

DETERMINATION AND STATEMENT OF REASONS

SYDNEY WESTERN CITY PLANNING PANEL

DATE OF DETERMINATION	4 July 2025
DATE OF PANEL DECISION	4 July 2025
DATE OF PANEL MEETING	7 April 2025
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Kevin Lam, Ninos Khoshaba
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Public meeting held by videoconference on 7 April 2025: opened at 11:30am and closed at 12:45pm.

MATTER DETERMINED

PPSSWC-372 – Fairfield – DA 294.1/2023 – 17 Lupin Avenue, Fairfield East - 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.

PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at briefings and the public hearing and the matters listed at item 8 in Schedule 1.

Application to vary a development standard:

Following consideration of a written request from the applicant, made under clause 4.6 (3) of the Fairfield Local Environmental Plan 2013 (LEP), that has demonstrated that:

- compliance with clause 4.3 (Height of Buildings) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under clause 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of clause 4.3 (Height of Buildings) of the LEP and the objectives for development in the R4 High Density Residential zone; and
- the concurrence of the Secretary has been assumed.

In that regard, the Panel has had regard to the Applicant's amended written request Version C dated April 2025. That request has been prepared in circumstances where the Floor Space Ratio Map prescribes a maximum floor space ratio of 2:1 for the subject site, but a variation to that control is available under clause 4.4A of Fairfield LEP 2013 for land in Zone R4 High Density Residential. Different maximum FSRs apply depending on the length of street frontage for the site. The Applicant's preferred interpretation allowed both street frontages to be added together to apply the clause. The Panel did not agree, reading the clause to direct the assessment to the main street frontage for the development which exceeds 40m allowing a maximum FSR of 1.5:1 (applying clause 2(b)(ii)). The amended clause 4.6 request addressed the Panel's interpretation.

A 30% bonus is available under the Housing SEPP making the permitted FSR 1.95. The amended 4.6 request incorrectly states the bonus to bring the permitted FSR to 2:1.

The amended clause 4.6 request states the FSR to be 2.19:1, which would be a 12% variation.

Notably clause 4.4A would allow an FSR of 2:1 (2.6:1 with the SEPP bonus for affordable housing) if the frontage exceeded 45m. The proposal is substantially less than that maximum.

The length of the western (Lupin Street) frontage is 41.55m and the length of the eastern (Belmore Street) frontage is 41.29m and the table below depicts the FSR that would be permitted with a sliding scale.

Street Frontage	Depth	FSR increase (LEP)	FSR (sliding scale)
30m	40m	1.50	1.50
31m	40m	1.50	1.53
32m	40m	1.50	1.57
33m	40m	1.50	1.60
34m	40m	1.50	1.63
35m	40m	1.50	1.67
36m	40m	1.50	1.70
37m	40m	1.50	1.73
38m	40m	1.50	1.77
39m	40m	1.50	1.80
40m	40m	1.50	1.83
41m	40m	1.50	1.87
41.29 m (Belmore Ave frontage)	40m	1.50	1.88
41.55 m (Lupin St frontage)	40m	1.50	1.89
42m	40m	1.50	1.90
43m	40m	1.50	1.93
44m	40m	1.50	1.97
45m	40m	2.00	2.00

While the Panel agrees with the Council assessment that the standard strictly applies to just one frontage, it accepts that a site with a depth presenting to a public road also exceeding the 40 metre standard, with the added advantages of being a corner site, should allow a more relaxed approach to the standard in this particular case.

On balance it is unnecessary to apply the standard strictly in those circumstances provided that a reasonable design can be achieved which addresses the objectives of the standard. There is no express objective in the clause 4.4A standard, but the Panel is satisfied following a review of the objectives of the general clause 4.4 FSR standard, and the apparent reasons for relaxing that standard for generously dimensioned sites in the R4 high density zone, that the development sufficiently addresses those objectives. Notably, a site with a frontage of 40 metres and a depth of just 30 metres would attract the 1.95:1 FSR. This site is more than 25% deeper.

Development application

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was unanimous.

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons outlined in the Council assessment report.

The Panel has already set out in its report of 27 May 2025 its reasons for concluding that the DA ought to be approved pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, having regard to each of the matters identified in s 4.15. The Panel was particularly mindful that it is in the public interest for the additional affordable housing the DA proposes to be constructed to meet the needs of very low, low and moderate income households identified by the Housing SEPP.

The proposal will be quite different in form from the surrounding detached housing in the locality, but that form of housing can be expected to be replaced gradually over the coming years as new building work takes advantage of the more relaxed controls available for the R4 High density zone.

