

## COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	PPSSWC-372
<b>DA No.</b>	DA 294.1/2023 PAN-354293
<b>LGA</b>	Fairfield City Council
<b>Proposed Development</b>	Demolition of existing structures, Tree removal and the Construction of a 6-storey Residential Flat Building containing thirty – nine (39) dwellings over a basement car park containing 28 car spaces and associated landscaping and civil works.
<b>Street Address</b>	Three (3) lots consisting of: <ul style="list-style-type: none"> <li>▪ 15 Lupin Avenue, Fairfield East (Lot 1 in DP 1154467)</li> <li>▪ 17 Lupin Avenue, Fairfield East (Lot 185 in DP 15560)</li> <li>▪ 82 Belmore Street, Fairfield East (Lot 2 in DP 1154467)</li> </ul>
<b>Applicant</b>	BlueCHP
<b>Date of DA Lodgement</b>	26 <sup>th</sup> September 2023
<b>Total number of Submissions</b>	27 total submissions (inclusive of petition)
<b>Number of Unique Objections</b>	17 unique objections
<b>Recommendation</b>	Deferral
<b>Regional Development Criteria</b>	Private infrastructure and community facilities over \$5 million  Cost of development: \$28,429,852.00
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>▪ Fairfield LEP 2013</li> <li>▪ SEPP (Building Sustainability Index: BASIX) 2004</li> <li>▪ SEPP (Planning Systems) 2021</li> <li>▪ SEPP (Resilience &amp; Hazards)</li> <li>▪ SEPP (Transport &amp; Infrastructure) 2021</li> <li>▪ SEPP (Housing) 2021: Chapter 2 Affordable Housing and Chapter 4 Design of Residential Apartment Development</li> <li>▪ Apartment Design Guide</li> <li>▪ Fairfield CityWide DCP 2013</li> </ul>

	<ul style="list-style-type: none"> <li>▪ EP&amp;A Act 1979</li> <li>▪ EP&amp;A Regulation 2021</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<ul style="list-style-type: none"> <li>▪ Attachment 1 – Council Compliance Table: ADG</li> <li>▪ Attachment 2 – Council Compliance Table: DCP</li> <li>▪ Attachment 3 – Architectural Plans</li> <li>▪ Attachment 4 – SEPP 65 Report</li> <li>▪ Attachment 5 – Urban Design Study</li> <li>▪ Attachment 6 – Landscape Plans</li> <li>▪ Attachment 7 – Civil Design Plans</li> <li>▪ Attachment 8 – Building Code of Australia (BCA) Report</li> <li>▪ Attachment 9 – Acoustic Assessment</li> <li>▪ Attachment 10 – Arboricultural Impact Assessment</li> <li>▪ Attachment 11 – Geotechnical Investigation</li> <li>▪ Attachment 12 – Clause 4.6 Variation Request Building Height</li> <li>▪ Attachment 13 – Clause 4.6 Variation Request FSR</li> <li>▪ Attachment 14 – Statement of Environmental Effects</li> <li>▪ Attachment 15 – Phase 1 Site Investigation Report</li> <li>▪ Attachment 16 – BASIX Certificate</li> <li>▪ Attachment 17 – Crime Risk Assessment</li> <li>▪ Attachment 18 – Services Certificate</li> <li>▪ Attachment 19 – Operational Waste Management Plan</li> <li>▪ Attachment 20 – Traffic Impact Assessment</li> <li>▪ Attachment 21 – Traffic Response</li> <li>▪ Attachment 22 – Response to Council Letter Part 1</li> <li>▪ Attachment 23 – Response to Council Letter Part 2</li> <li>▪ Attachment 24 – Submissions</li> </ul>
<b>Clause 4.6 Requests</b>	<p>A Clause 4.6 Request has been submitted to address the variation to:  <u>Fairfield Local Environmental Plan (LEP) 2013</u></p> <ul style="list-style-type: none"> <li>▪ Clause 4.3 Building Height</li> <li>▪ Clause 4.4 Floor Space Ratio</li> </ul> <p>A Clause 4.6 Request was not submitted to address the variation to:  <u>State Environmental planning Policy (Housing) 2021</u></p> <ul style="list-style-type: none"> <li>▪ Clause 18(2)(b) Landscape area</li> <li>▪ Clause 18(2)(e) Solar Access</li> </ul>
<b>Summary of key Issues</b>	<ul style="list-style-type: none"> <li>▪ FSR Exceedance</li> <li>▪ Building Height Exceedance</li> <li>▪ Design Excellence and Apartment Design Guidelines</li> <li>▪ State Environmental Planning Policy (Housing) 2021</li> <li>▪ Design inconsistent with the DCP</li> <li>▪ One Way Driveway</li> <li>▪ Inadequate arrangements for waste management</li> </ul>
<b>Report Prepared By</b>	Liam Hawke, Coordinator Development Planning
<b>Report Date</b>	24 March 2025

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes**

<b>Legislative clauses requiring consent authority satisfaction</b>	<b>Yes</b>
Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarised, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	
<b>Clause 4.6 Exceptions to development standards</b>	<b>No</b>
If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	
<b>Special Infrastructure Contributions</b>	<b>No</b>
Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	
<b>Conditions</b>	<b>No</b>
Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	

## 1. EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 294.1/2023 proposing the demolition of existing structures, tree removal and the construction of a 6-storey Residential Flat Building containing thirty – nine (39) dwellings over a basement car park containing 28 car spaces and associated landscaping and civil works.

The proposed development is made under the provisions of Division 1 - Infill Affordable Housing of the State Environmental Planning Policy (Housing) 2021. The proposal is to be managed by BlueCHP who is a registered social housing provider and 100% of the dwellings will be affordable housing.

The application is referred to the Sydney Western City Planning Panel (SWCPP) for consideration pursuant to State Environmental Planning Policy (Planning Systems) 2021, as the proposal has a capital investment value greater than \$5 million and is for the purpose of affordable housing.

The subject site is known as No's 15 – 17 Lupin Avenue and No. 82 Belmore Street Fairfield East and comprises 3 lots (Lot 1 and 2 in DP 1154467 and Lot 185 in DP 15560). The site is an irregular shape and has a total site area of approximately 1,414m<sup>2</sup>. The site is located on the corner of Belmore Street and Lupin Avenue. The site contains existing dwellings and ancillary structures and thirteen (13) trees which are all proposed to be removed to facilitate the proposed development.

There have been three (3) briefings with the Panel in relation to this application, initially on 6 November 2023, 26 February 2024 and on 28 October 2024. During the briefings key issues were discussed including FSR exceedance, design excellence and ADG compliance, street setback, one way driveway, inadequate arrangements for waste management and other matters raised.

Council initially wrote to the applicant outlining the issues identified and a meeting with Council's officers including Council's Architect and the Applicant occurred. The Applicant

responded with amended documentation incorporating improvements however these changes have not addressed all the matters identified.

At the Update Briefing on the 28 October 2024 held between the Sydney Western City Planning Panel (SWCPP), the Applicant and Fairfield City Council. The Applicant was directed by the Panel to submit a final package to Council, with the application being referred to the Panel for consideration and determination. The final package was submitted via the NSW Planning Portal on the 9 December 2024 and a Public Determination Meeting has been scheduled by the Sydney Western City Planning Panel for the 7 April 2025. The subject report has been prepared by Council officers as part of the consideration of the Panel.

The amended application has been considered in accordance with the relevant planning provisions including but not limited to Fairfield LEP 2013, SEPP (Housing) 2021: Chapter 2 Affordable housing and Chapter 4 Design of Residential Apartment Development; the Apartment Design Guide (ADG); SEPP (Resilience and Hazards) 2021: Chapter 4 Remediation of Land; and Fairfield CityWide DCP 2013. An assessment of the amended application has identified that some initial issues raised have been addressed, however, it also identified a number of issues that remain outstanding.

The key issues associated with the proposal are:

- **Floor Space Ratio (FSR) Exceedance:** the proposed residential flat building exceeds the maximum permitted FSR of 2:1. Given the variation proposed, the application has been accompanied by a written request (made pursuant to Clause 4.6 of the Fairfield Local Environmental Plan 2013) which seeks to justify the noncompliance with the development standard. It is considered that the submitted Clause 4.6 written document currently relied upon does not state the correct variation to the development standard and does not specifically address that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (as required under Clause 4.6(3)(a) of the Fairfield LEP 2013). Given this, Council is not satisfied that the written request appropriately addresses the relevant clauses listed above in its current form.
- **Building height Exceedance:** the proposed residential flat building exceeds the maximum building height that is permitted. Given the variation proposed, the application was initially accompanied by a written request (made pursuant to Clause 4.6 of the Fairfield Local Environmental Plan 2013) which seeks to justify the noncompliance with the development standard. It is considered that the submitted Clause 4.6 written document currently relied upon does not state the correct variation to the development standard and does not specifically address that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (as required under Clause 4.6(3)(a) of the Fairfield LEP 2013). Given this, Council is not satisfied that the written request appropriately addresses the relevant clauses listed above in its current form.
- **Design Excellence and Apartment Design Guidelines:** It is considered that the design of the residential flat building does not exhibit design excellence when considered against the matters in Clause 6.12 of the LEP. It is also considered that the design of the development, when evaluated in accordance with the design principles for residential apartment development as set out in Schedule 9 of State

Environmental Planning Policy (Housing) 2021 does not meet the principles of good design and compliance with the Apartment Design Guidelines.

- **State Environmental Planning Policy (Housing) 2021:** It is considered that the proposed development does not comply with Clause 18 (2)(b) and (2)(e) of the SEPP in relation to required landscape area and solar access. No Clause 4.6 Variation request has been submitted in order for the consent authority to consider the variation to the development standard.
- **Design inconsistent with the DCP:** The proposed development does not comply with the controls within Chapter 7 Residential Flat Buildings contained within Fairfield City Wide DCP 2013. In particular street setback, location of AC units and Servicing requirements are a key issue.
- **One Way Driveway:** The proposed development does not allow simultaneous two way movement into and out of the basement. Council's Traffic Engineer have assessed the proposed vehicle access arrangement and do not support the proposed one way system.
- **Inadequate arrangements for waste management:** the proposed development does not meet Council's technical matters and design requirements to do with waste storage and collection; and the arrangements for waste are insufficient.

