

## Section 4.6 Exceptions to development standards: Written variation request – Height of Buildings

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Construction of a new residential flat building containing thirty-nine (39) dwellings, basement car parking to Chapter 2, Part 2, Division 1 – In-Fill Affordable Housing of *State Environmental Planning Policy (Housing) 2021*

15-17 Lupin Avenue & 82 Belmore Street, Fairfield East  
Lot 185 in DP 15560, Lot 1 & 2 DP 1154467

Prepared for: BlueCHP

Project No: E867

Date: August 2023

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If this document has not been signed for review and approval then it is deemed a preliminary draft.



Prepared by: Tim Campelj – Senior Planner



Reviewed by: Brendon Clendenning – Principal Planner



Authorised by: Daniel Govers – Director

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**Section 4.6 Written Request to Vary a Development Standard  
Fairfield Local Environment Plan 2013**

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<b>Applicant's name</b>	BlueCHP
<b>Site address</b>	15-17 Lupin Avenue & 82 Belmore Street, Fairfield East (Lot 185 in DP 15560, Lot 1 & 2 DP 1154467)
<b>Proposal</b>	Construction of a new residential flat building containing thirty-nine (39) dwellings, basement car parking to Part 2, Division 1 – <i>In-Fill Affordable Housing of State Environmental Planning Policy (Housing) 2021</i> .
<b>Environmental Planning Instrument</b>	<i>Fairfield Local Environmental Plan 2013</i>
<b>Development standard to be varied</b>	Section 4.3(2) – Height of buildings

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Creative Planning Solutions (CPS) has prepared this report on the behalf of our client (client), BlueCHP, as part of a Development Application to Fairfield Council (Council).

Contained within this report below is the written request relating to the proposed variation to Section 4.3 of *Fairfield Local Environmental Plan 2013* (FLEP 2013) in accordance with the provisions of Section 4.6 of FLEP 2013. This written request relates to plans prepared by Loucas Architects that are submitted to Council as part of a development application package.

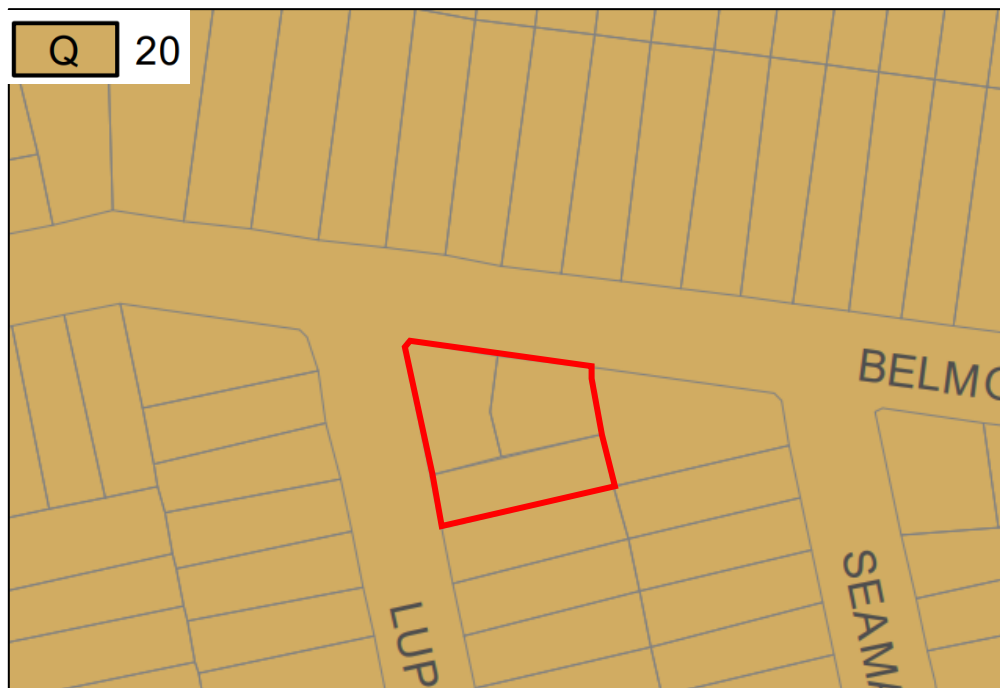
### Details of development standard sought to be varied

