

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-374
DA No.	DA 260.1/2023 PAN-355763
LGA	Fairfield City Council
Proposed Development	<p>The application proposes to amalgamate and subdivide the existing 6 lots to create two Torrens Title lots to facilitate the staged development of the site as follows:</p> <p>Stage 1: Construction of 53 Multi Dwelling Housing comprising 15 x three-storey and 38 x two-storey units, across 8 blocks (Block A to H), including 1 level of basement car parking and at-grade parking providing a total of 136 spaces; and ancillary works including demolition of existing structures, earthworks, tree removal, construction of a private internal access road, and landscaping</p> <p>Stage 2: Construction of 6-storey Residential Flat Building containing 85 apartments (reduced from 87) with two levels of basement parking providing a total of 107 spaces (reduced from 109), and ancillary works.</p>
Street Address	<p>Six lots consisting of:</p> <ul style="list-style-type: none"> ▪ 400 Cabramatta Road West, Cabramatta (Lot 1 in DP 29449) ▪ 402 Cabramatta Road West, Cabramatta (Lot 1 in DP 503339) ▪ 402A Cabramatta Road West, Cabramatta (Lot 2 in DP 503339) ▪ 404 Cabramatta Road West, Cabramatta (Lot 7 in DP 709126) ▪ 2 Orange Grove Road, Cabramatta (Lot 6 in DP 709126) ▪ 6 Links Avenue, Cabramatta (Lot 3 in DP 30217)
Applicant/Owner	Ahmed Taleb, TCON Constructions
Date of DA Lodgement	28 August 2023
Total number of Submissions	52 total submissions
Number of Unique Objections	34 unique objections
Recommendation	Refusal

Regional Development Criteria	Cost of development: \$50,273,658.38
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> ▪ Fairfield LEP 2013 ▪ SEPP (Building Sustainability Index: BASIX) 2004 ▪ SEPP (Planning Systems) 2021 ▪ SEPP (Resilience & Hazards) ▪ SEPP (Transport & Infrastructure) 2021 ▪ SEPP (Housing) 2021: Chapter 4 Design of Residential Apartment Development ▪ Apartment Design Guide ▪ Fairfield CityWide DCP 2013 ▪ Section 138 of NSW Roads Act 1993 ▪ EP&A Act 1979 ▪ EP&A Regulation 2021
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> ▪ Attachment 1 – Reasons for Refusal ▪ Attachment 2 – Council's Compliance Tables: DCP & ADG ▪ Attachment 3 – Architectural Plans – Stage 1 Multi Dwelling Housing ▪ Attachment 4 – Architectural Plans – Stage 2 Residential Flat Building ▪ Attachment 5 – Architectural Design Statement MDH ▪ Attachment 6 – Architectural Design Statement RFB ▪ Attachment 7 – ADG Diagrams ▪ Attachment 8 – Landscape Plans ▪ Attachment 9 – Photomontages ▪ Attachment 10 – Shadow Diagram Certification ▪ Attachment 11 – Civil Engineering Plans Multi Dwelling Housing ▪ Attachment 12 – Civil Engineering Plans Residential Flat Building ▪ Attachment 13 – Subdivision Plan ▪ Attachment 14 – Survey Plan ▪ Attachment 15 – Accessibility Assessment Report ▪ Attachment 16 – Acoustic Report: Traffic and Environmental Noise ▪ Attachment 17 – Air Quality Report ▪ Attachment 18 – Arboricultural Impact Assessment ▪ Attachment 19 – Building Code of Australia (BCA) Report ▪ Attachment 20 – Cost Report ▪ Attachment 21 – Ecological Issues and Assessment Report ▪ Attachment 22 – Geotechnical Investigation ▪ Attachment 23 – Landscape Statement ▪ Attachment 24 – Loading Dock Management Plan ▪ Attachment 25 – Pedestrian Access & Mobility Plan ▪ Attachment 26 – Phase 1 Site Investigation Report ▪ Attachment 27 – Statement of Environmental Effects ▪ Attachment 28 – Updated Traffic and Parking Impact Assessment ▪ Attachment 29 – Addendum Traffic and Parking Statement, ▪ Attachment 30 – Urban Design Report DA ▪ Attachment 31 – Waste Management Plan ▪ Attachment 32 – Applicant's Response to Council's Letter of December 2023 ▪ Attachment 33 – Applicant's Response to Council's Letter of 5 July 2024

	<ul style="list-style-type: none"> Attachment 34 – Applicant's Response to Council's Letter of 26 August 2024 Attachment 35 – Applicant's Response to Panel Briefing Attachment 36 – Applicant's DCP Compliance Table Attachment 37 – Transport for NSW (TfNSW) Concurrence Attachment 38 – Map of Properties Notified & Submissions Received Attachment 39 – Submissions
Clause 4.6 Requests	<p>A Clause 4.6 Request was not submitted to address the variation to:</p> <ul style="list-style-type: none"> Fairfield Local Environmental Plan (LEP) 2013 Clause 4.4 Floor Space Ratio Zoning Partly R4 High Density Residential, and Partly R3 Medium Density Residential
Summary of key submissions	<ul style="list-style-type: none"> Traffic generation, vehicle access, car parking and congestion concerns, especially about the length of time that residents will be delayed when trying to exit from Links Avenue – current light only allows 3-4 cars to exit before turning red – residents wait 5-7 minutes at times Concern that there are no safety barriers to protect residences from traffic Loss of parking on local street and road safety impacts Loss of privacy, overlooking, overshadowing and noise impacts Up to six storey buildings being out of character Loss of tree canopy Limited infrastructure available for the development
Report Prepared By	Venetin Aghostin, Senior Development Planner
Report Date	4 November 2024

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**

Legislative clauses requiring consent authority satisfaction

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? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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? **No**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

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

1. EXECUTIVE SUMMARY

Council is in receipt of Development Application No. 260.1/2023 proposing to amalgamate and subdivide the existing 6 lots to create two Torrens Title lots to facilitate the staged development of the site and referred to within this report collectively as 400-404 Cabramatta Road West, Cabramatta, as follows:

- Stage 1: Construction of 53 Multi Dwelling Housing comprising 15 x three-storey and 38 x two-storey units, across 8 blocks (Block A to H), including 1 level of basement car parking and at-grade parking providing a total of 136 spaces; and ancillary works including demolition of existing structures, earthworks, tree removal, construction of a private internal access road, and landscaping; and
- Stage 2: Construction of 6-storey Residential Flat Building containing 85 apartments (reduced from 87) with two levels of basement parking providing a total of 107 spaces (reduced from 109), and ancillary works.

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 \$30 million and is required to be determined by the SWCPP.

Prior to the lodgement of this Development Application (DA), the subject site was subject to a Planning Proposal (PP) Application that rezoned the land to partly R4 High Density Residential and partly R3 Medium Density Residential. A site specific DCP was also adopted in order to guide the redevelopment of the site, to allow a residential flat building on the northern end and multi dwelling housing on the southern portion of the land.

The land is privately owned, has a total site area of 15,327m², maintains frontages to two major classified roads being Cabramatta Road West to the north, and Orange Grove Road/Cumberland Highway to the west, as well as a secondary frontage to the local Links Avenue further south from which the one vehicular access to the site is located. The site is predominantly vacant except for a few minor structures on the northern portion of the site and contains extensive existing mature trees. The surrounding context is predominantly single storey and double storey, detached dwellings. Opposite the site are non-residential uses such as a golf club, a service station and a food and drink premises.

There have been two briefings with the Panel in relation to this application, initially on 11 December 2023 and then on 9 September 2024 where key issues were discussed including traffic impacts, acoustic impacts, loss of vegetation, the design of the circulation road, service vehicle access issues, inadequate arrangements for waste management and other matters were raised. During these discussions, the Panel enquired about locating the private open space internal to the site rather than along the perimeter of the site to improve the amenity of occupants.

An Urban Design expert was engaged by Council to assess the proposal against the design quality provisions of SEPP (Housing) 2021 (SEPP 65), the ADG and the design excellence provisions in the Fairfield LEP 2013. The Urban Designer identified a range of issues with

the proposal and does not consider that the proposal would meet the principles of good design under SEPP 65, and particularly does not meet the objectives in relation to the principles of context, built form and scale, landscape, safety, sustainability and amenity.

A meeting was held between Council and the applicant and the urban design expert. Council suggested to the applicant to consider locating all garages, car parking, vehicular access and servicing for waste collections within a basement, to enable the ground level of the site to be prioritised for landscaping, pedestrians/cyclists access, for preservation of existing vegetation and improvement of the design, the contextual fit and overall amenity for occupants and neighbours. The applicant expressed that they did not wish to deviate from the envelope depicted in the site specific DCP.

Council wrote to the applicant on three occasions outlining the issues identified. The applicant responded with amended documentation incorporating improvements however these changes have not addressed the matters raised.

The amended application has been considered in accordance with the relevant planning provisions including but not limited to SEPP (Housing) 2021: Chapter 4 Design of Residential Apartment Development; the Apartment Design Guide (ADG); SEPP (Resilience and Hazards) 2021: Chapter 4 Remediation of Land; Fairfield LEP 2013; and Fairfield CityWide DCP 2013. Subsequently, a number of issues have been identified and remain outstanding.

The key issues associated with the proposal are considered to be:

- **Traffic impacts and mitigation measures:** traffic generation of the development, which as amended has increased to 57 AM peak hour vehicle trips and 60 PM peak hour vehicle trips. The average delay, queue lengths and the degree of saturation at Links Avenue are considerably impacted by the traffic generation of the proposal causing excessive wait time for residents in the area. The queue length would increase beyond the site access which would not allow residents to take the right turn from the driveway onto Links Avenue which will result in queuing internal to the site. Council's assessment finds that the proposal is nearly doubling the average delay and the queuing for vehicles travelling from Links Avenue. For right-turn movement from Links Avenue the queue length increases from 29m to 80m, and the average delay increases from 75.8 seconds to 132.3 seconds while the degree of saturation surges from 0.49 to 1.014 exceeding the maximum practical degree of saturation for signalised intersections.
- **Design of circulation road, servicing of the site and swept paths:** the design of the private two-way circulation road does not enable two-way simultaneous movement at the bends of the road, for a truck (primarily Council's Heavy Rigid Vehicle (HRV)) and a passenger vehicle, to drive simultaneously and safely within the bends of the development. Additionally, the design and dimensions of the circulation road are less than the dimensions required by DCP and have impacted the ability for vehicles to achieve two-way simultaneous movement, and impacted the ability to provide a safe and designated pedestrian pathway. Carriageway excluding curb is less than 6m in two locations (3m and 5.4m is proposed); carriageway including curb along the eastern road is less than 8.85 (6m is proposed); and carriageway width between units with garages opposite is less than 12.15m (as low

as 9.6m). These changes are unacceptable considering the issues with the site and the lack of a safe pedestrian footpath along the road.