Council's technical officers have assessed the application and issues have been raised by the Traffic & Transport Branch, Waste Management Branch, Development Engineer and Council Architect. These issues are further addressed within the report. Council notes that no issues were raised by the internal Building Control Branch, Public Health & Environment Branch, and Tree Preservation Officer (TPO).

The following jurisdictional prerequisites imposed by the following controls have not been satisfied and it is considered that consent cannot be granted on this basis:

- Clause 4.6 of the LEP with respect to exceptions to development standards in regards to a variation to clause 4.3 Building Height and Clause 4.4 FSR.
- Clause 6.12 of the LEP with respect to design excellence as it is considered that the residential flat building does not exhibit design excellence.
- Clause 18 (2)(b) and (2)(e) of the SEPP (Housing) 2021 are not complied with and no Clause 4.6 Variation request has been submitted.

The following jurisdictional prerequisites to the grant of consent imposed by the following controls are considered to have been satisfied:

- SEPP (Resilience & Hazards) for consideration of whether the land is contaminated.
- Clause 2.48 of SEPP (Transport & Infrastructure) where the work is in the vicinity of electrical infrastructure.

The application was formally amended on two (2) occasions and therefore the subject application was notified on three (3) occasions, in accordance with Council's Community Engagement Strategy 2024 by way of letters and advertisements on Council's website. Council received a total of 27 submissions of which 17 are unique objections. The key concerns relate to crime/safety, traffic generation, limited parking, waste management, loss

of privacy and overshadowing, out of character, loss of tree canopy and construction impacts. These issues have been addressed within this report.

It is noted that Council has consistently raised the above issues and non-compliances during the course of the assessment of the application. It was indicated to the Applicant that these matters were considered fundamental and would need to be suitably resolved in order for the development to be supported. The Applicant has amended the application in the final package and it is considered that some of the matters raised have been addressed, however, the proposal in its current form does not address all the issues raised. The issues raised by Council could be addressed through further amendments to the proposed development. Recommendations are proposed within the report to address these matters. It is noted that in order to resolve the issues the gross floor area of the development would need to be reduced.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act 1979, given the issues identified with the application, Council is not in a position to support the application in its current form and it is considered that the proposal is not in the public interest.

Given the above, it is recommended that Development Application 294.1/2023 be **Deferred** for the Applicant to amend the Application to address the issues raised in Council's Assessment report.

## **2. THE SITE AND LOCALITY**

---

### **Subject Site**

The subject site which is referred to in this report as No's 15 – 17 Lupin Avenue and No. 82 Belmore Street Fairfield East comprises 3 lots consisting of:

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

The site is an irregular shape and has a total site area of approximately 1,414m<sup>2</sup>. The site is located on the corner of Belmore Street and Lupin Avenue. The dimensions of the site are as follows:

- Northern Boundary is 41.29m (Belmore Street);
- Southern Boundary is 40.255m;
- Western Boundary is 41.55m (Lupin Avenue); and
- Eastern Boundary is 27.27m.

The site has a gentle slope from the south eastern corner to the north western corner at the intersection of the Lupin Avenue and Belmore Street.

The site is occupied by existing structures (dwellings and ancillary structures) that are all to be demolished. Thirteen (13) trees are located on the site which are proposed to be removed. The existing street tree on the road reserve is not proposed to be removed. Please note, the site is not mapped on the NSW Biodiversity Values Map.



Overhead powerlines run along both Lupin Avenue and Belmore Street immediately adjacent to the subject site.

Council's mapping does not identify the site as having any other environmental constraints affecting the site such as flooding, acid sulfate soils, bushfire prone land etc.

The site is located approximately 380m north west of Villawood Station and approximately 420m from Villawood Town Centre which has convenient access to bus and rail services.



**Figure 1:** Aerial view of the site, outlined.

### **Surrounding Area**

The surrounding context is characterised as follows:

**North:** The northern boundary of the site immediately adjoins Belmore Street. On the other side of the street are detached single storey dwellings.

**South:** The southern boundary of the site is immediately adjoined by detached single and 2-storey dwellings. The proposed driveway of the development is located along the southern boundary.

**West:** The western boundary of the site immediately adjoins Lupin Avenue. On the other side of the street are detached single storey and 2-storey dwellings.

**East:** the eastern boundary of the site is immediately adjoined by single storey detached dwellings which face Seaman Avenue and have their rear yards facing the development site.

The wider locality is characterised by generally low density residential development primarily comprising of detached single storey and 2-storey dwellings located on lots that range from

450m<sup>2</sup> to 700m<sup>2</sup>. This area was previously a low density residential zone and was upzoned to an R4 High Density Residential zone under Fairfield Local Environmental Plan 2013. This proposal is the first high density residential development and will set a precedence for future development within this area. Furthermore, the area is close to Villawood Station and Villawood Town Centre which is currently undergoing significant redevelopment.



**Figure 2:** Aerial view of the wider context.

### 3. DESCRIPTION OF THE PROPOSAL

#### Summary of Development

The proposed development seeks consent for the demolition of existing structures, tree removal and the construction of a 6-storey Residential Flat Building containing thirty – nine (39) dwellings over a basement car park containing 28 car spaces and associated landscaping and civil works. The proposed development is made under the provisions of Division 1 Infill - Affordable Housing of the State Environmental Planning Policy (Housing) 2021. The proposal is to be managed by BlueCHP who is a registered social housing provider and 100% of the dwellings will be affordable housing.





**Figure 3.** Photomontage of the development from the intersection of Lupin avenue and Belmore Street.

Additional details of each element of the proposal is outlined below.

### **Demolition and Tree Removal**

- The application proposes to remove all existing structures which are principally dwellings and ancillary structures. The proposal also seeks the removal of thirteen (13) trees that are located within the site. The proposal does not seek to remove the existing street tree located on the Road reserve in Lupin Avenue.
- Ancillary earthworks are proposed to enable the development including excavation works for the basement level.

### **Construction of Residential Flat Building**

- Construction of 6-storey residential flat building containing 39 residential units, comprising of 9 x 1 bedroom (23%), 27 x 2 – bedroom (70%) and 3 x 3 bedroom (7%). All proposed dwellings are to be managed by BlueCHP, a registered community housing provider and 100% of the dwellings will be for the purpose of affordable housing.
- Vehicular access will be via Lupin Avenue and will contain a waiting bay. The design of the vehicle access will mean that only one vehicle can enter and exit at any time. A traffic light system is proposed to manage this arrangement. Pedestrian access to the development is via Belmore Street.
- The proposed development includes 1 level of basement car parking which comprises a total of 28 car parking spaces (20 for residents and 8 for visitors). Storage lockers for

the residents are also contained within the basement. No motorcycle or bicycle parking spaces are provided. One of the visitor spaces also acts as a car wash bay.

- Communal open space (COS) will be provided in two forms, as follows:
  - 359m<sup>2</sup> located on the ground floor on the eastern and southern portion of the site; and
  - 322m<sup>2</sup> located on the roof of the building.
- No details of AC Plant/equipment is provided on the submitted plans.
- No loading bays or service arrangements have been provided on the ground or basement level of the development. The design of the ramp will only allow a B99 to access the basement level.
- A waste and recycling storage room is provided on the ground floor. No waste storage rooms are provided on each level. A waste chute system is incorporated into each level of the development for general waste (red bin) only.