Section 4.3 of FLEP 2013 prescribes the maximum height of buildings for land to which the plan applies. The relevant provisions of section 4.3 are reproduced below:

#### **4.3 Height of buildings**

- (1) *The objectives of this clause are as follows—*
  - (a) *to establish the maximum height for buildings,*
  - (b) *to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*
  - (c) *to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
  - (d) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
  - (e) *to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*
  - (f) *to allow adequate natural light and ventilation between dwellings and sufficient separation for acoustic and visual privacy.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings Map (**Figure 1**) prescribes a maximum building height of 20m to the subject site.



**Figure 1:** Extract of the FLEP 2013 height of buildings map, with the subject site identified by red border.

**Source:** [legislation.nsw.gov.au](http://legislation.nsw.gov.au)



Figure 2: An extract of the west elevation, showing the proposed development as viewed from Lupin Avenue, with the 20-metre height plane depicted.

Source: Loucas Architects, 2023



Figure 3: An extract of the north elevation, showing the proposed development as viewed from Belmore Street, with the 20-metre height plane depicted.

Source: Loucas Architects, 2023

The proposed development has a maximum proposed height of 22.35m. This non-compliance results in a 11.18% variation to the development standard.

As illustrated within the figures above, the design seeks to breach the building height, being the communal room, communal open space and the lift overrun and stairwell.

#### **Section 4.6 Exceptions to Development Standards – Fairfield Local Environment Plan 2013**

Section 4.6 of the FLEP 2013 is the mechanism by which the consent authority is able to grant consent to a development despite a non-compliance(s) with a prescribed development standard. Section 4.6 is reproduced below:

- (1) The objectives of this clause are as follows—*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless—*
  - (a) the consent authority is satisfied that—*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) the concurrence of the Planning Secretary has been obtained.*
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider—*
  - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*

- (b) *the public benefit of maintaining the development standard, and*
  - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4,*
  - (ca) *clause 5.5*

**Note:** The development application does not propose a variation to any of the provisions referred to within section 4.6(8).

### **The statutory obligations of the applicant and Council**

The authority established within *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, provides that a section 4.6 variation need not establish that a development containing a variation provides a better or even neutral outcome for a development site compared with that which would be provided by a compliant development.

In light of this judgement, it is also necessary to distinguish between the obligations of the applicant, and the obligations of Council. The applicant is required only to address the matters required by section 4.6(3). Note however that for completeness and to assist Council in its assessment, this variation request has addressed section 4.6(3) and section 4.6(4). Given the inevitable overlap between these matters, this request should be read in its entirety as generally fulfilling the applicant's obligations as prescribed by section 4.6(3).

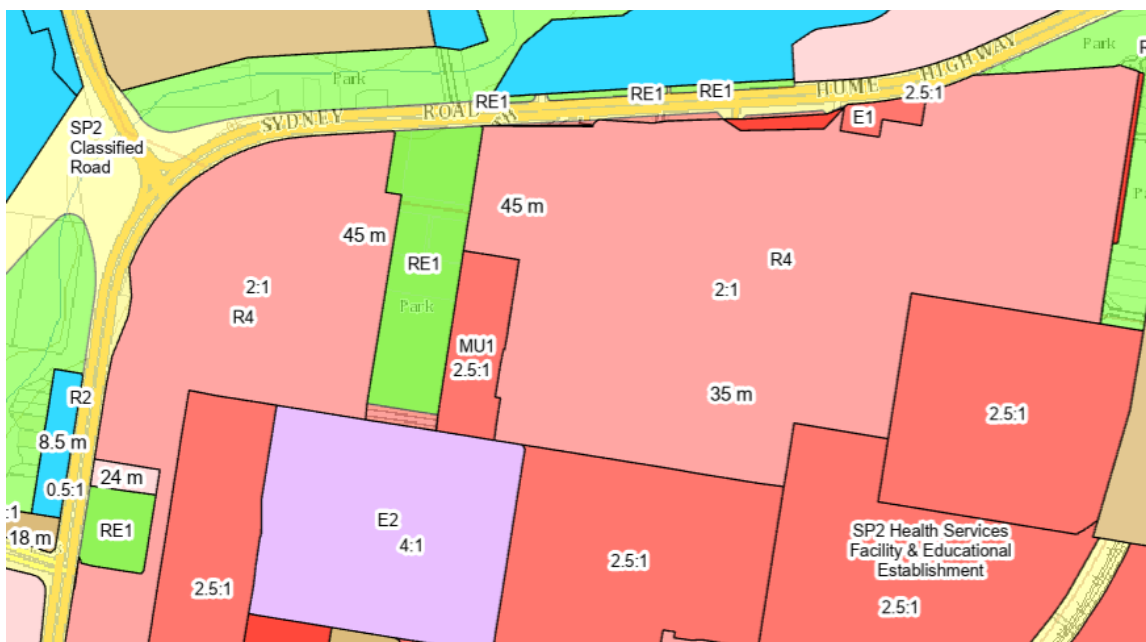
**Section 4.6(3) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standard**