- **Floor Space Ratio (FSR) Exceedance:** the proposed residential flat building exceeds the maximum 2:1 FSR that is permitted by Fairfield LEP 2013 over the R4 zoned land. The exceedance occurs as a result of the gross floor area (GFA) diagrams excluding the ground floor residential waste storage rooms from the calculation of GFA and internal corridors where these spaces are primarily enclosed. A Clause 4.6 Request for variation of the FSR standard was not submitted as the applicant is of the opinion that the space does not constitute 'GFA'.
- **Loss of existing mature trees:** the site has approximately 75 trees and the development proposes to remove a significant number of these to accommodate the development. Council's concern is specifically with the removal of 13 of the trees ranging in height from 8m to 32m, as not only were these 13 identified by the site specific DCP to be retained, these trees are tall significant trees, primarily located along the perimeters of the site or in the communal open spaces that are capable of being retained and protected, subject to redesign of the building envelopes. The benefit of retaining and preserving the natural landscape and amenity that these trees contribute to the streetscape, the site, the locality and to the community is considered to be of considerable benefit.
- **Design Quality not achieved:** 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 SEPP (Housing) 2021 does not meet 7 out of 9 of the principles of good design particularly context, built form and scale, density, landscape, safety, sustainability and amenity.
- **Building setbacks and design inconsistent with the ADG:** The proposed building setbacks to the lower density eastern and southern boundaries, as well as separation between proposed units in the same building do not comply with the ADG resulting in inadequate transition between the 6-storey scale compared to the low scale, two storey context. The privacy measures proposed to mitigate non-compliant building setbacks result in unacceptable impacts and reduce the quality of the building. Other elements of the design are also inconsistent with the ADG such as interface to public domain, pedestrian access and entries, vehicle access, acoustic privacy, landscape design, waste storage facilities and so on.
- **Inconsistencies with Site Specific DCP:** The proposed development has a low level of consistency and compliance with both numerical requirements of the site specific DCP contained in Chapter 10 and Chapter 6A, but also with the objectives. It is considered that the application does not display sufficient merit that would warrant a flexible application of the DCP, or variations to the DCP controls, as the proposed variations are not likely to lead to acceptable environmental and built outcomes.

- **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 unsuitable.
- **Acoustic impacts of waste rooms:** Acoustic impacts of the open design of the amended waste room at the ground floor have not been supported by justification or a revised Acoustic Report and has the potential to adversely impact adjoining residents.

Council's technical officers have assessed the application and concerns have been raised by the Traffic & Transport Branch, Waste Management Branch, Landscape Advisor, Tree Preservation Officer, Place Manager, Strategic Planning and Land Use Branch. The issues are addressed within the report. Council notes that no issues were raised by the internal Building Control Branch, Development Engineer, Subdivision Engineer, Heritage Advisor, Public Health & Environment Branch, Property Advisor, Asset Management, Natural Resources and Tree Preservation Officer (TPO).

The design of the residential flat building despite already being amended by the removal of two units in order to comply with the maximum FSR, continues to exceed the maximum 2:1 FSR that is permitted by Clause 4.4 of the LEP. The current design has sought to replace a solid wall of the waste room with a 1.4m high screen to avoid calculating the large space as GFA, however the depth of the space remains almost entirely enclosed and Council does not agree that the applicant's approach is sufficient to warrant exclusion of the room from GFA.

As the applicant considers that this would not be defined as GFA, they have not submitted a written request for a variation of the standard pursuant to Clause 4.6 of the LEP, which allows the Consent Authority to consider exceptions to development standards in certain circumstances.

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

- Clause 2.119 and 2.122 of SEPP (Transport & Infrastructure) with respect to the matters to do with safety, efficiency and ongoing operation of the classified road, the design of the vehicular access, sensitivity of the development to traffic noise and vehicle emissions, accessibility of the site, efficiency of movement of people, and the potential traffic safety, road congestion and parking implications
- Clause 4.6 of the LEP with respect to exceptions to development standards
- Clause 6.9 of the LEP with respect to essential services and particularly the requirement for suitable vehicular access as the application has not demonstrated that the two-way private road can accommodate a heavy rigid vehicle and a passenger vehicle at the intersections of the development, at the same time
- 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

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 is not Integrated Development however required the concurrence of Transport for NSW (TfNSW) under Section 138 of the Roads Act 1993 due to alterations to existing vehicular crossings along the classified roads. The development is also a Traffic-Generating development under SEPP (Transport & Infrastructure) 2021. TfNSW initially raised issues with the traffic modelling which was updated by the applicant and lead to TfNSW issuing its concurrence. Endeavour Energy has also reviewed the application and provided comments but raised no issues of concern.

The application was publicly notified on two occasions and Council reviewed a total of 52 submissions, of which 34 are unique submissions. The key concerns relate to traffic generation, vehicle access, car parking and congestion concerns, especially in relation to the length of time that residents will be delayed when trying to exit from Links Avenue, citing to Council that the current light only allows 3-4 cars to exit before turning red – residents wait 5-7 minutes at times. Other concerns include but are not limited to there being no safety barriers to protect residences from traffic, loss of parking on local streets and road safety impacts, loss of privacy, overlooking, overshadowing and noise impacts, six storey building being out of character, loss of tree canopy; and limited infrastructure available for the development. These issues have been addressed within this report.

It is noted that Council has consistently raised the above concerns 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.

Other issues include the inadequacy of the documentation including but not limited to the clause 4.6 variation request, staging details, demolition details, loading dock management plan, pedestrian access and mobility plan, acoustic report reflecting amended waste room, waste management plan, BASIX certificate, and limited internal dimensions on multi dwelling housing architectural plans.

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 cannot support the application and it is considered that the proposal is not in the public interest.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the EP&A Act, DA 260.1/2023 is recommended for refusal subject to the reasons contained at Attachment A of this report.

2. THE SITE AND LOCALITY

Subject Site

The subject site which is referred to in this report as No's 400-404 Cabramatta Road West, Cabramatta comprises 6 lots consisting of:

- 400 Cabramatta Road West, Cabramatta (Lot 1 in DP 29449)
- 402 Cabramatta Road West, Cabramatta (Lot 1 in DP 503339)
- 402A Cabramatta Road West, Cabramatta (Lot 2 in DP 503339)
- 404 Cabramatta Road West, Cabramatta (Lot 7 in DP 709126)
- 2 Orange Grove Road, Cabramatta (Lot 6 in DP 709126)

- 6 Links Avenue, Cabramatta (Lot 3 in DP 30217)

The site has a total site area of 15,327m². The site has frontages to three roads, including two which are classified roads zoned SP2 Infrastructure (i.e. Cabramatta Road West and Orange Grove Road) and a local road being Links Avenue.

The site consists of two zonings:

- R4 High Density Residential along the northern frontage
- R3 Medium Density Residential across the rest of the site to the south

The site is occupied by existing structures that are all to be demolished.

The topography of the site at the Cabramatta Road West frontage is relatively flat and then falls steeply to the south towards Links Avenue by approximately 12m.

Council's mapping identifies the following environmental constraints affecting the site:

- 1.8m Easement over 6 Links Avenue which will be become redundant
- Contours of site indicate an overland flow path, which is not mapped, but is present on the site
- Located in the Vicinity of Heritage Item 11, Red Gums, located on the golf course

The site is not mapped on the NSW Biodiversity Values Map but is mapped on Council's mapping as being in a Conservation Significance Assessment (CSA) area (see Figure 3 below), highlighting the existence of native vegetation and/or habitat. The site contains a significant number of existing trees located within the property boundaries as well as street trees.

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

The site is opposite to, and within walking distance of a number of bus stops and therefore has convenient access by bus to local town centres such as Cabramatta town centre which is about 2km further east and Liverpool town centre which is also about 2.3km further south.

Surrounding Area

The surrounding context is characterised as follows:

East: the eastern boundary of the site is immediately adjoined by a row of 10 single and storey detached dwellings which face Smiths Avenue and have their rear yards facing the development site. Some properties have secondary dwellings to the rear where others have an open-rear yard. Further east is also a residential precinct zoned R2 Low Density Residential characterised by primarily detached single and double storey dwellings. There is one exception which is a site that contains an older multi dwelling development containing 10 units which is not a type of development that is currently permitted in the R2 zone.

South: The southern boundary of the site is immediately adjoined by a row of 4 double storey detached dwellings which face Links Avenue and have their rear yards facing the development site. The proposed driveway of the development is located running along the side boundaries of two neighbouring dwellings. Further south is also a residential precinct

zoned R2 Low Density Residential characterised by primarily detached single and double storey dwellings.

North: A BP service station and Hungry Jacks are located north of the site on the opposite side of Cabramatta Road West, including a residential precinct zoned R2 Low Density Residential characterised by primarily detached single and double storey dwellings.

West: The Cabramatta Golf Course is located west of the site on the opposite side of Orange Grove Road over land zoned RE2 Private Recreation.

The wider locality is characterised by a mix of land uses including residential, commercial, private and public recreation, education and community uses including places of worship within a low-density and low-scale environment consisting of one or two storey buildings. Further south and within walking and/or driving distance of the site is the Orange Grove bulky goods and retail complex. There are no known examples of multi-storey buildings above two storeys in the immediate or broader locality.



Figure 1: Aerial view of the site, outlined.



Figure 2: Aerial view of the wider context.



Figure 3: Site is mapped in the Conservation Significance Assessment (CSA) area and is mapped as low significance.

3. DESCRIPTION OF THE PROPOSAL

Summary of Development

The proposed development seeks consent for amalgamation and subdivision of the existing 6 lots to create two Torrens Title lots to facilitate the staged development of the site as follows:

- Stage 1: Construction of 53 multi dwelling housing comprising 15 x three-storey and 38 x two-storey units, across 8 blocks (Block A to H), including 1 level of basement car parking and at-grade parking providing a total of 136 spaces; and ancillary works including demolition of existing structures, earthworks, tree removal and construction of a private internal access road; and landscaping
- Stage 2: Construction of 6-Storey residential flat building containing 85 apartments (reduced from 87) with two levels of basement parking providing a total of 107 spaces (reduced from 109), and associated works

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



Figure 4. Photomontage of the development from the intersection of Orange Grove Road and Cabramatta Road West.



Figure 5. Photomontage of the development from Orange Grove Road.