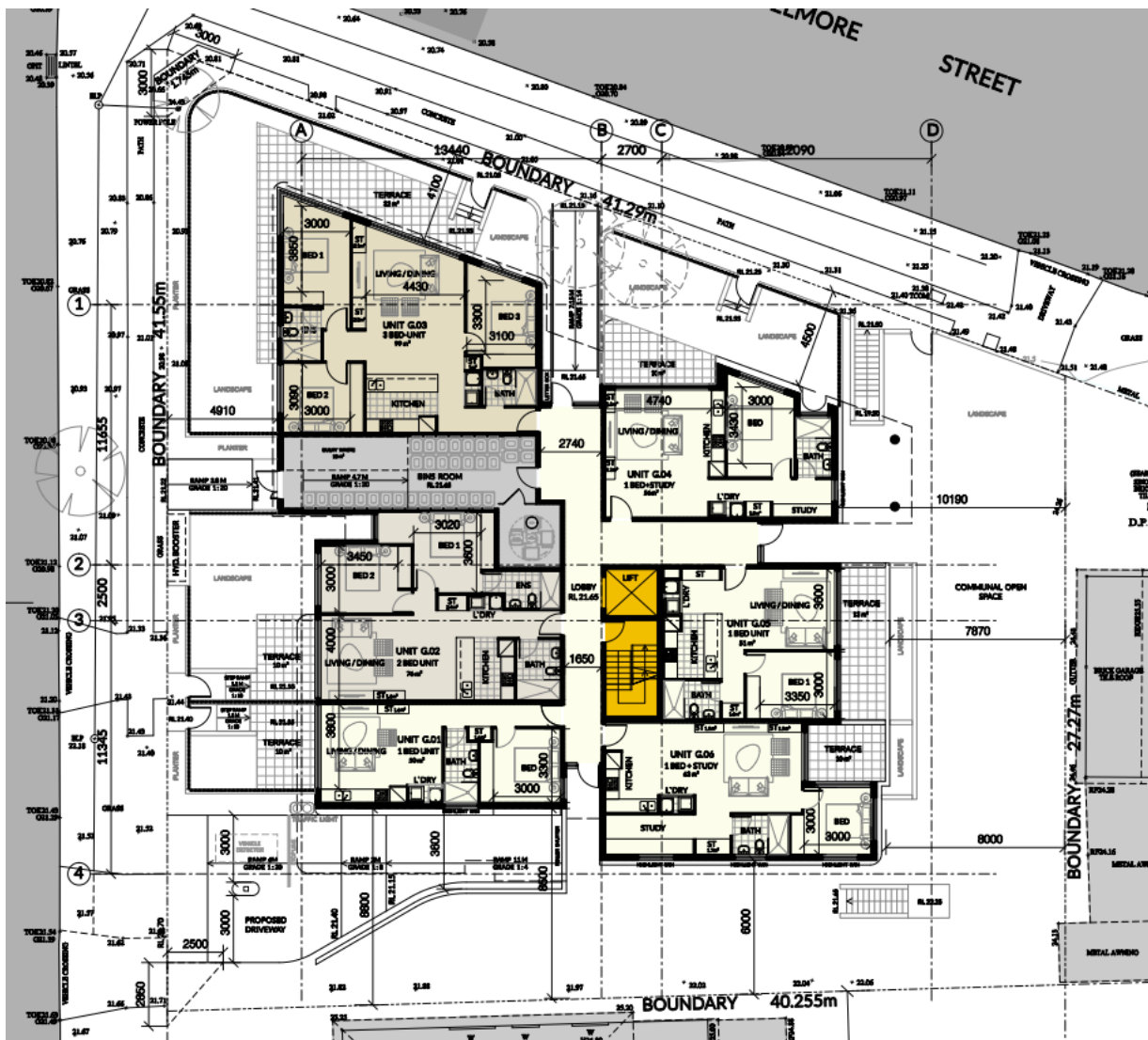






Figure 6. Proposed Typical Level 4 and 5 Floor Plan for Residential Flat Building.







Figure 8. Proposed North Elevation facing Belmore Street.



Figure 9. Proposed West Elevation facing Lupin Avenue.

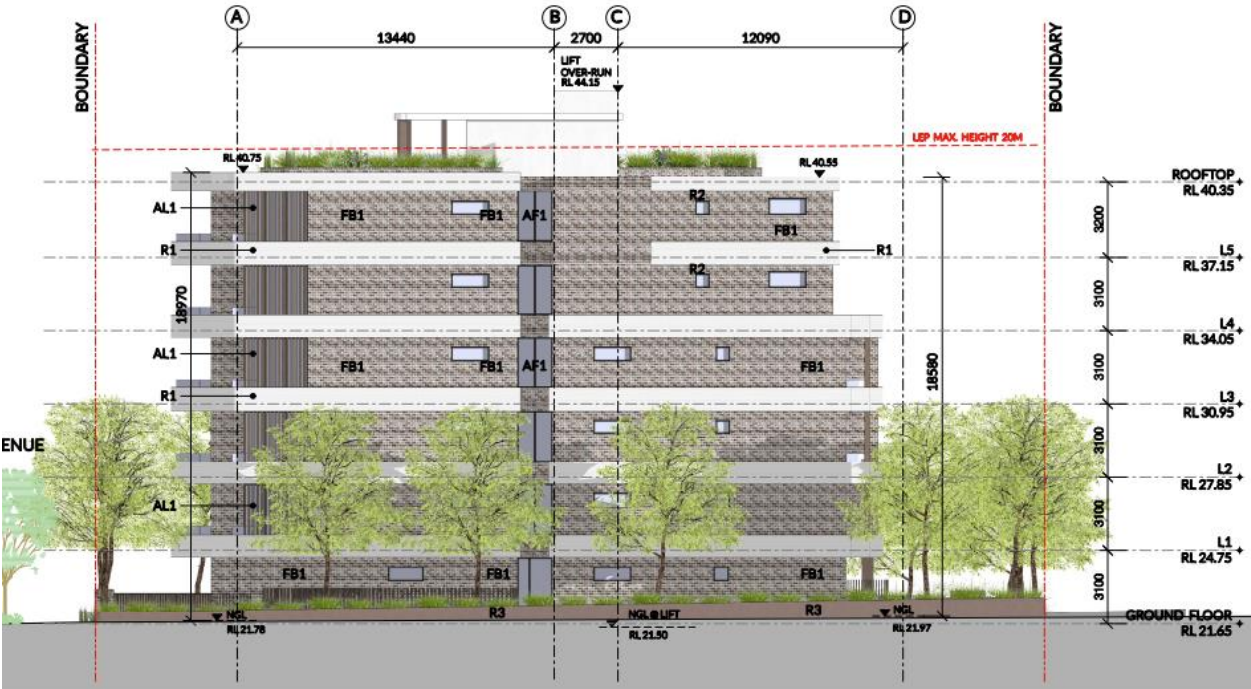


Figure 10. Proposed South Elevation.



**Figure 11.** Proposed East Elevation.

### **Civil Works**

- Ancillary civil works are proposed including the removal of redundant vehicle crossings and construction of a new vehicle crossing.
- A sewer line that is Sydney Water's asset runs directly through the site and will be required to be relocated.
- Stormwater will be managed through an OSD tank located on the south western corner of the subject site.

### **Landscaping**

- Ancillary landscaping of the site including replacement planting and a variety of ground covers, shrubs and trees are proposed. Facilities for residents such as communal areas with seating and recreation spaces are also incorporated into the landscape areas. A total of 372m<sup>2</sup> of deep soil is provided onsite, which equates to 26% of the site area.





**Figure 12.** Proposed Ground Floor Landscaping.



**Figure 13.** Proposed Landscaping for Rooftop Communal Open Space.

## 4. HISTORY AND BACKGROUND

### Development History

There are no approvals on the site that are relevant to the subject application.

### Summary of Zoning

The residential area that is located north of Villawood Station where the subject site is located, was initially zoned for low residential purposes under Fairfield LEP 1994. This zone was maintained when the Fairfield LEP 2013 came into force on the 31 May 2013.

On 18 December 2020, Fairfield LEP 2013 Amendment No.38 was published. This amendment to the LEP effectively rezoned this residential area to R4 High Density Residential. Since this time there have been no high density residential development lodged with Council. The area that this subject site is located within is presently characterized by single and 2-storey dwellings and the subject application is the first high density residential accommodation. If approved and constructed the development will set a precedence within this residential area.

## **Development Application (DA) Background**

The history of the subject application is provided below:

- On 2 June 2022, a Pre DA Lodgement Meeting was held between Council and the Applicant to discuss the redevelopment of the site. Areas of discussion included street setbacks on Lupin Ave and Belmore Street, location of Communal Open Space wholly on the roof, location of driveway and calculation of Floor Space Ratio.
- The subject application was lodged on 26<sup>th</sup> September 2023.
- On 6 November 2023, a Preliminary Briefing was held between the Sydney Western City Planning Panel (SWCPP), the Applicant and Fairfield City Council. The issues raised by the Panel and Council were subsequently conveyed to the applicant in Council's letter dated 23 December 2023.
- On 14 February and 15 February 2024 the Applicant formally amended the application and amended plans and additional information were submitted via the NSW Planning Portal.
- On 26 February 2024, an Update Briefing was held between the Sydney Western City Planning Panel (SWCPP), the Applicant and Fairfield City Council. The issues held by Council were maintained with the amended application. In order to progress the matter a further letter was issued by Council on 5<sup>th</sup> June 2024, outlining the issues with the amended application.
- On 27 June 2024, a meeting was held in person at Council's offices between the applicant and Council's technical officers to discuss the issues in Council's letter, including Council's Architect.
- On 28 October 2024, a further update Briefing was held between the Sydney Western City Planning Panel (SWCPP), the Applicant and Fairfield City Council. The issues regarding FSR, Setbacks, Open Space and the Driveway were discussed. It was advised that a final package would be submitted with the Application referred to the Panel for consideration and determination.
- On 9 December 2024, the Applicant formally amended the application and amended plans and additional information were submitted via the NSW Planning Portal. A Public Determination Meeting has been scheduled by the Sydney Western City Planning Panel on the 7 April 2025. The subject report has been prepared by Council officers as part of the consideration of the Panel.

## **5. REFERRALS AND SUBMISSIONS**

---

### **Agency Referrals and Concurrence**

The development application was referred to the following agencies for comment/concurrence as required by the EP&A Act and outlined below.



## Endeavour Energy

The site is in the vicinity of electrical infrastructure and as such the application was referred to Endeavour Energy for comments, in accordance with SEPP (Transport and Infrastructure) 2021. On 6 October 2023 Endeavour Energy provided its advice to Council which supports the proposal, and provided conditions of consent.

## **Council Officer Referrals**

The development application has been referred to various Council officers for technical review as outlined below. The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

<b>Officer</b>	<b>Comments</b>	<b>Resolved</b>
Building Control Branch	No issues with the proposal, subject to conditions.	Yes
Development Engineering	Issues unresolved regarding the one way ramp access to the basement. Stormwater issues have been resolved, subject to conditions.  The advice of the Development Engineer is discussed under the Key Issues section of this report.	No
Public Health & Environment	No issues with the proposal with respect to acoustic impacts or land contamination.  No issues with the proposal, subject to conditions.	Yes
Traffic Engineer	The Traffic Engineer initially identified issues with the development which were conveyed to the applicant to address in Council's previous letters. Amended plans and additional information was submitted by the applicant which has addressed the issues except for the proposal for a one way ramp access to the basement.  The advice of the Traffic Engineer is discussed under the Key Issues section of this report.	No
Waste Management	The Waste Management Branch initially identified a range of issues with the proposed site layout and inability of Council's HRV to safely collect waste from the property. The issues were conveyed to the applicant to address. Amended plans and additional information was submitted by the applicant and reviewed by the Waste Management Branch who advised that the application is not able to be supported primarily on the basis of the following: <ul style="list-style-type: none"><li>No documentation has been submitted that demonstrates that there is sufficient bin space on the street for street collection.</li></ul>	No

	<ul style="list-style-type: none"> <li>Technical matters and design requirements to do with waste storage and collection areas are not complied with.</li> </ul> <p>The advice is discussed under the Key Issues section of this report.</p>	
Tree Preservation Officer (TPO)	<p>The TPO has raised no issues with the proposed tree removal and retention across the site from an Arboricultural perspective on the basis that tree removal facilitates the new development.</p> <p>No issues with the proposal, subject to conditions.</p>	Yes
Council Architect	<p>Council's Architect initially identified a range of issues with the proposal and found that the proposal did not meet the principles of good design under SEPP 65 and did not meet the requirements of design excellence under Clause 6.12 of the Fairfield LEP 2013.</p> <p>Amended documentation including an Urban Design Study were submitted in response to the concerns which has addressed a number of issues raised. Notwithstanding a range of issues remain unresolved which include:</p> <ul style="list-style-type: none"> <li>- Driveway only partially covered;</li> <li>- Landscaping and setback zone along corner;</li> <li>- COS on the rooftop has limited shade structures and should be further setback from the southern boundary; and</li> <li>- No details of substation and AC units to determine impacts.</li> </ul> <p>The advice is discussed under the Key Issues section of this report.</p>	No

## Public Consultation and Submissions Received

The application was formally amended on two (2) occasions and therefore the subject application was notified on three (3) occasions, in accordance with Council's Community Engagement Strategy 2024 by way of letters and advertisements on Council's website.