Compliance with the maximum height of buildings development standard has been determined to be unreasonable and unnecessary in the circumstances of the case, and the following outlines the environmental planning grounds for the proposed variation:

1. Correlation between building height and floor space ratio

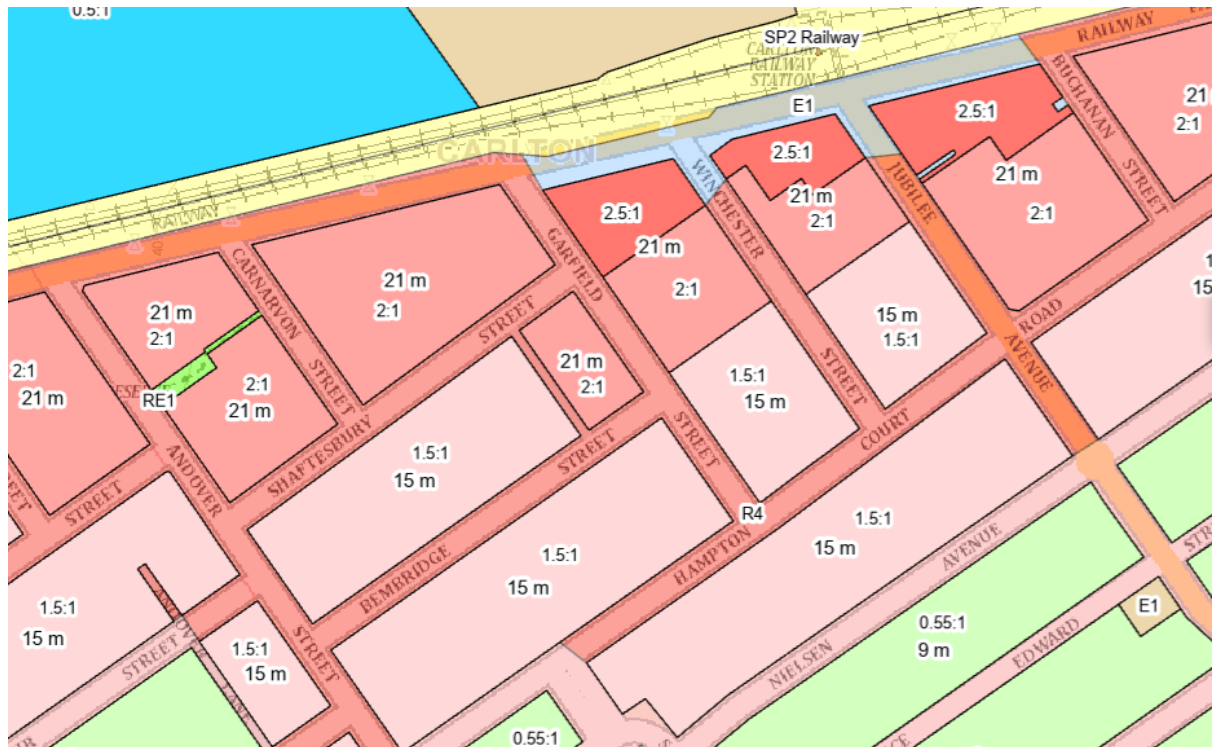
The subject site and surrounding land within the R4 zone are affected by a maximum floor space ratio (FSR) which varies according to the characteristics of the site as described within section 4.4A of FLEP 2013. The lowest maximum FSR that is permitted by section 4.4A is 1.25:1 and the highest FSR that is permitted by section 4.4A is 2:1. The subject site and surrounding land are affected by a maximum building height of 20m, and unlike FSR, the building height limit does not vary based upon the characteristics of the land. Therefore, irrespective of the FSR that applies, all surrounding land within the R4 zone is affected by a maximum building height of 20m.