Subdivision and Amalgamation

- The application proposes to amalgamate and subdivide the existing 6 lots to create two Torrens Title lots that align with the R4 and R3 zone boundaries and to facilitate the proposed development, incorporating various easements over the two lots such as for carriageway, drainage and electrical substation. The following lot sizes are proposed:
 - Lot 1 for the RFB will be 3,398m²
 - Lot 2 for the MDH will be 11,929m²

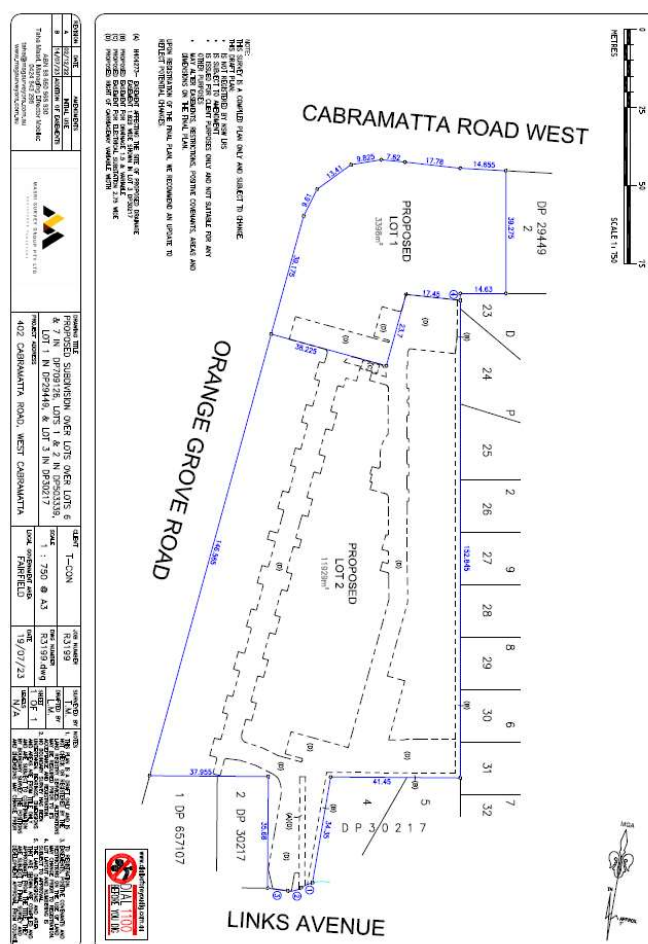


Figure 6. Proposed Subdivision Plan.

Phases in Stage 1 and Stage 2

- Stage 1 Multi Dwelling Housing (MDH)** will be carried out in three phases as follows:
 - Phase 1 of Stage 1 involves:
 - Siteworks for MDH and RFB
 - Implementation of tree protection measures for MDH and RFB
 - Site demolition for MDH and RFB
 - Site clearing for MDH and RFB
 - Phase 2 of Stage 1 involves:
 - Site preparation, excavation, fill and benching for MDH only
 - Stormwater construction for MDH only

- Swale and OSD construction for MDH only
- Phase 3 of Stage 1 involves:
 - Construction of MDH basement and units
 - Vehicular access
 - Pedestrian access
 - Landscaping
- **Stage 2 Residential Flat Building (RFB)** will be carried out in two phases as follows:
 - Phase 1 of Stage 2 involves:
 - Basement excavation for RFB
 - Site preparation for RFB
 - OSD & Stormwater for RFB
 - Basement Access for RFB
 - Phase 2 of Stage 2 involves:
 - Construction of RFB
 - Landscaping
 - Pedestrian access

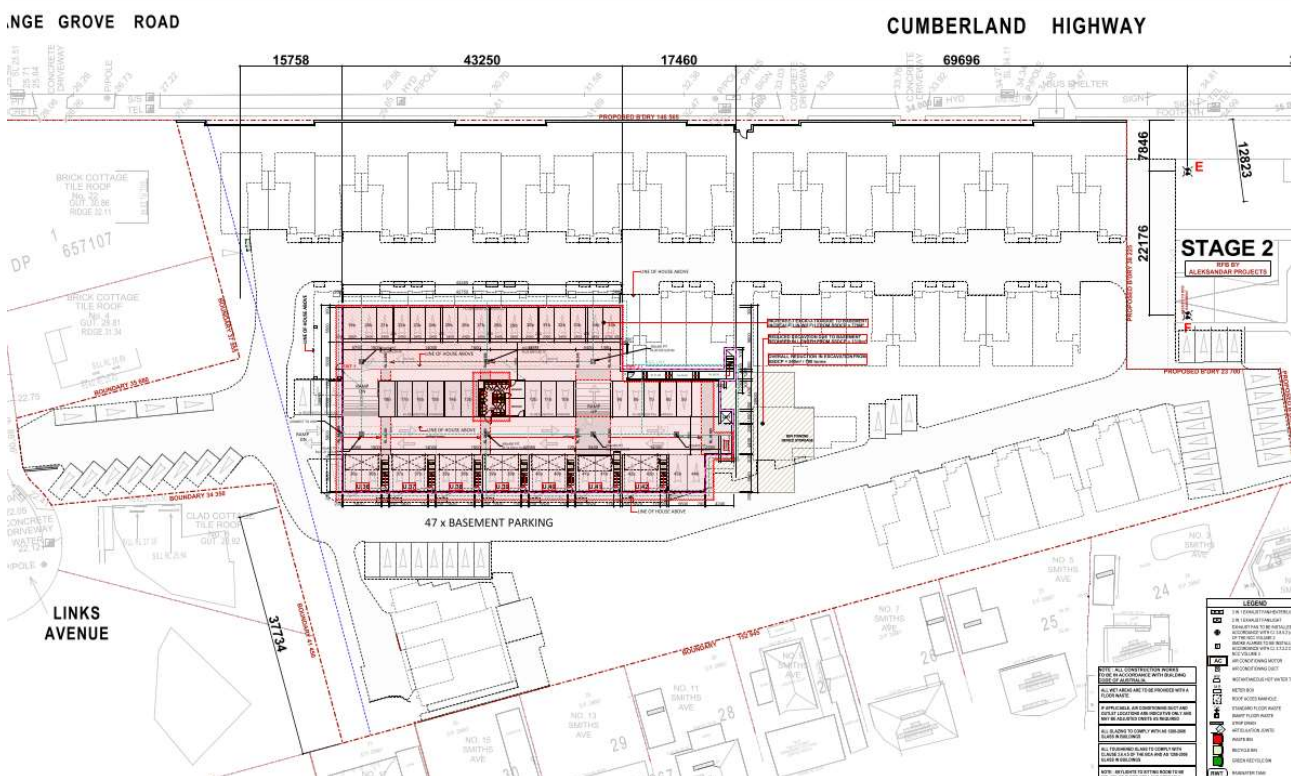
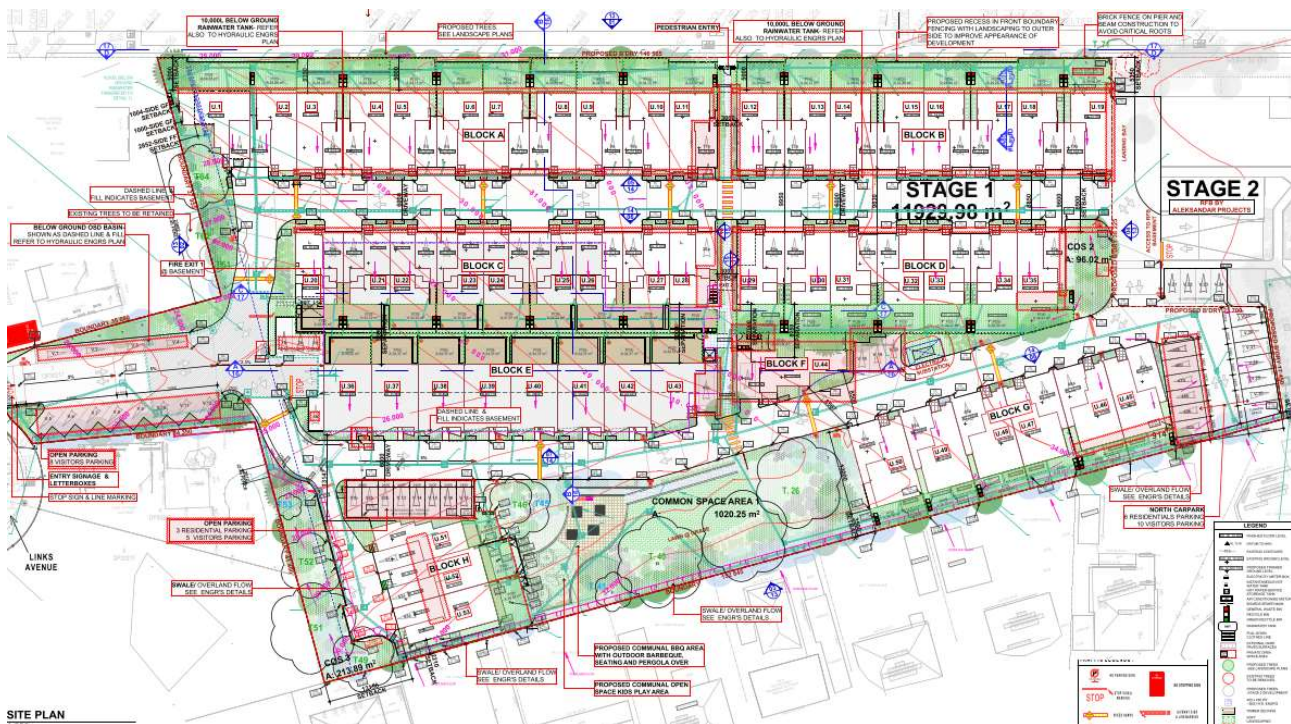
Stage 1 Multi Dwelling Housing (Designed by Designiche)

Additional details of Stage 1 of the application are as follows:

- Demolition of all existing structures across the whole of the site including the land over which both the multi dwelling housing and residential flat building are proposed.
- Construction of a total of 53 multi dwelling housing comprising 38 x 2-storey and 15 x 3-storey units across 8 blocks (Block A to Block H), including 1 level of basement car parking and at-grade parking.
- The 53 units will provide a mix of 32 x 3 bedroom units and 21 x 4 bedroom units.
- A total of 136 car parking spaces will be provided on site, inclusive of residential and visitor spaces, designated as follows:
 - 106 residential spaces
 - 30 visitor spaces
- The following facilities have not been provided for the multi dwelling housing:
 - No accessible or adaptable parking spaces
 - No motorcycle parking spaces
 - No electric car charging bays
 - No bicycle parking spaces are provided
 - No on-site car wash bay is provided.
- Communal open space (COS) will be provided at the ground level across three main areas:
 - Principal COS 1 along the eastern boundary with an area of 1,020.25m² and facilities such as seating, and play equipment