The application was originally notified in October 2023, and Council received 8 submissions objecting to the development. The application was renotified again in March 2024 after amended plans and additional information was submitted to Council. Council received a further 4 submissions objecting to the proposal. Lastly, the application was renotified in December 2024 after the final package which included amended plans was submitted to Council. Council received a further 5 submissions including a petition with 11 signatures.

The combined number of submissions objecting to the development is 27 which includes 17 unique objections.

A copy of the submissions is included in the attachments to this report. A summary of the key issues of concern include but are not limited to:

- Potential to increase opportunities for crime and safety concerns;
- Traffic generation and impacts;
- Limited parking available on the street and insufficient car parking has been provided for the development;
- Waste management and bin pickup;
- Immediate residential properties concerned with loss of privacy, overlooking and noise impacts;
- Up to six storey buildings being out of character;
- Overshadowing of residential properties;
- Overlooking of residential properties from windows and openings;
- Loss of tree canopy and the natural environment;
- Limited infrastructure available for the development and poor servicing by public transport;
- Construction impacts, noise and dust nuisance;
- Property devaluation;
- Lack of energy efficiency and BCA compliance;
- No Visual Impact assessment or Social Impact Statement;
- No loading facilities are provided; and
- Impact on community self of identity.

The issues raised in the submissions have been addressed throughout this report and in the compliance tables attached.

## **6. STATUTORY CONSIDERATIONS**

---

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the Environmental Planning and Assessment (EP&A) Act 1979. These matters as are of relevance to the development application include the following:

*(a) the provisions of—*

- (i) any environmental planning instrument, and*
  - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) any development control plan, and*
  - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
  - (v) (Repealed)*
- that apply to the land to which the development application relates,*

- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be the following:

- Requiring referral to Endeavour Energy

It is noted that the proposal is not considered to be any of the following:

- Integrated Development
- Designated Development
- Crown DA.

## **1. Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The relevant environmental planning instruments, development control plans and the matters for consideration under the EP&A Act and Regulation are considered to be:

- Fairfield LEP 2013
- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Planning Systems) 2021:
- SEPP (Resilience & Hazards)
- SEPP (Transport & Infrastructure) 2021
- SEPP (Housing) 2021: Chapter 2 Affordable Housing and Chapter 4 Design of Residential Apartment Development
- Apartment Design Guide
- Fairfield City Wide DCP 2013

The following does not apply to the site or the proposal:

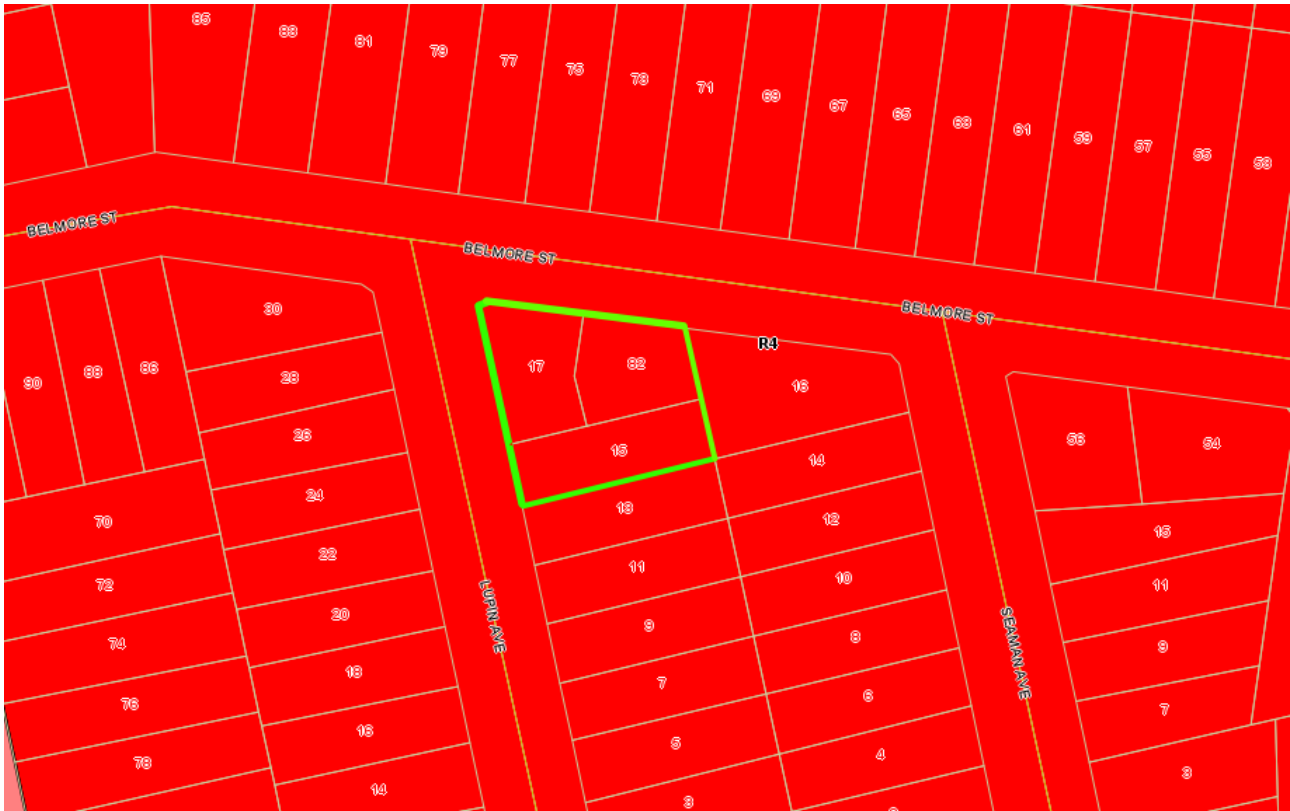
- Proposed instruments
- Planning agreements

A detailed assessment of the proposal against each provision is provided in the subsequent sections.

### **A. Fairfield Local Environmental Plan (LEP) 2013**

#### **Zoning and Permissibility**

The subject site is zoned R4 High Density Residential under the Fairfield LEP 2013.



**Figure 14.** Zoning Map: R4, Fairfield LEP 2013.

The proposal development is characterised as follows:

- *Residential Flat Building*
- *Demolition*
- *Tree Removal*

Residential Flat Buildings are permitted with consent in the R4 zone. Ancillary work such as demolition and tree removal are permitted within the zone subject to consent.

The FLEP 2013 provides the following definitions of residential flat building and multi dwelling housing:

***residential flat building*** means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

The proposed development is considered to be permissible in the zone.

## **Objectives of the Zones**

### **R4 High Density Residential Zone**

The proposal is considered to have regard to the relevant objectives of the R4 High Density Residential zone which are as follows:

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



- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To maximise opportunities for increased development on all land by encouraging site amalgamations.*

### **Additional Provisions of Fairfield LEP 2013**

The following additional provisions of the Fairfield LEP 2013 are relevant to the proposal and are addressed below:

**Table 1. Fairfield LEP 2013**

<b>Clause</b>	<b>Development Standard</b>	<b>Proposal</b>	<b>Compliance</b>
2.7 Demolition Requires Development Consent	The demolition of a building or work may be carried out only with development consent.	The application includes proposed demolition of existing structures.	Yes
4.3 Height of Buildings	20m maximum building height permitted	Maximum 22.65m building height and therefore does not comply. A Clause 4.6 variation request for the height breach has been submitted.	No
4.4 Floor Space Ratio (FSR)  4.4A Exceptions to Maximum FSR in Zone R4	2:1 maximum FSR permitted on R4 zoned land, however see below:  (1) This clause applies to land in Zone R4 High Density Residential (excluding any land in Bonnyrigg, Cabramatta, Canley Vale and Fairfield Heights)  (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— (i) 1.25:1 if the site has a depth of less than 40 metres, or	The site area is 1,414m <sup>2</sup> and the site has the following boundaries:  - Northern Boundary is 41.29m (Belmore Street); - Southern Boundary is 40.255m - Western Boundary is 41.55m (Lupin Avenue) - Eastern Boundary is 27.27m  The Applicant has interpreted that both the Belmore Street frontage and Lupin Ave frontage is to be calculated as the entire frontage. Based on this, the maximum FSR would be 2:1. Notwithstanding this, Council officers interpretation is inconsistent with this as each frontage is distinct in its own right.  Given vehicle access is provided along Lupin Ave, this frontage has been considered the principle frontage and therefore a maximum FSR of 1.5:1 is allowed.  An additional 0.5:1 FSR is allowed under the provisions of the SEPP	No