A 20m height limit is relatively low for land affected by an FSR of 2:1. In neighbouring local government areas higher FSR limits apply, noting the examples shown within the Liverpool and Georges River LGAs that are shown within the images below.



**Figure 4:** Land within Warwick Farm affected by Liverpool Local Environmental Plan 2012, lying within the R4 zone, with a prescribed FSR of 2:1, and a prescribed building height of 45m

Source: [planningportal.nsw.gov.au/spatialviewer](http://planningportal.nsw.gov.au/spatialviewer)



**Figure 5:** Land within Carlton affected by Georges River Local Environmental Plan 2021, lying within the R4 zone, with a prescribed FSR of 2:1, and a prescribed building height of 21m

Source: [planningportal.nsw.gov.au/spatialviewer](https://planningportal.nsw.gov.au/spatialviewer)

Whilst there is nothing illegitimate about the maximum height of buildings that applies to the site, it is relevant to this variation request that the maximum height of buildings that applies is *relatively* low, for land otherwise affected by a similar statutory planning regime.

To reiterate, unlike the examples given above, this maximum building height applies to land that is affected by a floor space ratio ranging from 1.25:1 to 2:1, meaning that the highest FSR permitted is 60% higher than the lowest FSR permitted on the land.

It stands to reason that at the higher end of the FSR scale given within section 4.4A of FLEP 2013, there is greater pressure on achieving compliance with the height of building standards. In addition to the developments that did not achieve compliance with the height of buildings standard despite achieving compliance with the FSR standard (discussed later in relation to point no.3), there are further developments where compliance was only narrowly achieved (i.e., proposed height of 20m), and where FSR was substantially below that within the proposed development. For example:

- A six storey residential flat building at 7-11 Weston Street, Fairfield, approved by the Land and Environment Court on 28 February 2020. The approved building height is 20m and the approved FSR is no higher than 1.5:1. This is the subject of *Sun Life Dior Pty Ltd ATF Sun Life Dior Unit Trust v Fairfield Council* [2020] NSWLEC 1087, referred to within the legal advice provided by Bartier Perry and contained within the development application package.
- A six storey mixed use development at 38A Station Street, Fairfield, approved on 16 November 2022 (DA 286.1/2021). The approved building height is 20m and the approved

FSR is 1.92:1, noting that non-residential elements would typically be expected to contribute to a higher FSR, as private open space areas are not required.

As the development is for the purposes of affordable housing, pursuant to section 17(1)(a)(i) of the Housing SEPP, the development is subject to an additional floor space ratio of 0.5:1 above the maximum permitted by FLEP 2013. This takes the FSR permitted at the site to 2.5:1, which is double the lowest minimum FSR prescribed by section 4.4A. A 20m height limit is a very low height limit for land whereby 2.5:1 FSR is permitted, including for which the compliant FSR of 2.19:1 is proposed.

## 2. Affordable housing and development standards

The additional 0.5:1 of FSR permitted by the Housing SEPP is providing in order to achieve identified town planning objectives. Section 3(b) of the Housing SEPP identifies one of the 8 principles of the policy as seeking to encourage *“the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability”*.

Similarly, section 1.3(b) of the *Environmental Planning and Assessment Act 1979* (“the Act”) identifies one of the 10 objects of the Act as seeking *“to promote the delivery and maintenance of affordable housing”*.

Thus, the provision of an additional FSR of 0.5:1 is targeted towards meeting identified town planning purposes. Residential flat buildings typically only contain affordable housing for either of two reasons: if the building is owned and operated by an affordable housing provider, or if a commercially-minded developer seeks to maximise yield through the provision of affordable housing (albeit for a temporary period). In the former instance, the provision of affordable housing is greater than the additional FSR allowed by the Housing SEPP, whereas in the latter instance, the provision of affordable housing is often no more than the minimum required to benefit from the additional FSR. It is evident that the former instance provides a greater contribution to the overall affordable housing stock than the latter, and therefore better meets the above identified town planning goals.