- COS 2 opposite basement entry with an area of 96.02m²
 - COS 3 along the southern boundary with an area of 213.89m²
- Construction materials include bricks, rendered and painted brick, cladding, aluminium frames and windows, timber battens, Colorbond panel doors and roofing.
- Fencing is proposed and some fencing will need to comply with the Acoustic Report recommendations. Plans show the following types:
 - West boundary fronting Orange Grove Road/Cumberland Highway will be a 1.8m high brick fence.
 - North boundary fencing to residential flat building, no details provided and it is assumed there is no fencing
 - Southern boundary fencing will be 2.1m high Colorbond, tapering to 1.2m at the Links Avenue front boundary
 - East boundary fencing partly 1.8m high and partly 2.1m high Colorbond fence
- Additional privacy screening involving a 2.4m high fence is proposed along the boundary with the southern neighbours to screen their windows and yards from headlight glare and views as a result of the finished levels of the western circulation road. Insufficient detailing was submitted regarding this measure.
- Plant/equipment such as air conditioning units are capable of being installed in the rear yards of individual units.
- A substation will be located at the eastern driveway.
- Existing vegetation on the site consisted of some 75 trees that were assessed in 2015 as part of the Planning Proposal. A reassessment of vegetation undertaken in February 2024 identified that 14 trees were not present or dead and are identified in the Arboricultural Report. The following is noted:
 - 37 trees are proposed to be removed. This includes 13 trees that the site specific DCP required to be retained.
 - 14 trees are proposed to be retained
 - 5 trees were identified as exempt species
 - 5 trees were approved for removal under a tree permit according to the arborist.
- New landscaping is proposed across the site including replacement planting and a variety of ground covers, shrubs and trees.
- Proposed 1.5m wide drainage easement along the east and south boundaries to collect stormwater and discharge into Links Avenue from the whole site but will benefit the residential flat building. On-Site Detention (OSD) is also proposed under the driveway area.
- A swale is proposed along the east and south boundaries which redirects the alignment of the existing swale but maintains the swale within the property boundaries.
- Ancillary earthworks are proposed to enable the development including excavation works for the basement levels.

- Vehicular access will be via one access point from Links Avenue further south which will be constructed as part of the Stage 1 Multi Dwelling Housing units and will be shared with the Stage 2 Residential Flat Building. No vehicular access is provided from the adjoining classified roads.
- A private internal circulation road will be constructed to provide direct access to individual units and to the Stage 2 development. The road is two-way and provides shared vehicular access, service vehicle access and pedestrian access with no formal footpath.
- Traffic control measures to mitigate against the adverse impacts of traffic generated by the development include but are not limited to:
 - Existing BB Line markers (i.e. double line) along Links Avenue proposed to be lengthened to 30m and greater than 30m; and length of the 'No Stopping' along Links Avenue increased. This will result in a loss of on-street parking spaces.
 - No Stopping signs along the internal circulation road
 - Stop Signs and line marking at the exit point of the Links Avenue driveway to provide priority to vehicles travelling along Links Avenue
 - Speed humps within the internal circulation road
 - Pedestrian crossings only along the east to west pedestrian route between the development to Orange Grove Road
 - Signpost directing apartment traffic along the eastern driveway where there are a lesser number of multi dwelling housing units that would be impacted compared to the western driveway.
 - Left-only signage proposed at the exit of the RFB basement to direct traffic along the eastern driveway.
- The site is required to be serviced by Council's waste collection service which is a 10.5m long Heavy Rigid Vehicle (HRV) and is the largest vehicle that is capable of accessing the private circulation road. Trucks cannot access the basement.
- One formal loading bay will be provided at ground level, located externally and on the south side of the residential flat building. This loading bay will be shared with the Stage 2 Residential Flat Building. Service vehicles are proposed to reverse into the loading bay then exit in a forward direction.
- Waste and recycling storage is distributed as follows:
 - 3 x waste stream bins per unit will be located in the rear yards of individual units where those units have a garage connecting their yard to the circulation road
 - Where units do not have ability to store bins in a rear yard, a common waste room is proposed in the basement
- Bins will be presented to the private circulation road kerb for weekly collections then returned to the individual units or the common waste room.





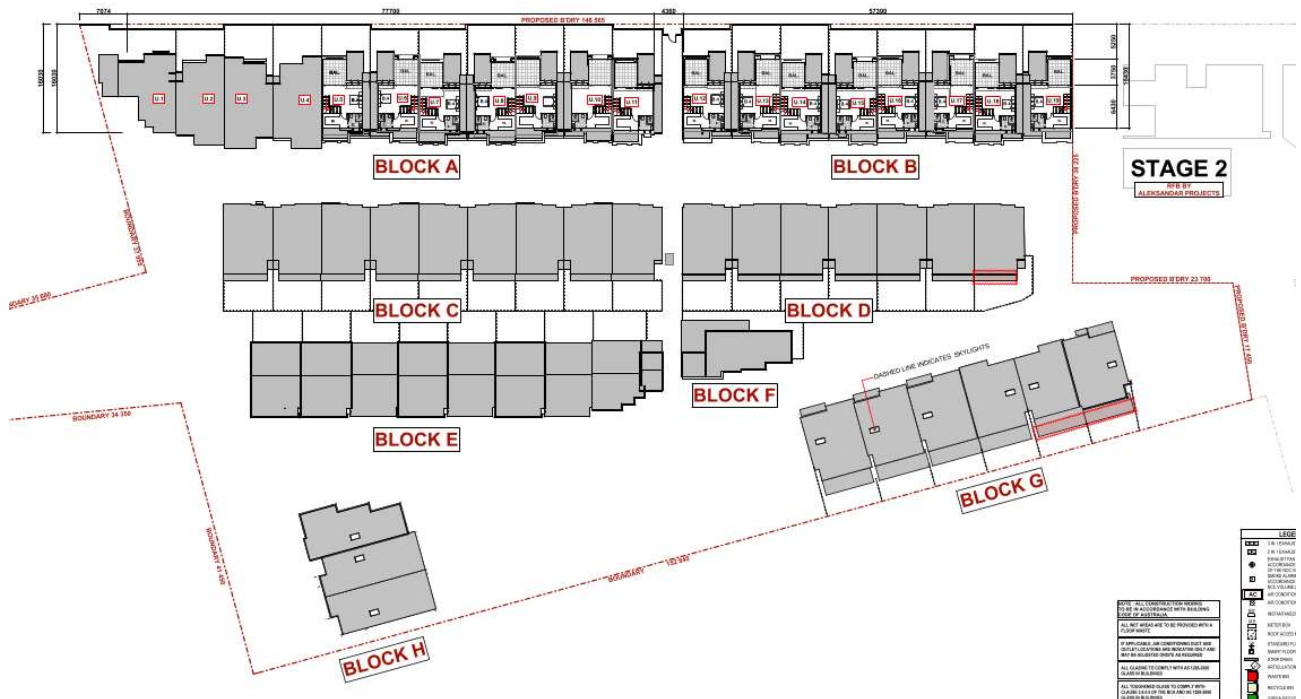


Figure 11. Proposed Second Floor Plan (third storey) for Stage 1 Multi Dwelling Housing.

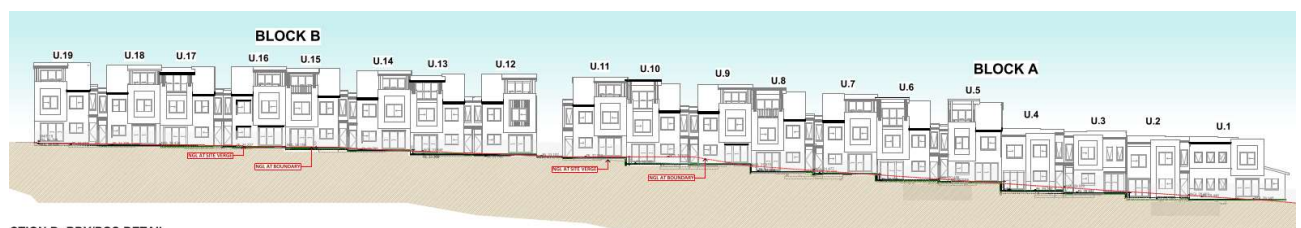


Figure 12. Proposed West Elevation facing Orange Grove Road/Cumberland Highway.

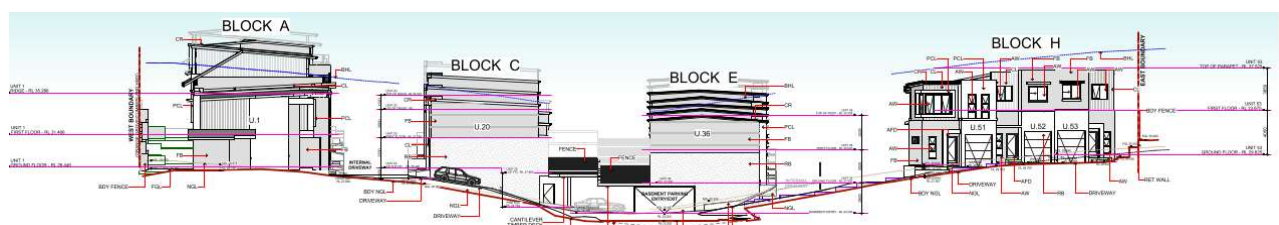


Figure 13. Proposed South Elevation facing the south adjoining neighbours who front onto Links Avenue.

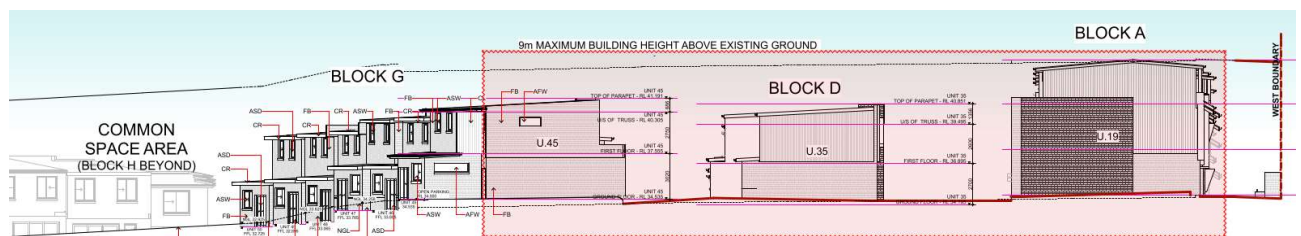


Figure 14. Proposed North Elevation facing the proposed Residential Flat Building.



Figure 15. Proposed West Elevation facing the west adjoining neighbours who front onto Smiths Avenue.