	<p>(ii) 1.5:1 if the site has a depth of at least 40 metres,</p> <p>(c) if the building has a street frontage of at least 45 metres—</p> <p>(i) 1.5:1 if the site has a depth of less than 40 metres, or</p> <p>(ii) 2:1 if the site has a depth of at least 40 metres.</p>	<p>(Housing) 2021 and therefore the maximum FSR allowed is 2:1.</p> <p>The proposed GFA for the development is 2929m<sup>2</sup> as indicated in the Architectural Plans.</p> <p>Given the above, the proposed FSR is 2.07:1, which does not comply with the development standard.</p> <p>A Clause 4.6 Request to vary the FSR development standard has been submitted.</p>	
4.5 Calculation of FSR and site area	This clause sets out the provisions for calculation of site area and floor space ratio	The site areas have been calculated in accordance with this clause.	Yes
4.6 Exceptions to development standards	This Clause enables council to exercise an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development	The application was initially accompanied by a Clause 4.6 Request for Variation of the Building Height development standard and during the assessment of the application a Clause 4.6 Request for Variation of the FSR development standard has been submitted.	See assessment below
6.2 Earthworks	<p>This clause sets out the provisions that Council must consider:</p> <p><i>(1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.</i></p> <p><i>(2) Development consent is required for earthworks unless—</i></p> <p><i>(a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or</i></p>	The Application was supported by a Geotechnical Investigation report. It is considered that subject to conditions of consent, the submitted documentation satisfies this clause.	Yes

	<p><i>(b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.</i></p> <p><i>(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—</i></p> <p><i>(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality of the development,</i></p> <p><i>(b) the effect of the development on the likely future use or redevelopment of the land,</i></p> <p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p> <p><i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i></p> <p><i>(e) the source of any fill material and the destination of any excavated material,</i></p> <p><i>(f) the likelihood of disturbing relics,</i></p> <p><i>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i></p> <p><i>(h) any appropriate measures proposed to avoid, minimise or</i></p>	
--	---	--

	<i>mitigate the impacts of the development.</i>		
6.9 Essential Services	This Clause prescribes that: <i>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</i> <i>(a) the supply of water,</i> <i>(b) the supply of electricity,</i> <i>(c) the disposal and management of sewage,</i> <i>(d) stormwater drainage or on-site conservation,</i> <i>(e) suitable vehicular access.</i>	Subject to conditions, it is considered that the proposed development will have access to essential services.	Yes
6.12 Design excellence	(1) The objective of this clause is to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Fairfield	Following an assessment of the application, it is considered that the development in its current form does not exhibit design excellence. Development consent must not be granted as it is considered that the residential flat building does not exhibit design excellence. Further discussion is provided in Section 6 and Section 7 of this report.	No

### **Variation to Clause 4.3 Height of Building Development Standard**

Clause 4.3 of the Fairfield Local Environmental Plan 2013 allows for a maximum building height of up to 20m at the subject site. The application proposes a height of up to 22.65m, and therefore exceeds the development standard by 2.65m. This equates to a variation of 13.25%. The proposed variation is illustrated in the figure below.



**Figure 15.** Elevation Plan showing Building Height.

The breach occurs across the rooftop of the development, with the development standard varied due to the proposed lift overrun and communal open space. It is noted that the majority of the main structure of the building is within the 20m maximum building height limit.

Given the variation proposed, the application has been accompanied by a written request (made pursuant to Clause 4.6 of the Fairfield Local Environmental Plan 2013) which seeks to justify the noncompliance with the development standard. A full copy of the Clause 4.6 Written Request is contained within **Attachment H** of this report.

It is noted that when the Application was initially submitted a rooftop communal open space area was provided and was accompanied by a Clause 4.6 Variation Request. Notwithstanding this, this document was submitted when the application was initially lodged and has not been updated to reflect the amended application. Given this, the document refers to a lesser variation which is different to the current variation proposed. This matter will need to be reconsidered in the Clause 4.6 variation document.

The provisions of Clause 4.6 of the LEP allows the Consent Authority to consider exceptions to development standards in certain circumstances.

Clause 4.6(3) and Clause 4.6(4) of the LEP prescribes that:

- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*
  - (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

*(b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*Note—*

*The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

A review of the document states that the request addresses Clauses 4.6(3)(a) and 4.6(3)(b) and argues that strict compliance with Clause 4.3 of the Fairfield Local Environmental Plan 2013 is considered to be unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Notwithstanding the above, it is considered that the document does not specifically address Clause 4.6(3)(a) and states the following:

*Compliance with the maximum height of buildings development standard has been determined to be unreasonable and unnecessary in the circumstances of the case,*

The request then states the environmental planning grounds for the variation in order to address Clause 4.6(3)(b) for the proposed variation which include the following reasons:

- 1. Correlation between building height and floor space ratio;*
- 2. Affordable housing and development standards;*
- 3. Alternative building envelope;*
- 4. Social benefits and dwelling yield;*
- 5. Acceptance of similar variations;*
- 6. Minimal impacts on the surrounding area;*
- 7. Character of the built form; and*
- 8. Visual impact of the variation.*

In order to consider the contravention to the development standard, the Consent Authority must be satisfied that the Applicant's written request addresses the matters required to be demonstrated within both Clause 4.6(3)(a) and Clause 4.6(3)(b).

Based on the above it is considered that the document currently relied upon does not state the correct variation to the development standard and that the document does not specifically address that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (as required under Clause 4.6(3)(a)). Given this, Council cannot be satisfied that the written request appropriately addresses the relevant clauses listed above in its current form. On this basis, the Clause 4.6 request to vary Clause 4.3 in relation to height of building is not supported in this circumstance.

#### **Variation to Clause 4.4 Floor Space Ratio Development Standard**

Clause 4.4 of the Fairfield Local Environmental Plan 2013 allows for a maximum floor space ratio (FSR) of 2:1 at the subject site. Notwithstanding this, Clause 4.4A Exceptions to maximum floor space ratio in Zone R4 is applicable and is as follows:



- (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—*
    - (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.*

The site has the following boundaries:

- Northern Boundary is 41.29m (Belmore Street);
- Southern Boundary is 40.255m
- Western Boundary is 41.55m (Lupin Avenue)
- Eastern Boundary is 27.27m

Given vehicle access is provided along Lupin Ave, this frontage has been considered to be the principle street frontage and therefore a maximum FSR of 1.5:1 is allowed. Furthermore, the application has been made under Division 1 In-fill affordable housing of State Environmental Planning Policy (Housing) 2021. Under these provisions an additional FSR of 0.5:1 is afforded in this circumstance and therefore the maximum FSR applicable for the subject site is 2:1.

The proposed GFA for the development in the submitted documentation is 2929m<sup>2</sup> and therefore the FSR is 2.07:1. Given this, the proposed development exceeds the development standard by 0.07:1 which equates to a variation of 3.5%.

Given the variation proposed, the application has been accompanied by a written request (made pursuant to Clause 4.6 of the Fairfield Local Environmental Plan 2013) which seeks to justify the noncompliance with the development standard. A full copy of the Clause 4.6 Written Request is contained within **Attachment H** of this report.

Please note and as discussed below, 20.1 car parking spaces are required and 28 car parking spaces are provided. Accordingly, there is 8 additional car parking spaces above the required number. The submitted documentation in the gross floor calculation does not include the car parking spaces provided in addition to the required number of spaces. Given this, the document refers to a lesser variation which is different to the current variation proposed. This matter will need to be reconsidered in the Clause 4.6 variation document.

The provisions of Clause 4.6 of the LEP allows the Consent Authority to consider exceptions to development standards in certain circumstances.

Clause 4.6(3) and Clause 4.6(4) of the LEP prescribes that:

- (3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that—*

*(c) compliance with the development standard is unreasonable or unnecessary in the circumstances, and*

*(d) that there are sufficient environmental planning grounds to justify contravening the development standard.*

*Note—*

*The Environmental Planning and Assessment Regulation 2021 requires a development application for development that proposes to contravene a development standard to be accompanied by a document setting out the grounds on which the applicant seeks to demonstrate the matters in paragraphs (a) and (b).*

A review of the document states that the request addresses Clauses 4.6(3)(a) and 4.6(3)(b) and argues that strict compliance with Clause 4.4 of the Fairfield Local Environmental Plan 2013 is considered to be unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

Notwithstanding the above, it is considered that the document does not specifically address Clause 4.6(3)(a) and states the following:

*Compliance with the maximum floor space ratio development standard has been determined to be unreasonable and unnecessary in the circumstances of the case,*

The request states the environmental planning grounds for the variation in order to address Clause 4.6(3)(b) for the proposed variation which include the following reasons:

- 1. Compliant on the basis of a ‘sliding scale’ FSR;*
- 2. Underlying purpose of section 4.4A;*
- 3. Opportunities associated with two frontages;*
- 4. Expansion of issues identified in points 1,2, accounting for amendments to the Housing SEPP;*
- 5. Social benefits and dwelling yield;*
- 6. Acceptance of similar variations;*
- 7. Minimal impacts on the surrounding area;*
- 8. Consistency with objectives of the development standard.*

In order to consider the contravention to the development standard, the Consent Authority must be satisfied that the Applicant’s written request addresses the matters required to be demonstrated within both Clause 4.6(3)(a) and Clause 4.6(3)(b).

Based on the above it is considered that the document currently relied upon does not state the correct variation to the development standard and does not specifically address that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (as required under Clause 4.6(3)(a)). Given this, Council cannot be satisfied that the written request appropriately addresses the relevant clauses listed above in its current form. On this basis, the Clause 4.6 request to vary Clause 4.4 in relation to floor space ratio is not supported in this circumstance.