Irrespective of the reasons for reliance on the additional FSR, the maximum floor space ratio that is given by the Housing SEPP should not be interpreted solely as a developer incentive that is able to be exploited by developers. It sets a variable maximum floor space ratio based upon certain preconditions, in the same way that section 4.4A of FLEP 2013 sets a maximum floor space ratio based upon a different set of preconditions. It legitimately sets different rules for developments that accommodate occupants of certain demographics.

Given that the height of buildings permitted on the land is relatively low when correlated with the FSR that is permitted, the provision of additional FSR, permitted to meet identified town planning goals, should be expected to create further pressure on the capacity to comply with the height of buildings development standard.

### 3. Alternative building envelope

The site is located at the south-west corner of the intersection of Lupin Avenue and Belmore Street and this presents particular opportunities for accommodating the additional floor space ratio on the site. The floor plate at each level seeks facades that are parallel to each of the street boundaries, with part of the building mass located towards the corner, so as to both emphasise the intersection and to site the building away from neighbouring properties.

The driveway is proposed towards the southern rear boundary where amenity would be low, with an articulated southern façade is provided so as to maximise solar access to the southern adjoining property and to create visual interest.

A remaining key factor to consider in the siting of the building is the location of the communal open space. Rooftop communal open spaces are preferred per objective 4N-2 of the *Apartment Design Guide* and corner allotments are ideal locations for rooftop communal open spaces, particularly in instances where a northern aspect is available. Further, there are notable challenges to the provision of communal open space within the eastern side setback, given the site narrows from west to east providing a relatively small area for communal open space to the east. The rooftop communal open space therefore provides the most appropriate outcome. It provides excellent amenity given the generous aspects and solar access available.

If the communal open space were proposed within a ground floor location, it would be provided with inferior dimensions, solar access, and outlook. In addition, it would require that additional floor space permitted by the planning controls be located either in a location which reduces boundary setbacks, or results in the addition of a further storey. A reduction in boundary setbacks should not be preferred as it would create a number of streetscape and amenity issues. Similarly, an additional storey used to accommodate apartments would create a far greater impact on the perceived height of the development.

Conversely, the communal room and rooftop access are able to be centrally located within a small floorplate, preventing direct views into nearby private open space areas and habitable room windows. The rooftop area enables the provision of a generous space occupying the majority of the roof area, but providing very little additional contribution to the proportion of the building that exceeds the height limit. The rooftop area also enables the provision and maintenance of rooftop edge planting that would be visible from nearby vantage points, softening the appearance of the development and obscuring the non-compliant elements. Being centrally located, there will be minimal visual impact of these facilities when viewed from the public realm and adjoining properties, as depicted in the image below.



**Figure 6:** Extract Render of the proposed development as viewed from the opposite corner of the intersection, noting that edge planting is visible, whereas the rooftop communal areas are not.

**Source:** Design Verification Statement, Loucas Architects

Noting the sort of development that is envisioned by the FLEP 2013 and with regard to the above, to enforce compliance would result in a smaller building, such an alternative would have detrimental outcomes that include:

- Reducing the number of dwellings; noting all dwellings are proposed as affordable housing and a reduction will have significant and adverse social outcomes, and
- A lower apartment building would likely occupy a larger building footprint to offset some of the loss of dwelling yield. Issues with a lower building with a wider footprint are as follows:
  - Such a design will require deeper apartments; this would subsequently lower natural light penetration and levels of internal amenity,
  - A larger footprint would reduce the side and rear building setbacks, which will subsequently reduce deep soil area, and result in unreasonable amenity impacts of adjoining properties.

With regard to the above, an alternative building footprint incorporating these amendments would have poorer social and amenity outcomes.

