council during the intervening period.

Floor space ratio

The architectural plans have been amended resulting in a lowered gross floor area (GFA) and floor space ratio (FSR). The FSR of the previous proposal was 2.19:1 (GFA of 3,103m²), whilst the amended proposal is provided with an FSR of 2.07:1 (GFA of 2,929m²).

Changes that have contributed to the FSR reduction are listed below:

- The shifting of the building envelope and the changes to the ground floor dwelling mix (each discussed in subsequent points) has had the net effect of reducing floor space.
- Second bathrooms have been deleted from all but one of the 2-bedroom units, enabling the internal area of many of the units to be reduced to 70m². The previous proposal contained 29 (of 30) 2-bedroom apartments with second bathrooms, whereas the current proposal provides only 1 (of 27) 2-bedroom apartments with a second bathroom.
- The rooftop room is no longer enclosed and is not provided as floor space.
- The lobby areas have been narrowed.

Setting aside the disagreement as to the appropriate FSR (2:1 according to Council, and 2.5:1 according to Bartier Perry legal advice, each accounting for the 0.5:1 affordable housing bonus), the applicant maintains that there is sound logic in the variation that is proposed. To emphasise this logic and account for amendments made to *State Environmental Planning Policy (Housing) 2021* ("the Housing SEPP), an additional discussion is presented in pages 11-12 of the variation request, which is modified and reproduced below:

- (a) The intent of section 4.4A of *Fairfield Local Environmental Plan 2013* (FLEP 2013) appears to be to provide higher permitted FSR as the frontage and width of properties increase.
- (b) If either frontage were increased from ~41m to 45m, it is understood that Council would accept that the FSR is 2.5:1, even if the lot size were unchanged (also noting the decision within *Sun Life Dior Pty Ltd ATF Sun Life Dior Unit Trust v Fairfield Council* [2020] NSWLEC 1087).
- (c) Conversely, if either of the frontages were reduced to 30m, and the maximum depth reduced to 40m, the FSR would not change, and Council would maintain that the FSR is 2:1 (which is agreed to by the applicant). This would also apply to a midblock property that is not located at a corner.
- (d) Given the apparent intent of the control, there must be an acceptance that an FSR of somewhere between 2:1 to 2.5:1 is reasonable for the subject site, especially when:
 - i. the proposed FSR is much closer to 2:1 than it is to 2.5:1,
 - ii. the site is provided with two frontages, each that are very close to meeting the 45m threshold which would increase the FSR to 2.5:1,

- iii. the overall area required for setbacks is less than that which would be required for a midblock lot, and
- iv. the proposal provides 100% affordable housing, with 50% affordable housing being sufficient to receive the FSR bonus.

In relation to the final point above, it is important to note that recent changes to the Housing SEPP are also relevant to this discussion, and strengthen the rationale for the variation. The amended version of the SEPP, which does not apply to this development application, provides a proportionately higher FSR bonus for a proportionately lesser provision of affordable housing. An affordable housing component of only 15% would give a bonus of 30%, and this is the maximum bonus that can be applied.

If a 2:1 baseline FSR applied, then under the new SEPP, the bonus would increase to 0.6:1, giving a total FSR of 2.6:1, which is higher than the 2.5:1 put forward by Bartier Perry. However, adopting the position of Council, the baseline FSR would be 1.5:1, which would provide a reduced FSR of 1.95:1.

Under the current version of the SEPP, points (a), (b), and (d)(iv) above could be rewritten as follows:

- If either frontage were increased from ~41m to 45m, it is understood that Council would accept that the FSR under the amended Housing SEPP is 2.6:1, even if the lot size were unchanged.
- Conversely, if either of the frontages were reduced to 30m, and the maximum depth reduced to 40m, the FSR would not change, and Council would maintain that the FSR under the amended Housing SEPP is 1.95:1 (which would be agreed to by the applicant). This would also apply to a midblock property that is not located at a corner.
- The proposal provides 100% affordable housing, with 15% affordable housing being sufficient to receive the 30% FSR bonus.

Therefore, the starkness of the impact of variations in the site frontage and width is exacerbated when accounting for the amended Housing SEPP, and the anomalies created by section 4.4A are not explained by any town planning rationale.