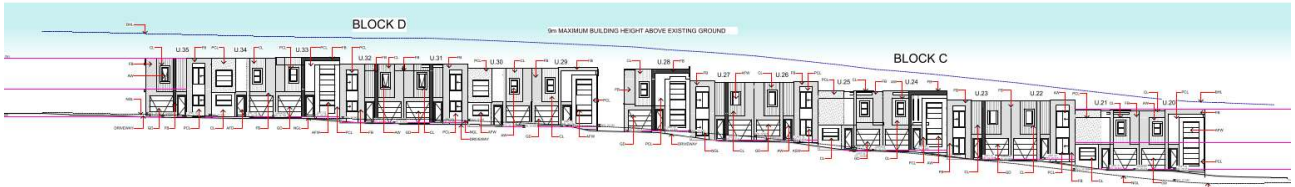


Figure 16. Proposed internal elevation of Block C and Block D.

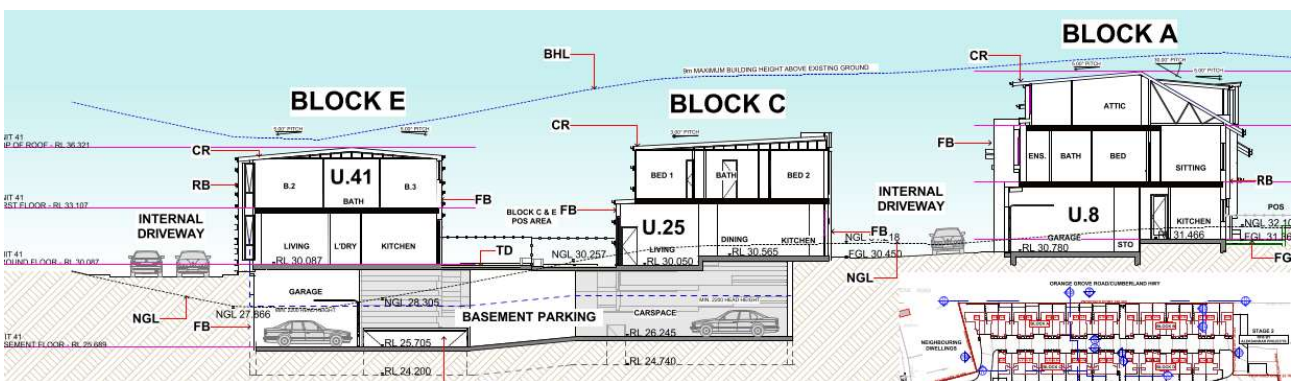


Figure 17. Proposed Section to illustrate the basement below Block C and Block E.

Stage 2 Residential Flat Building (Designed by Aleksandar Projects)

Additional details of Stage 2 of the application are as follows:

- No demolition and no vegetation removal is proposed in Stage 2 as the existing structures and existing vegetation which was identified in the previous section, across the whole site will be demolished/removed as part of Stage 1.
- Construction of 6-storey residential flat building containing 85 residential units (reduced from 87 units), including 2 levels of basement car parking.
- Vehicular access will be via Links Avenue further south which will be constructed as part of the Stage 1 Multi Dwelling Housing units and will be shared. No vehicular access is provided from the abutting classified roads which are Cabramatta Road West and Orange Grove Road.
- The 85 units (reduced from 87 units) will provide a mix of 27 x 1 bedroom units, 56 x 2 bedroom units and 2 x 3 bedroom units. The distribution across each floor is 10 units at the ground floor and 15 units on every upper level.

- A total of 107 car parking spaces (reduced from 109) will be provided on site, designated as follows:
 - 31 x residential car parking spaces in Basement 01
 - 54 x residential car parking spaces in Basement 02
 - 22 x visitor spaces in Basement 01

Note: 4 x residential car parking spaces have been provide at grade however these are assigned to units within the Stage 1 Multi Dwelling Housing units however they are surplus spaces and can be constructed in Stage 2.

- A total of 12 accessible/adaptable parking spaces are included in the above figures and are designated as follows:
 - 3 of the visitor spaces in Basement 01 are accessible spaces
 - 9 of the residential spaces in Basement 02 are adaptable spaces
- No motorcycle parking spaces are provided.
- Electric car charging bays are designated as follows:
 - 3 of the visitor spaces in Basement 01 are car charging bays
 - Residential car charging bays proposed to be installed as needed.
- A total of 63 bicycle parking spaces will be provided as follows:
 - 30 residential bicycle parking spaces in Basement 01
 - 24 residential bicycle parking spaces in Basement 02
 - 9 visitor bicycle parking spaces at ground level
- A car wash bay is included within Basement 01.
- Residential storage that is not located inside of individual units is designated as follows:
 - 10 storage spaces for 10 residential units
 - 75 storage spaces for 75 residential units
- Communal open space (COS) will be provided as three pockets at the ground level as follows:
 - Partly open and partly covered gym space/open room but without any fixed layout/equipment/purpose,
 - Children's play area, and
 - BBQ area with picnic tables/chairs.
- Construction materials include bricks for walls in light earthy colours, concrete for balconies, steel cladding for feature walls and over balustrades; and aluminium windows and balustrades.
- Fencing is proposed and some fencing will need to comply with the Acoustic Report recommendations. Plans show the following types:
 - A 1.8m high acoustic barrier wall along the north and west front boundary to form a noise barrier against the classified roads being Cabramatta Road West and Orange Grove Road has been incorporated into the amended plans to replace the former 1.2m palisade street fencing. A mosaic art installation is proposed on the wall however a detailed design has not been submitted.

- Fencing to east and south neighbours is unclear but might be a 1.8m brick fence. Details are not shown on the Fence Plan nor in the architectural plans.
- The applicant has requested to offset local infrastructure contributions for the proposed mosaic artwork which is not supported by Council's Strategic Planning Branch.
- Plant/equipment is proposed to be located at ground level instead of the basement, some waste rooms are located in the basement, air conditioning units will be located on balconies or on the roof of the building; roof access for maintenance will be via a hatch only. No solar panels are incorporated into the design.
- 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.
- Proposed 1.5m wide drainage easement along the east and south boundaries to collect stormwater and discharge into Links Avenue from the whole site and will benefit the residential flat building. On-Site Detention (OSD) is also proposed to the south of the basement.
- Ancillary earthworks are proposed to enable the development including excavation works for the basement levels.
- The site is required to be serviced by Council's waste collection service which is a 10.5m long Heavy Rigid Vehicle (HRV) and is the largest vehicle that is capable of accessing the private circulation road. Trucks cannot access the basement.
- One formal loading bay will be provided at ground level, located externally and on the south side of the residential flat building. This loading bay will be shared with the Stage 1 Multi Dwelling Housing. Service vehicles are proposed to reverse into the loading bay then exit in a forward direction.
- The location of the proposed loading bay is such that it will require the HRV to reverse into the bay within a carriageway and is not considered safe nor efficient for waste collection service.
- Waste and recycling storage rooms and waste chute rooms are located in Basement 01. A waste collection room is also provided at ground level adjacent to the HRV loading bay with 1.4m high balustrade for screening, instead of solid wall and will likely generate odour, vermin, and visual impacts.
- A waste chute system is incorporated into each level of the development for convenient access to the chute and all waste streams.

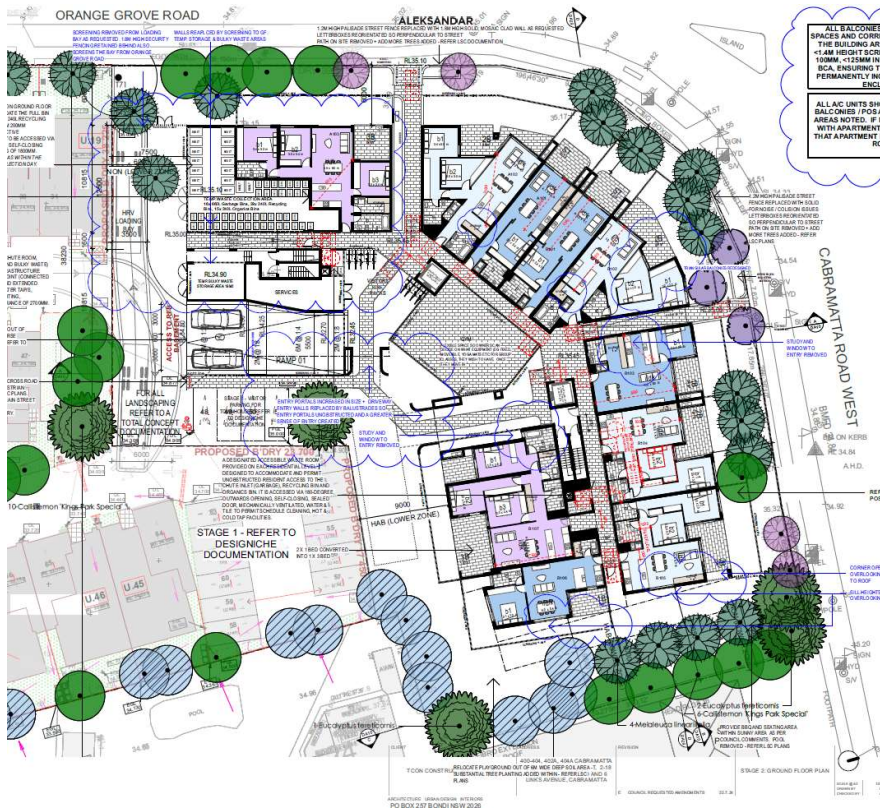


Figure 18. Proposed Ground Floor Plan for Stage 2 Residential Flat Building.