#### 4. Social benefits and dwelling yield

The Fairfield Local Housing Strategy 2022 ('FLHS') has found that *'the waiting list for social housing within the City is in excess of 15 years, with homelessness experienced by humanitarian entrants hidden and not easily quantifiable. In addition, the lack of affordable housing also results in overcrowding and negative impact of mental health and wellbeing.'*

As the proposed development is to be occupied by affordable housing, dwelling yield is critical to maximising the social benefit to be gained by such a project. This is in line with Planning Priority 2 of the FLHS which requires Council to *'Deliver greater housing diversity and affordability to meet the changing needs of the community'*.

Given the need for affordable housing within the Fairfield LGA, as referenced in the FLHS (specifically Planning Priority 2 and its associated actions), it is submitted that compliance with the development standard in this instance would be unreasonable and unnecessary. Given that the relatively minor breaches would have minimal adverse impact on the surrounding area, in particular the adjoining southern and eastern properties, for the consent authority not to support the minor non-compliance with building height standard, it would:

- Reduce the amount of housing available for the vulnerable members of the community and key workers; and/or
- Likely reduce the amenity (i.e., communal amenities) that could otherwise be afforded to the proposed apartments.

## 5. Acceptance of similar variations

Lift overruns and rooftop communal open space are commonly associated with variations to the height of buildings development standard, given that associated taller (i.e., non-compliant) elements are typically centrally located and they are often not visible from the public domain. This has been acknowledged in the assessment of previous development applications, by Council staff, local and regional panels and the Land and Environment Court. Examples of similar height variations within the Fairfield LGA are described within Table 1 below.

**Table 1 – Examples of similar height variations within the Fairfield LGA**

Application Details	Details of variation
DA 176.1/2021 47-53 Pedestrian Mall Villawood Approved on 21 December 2021	<i>The application proposed a variation to the maximum building height standard stated in Clause 4.3 of the FLEP 2013. The 12% variation is as a result of the lift overrun and landscaping structures located on the rooftop level communal open space area.</i>  Source: Services Committee Agenda – 8 February 2022
DA 55.1/2019 82-86 Hamilton Road, Fairfield Approved on 23 June 2021	<i>The proposal seeks to exceed the 20m maximum height of building standard prescribed by Clause 4.3 of the LEP, by a maximum of 400mm, equal to a 2% variation. The variation arises from the lift overrun and mechanical ventilation units only and not the rest of the building.</i>  Source: Variations Register – April/June 2021
DA 509.1/2019 25 Nelson Street, Fairfield Approved on 18 February 2021	<i>The proposal seeks to exceed the 20m maximum height of building standard prescribed by Clause 4.3 of the LEP, by a maximum of 1800mm, equal to 9% variation. The variation arises from the lift overrun and roof parapet only.</i>  Source: LPP Assessment Report – 18 February 2021

<p>DA 333.1/2018 56 Quarry Road, Bossley Park Approved on 18 May 2020</p>	<p>a) <i>The height of the proposal exceeds the 8 metre development standard applying to the site by 2.742 metres which is equal to 34%, but the exceedance relates to a small part of the new building limited generally to the lift overrun.</i></p> <p>b) <i>While one element of the building is 3 storeys, the proposed lower ground floor of the building is partly excavated. The completed building will therefore present as a 2 storey building when viewed from the existing streetscape and adjoining residential properties.</i></p> <p>Source: Regional Panel Statement of Reasons – 18 May 2020</p>
<p>DA 353.1/2017 259-261 Cabramatta Road West, Cabramatta Determined on 30 January 2019</p>	<p>21. <i>The planning experts agree that, pursuant to cl 4.3 of the FLEP 2013, the maximum height standard applied to the site is 10 m, and that the height non-compliance based on the amended plans is 1.955 m. The experts also agree that the non-compliance to the height standard relates to the lift overrun and shading structures associated with the roof outdoor play area, a requirement to the functionality of the proposed child care centre.</i></p> <p>31. <i>I accept that compliance to the height standard, pursuant to cl 4.3 of the FLEP 2013, based on the proposed design of the building, is both unreasonable and unnecessary. This assessment is supported by the perceived lack of visibility in the streetscape, and impact to the amenity of surrounding buildings due to the set back of the proposed structures on the roof (that relate to the breach) and their limited areal significance.</i></p> <p>Source: <i>Lu Projects Pty Ltd v Fairfield City Council</i> [2019] NSWLEC 1021 (Appeal dismissed; however, merits of variation request accepted at [31]).</p>

## 6. Minimal impacts on the surrounding area

The areas of non-compliance are centrally located within the building footprint therefore ensuring the development would have no adverse and unreasonable impacts on the amenity of the surrounding sites and the public domain in terms of privacy impacts, excessive solar access reduction, view loss and adverse streetscape impact.