## **B. State Environmental Planning Policy (Transport and Infrastructure) 2021**

### **Chapter 2 Infrastructure**

The following Clauses of Chapter 2 Infrastructure are relevant to the site and the proposal and have been taken into consideration:

**Table 2.** Relevant Clauses of Chapter 2 Infrastructure

<b>Clause</b>	<b>Provision</b>	<b>Comment</b>	<b>Satisfied</b>
2.48 Determination of development applications—other development	This Clause requires Council to consult with the electricity supply authority for development involving works in the vicinity of electrical infrastructure.	The application was referred to Endeavour Energy as the works are near electrical infrastructure. Endeavour Energy raised no concerns with the proposal.	Yes

## **C. State Environmental Planning Policy (SEPP) (Planning Systems) 2021**

### **Chapter 2 State and Regional Development**

Chapter 2 State and Regional Development of SEPP (Planning Systems) 2021 states in Part 2.2 that Development is State significant development for the purposes of the Act if the development is specified in Schedule 6 Regionally Significant Development. Schedule 6 states that Private infrastructure and community facilities with a Capital Investment Value (CIV) of over \$5 million is regionally significant development. The development is for the purposes of affordable housing which are included within this section.

At the time of lodgement, the application declared the estimated cost of development including GST to be \$28,429,852 million. The CIV will exceed the SEPPs \$5 million threshold and as such the application is referred to the Sydney Western City Planning Panel for determination.

It is noted that the application was lodged 28 August 2023 and the SEPP was amended on 4 March 2024, after the lodgement of the application. The current version has removed the reference to CIV and replaced it with the reference to Estimated Development Cost (EDC) which is calculated differently as defined in the Environmental Planning & Assessment Regulation 2021.

Notwithstanding, a revised EDC Report was not necessary to be submitted by the applicant for the purpose of updating the EDC due to the transitional provisions contained in Part 2.5 Miscellaneous (Section 2.22 (2) and (3)). This Part provides that existing regionally significant development applications that have not been determined when this Chapter was amended do not cease to be regionally significant development upon the Chapter amendment.

## **D. SEPP (Building Sustainability Index: BASIX) 2004 (repealed)**

It is noted that SEPP (BASIX) 2004 has since been repealed when SEPP (Sustainable Buildings) 2022 commenced in October 2023. However as the application was lodged on

26 September 2023 prior to the commencement of the new SEPP, SEPP (BASIX) 2004 applies.

The Applicant has submitted a BASIX Certificate in support of the application based on the original plans as lodged in September 2023, however has not submitted an amended BASIX to reflect the current amended plans lodged in December 2024. Amended BASIX Certificates reflecting the amended application are necessary.

## **E. SEPP (Biodiversity and Conservation) 2021**

### **Chapter 2 Vegetation in Non-Rural Areas**

The proposal does not conflict with the provisions of Chapter 2 of the SEPP and is considered acceptable. The site is not mapped as containing biodiversity values and is not located in any significant conservation area. However existing vegetation within the site are impacted.

The proposal seeks the removal of the thirteen (13) trees identified by the Arboricultural Report. The site is not mapped as containing biodiversity values.

Council's Tree Preservation Officer has assessed the proposed tree removal and raises no concerns subject to conditions of consent.

## **F. SEPP (Resilience and Hazards) 2021**

### **Chapter 4 Remediation of Land**

Chapter 4 Remediation of Land is applicable to the site and the proposal. Section 4.6 of the SEPP requires Council to consider a number of matters including whether the land is contaminated; and if contaminated whether Council is satisfied that the land is suitable in its contaminated state or can be made suitable for the purpose of the proposed development. Section 6.6 also requires Council to consider and be satisfied that where the land requires remediation that the land will be remediated before the land is used for the proposed development.

A Preliminary Site Investigation (PSI) Report was submitted with the application to assess the potential for contaminants across the site. The PSI Report concludes that the site can be made suitable for its intended land use as a high-density residential development subject to the implementation of the recommendations of the PSI. These include the following recommendations:

- A Hazardous Materials (HAZMAT) Survey to be prepared prior to demolition or removal of any onsite structures, with any control measures outlined in the HAZMAT survey to be implemented during demolition or removal works;
- An unexpected finds protocol (UFP) to be prepared and implemented for the proposed redevelopment works to outline the procedures that should be followed in the event that signs of contamination are encountered (such as the presence of ACM in fill materials or stained soils/buried debris);
- During site redevelopment works, any excess soil that is generated during construction works that is surplus to site development requirements will require

classification in accordance with NSW EPA (2014) Waste Classification Guidelines and disposed at a facility licensed to receive the waste; and

- Any imported fill material brought onto the site for any purpose must be validated as being suitable for the intended land use.

Council's Public Health and Environment (PH&E) Section has reviewed this aspect of the application and raise no concerns with the proposal, advising that the application has demonstrated that the site can be made suitable for the development, subject to compliance with the recommendations of the report, thereby satisfying the provisions of Chapter 4 Remediation of Land of the SEPP.

## G. State Environmental Planning Policy (Housing) 2021

### Chapter 2 Affordable Housing

It is noted that State Environmental Planning Policy (Housing) 2021 has been amended several times since the lodgement of the application. However, as the application was lodged on 26 September 2023 the policy that applied to the application at that time has been considered.

The subject Development Application seeks the development of affordable housing. In certain circumstances, development for this purpose can benefit from additional floor space ratio under Section 17 of the State Environmental Planning Policy (Housing) 2021. The following table summarises the additional floor space permitted under the State Environmental Planning Policy (Housing) 2021.

Development Standard	Compliance
<b>Section 17 – Floor Space Ratio</b> (1) The maximum floor space ratio for development to which this Division applies is the maximum permissible floor space ratio for residential accommodation on the land plus an additional floor space ratio of— (a) if the maximum permissible floor space ratio is 2.5:1 or less— (i) if at least 50% of the gross floor area of the building resulting from the development will be used for affordable housing—0.5:1, or (ii) if less than 50% of the gross floor area of the building will be used for affordable housing—Y:1, where— <b>AH</b> is the percentage of the gross floor area of the building that is used for affordable housing. $Y = AH \div 100$ or (b) if the maximum permissible floor space ratio is more than 2.5:1— (i) if at least 50% of the gross floor area of the building will be used for affordable	No  The maximum permissible floor space ratio is 1.5:1 under Fairfield Local Environmental Plan 2013.  The proposed development seeks 100% of the gross floor area of the development to be utilised for the purpose of affordable housing.  In this regard, in accordance with Section 17(1)(a)(i) of the State Environmental Planning Policy (Housing) 2021, the subject site has a maximum permitted floor space ratio of 2:1.  The proposed floor space ratio of the development is 2.07:1 and therefore does not comply.  A Clause 4.6 variation request for the height breach has been submitted in regards to this matter.

<p>housing—20% of the maximum permissible floor space ratio, or</p> <p>(ii) if less than 50% of the gross floor area of the building will be used for affordable housing—Z% of the maximum permissible floor space ratio, where—</p> <p><b>AH</b> is the percentage of the gross floor area of the building that is used for affordable housing.</p> <p><b>Z</b> = <math>AH \div 2.5</math></p> <p>(2) The additional floor space ratio must be used for the purposes of affordable housing.</p>	
<p><b>Section 18 – Non-discretionary Development Standards</b></p> <p>(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p>(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies—</p>	Noted.
<p>(a) a minimum site area of 450m<sup>2</sup>,</p>	<p>Yes.</p> <p>Site area = 1414m<sup>2</sup></p>
<p>(b) for a development application made by a social housing provider—at least 35m<sup>2</sup> of landscaped area per dwelling,</p>	<p>39 x 35 = 1365m<sup>2</sup> is required.</p> <p>Approximately 585.4m<sup>2</sup> of landscape area is provided on the ground level and the rooftop COS.</p> <p>The development is deficient by 779.6m<sup>2</sup> of landscape area which is a variation of approximately 57%.</p> <p>Please note no Clause 4.6 variation request for the landscape area has been submitted in support of the variation to the development standard.</p>
<p>(c) if paragraph (b) does not apply—at least 30% of the site area is landscaped area,</p>	<p>It does not apply in this circumstance, however, if it did the amount of landscaped area provided is 41% and therefore complies.</p>
<p>(d) a deep soil zone on at least 15% of the site area, where—</p> <p>(i) each deep soil zone has minimum dimensions of 3m, and</p> <p>(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,</p>	<p>Yes.</p> <p>Deep soil zone = 26%</p> <p>The majority of the deep soil zone is located behind the building line.</p>



<p>(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,</p>	<p>The submitted documentation indicates that 30/39 (76.9%) of the apartments will receive a minimum of 2 hours of solar access.</p> <p>However, the documentation does not demonstrate compliance with the 3 hours of solar access required to living rooms and POS areas to 70% of the apartments.</p> <p>It would appear that 23/39 (58.9%) of the apartments would receive the 3 hours of solar access.</p> <p>This has been raised with the Applicant, however, it has not been addressed in the amended application and it is noted that No Clause 4.6 variation request for the solar access has been submitted in regards to this matter.</p>
<p>(f) for a development application made by a social housing provider for development on land in an accessible area—            (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, or            (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, or            (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space,</p>	<p>1 bedroom units = 9            2 bedroom units = 27            3+ bedroom units = 3</p> <p>Number of car parking spaces required            = <math>(9 \times 0.4) + (27 \times 0.5) + (3 \times 1)</math>            = <math>3.6 + 13.5 + 3</math>            = 20.1</p> <p>Number of car parking spaces provided            = 28 (20 for residents and 8 for visitors)</p> <p>The proposal complies.</p>
<p>(g) if paragraph (f) does not apply—            (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, or            (ii) for each dwelling containing 2 bedrooms—at least 1 parking space, or            (iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,</p>	<p>Not applicable.</p>
<p>(h) for development for the purposes of residential flat buildings—the minimum internal area specified in the Apartment Design Guide for each type of apartment,</p>	<p>Yes.</p> <p>The internal areas of the units have been considered against the Apartment Design Guide.</p>
<p>(i) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,</p>	<p>Not applicable</p>
<p>(j) if paragraphs (h) and (i) do not apply, the following minimum floor areas—            (i) for each dwelling containing 1 bedroom—65m<sup>2</sup>, or</p>	<p>Not applicable</p>

(ii) for each dwelling containing 2 bedrooms—90m <sup>2</sup> , or (iii) for each dwelling containing at least 3 bedrooms—115m <sup>2</sup> plus 12m <sup>2</sup> for each bedroom in addition to 3 bedrooms.	
<b>19 Design requirements</b>	Noted
(1) Development consent must not be granted to development to which this Division applies unless the consent authority has considered the following, to the extent to which they are not inconsistent with this Policy— (a) the Seniors Living Policy: Urban Design Guidelines for Infill Development published by the Department of Infrastructure, Planning and Natural Resources in March 2004, (b) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the Low Rise Housing Diversity Design Guide. (2) Subsection (1) does not apply to development to which <i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</i> applies.	Not applicable
(3) Development consent must not be granted to development to which this Division applies unless the consent authority has considered whether the design of the residential development is compatible with— (a) the desirable elements of the character of the local area, or (b) for precincts undergoing transition—the desired future character of the precinct.	The proposed development is not compatible with the desirable elements of the character of the local area given the size and scale of the development amongst the low-density residential dwellings. Notwithstanding, the site is located within a R4 High Density Residential zone precinct. The submitted Urban Design Study demonstrates that the proposed development is compatible with the desired future character of the precinct.