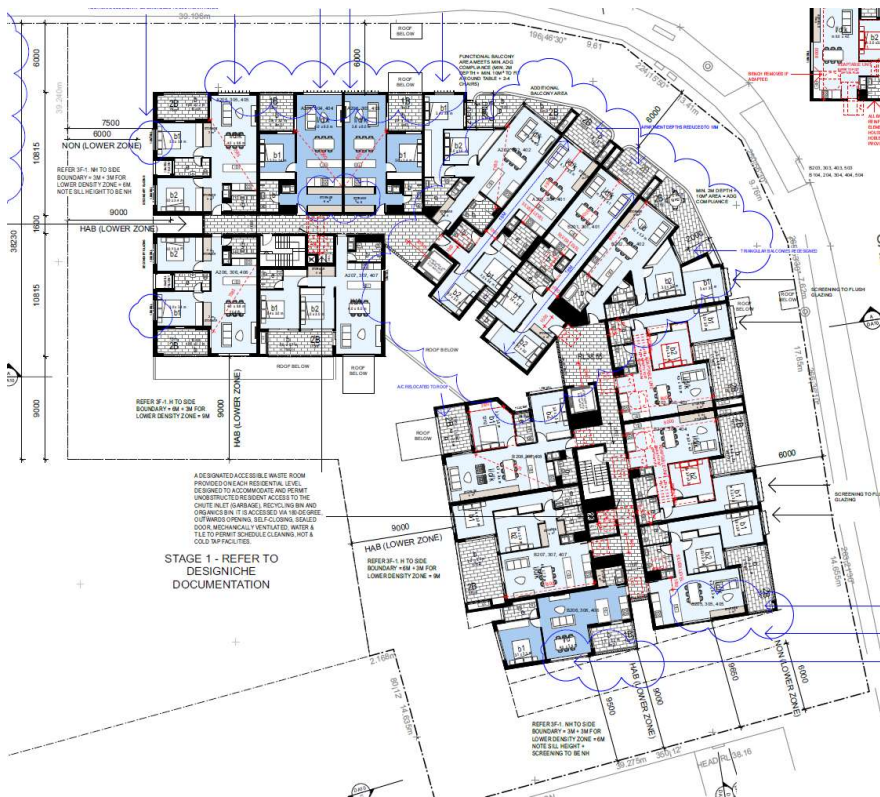


Figure 19. Proposed Typical Level 1, 2 and 3 Floor Plan for Stage 2 Residential Flat Building, incorrectly Titled on plans as “Typical Level 2-4 Plans”. This plan represents the second, third and fourth storeys of the building.



Figure 20. Proposed Level 4 Floor Plan for Stage 2 Residential Flat Building incorrectly Titled on plans as “Level 5”. This plan represents the fifth storey of the building.



Figure 21. Proposed Level 5 Floor Plan for Stage 2 Residential Flat Building, incorrectly Titled on plans as “Level 6”. This plan represents the sixth storey of the building.

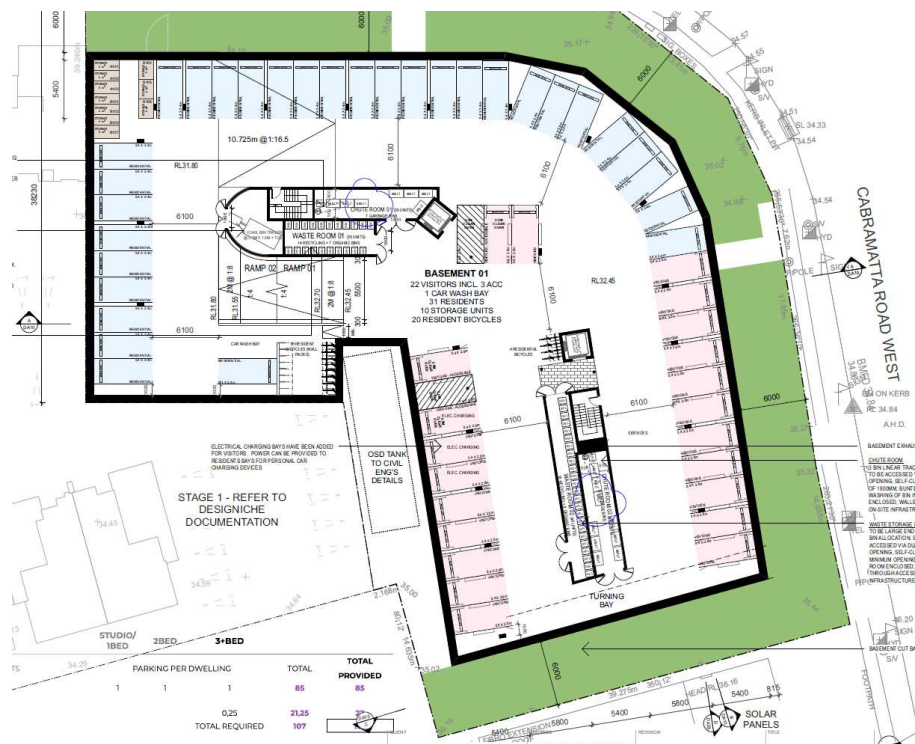


Figure 22. Proposed Basement 01 for Stage 2 Residential Flat Building.



Figure 23. Proposed Basement 02 for Stage 2 Residential Flat Building.

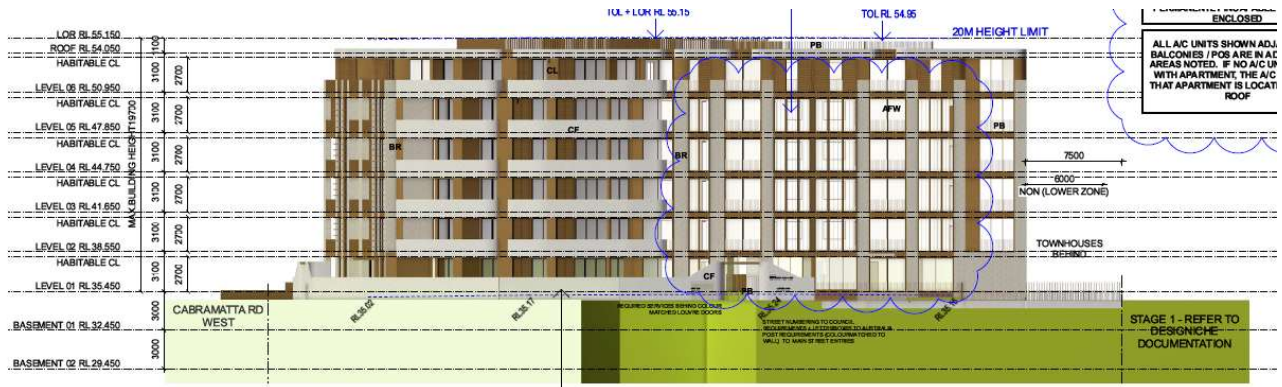
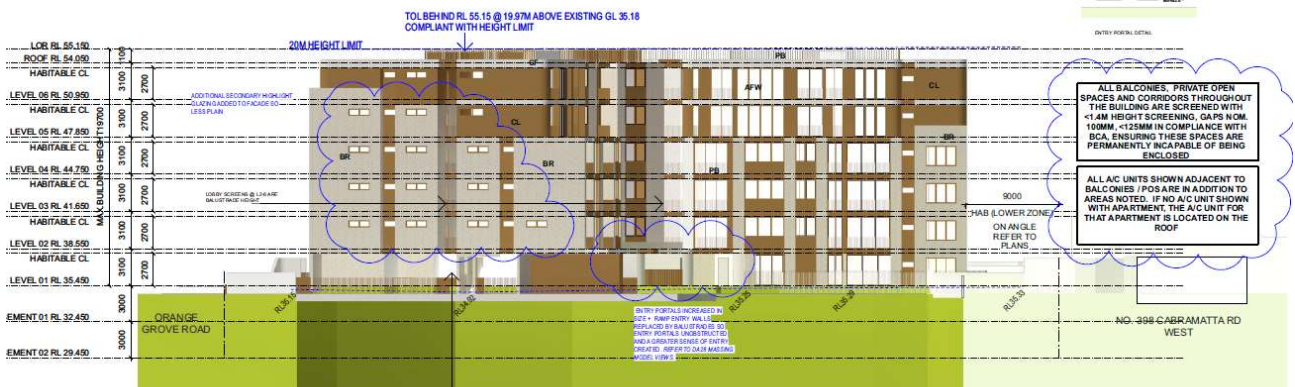


Figure 24. Proposed North Elevation facing Orange Grove Road/Cumberland Highway.



Figure 25. Proposed West Elevation to Cabramatta Road West.



7TH ELEVATION

Figure 26. Proposed South Elevation overlooking the Stage 1 Multi Dwelling Housing.



Figure 27. Proposed East Elevation overlooking residential neighbours.

4. HISTORY AND BACKGROUND

Summary of Latest Planning Proposal

The site has a long and complex history. The following provides a historical summary of events below.

Prior to the lodgement of this Development Application (DA), the subject site was subject to several Planning Proposal (PP) Applications, the most recent which resulted in the rezoning of the land to partly R4 High Density Residential and partly R3 Medium Density Residential, and the introduction of a site specific DCP to guide the redevelopment of the site, to allow a residential flat building on the northern end and multi dwelling housing on the southern part.

Council did not support the previous PP applications including the recent application due to a range of concerns with the impacts of the development on the locality, on the amenity of local residents, and the density being out of character with the existing low density housing stock. In June 2021 Council resolved to refuse the PP citing one of the key concerns as: *“...the traffic impact to the local road network is unacceptable as the existing intersection already performs poorly having a Level of Service of “F”. The proposed development will exacerbate this issue by increasing wait times and queue lengths for vehicles waiting to exit Links Avenue”*.

Notwithstanding, the NSW Department of Planning approved and finalised the PP and the Fairfield Local Environmental Plan (LEP) was gazetted on 24 September 2021.

A site specific DCP was subsequently adopted by Council for the site on the basis that the planning proposal was approved and gazetted by the Department of Planning. Further background behind the PPs is provided as follows:

First Planning Proposal

- During 2016/2017 the first Planning Proposal that was lodged by the applicant was refused by Council at its meeting in September 2017, resolving not to proceed to Gateway Determination with the PP. The application sought to obtain approval for a rezoning of the subject site however the proposal was not supported as it resulted in significant over development of the site proposing:
 - R1 General Residential Zoning across the entire site
 - Increased height of buildings to part 14 metres (4 storeys) and part 27 metres (8 storeys)
 - Increase the maximum floor space ratio for the site to 2:1
 - Allow “Office Premises” and “Business Premises” as additional permitted uses on the site.

Second Planning Proposal

- During 2018, a second PP was submitted by the applicant for a pre-Gateway Review, by the Department of Planning and by the Sydney Western City Planning Panel (SWCPP). On 11 April 2018, the SWCPP determined that at that time the scale and density of the proposal did not meet the site-specific strategic merit test and that the proposal should

not be submitted for Gateway Determination. However, in the meeting minutes the panel also concluded that:

“The Panel recognises that the area of this site which is held in single ownership provides an opportunity to deliver increased housing supply and choice beyond that which the present controls permit. Accordingly, it reinforces the suggestion of Council Officers that more appropriately scaled form of medium density residential development be discussed”

Third Planning Proposal

- In August 2018, the applicant submitted a new PP with reduced scale in response to the SWCPP recommendations. The Planning Proposal sought the following key changes to the Fairfield LEP 2013:
 - Rezoning the site from R2 Low Density Residential to part R4 High Density Residential to part R3 Medium Density Residential
 - Increasing the maximum height of building to facilitate a 4 storey apartment building with a small 5 storey pop-up section addressing the Cabramatta Road and to facilitate 2 and 3 storey townhouse/terrace style development for the remainder of the site.
 - Increasing the maximum floor space ratio from 0.45:1 to part 1.7:1 and part 0.7:1
- In November 2018, the Strategic Branch reported the PP to the Fairfield Local Planning Panel, seeking advice on the proposal, in accordance with the Local Planning Panels Directions. The following advice was provided by the Panel:

PANEL CONSIDERATION:

The Panel considered the merits of the proposed Planning Proposal and supports, in principle, the request for rezoning subject to a number of concerns which it believes both Council staff and Councillors should take into account in considering this matter further.