Shifting of building envelope

The amended proposal has sought to shift the mass of the building towards the corner, away from the southern and eastern boundaries. Corner units are now provided with balconies that wrap around the corner, and respond to the geometry of the intersection. This has reduced the setback to Lupin Avenue from the 5.8m dimension previously proposed to 3.2m to the balcony and 4.91m to the wall beyond. A 5.8m dimension to Lupin Street is retained to the southern end of the building. The amendment also provides differing setbacks to the western end of the Belmore Road frontage, with the previously proposed setbacks of 4.2m - 4.5m now ranging from 3.9m - 4.8m; and this has the effect of increasing the contrasting setbacks between the corner and the eastern part of the northern frontage.

The previous proposal provided a southern setback that varied between 4.5m and 6m. The shifting of the building massing has enabled a minimum 6m setback to be applied to the entirety of the southern façade. An increased setback of 7.29m has been provided to the eastern end of the southern façade, in order to

enable increased morning solar access through to land adjoining to the south. The changes to the setbacks have been provided to directly respond to Council's concerns regarding overshadowing to the south.

Similarly, the previous proposal provided a southern setback of 6m to the lower four floors and 9m to the top two floors. The shifting of the building massing has enabled a minimum 7.64m setback to the eastern façade, with an increased setback of over 8m provided to the southern end of the eastern façade, in order to enable increased morning solar access through to land adjoining to the south.

It is important to note that the Fairfield Citywide Development Control Plan 2013 (FDCP) allows for the following setbacks:

- Primary frontage (shorter length) – Any part of the development (except landscaping and retaining walls) must be located within 1.5 metres of the average existing front street setback.
- Secondary frontage (longer length) – 6m, but reduced to 3m for 25% of the secondary frontage.

The controls permit highly variable setbacks, with dimensions as low as 3m. The controls also permit a setback reduction to 25%, and this applies to one of the *frontages*, as opposed to one of the *buildings*. Putting these observations aside, the building has been sited according to the particular characteristics of the site and adjoining properties. The site is provided with the unusual characteristic of having two frontages that are approximately equal in length. Moreover, the street frontages meet at an acute angle, providing an opportunity to emphasise the corner without providing a dominant presence to the intersection. Therefore, the proposal seeks to provide greater setbacks to the east and southern boundaries, and to the outer edge of each frontage, whilst providing narrow setbacks to emphasise the corner. Any non-compliance created by this approach is reasonable, having regard to the setbacks provided elsewhere that are in excess of that prescribed by the controls.

Ground Floor changes to Dwelling Mix

The ground floor changes have amended the dwelling mix to reduce the proportion of 2-bed apartments, and increase the proportion of 1-bed apartments. The previous dwelling mix, and the proposed dwelling mix are each shown below.

Dwelling Mix - Feb 24 Design

Type	1-bed	2-bed	3-bed	Total
Ground	1	4	1	6
Level 1	1	6	0	7
Level 2	1	6	0	7
Level 3	1	6	0	7
Level 4	1	4	1	6
Level 5	1	4	1	6
Total	6	30	3	39
Proportion	15%	77%	8%	100%

Dwelling Mix - Dec 24 Design

Type	1-bed	2-bed	3-bed	Total
Ground	4	1	1	6
Level 1	1	6	0	7
Level 2	1	6	0	7
Level 3	1	6	0	7
Level 4	1	4	1	6
Level 5	1	4	1	6
Total	9	27	3	39
Proportion	23%	69%	8%	100%

The changes to the ground floor have also enabled a greater provision of landscaping to each of the street frontages.

Basement

The development now provides a single level of basement parking, with the lower basement level deleted from the proposal. Refer to the amended Traffic Impact Assessment for further information. Despite the changes, the proposal will comfortably retain compliance with the minimum deep soil requirements prescribed by the Apartment Design Guide, with a deep soil provision of 26%.

Should you have any questions on the above, please do not hesitate to contact the undersigned.

Yours sincerely,



Brendon Clendenning
Principal Planner – Creative Planning Solutions Pty Limited