## Chapter 4 Design of Residential Apartment Development

SEPP No. 65 – Design Quality of Residential Apartment Development and the accompanying Apartment Design Guide (ADG) applies to the proposed residential flat building. It is noted that SEPP 65 and all its original provisions have been transferred to Chapter 4 of SEPP (Housing) 2021 and accordingly SEPP 65 was recently repealed. The transferred provisions now under Chapter 4 of SEPP (Housing) 2021 remain applicable to this proposal and is referred to as SEPP 65 within this report.

A detailed assessment against the criteria of the Apartment Design Guide (ADG) has been undertaken and is outlined in **Attachment 2** to this report.

Council's Architect has assessed the 9 design principles in Schedule 9 of SEPP 65. The assessment has revealed that the proposed development in its current form identified a range of issues with the proposal, and does not meet all the design criteria which is discussed below.

### Local Character and Context

- The inclusion of large deep soil area needs to be developed to include high quality larger canopy trees to take maximum advantage. The POS terrace of G.03 should be further setback into the development.

### Building Setbacks, Separation and Visual/Acoustic Privacy

- Building setbacks to the southern boundary do not comply as follows:
  - o For Levels 4 and 5, a 9m minimum setback is required for habitable rooms. Unit 4.06 and 5.06 have a bedroom with a window that is setback 7.29m along the southern boundary. It is noted that the 2 subject windows are highlight windows which may assist in visual privacy, however, the purpose of the setback is also required to provide acoustic privacy as well. The 2 subject windows cannot be removed as they are required in order to provide the required 60% of dwellings for natural ventilated unit requirement.
  - o The Communal Open Space on the roof top is setback approximately 6.9m from the southern boundary and should be setback 9m.
- Some balconies allow viewing into neighbouring habitable areas, these are 5.03 to 5.02, 5.04 to 5.05 which are repeated on Level 4. The privacy between the ground floor COS to G.01 and G.06 needs to be further considered.

### Public Domain Interface

- Concern is raised regarding the design of G.03 and that the living, POS and a bedroom is significantly exposed to the street.
- The driveway is only partially within the building envelope which is not appropriate.
- The building entrance at Belmore Street needs to be clearly detailed and would be better located opposite the letter boxes.

### Communal Open Space

- The roof top communal open space is very exposed and does not provide much amenity. Further shade structures should be provided that are integrated into the design and do not cause any additional overshadowing to the southern dwellings. The east section of the COS may be able to include further shading without overshadowing impact.
- The stormwater plan proposes a swale and rainwater tank on the southern boundary. These are not indicated on the landscape plans and may impact the available COS and landscaping on the ground floor.

### Private Open Space

- Several of the POS on the ground floor are less than 15m<sup>2</sup> and are within the front setback zone.
- No details of the AC units is provided on the architectural plans. If they are provided on the balconies then they will not comply.

### Common Circulation

- Only one (1) lift is proposed for the whole development. The chance that there is a breakdown or maintenance issue will leave residents without any access to a lift which is not considered appropriate in a modern residential flat building.

### Site Servicing

- A fire booster is located on the plans, however, details of a substation, gas and water are not provided. These should be included into the plans to provide an integrated design that does not compromise landscaping within the front setback zone.

Given the above, it is considered that the above issues will require further amendments to the proposed development in order to address the SEPP and Guidelines.

## **H. Fairfield City Wide Development Control Plan (DCP) 2013**

The application has been assessed against the relevant controls of Fairfield CityWide DCP 2013 including but not limited to:

- Chapter 3 Environmental Management and Constraints
- Chapter 7 Residential Flat Buildings
- Chapter 12 Car Parking, Vehicle and Access Management

A detailed assessment of the application against the DCP controls has been undertaken and is outlined in **Attachment 2** to this report.

The proposal is satisfactory with respect to controls in Chapters 3 and 12 of the DCP.

The proposal does not comply with the controls in Chapter 7 of the DCP. The non-compliances with Chapter 7 are as follows:

### Street Setbacks

- The proposed development has a 4.1m – 4.5m setback to Belmore Street and a 4.91m – 6.5m setback to Lupin Avenue. This is not considered to be in accordance with the DCP control. It is further noted that the setback zone is further encroached with terraces/POS of ground floor apartments.

### Air Conditioning Units

- Details of air conditioning plant has not been provided on the plans.

### Vehicle Access

- The access ramp into the basement does not allow for simultaneous two – way movement. Council's traffic engineers raise concern with this arrangement.

## Waste Collection

- Council's Waste Management Section has assessed the application against Council's requirements for waste storage and collection and raised a number of issues that have not been adequately addressed. These are discussed under the Key Issues section of the report.

## Servicing

- No servicing is provided onsite to cater for residents within the proposed residential flat building.

Given the above, it is considered that the above issues will require further amendments to the proposed development in order to address the DCP.

### **I. Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are no proposed instruments that are relevant to the proposal.

### **J. Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The Fairfield CityWide DCP 2013 is the relevant DCP and is considered and addressed in this report.

### **K. Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

### **L. Section 4.15(1)(a)(iv) - Provisions of Regulations**

Any relevant matters prescribed in the regulations have been considered.

### **M. Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below. Accordingly, it is considered that the proposal in its current form will result in significant adverse impacts in the locality.

### **N. Section 4.15(1)(c) - Suitability of the Site**

The application has not demonstrated that the site is suitable for the development, nor that the proposal fits in within the locality, nor that there is adequate infrastructure to accommodate the demands of the development have been addressed.

## **O. Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

## **P. Section 4.15(1)(e) - Public interest**

The proposal in its current form is not considered to be in the public interest as the potential impacts are not adequately mitigated, the proposal has several non compliances with the relevant planning controls and has not addressed all the good design principles, and on balance the proposal is contrary to the public interest.

## **7. KEY ISSUES**

---

In addition to the relevant provisions and requirements previously mentioned and discussed within this report, including those contained within the State Environmental Planning Policies, Fairfield Local Environmental Plan 2013, Apartment Design Guide and Fairfield CityWide Development Control Plan 2013, the key planning considerations with the application are identified below.

### **1. FSR Exceedance**

The proposed development exceeds the maximum 2:1 FSR that is permitted by Fairfield LEP 2013 and SEPP (Housing) 2021. The proposed GFA for the development in the submitted documentation is 2929m<sup>2</sup> and therefore the FSR is 2.07:1. Given this, the proposed development exceeds the development standard by 0.07:1 which equates to a variation of 3.5%.

Given the variation proposed, the application has been accompanied by a written request (made pursuant to Clause 4.6 of the Fairfield Local Environmental Plan 2013) which seeks to justify the noncompliance with the development standard.

Please note and as discussed above, in accordance with SEPP (Housing) 2021 only 20.1 car parking spaces are required and 28 car parking spaces are provided. Accordingly, there are 8 additional car parking spaces above the required number. The submitted documentation in the gross floor calculation does not include the car parking spaces provided in addition to the required number of spaces. Given this, the document refers to a lesser variation which is different to the current variation proposed. This matter will need to be reconsidered in the Clause 4.6 variation document.

It is considered that the submitted Clause 4.6 written document currently relied upon does not state the correct variation to the development standard and does not specifically address that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (as required under Clause 4.6(3)(a) of the Fairfield LEP 2013). Given this, Council cannot be satisfied that the written request appropriately addresses the relevant clauses listed above in its current form. On this basis, the Clause 4.6 request to vary Clause 4.4 in relation to floor space ratio is not supported in this circumstance.

Resolution: In order to address this matter the applicant should further consider the amount of gross floor area for the development and amend the Clause 4.6 Written request to address the issues raised.



## **2. Building Height Exceedance**

The proposed development exceeds the maximum 20m Building height development standard that is permitted by Fairfield LEP 2013. The proposed development has a building height of up to 22.65m, and therefore exceeds the development standard by 2.65m. This equates to a variation of 13.25%.

The breach occurs across the rooftop of the development, with the development standard varied due to the proposed lift overrun and communal open space. It is noted that the majority of the main structure of the building is within the 20m maximum building height limit.

Given the variation proposed, the application has been accompanied by a written request (made pursuant to Clause 4.6 of the Fairfield Local Environmental Plan 2013) which seeks to justify the noncompliance with the development standard.

It is noted that when the Application was initially submitted a rooftop communal open space area was provided and was supported with a Clause 4.6 Variation. Notwithstanding, this document was submitted when the application was initially lodged and has not been updated to reflect the amended application. Given this, the document refers to a lesser variation which is different to the current variation proposed. This matter will need to be reconsidered in the Clause 4.6 variation document.

It is considered that the submitted Clause 4.6 written document currently relied upon does not state the correct variation to the development standard and that the document does not specifically address that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (as required under Clause 4.6(3)(a)). Given this, Council cannot be satisfied that the written request appropriately addresses the relevant clauses listed above in its current form. On this basis, the Clause 4.6 request to vary Clause 4.3 in relation to height of building is not supported in this circumstance.