1. The Panel was of the view that concurrently in parallel with the consideration of the Planning Proposal that a site specific DCP also be developed.
2. The Panel feels the environmental constraints of the site have not been dealt effectively and the DCP should specifically consider the need to protect the important Cumberland Plain Woodland (EEC) and the manner in which this vegetation links with other local and similar vegetation within the immediate vicinity. Such an assessment should also strategically consider the opportunities for off-setting should it be determined that some degree of loss of vegetation is unavoidable.
3. That the applicant be requested to provide advice on how it intends to attenuate traffic noise, particularly along the Cumberland Highway.
4. That the Panel was of the view that the proposal ought to have an element of affordable housing which it singularly lacks at this stage.
5. The Panel was concerned about the diminished development potential on the two contiguous sites on the corner of Links Avenue and Cumberland Highway, and believes that this needs to be properly addressed prior to a Planning Proposal going forward including the applicant being asked to provide evidence of a genuine attempt to purchase the properties.
6. The Panel was of the view that insufficient regard had been directed to the following amenity issues:
 - Insufficient justification of one way traffic as opposed to two way traffic which would have a better impact on amenity.
 - Further documentation that the site is adequately serviced by emergency vehicles and waste collection trucks.
 - Privacy of the residents generally.
 - The provision of adequate open space and circulation for the residents of the site.
 - The impact of waste collection generally and management of waste including storage and placement of bins .
7. The Panel was of the view that more work needs to be carried out by the applicant to explain the topographical impact of the proposed development, including effective stormwater management.

Despite the Panel being of the view that it supports, in principle, the merit of rezoning, given the range of issues outstanding it is suggested that a new Planning Proposal being submitted would have merit, if it sufficiently addresses all these concerns.

- In March 2019, as part of the first preliminary step in the process, Council resolved to support the progression of this PP to Gateway Determination.
- On 15 May 2019, the NSW Department of Planning issued a Gateway Determination endorsing public exhibition of the PP. In accordance with the Gateway Determination, the PP and the draft SSDCP providing a range of objectives and development controls to guide future development on the subject site were publicly exhibited. Council received 14 submissions from local residents. Council also received 2 separate petitions containing 37 and 27 signatures respectively. Following exhibition, amendments were made to the proposal to address concerns raised including but not limited to revising the density, the DCP, the FSR controls, the height of the residential flat building etc.

- On 10 March 2020, Council's Strategic Branch reported the PP to the Outcomes Committee, recommending approval. However, the Committee members resolved to defer the matter to a subsequent meeting; and resolved that officers prepare a supplementary report addressing the issues of concern raised by speakers to the Committee and representations made by community members, as well as further clarification of the recommended height increase to 10m in the proposed R3 zone.
- On 24 March 2020, a Supplementary Report was provided to the Outcomes Committee addressing the abovementioned resolution and commenting on the specific matters requested by the Committee. This led to Council unanimously resolving to refuse the PP and the associated Site Specific DCP. The reasons for refusal cited by Council were as follows:
 - Council has not completed a City wide strategy that supports the extent of development proposed on the site.
 - The proposed height allowance of 10 metres for the proposed R3 Zoning and associated town house development on the site is inconsistent with the height allowance of 9 metres that applies to R3 Zone in other parts of the City.
 - The development will generate excessive traffic which will have a negative impact on traffic flows and parking in Links Avenue and surrounding road network.
- Despite Council's refusal to support the PP, on 24 September 2021, NSW Department of Planning gazetted the PP subject to amendments such as limiting the height over the R3 zone to 9m instead of 10m.
- Following Department of Planning decision to rezone the site, it was necessary that a site specific DCP be adopted by Council. As such the current DCP was adopted in 2022 and is the subject of this assessment.

Development Application (DA) Background

A review of Council's records found the following relevant information relating to the Development Application:

- On 19 November 2021, a Pre DA Lodgement Meeting was held between Council and the applicant to discuss redevelopment of the site involving a departure from the layout and controls of the Site Specific DCP. Council advised that any major amendment to the SSDCP must undergo consultation with the Strategic Planning Branch, otherwise any DA submitted should be consistent with the applicable controls. Council also advised that the proposed aboveground parking being sub-optimal and should be provided within a basement to improve opportunities for landscaping and buffers to adjoining residences.
- On 20 January 2023, the application was submitted but not formally lodged, on the NSW Planning Portal. Following a preliminary review of the application a number of issues were identified with the design and also with the accompanying documentation. The proposal did not achieve the high quality design and amenity outcomes that are expected of this particular site following the PP and site specific DCP. Owner's consent was also not provided for all the lots; and other essential environmental reports were not submitted such as Urban Design Report, Acoustic Report deficiencies, Air Quality Report, Swept

Paths for HRV, Heritage Impact Report, Subdivision Plan details, stormwater details, issues with Architectural Plans etc.

- A meeting was held with the applicant's planning consultant and Council on 15 February 2023, to discuss the issues identified and to provide an opportunity for the applicant to reconsider the proposal before proceeding to submit the application in order to address the design and amenity issues.
- On 23 February 2023 and subsequent to the meeting with the applicant, the application was returned by Council for the reasons mentioned above.
- On 28 July 2023, the application was re-submitted on the NSW Planning Portal. A preliminary review of the proposal was undertaken and it was found that the design had not been amended and the issues previously raised relating to the design and quality, had not been addressed. However, as owner's consent and other environmental reports were submitted by the applicant, the application was able to proceed to lodgement.
- The subject application was lodged on 28 August 2023.
- On 11 December 2023, a Preliminary Briefing was held between the Sydney Western City Planning Panel (SWCPP) and Fairfield City Council. The issues raised by the Panel were subsequently conveyed to the applicant in Council's letter.
- On 21 December 2023 and following completion of Council's assessment of the application, correspondence was issued to the applicant raising a number of concerns with the proposal including but not limited to, design and quality; vehicular access and traffic impacts; issues raised by Transport for NSW (TfNSW); inconsistencies with Fairfield LEP 2013; inconsistencies with Site Specific DCP controls; inconsistencies with the ADG; acoustic impacts on residential neighbours; tree removal and vegetation impacts; landscape design issues; waste management issues; Place Management issues; concerns in the submissions received; and comments of Endeavour Energy.
- On 23 December 2023, the applicant requested an extension of time until 29 March 2024 to respond to Council's letter. The extension was granted by Council following consultation with the Panel.
- On 16 February 2023, 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 external Urban Designer who was engaged by Council to peer review the design.
- On 28 March 2024 and 29 March 2024, amended plans and additional information were submitted by the applicant via the NSW Planning Portal responding to the issues of concern. Information included but was not limited to, amended architectural plans, waste management plan, amended civil engineering plans, amended Arboricultural assessment, amended acoustic assessment, loading dock management plan, addendum traffic and parking assessment, and a pedestrian access and mobility plan. Changes incorporated to the plans included an improved east-west pedestrian link, removal instead of relocation of a half court basketball and swimming pool that were originally proposed directly adjacent to neighbouring residents, increased tree retention,

minor amendments to improve DCP and ADG compliance, removal of the third storey of 4 of the multi dwelling housing units facing Orange Grove Road etc.

- On 5 July 2024, following an assessment of the amended application, Council issued a second letter to the applicant advising the amended proposal remained largely the same as the original version; and whilst the amended plans have incorporated certain improvements that have addressed some of the issues, the changes are not considered to be significant or substantial to address the key issues with the application. The letter advised that given the extent of the issues that remain unresolved, Council was not in a position to support the amended proposal.
- On 29 July 2024, amended plans and additional information was submitted by the applicant via the NSW Planning Portal in response to the matters raised. Information included but was not limited to, amended architectural plans, design statements and written responses to Council's letter. Some of the improvements/changes included reduction in GFA to rectify incorrect calculations, loss of 2 units in the residential flat building as a result, retention of a further 6 existing trees, reduction in volume of excavation, redesign of Unit 1 to be part 1 storey and part 2 storey, loss of on-street parking to improve traffic flow, etc.

This version of plans forms the basis of Council's final assessment. The amended plans have not satisfactorily addressed the matters raised with the proposal and have further reduced the quality of the residential flat building in particular.

The amended plans were not publicly re-notified as it was considered that the application had not substantially changed.

- On 26 August 2024, Council issued a third letter to the applicant in relation to matters concerning traffic generation traffic modelling, mitigation measures, internal circulation and accessway, inability for a waste collection vehicle to simultaneously pass another vehicle at the bends, issues with the pedestrian access mobility plan, loading dock manoeuvrability, on-site parking demand and provision and other matters.
- On 6 September 2024, the applicant submitted a written statement outlining the applicant's response to matters raised in Council's letter of 5 July 2024 pertaining to traffic issues. Council's Traffic Engineer assessed the information and advised that impacts of the development, particularly on the nearby intersection are unacceptable. This information has also formed the basis of Council's final assessment.
- On 9 September 2024, an Update Briefing was held between the Sydney Western City Planning Panel (SWCPP), the applicant and Fairfield City Council and a timeframe was established for a Public Determination Meeting, to be held on 4 November 2024.
- On 29 September 2024, the applicant submitted a written statement outlining a record of their briefing notes and their response to matters discussed at the Update Briefing with the Panel. The document includes additional plans and diagrams such as a road signage and line marking plan, bulk excavation diagram, existing and proposed tree canopy coverage plans, built form comparison plan and driveway comparison plan and communal open space comparison plan between site specific DCP and proposal; and height plane diagrams. The documents have been reviewed by Council but does not

provide information that resolves the issues with the proposal and Council's final assessment of the matter therefore remains unchanged.

5. REFERRALS AND SUBMISSIONS

Agency Referrals and Concurrence

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

Transport for NSW (TfNSW)

The application was referred to Transport for NSW (TfNSW) as the development is a traffic-generating development and has frontages to a classified road in accordance with SEPP (Transport and Infrastructure) 2021. The development also requires TfNSW concurrence under Section 138 of the NSW Roads Act 1993 for closure of existing accessways from the classified roads and ancillary civil works.