## 7. Character of the built form

The proposed building height is considered to be appropriate both for the site and the locality more broadly. On 18 December 2020, the land zone was amended to R4 High Density Residential Zone and the prescribed height of buildings was increased to 20 metres for the site and land bounded by River Avenue to the south, Tangerine Street to the north, Normanby Street to the west and Villawood to the west. Upon review of Council's online development application tracker, there were

no current or determined applications for a residential flat building (or similar) within this pocket of land.

Given the changes to the prescribed planning controls within the FLEP 2013, it is anticipated the characteristics will significantly alter and will be comprised predominantly of residential flat buildings. The development has sought to respond with the envisaged character of the immediate area by ensuring the bulk of the building is below the 20 metre prescribed height, and centralising the areas of non-compliance so that there will be minimal visual impact.

#### 8. Visual impact of the variation

Building elements located above the prescribed height standard are generally limited to rooftop structures including a communal room, communal open space and circulation elements such as the lift overrun and stairwell. Each of these elements have been deliberately recessed to the centre of the building footprint in order to limit their visibility from the public domain.

The roof level itself is inset from the edges of the lower levels in order to increase separation from neighbouring dwellings to the south and east reducing visual impacts to these residences. Both street frontages are highly articulated, and upper levels along both street frontages are to be progressively stepped back from the corner; the height of areas closest to both street frontages are within the building height limit, thereby limiting impacts on the streetscape.

Furthermore, the highly articulated design of the building, and landscaped setting within which it is to be located, serve to minimise the visual impact of the additional building height. It is noted that substantial deep soil area, in excess of minimum requirements, is proposed within all boundary setback areas, in order to accommodate large trees that would filter and screen the development.

**Section 4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out,**

#### Consistency with objectives of the development standard

In the judgement within *Initial Action*, Preston CJ indicated that a consent authority only needs to be satisfied that an applicant has adequately addressed the matters within section 4.6(3), and that, pursuant to 4.6(4)(a)(ii), the development is consistent with the objectives of the standard and consistent with the objectives of the zone. Although not strictly required, this variation has addressed the reasons that the development satisfies 4.6(4)(a)(ii).

The objectives of the building height development standard, and a planning response to each demonstrating that such objectives would be satisfied are as follows:

*(a) to establish the maximum height for buildings,*

**CPS response:** The FLEP 2013 has established a maximum building height of 20 metres for the subject site.

*(b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are located,*

**CPS response:** The elements of the building that breach the 20 metre prescribed height limit are limited to the communal room and open space and circulation elements such as the lift overrun and stairwell. These elements are centrally located within the building footprint. The minimum setback of areas in breach to Lupin Avenue and Belmore Street are 13.76 metres and 13.71 metres respectively. Furthermore, the elements of non-compliance will not dominant the streetscape due to the seventh storey being well recessed from the storey below.

*(c) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

**CPS response:** The proposal has been designed to limit visual impacts through centrally locating the areas of non-compliance and being well recessed from the level below. The proposed setbacks of the communal facilities will ensure that these elements will not be visible from the adjoining properties and to maximise solar access afforded to existing properties and the public domain. The communal facilities are orientated to face towards Lupin Avenue and Belmore Street generate passive surveillance over the public domain. While the proposal will result in reduced solar access to neighbouring sites located immediately to the south of the subject site, these impacts are deemed reasonable given the stepped profile of the southern elevation and the site topography. Further, additional solar access impacts resulting from building elements located above the height limit are deemed negligible.

It is noted that building elements located above the height limit will not result in a loss of views.

*(d) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*

**CPS response:** The prescribed planning controls for the subject site were introduced in December 2020 essentially to promote high density development. The majority of the building is to be below the prescribed 20 metre building height requirement having regard for the desired future character of the locality. Whilst, there is a minor non-compliance to the height of buildings requirement, the design response of the communal facilities will limit the visual impact creating the appearance the building conforms with the 20 metre height limit.