Resolution: In order to address this matter the applicant should amend the Clause 4.6 Written request to address the issues raised.

## **3. Design Excellence and Apartment Design Guidelines**

It is considered that the design of the residential flat building does not exhibit design excellence when considered against the matters in Clause 6.12 of the LEP. It is also considered that the design of the development, in its current form is not in accordance with the design principles for residential apartment development as set out in Schedule 9 of SEPP (Housing) 2021 and the Apartment Design Guide (ADG).

The following issues have been identified in Council's assessment including advice from Council's Architect. Please note, advice is also provided in order to address these matters:

### Local Character and Context

- The inclusion of large deep soil area needs to be developed to include high quality larger canopy trees to take maximum advantage. The POS terrace of G.03 should be further setback into the development.

Resolution: G.03 should be redesigned which includes a setback for the terrace of at least 3m from Belmore Street.

#### Building Setbacks, Separation and Visual/Acoustic Privacy

- Building setbacks to the southern boundary do not comply as follows:
  - o For Levels 4 and 5, a 9m minimum setback is required for habitable rooms. Unit 4.06 and 5.06 have a bedroom with a window that is setback 7.29m along the southern boundary. It is noted that the 2 subject windows are highlight windows which may assist in visual privacy, however, the purpose of the setback is also required to provide acoustic privacy as well. The 2 subject windows cannot be removed as they are required in order to provide the required 60% natural ventilated unit requirement.
  - o The Communal Open Space on the roof top is setback approximately 6.9m from the southern boundary and should be setback 9m.
- Some balconies allow viewing into neighbouring habitable areas, these are 5.03 to 5.02, 5.04 to 5.05 which are repeated on Level 4. The privacy between the ground floor COS to G.01 and G.06 needs to be further considered.

Resolution: Units 4.06 and 5.06 should be redesigned to allow for natural ventilation and remove openings directly facing the southern boundary. The COS on the rooftop should be setback 9m from the southern boundary. Additional privacy features should be incorporated into the design that addresses internal privacy issues.

#### Public Domain Interface

- Concern is raised regarding the design of G.03 and that the living, POS and a bedroom is significantly exposed to the street.
- The driveway is only partially within the building envelope which is not appropriate.
- The building entrance at Belmore Street needs to be clearly detailed and would be better located opposite the letter boxes.

Resolution: The driveway should be located wholly within the building envelope. G.01 should be removed in order to allow the full extent of the driveway to be within the building. As raised G.03 should be redesigned to provide a more substantial setback. The pedestrian entrance to Belmore Street should be further considered.

#### Communal Open Space

- The roof top communal open space is very exposed and does not provide much amenity. Further shade structures should be provided that are integrated into the design and do not cause any additional overshadowing to the southern dwellings. The east section of the COS may be able to include further shading without overshadowing impact.
- The stormwater plan proposes a swale and rainwater tank on the southern boundary. these are not indicated on the landscape plans and may impact the available COS and landscaping on the ground floor.

Resolution: Further shade structures and amenities should be provided on the rooftop terrace. This needs to be carefully considered as to ensure that there is no additional overshadowing impacts to the southern dwellings and that it is integrated into the development. The stormwater infrastructure needs to be balanced and considered with the proposed landscaping along the southern boundary.

#### Private Open Space

- Several of the POS on the ground floor are less than 15m<sup>2</sup> and are within the front setback zone.
- No details of the AC units is provided on the architectural plans. If they are provided on the balconies then they will not comply.

Resolution: AC plant needs to be provided on the roof to ensure that balconies meet the ADG minimum size. In addition, further consideration to the design of the ground floor POS should be given.

#### Common Circulation

- Only one (1) lift is proposed for the whole development. The chance that there is a breakdown or maintenance issue which will leave residents without any access to a lift is not considered appropriate in a modern residential flat building.

Resolution: The Applicant shall further consider the provision of only one lift and/or provide justification regarding how this can be managed.

#### Site Servicing

- A fire booster is located on the plans, however, details of a substation, gas and water are not provided. These should be included into the plans to provide a integrated design that does not compromise landscaping within the front setback zone.

Resolution: The design should include all services that are needed for the development on the architectural plans and ensure that it is well integrated into the front setback landscape area.

### **4. State Environmental Planning Policy (Housing) 2021**

The proposed development has been made under the provisions of Division 1 In-fill Affordable Housing of State Environmental Planning Policy (Housing) 2021. Clause 18 of the SEPP provides non – discretionary development standards that if complied with, prevent the consent authority from requiring more onerous standards.

Council's assessment of the application has identified that the proposal does not comply with Clause (2)(b) and (2)(e), which are as follows:

*(b) for a development application made by a social housing provider—at least 35m<sup>2</sup> of landscaped area per dwelling,*

*(e) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,*

It is considered that a non-discretionary development standards can only be considered under a mechanism within an environmental planning instrument. Clause 4.6 of Fairfield LEP 2013 allows a consent authority to consider a variation if it meets the tests set out in Clause 4.6. No Clause 4.6 variation request has been submitted in order for the consent authority to consider the proposed variation.

Resolution: In order to address this matter the applicant should submit a Clause 4.6 Written request to address Clauses (2)(b) and (2)(e). Notwithstanding this, it is considered more appropriate that the proposed development be redesigned to ensure that 70% of dwellings receive 3 hours of solar access to living areas and POS in order to comply with Clause (2)(e).

## **5. Inconsistencies with DCP**

The proposed development does not comply with the controls in Chapter 7 of the DCP. A detailed assessment against the controls and objectives has been undertaken and was outlined in Section 6 of this report as well as in **Attachment 2**. The following issues have been identified in Council's assessment. Please note, advice is also provided in order to address these matters:

### Street Setbacks

- The proposed development has a 4.1m – 4.5m setback to Belmore Street and a 4.91m – 6.5m setback to Lupin Avenue. This is not considered to be in accordance with the DCP control. It is further noted that the setback zone is further encroached with terraces/POS of ground floor apartments.

Resolution: The design should further setback the terrace for Unit G.03 and further setback Unit G.04 and the units above to 6m.

### Air Conditioning Units

- Details of air conditioning plant has not been provided on the plans.

Resolution: AC plant needs to be provided on the roof to ensure that balconies meet the ADG minimum size.

### Servicing

- No servicing is provided onsite to cater for residents within the proposed residential flat building.

Resolution: At least 2 of the car parking spaces within the basement should be converted into loading bays. The loading bays should accommodate a Small Rigid Vehicle. This will necessitate changes to the first floor above the basement ramp to provide a 3.5m clearance.

## **6. One way Driveway**

The proposed development does not allow simultaneous two way movement into and out of the basement. The proposed vehicle access will narrow to 3.6m wide when entering into or out of the basement which will only allow one vehicle to enter or exit the basement at any one time. The development will rely upon a signalised traffic system that will require vehicles entering or exiting to give way depending on the signal. A waiting bay is provided within the basement and also at the ground level.

Council's Traffic Engineer has assessed the proposed vehicle access arrangement and do not support the proposed one way system. The site has two (2) frontages to Belmore Street and Lupin Avenue and have a combined frontage of 82.84m. Given the extensive length of street frontage it is considered that the subject site is not constrained in a manner that would prevent two way access and there would be no impediment to the proposed development being designed to allow this. Furthermore, no information has been provided in the event that the signalised system does not work (such as maintenance or breakdown) and the resulting traffic impacts that may arise.

A recommendation in order to address this, would be the removal of G.01 and to shift the driveway across into the building and maintain a two way access. This arrangement would allow 2 way access which would remove the need for a traffic light system and management processes as well as address urban design matters as discussed above, by increasing landscaping along the southern boundary and locating the driveway within the building envelope.

Resolution: The proposed development should be amended in order to address the matter raised above.

## **7. Inadequate arrangements for waste management**

Council's Waste Management Branch initially identified a range of issues with the proposed site layout and inability of Council's HRV to safely collect waste from the property. The issues were conveyed to the Applicant to address this matter. Amended plans and additional information was submitted by the applicant and reviewed by the Waste Management Branch who advised that the application is not able to be supported in the current form.

The issues raised are summarised as follows:

- The proposed development does not allow Council's Heavy Rigid Vehicle to access the site for collection. This would need to be provided or alternatively, demonstrate that there is sufficient bin space on the road to allow onstreet collection;
- A FOGO (green bin) storage area is required to be provided on the ground floor;
- The bulky waste area is required to be in a separate room.
- The bin carousel on the ground floor should cater for 660L bins instead of 240L bins.
- No recycling bin (yellow bin) storage room is provided on each level. This will require residents to access the ground floor bin storage room for recycling waste.

The issues raised above would necessitate changes to the proposed floor layout and therefore cannot be conditioned.

Resolution: The proposed development should be amended in order to address the waste matters raised above.

## 8. CONCLUSION

---

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported in its current form as the key issues as outlined in Section 7 have not been resolved satisfactorily and the following matters remain unresolved:

- FSR Exceedance;
- Building Height Exceedance;
- Design Excellence and Apartment Design Guidelines;
- State Environmental Planning Policy (Housing) 2021;
- Design inconsistent with the DCP;
- One Way Driveway;
- Inadequate arrangements for waste management.

The report provides a number of recommendations in order to address the issues that have been identified. The recommendations will require further amendments to the design of the proposed development and would require a reduction in the floor area to comply with the design excellence criteria and would also reduce the FSR exceedance.

## Q. RECOMMENDATION

---

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act 1979 and given the issues identified with the application, Council is not at a point to support the application in its current form and it is considered that the proposal is not in the public interest.

Given the above, it is recommended that Development Application 294.1/2023 for the proposed demolition of existing structures, tree removal and the construction of a 6-storey Residential Flat Building containing thirty – nine (39) dwellings over a basement car park containing 28 car spaces and associated landscaping and civil works at Nos. 15 – 17 Lupin Avenue and 82 Belmore Street, Fairfield East be **Deferred** in order for the Applicant to amend the Application in order to address the issues raised in Council's Assessment report.