One matter concerning which there was not unanimity was the question of whether the ramp into the basement carpark should be a single or double lane. As the driveway is at least 3 metres wide and less than 40 metres long, it would comply with AS/NZS 2890.1 as it applies to off street parking facilities for residential development of this comparatively smaller scale. However, the community appointed members felt strongly that where the potential for vehicle conflicts can be avoided so as to remove potential issues arising during morning and afternoon peaks, then passing on the ramp should be accommodated. In this case, the landscaping would still be compliant and adequate even if the additional area of the side setback was further encroached upon by the excavation for the ramp. While the Applicant indicated a strong preference for the single ramp to reduce the costs of construction, it provided a suggested wording for a condition of consent, should the two-way driveway be required.

While the remaining three members of the Panel saw the single lane driveway as acceptable if necessary to address site constraints, and saw benefits of less area of the site devoted to construction, they were nonetheless persuaded by the strong views of the other Panel members that the improvement to traffic circulation should be accommodated in this instance.

The unanimous decision was therefore to impose the condition of consent proposed by the Applicant for the two-way driveway arrangement.

Lastly, the Panel were unanimously of the opinion that the encroachment into the side setback to accommodate a driveway ramp was permitted in the context of the special circumstances of this application discussed above, and should not be seen as a precedent to be applied in the development of the area.

CONDITIONS

The Panel's deferral report of 27 May 2025 sets out the Panel's views about the several conditions which were disputed between the Applicant and the Council, excepting only that the following conditions are to be incorporated into the notice of determination:

- (a) The basement ramp shall be redesigned to be minimum 5.5m wide with 300mm clearance to vertical obstruction on both sides of the ramp to the full length to allow for two-way simultaneous traffic. The ramp shall be accommodated through a reduction in the width of the landscaping along the southern boundary, with an increase in the basement footprint by up to 600mm to the south."
- (b) The construction certificate plans are to incorporate a splay in the terrace at the north western corner of the building created from points measured 1.2 metres back along the Belmore Street and Lupin Avenue frontages, so as to allow an increase in deep soil planting in that location, with the *Lagerstroemia indica* proposed in that location to have a minimum pot size of at least 50 cm and a height of at least 2 m."






CONSIDERATION OF COMMUNITY VIEWS

In coming to its decision, the panel considered written submissions made during public exhibition and heard from all those wishing to address the panel. The panel notes that issues of concern included:

- 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 Panel considers that concerns raised by the community have been adequately addressed in the Council assessment report and that no new issues requiring assessment were raised during the public hearing.

PANEL MEMBERS	
 Justin Doyle (Chair)	 Louise Camenzuli
 David Kitto	 Ninos Khoshaba
 Kevin Lam	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-372 – Fairfield – DA 294.1/2023
2	PROPOSED DEVELOPMENT	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.
3	STREET ADDRESS	Three (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)
4	APPLICANT/OWNER	Applicant: BCL2 Limited Owner: BlueCHP Limited
5	TYPE OF REGIONAL DEVELOPMENT	Private infrastructure and community facilities over \$5 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> 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 Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Fairfield City Wide Development Control Plan 2024 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil Coastal zone management plan: [Nil] The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 24 March 2025 Draft conditions and reporting of Council and Applicant's position in memorandum communicated by email dated 12 May 2025 Consideration of additional material provided by the applicant via email on 2 and 3 June 2025. Draft Conditions of consent received by email dated 19 June 2025. Clause 4.6 – Height of Buildings Written submissions during public exhibition: 27 Verbal submissions at the public meeting: <ul style="list-style-type: none"> Shallyna Lo, Ly Tran Council assessment officer – Tia Mills, Liam Hawke On behalf of the applicant – Gareth Bird, Brendon Clendenning Total number of unique submissions received by way of objection: 17

8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> • Briefing: 6 November 2023 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Kevin Lam, Hugo Morvillo ○ <u>Council assessment staff</u>: Tia Mills, Liam Hawke ○ <u>Applicant representatives</u>: Gareth Bird, Theo Loucas, Jared Phillips, Brendon Clendenning • Briefing: 26 February 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Kevin Lam, Hugo Morvillo ○ <u>Council assessment staff</u>: Tia Mills, Liam Hawke, Sunnee Cullen ○ <u>Applicant representatives</u>: Gareth Bird • Briefing: 28 October 2024 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Kevin Lam, Ninos Khoshaba ○ <u>Council assessment staff</u>: Liam Hawke, Sunnee Cullen ○ <u>Applicant representatives</u>: Gareth Bird, Theo Loucas, Jared Phillips, Brendon Clendenning, Glenn Amanonce • Final briefing to discuss council's recommendation: 7 April 2025 <ul style="list-style-type: none"> ○ <u>Panel members</u>: Justin Doyle (Chair), Louise Camenzuli, David Kitto, Kevin Lam, Ninos Khoshaba ○ <u>Council assessment staff</u>: Tia Mills, Liam Hawke • Consideration of additional material by circulation of papers on 12 May 2025.
9	COUNCIL RECOMMENDATION	Deferral
10	DRAFT CONDITIONS	Received from Council via email on 19 June 2025