*(e) to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*

**CPS response:** The extent of the building which is non-compliant with the 20 metre height of building requirement is the communal room, communal open space and the lift overrun and stairwell. The non-compliance will not unreasonably impact existing or future view corridors due to the existing context of the area and the extent of the non-compliance being centrally within the building footprint.

- (f) *to allow adequate natural light and ventilation between dwellings and sufficient separation for acoustic and visual privacy.*

An Acoustic Assessment prepared by Renzo & Tonin & Associates accompanies the development application. It was found that the development including the rooftop communal area will not have any unreasonable acoustic impacts on the adjoining dwellings. Sufficient setbacks are proposed from the rooftop to the eastern and southern boundaries ensuring there will not be a loss of visual privacy to existing dwellings adjoining the subject site. Shadow diagrams have been prepared by Loucas Architects which show the adjoining private open space will still receive sufficient sunlight.

**CPS response:**

**Consistency with objectives of the zone:**

The objectives of the R4 High Density Residential zone, and a planning response to each demonstrating that such objectives would be satisfied are as follows:

- *To provide for the housing needs of the community within a high density residential environment.*

**CPS response:** The proposal will deliver 39 dwellings as designated to affordable housing, high density residential development within an accessible area that provides for the housing needs of a diverse community including those with a lower-income and/or those experiencing financial and social disadvantage. The scale and nature of the development is consistent with that anticipated to be found within the future surrounding high-density residential environment.

- *To provide a variety of housing types within a high density residential environment.*

**CPS response:** The proposal will deliver a range of dwelling sizes in the form of one, two, and three-bedroom apartments within a high-density residential development, which is envisaged for the surrounding R4 zone. Furthermore, 100% of the dwellings are to be affordable housing. This supports the needs of the community in providing tangible benefits for residents, such as secure housing, and improved employment, educational and health outcomes.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

**CPS response:** The proposed development will not affect the capacity of surrounding allotments to provide services and/or facilities that would serve the daily needs of local residents.

- *To maximise opportunities for increased development on all land by encouraging site amalgamations.*

**CPS response:** The proposed development includes the amalgamation of three (3) separate allotments ensuring there is sufficient area to accommodate an increased density that is envisaged for the R4 zoned land.

In summary, irrespective of the height variation, the consent authority can be satisfied that the proposed development will satisfy the objectives of both the building height standard and R4 High Density Residential zone. The proposed development is therefore in the public interest.

### **Conclusion**

In summary, the proposal seeks to utilise the development potential afforded by the applicable development standards, including that given by the Housing SEPP. The relatively low building height standard and its relationship to the variable FSR given by section 4.4A of FLEP 2013, becomes readily apparent when accounting for the additional building height permitted by the Housing SEPP.

In order to meet identified town planning aims, the proposal seeks to maximise FSR on the site, and as a consequence, seeks to locate communal open space on the rooftop. The conditions of the site, at the south-western corner of an intersection, are entirely compatible with that arrangement, and the rooftop communal open space provides excellent amenity to the development, with minimal impact on neighbouring properties or on the streetscape.

To enforce compliance with the building height standard will reduce dwelling yields and associated affordable housing provision; any reduction to yield will also necessitate design changes that will likely result in reduced amenity given associated with the communal roof top facilities. Further, the proposed variation to the building height standard will have minimal adverse impact on the surrounding sites and the locality more broadly, and would not present to surrounding areas in a manner that would be inconsistent with the future character of the area.

This variation request confirms that the proposal will positively contribute towards the existing and desired character of an area that permits six (6) storey buildings. The proposed partial seventh storey will provide affordable housing options within the Fairfield LGA, without causing significant and unreasonable impacts on surrounding sites and the public domain in terms of visual privacy, solar access and/or visual amenity.

As a result, compliance with the building height development standard is found to be unreasonable and unnecessary in the specific circumstances of this proposal, and there are sufficient environmental planning grounds to justify contravention of the building height development standard. Given the above, the applicant's statutory requirements pursuant to section 4.6 of FLEP 2013 are satisfied, and the variation to the building height development standard can be approved by Council.