TfNSW initially did not support the proposal, raising issues with the application which Council conveyed to the applicant in writing, such as:

- traffic generation adopted being low given the lack of public transport in the area;
- SIDRA Network Modelling found to contain parameter errors, producing unreliable results, key intersections excluded from modelling for example Orange Grove Road and Cabramatta Road; and Cumberland Highway and Viscount Road
- Require mitigation measures if deterioration in the Level of Service (LOS) is computed
- Council to consider reviewing the access and internal swept paths
- Council to consider left-in left-out onto Links Avenue given the roads poor horizontal geometry

The applicant submitted amended plans and information in March 2024 including but not limited to the Addendum Traffic and Parking Statement which was referred to TfNSW for further consideration.

The revised estimated traffic generation of the development based on the updated and corrected modelling lead to an increase in the total estimated peak hour traffic generation which as amended is estimated to result in the following additional vehicle trips:

- 57 AM peak hour vehicle trips (increased from 52) (20% Inbound and 80% Outbound trips for typical residential development)
- 60 PM peak hour vehicle trips (increased from 48) (80% Inbound and 20% Outbound trips for typical residential development).

TfNSW was satisfied with the amended development in how it responds to the first three issues raised; and provided their concurrence on 14 May 2024. The last two issues are matters for Council to assess and are addressed separately within this report.

Further amended plans submitted by the applicant in July 2024 have also been referred to TfNSW who advised Council on 12 August 2024 that the amendments do not change the comments already provided to Council.

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 30 September 2023 Endeavour Energy provided its advice to Council which supports the proposal, and provides comments for Council to further review. Endeavours comments have been considered but are not considered to raise any further issues that require investigation.

Amended plans submitted by the applicant in March 2024 and again in July 2024 have also been referred to Endeavour Energy who advised Council on 1 May 2024 and 6 August 2024 that none of the amendments change the comments already provided to Council.

Urban Design Consultant

An Urban Design expert was engaged by Council to assess the original proposal and subsequent amendments against the design quality provisions of SEPP 65, the ADG and the design excellence provisions in the Fairfield LEP 2013.

The Urban Designer identified a range of issues with the proposal and finding that the proposal does not meet the principles of good design under SEPP 65, and particularly does not meet the objectives in relation to the principles of context, built form and scale, landscape, safety, sustainability, and amenity. Additionally it was identified that the proposal also would not meet the objectives of density.

These issues were conveyed to the applicant in Council's letter dated 23 December 2023. A meeting was subsequently held at Council's offices in February 2024 between the applicant's representatives, Council officers and the Urban Designer to discuss the issues surrounding the application.

Council advised the applicant that the overall scheme for the site was problematic and that consideration of a different typology for the multi dwelling housing dwellings, modifications to the residential flat building and the access roadway should be considered by the applicant. Council acknowledged that while a Planning Proposal to change the zoning and controls of the site has already been approved, concerns have been identified with the proposed development which are not satisfactorily addressed.

It was recommended that alternative designs be considered, and potentially a modified building typology and parking within the basement instead of at-grade to address some of the issues arising from the proposed scheme and to retain more trees, provide more deep soil planting, protect the amenity of neighbours and promote pedestrian use and active transport and achieve compliance with the established planning controls including SEPP 65, ADG, LEP, and the DCP.

The applicant subsequently submitted amended plans to Council in March 2024 and July 2024 which were assessed and considered to be minor changes which did not satisfactorily address the issues identified , nor demonstrate consistency with the design excellence and design quality principles.

Furthermore, the amended application has not explored alternative outcomes for the site such as different built forms/typology for the multi dwelling housing in order to achieve better environmental and amenity outcomes overall.

The detailed comments of the Urban Designer have been included within this report under the SEPP 65 assessment and in the Key Issues section of this report.

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.

Officer	Comments	Resolved
Assets	No issues with the proposal.	Yes
Building	No issues with the proposal.	Yes
Engineering	No issues with the proposal.	Yes
Heritage	No issues with the proposal.	Yes
Property	No issues with the proposal.	Yes
Subdivision	No issues with the proposal.	Yes
Public Health & Environment	No issues with the proposal with respect to air quality, or land contamination. An amended Acoustic Report has not been submitted to address the impacts of the redesigned waste room at ground floor to the adjoining residents. The advice of PH&E is discussed under the Key Issues section of this report.	No
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 in March 2024, July 2024 and September 2024 and was reviewed by Council's Traffic Engineer who advised that the application is not able to be supported primarily on the basis of the following: <ul style="list-style-type: none"> The average delay, queue lengths and the degree of saturation at Links Avenue are considerably impacted by the traffic generation of the proposal causing excessive wait time for residents in the area. The queue length would increase beyond the site access which would not allow residents to take the right turn from the driveway onto Links Avenue which will result in queuing internal to the site. 	No

	<ul style="list-style-type: none"> ▪ The application has not demonstrated the ability for a truck and car to make simultaneous movements safely within the bends of the proposed two-way road. <p>The advice of the Traffic Engineer is discussed under the Key Issues section of this report.</p>	
Waste Management	<p>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 in March 2024, July 2024 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:</p> <ul style="list-style-type: none"> ▪ A three-point turn is proposed for Councils HRV to manoeuvre within/against an active carriageway. The proposed manoeuvre will inhibit the provision of a safe and efficient waste collection service. No updated swept path diagrams were submitted to address this matter. ▪ Technical matters and design requirements to do with waste storage and collection areas are not complied with. ▪ An amended Waste Management Plan addressing all the necessary matters was not submitted. <p>The advice is discussed under the Key Issues section of this report.</p>	No
Natural Resources	<p>Natural Resources initially raised issues which were conveyed to the applicant who responded by redesigning the development to further minimise impacts on the area with biodiversity significance, by retaining Tree 51, but not Tree 36. The issues raised are discussed under the Key Issues section of this report.</p>	No
Tree Preservation Officer (TPO)	<p>The TPO has generally 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; except in relation to the proposed removal of Council's Street Tree identified in the application as Tree 75. The applicant proposes to remove the street tree citing that the roots are lifting the footpath. Council's TPO has advised that Tree 75 should be retained and Council will continue to repair any public footpath that is raised by the roots of the tree. The issues raised are discussed under the Key Issues section of this report.</p>	No
Landscape Advisor	<p>Upon reviewing the amended Landscape Plans, the Landscape Advisor has advised that there are some minor design issues that remain unsatisfactorily addressed which</p>	No

	are matters that were requested to be addressed in Council's previous letters.	
Place Manager	<p>The Place Manager initially raised concerns that the proposed treatment of the corner of the site is inadequate given the volume of traffic and the highly prominent corner. The Place Manager requested that the proposal be amended to show an acoustic wall that provides noise and privacy abatement in the form of a minimum 1.8m wall with a mosaic finish to create a gateway entry to assist with place marking at a key intersection in the city and primarily to achieve the mandatory design excellence provisions in Clause 6.12 of the Fairfield LEP 2013.</p> <p>The applicant responded by providing a conceptual Public Art Plan, prepared by the Landscape Architect, and has advised that this plan will inform and guide preparation of the detailed artwork design.</p> <p>The Place Manager has advised that an advanced concept is required to give clarity and certainty in consultation with Council's Community Projects and Partnership Officer. In this regard, this matter has not been addressed and an advanced Public Art concept has not been provided.</p>	No
Strategic Planning	<p>The Strategic branch identified planning issues with the proposal which have been considered and addressed within the body of this report, including but not limited to the traffic issues and variations to the site specific DCP.</p> <p>The Strategic branch also advised that with respect to the applicant's provision of an artwork on the acoustic barrier wall; and with respect to the applicant's proposal to offset the local infrastructure contributions for the proposed artwork is not supported for the following reasons:</p> <ol style="list-style-type: none"> 1. The applicant proposes a noise wall as part of the development in a prominent position addressing a major road. Therefore, further treatments such as articulation, mosaic or artwork, would be expected to be provided to satisfy the criteria set out in Clause 6.12 Design Excellence of Fairfield LEP 2013. 2. During the Planning Proposal phase, there was significant increase in density that was achieved through the developer successfully applying for the R3 and R4 residential on the site. During that process, there was no significant broader community benefit offered by the developer. A small contribution to the community by making the applicant's noise wall for the amenity of the 	No

	<p>developments residents more attractive and increasing visual amenity is not significant enough to trigger an offset.</p> <p>3. In addition to the LEP provisions above, Council's Local Infrastructure Contributions Plan 2023 identifies <i>"...applicants can offer to dedicate land free of cost, pay a monetary contributions, provide works-in-kind or provide another material public benefit, or any combination of these, to be used for or applied towards a public purpose in full or partial satisfaction of a monetary contribution under this Plan."</i> The Plan also states that <u>"Council may choose to accept any such offer but is not obliged to do so."</u></p>	
--	--	--

Public Consultation and Submissions Received

The application was notified on two 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 21 submissions objecting to the development. The application was renotified again in May after amended plans and additional information was submitted to Council. Council received a further 31 submissions objecting to the proposal.

The combined number of submissions objecting to the development is currently 52 including 34 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:

- Congestion and length of time delay for residents accessing links road – current light only allows 3-4 cars to exit before turning red – residents wait 5-7 minutes at times
- Residents turning right on links road will be difficult
- Site should utilise orange grove road for access
- One vehicular access insufficient
- Traffic generation and impacts
- Links Avenue can only accommodate low density development
- Immediate residential properties concerned with loss of privacy, overlooking and noise impacts
- Dust nuisance
- Whether stormwater management system is appropriate
- Insufficient landscape and communal open space
- Concerns that parking is not shaded
- No safety barriers to protect residences from traffic
- Loss of parking on local street and road safety impacts
- Up to six storey buildings being out of character.
- Overshadowing of Smiths Avenue properties
- Overshadowing of residents solar panels

- Overlooking of Smiths Avenue properties from windows and openings
- Loss of tree canopy
- Loss of local wildlife and impact on the natural environment
- Poor servicing by public transport
- Limited infrastructure available for the development
- Limited parking available
- Construction impacts, noise and dust nuisance
- Construction vehicle impacts will block available street parking for residents
- Property devaluation
- Potential to increase opportunities for crime

The issues raised in the submissions have been addressed throughout this report and in the compliance tables attached. It is considered that the development is not in the public interest given the issues raised and which have not been satisfactorily resolved.

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 concurrence and referral from Transport for NSW (TfNSW)
- 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) 202:
- SEPP (Resilience & Hazards)
- SEPP (Transport & Infrastructure) 2021
- SEPP (Housing) 2021: Chapter 4 Design of Residential Apartment Development
- Apartment Design Guide
- Fairfield CityWide 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 partly zoned R4 High Density Residential and partly zoned R3 Medium Density Residential under the Fairfield LEP 2013.

The proposal development is characterised as follows:

- *Residential Flat Building*
- *Multi Dwelling Housing*
- *Demolition*
- *Tree Removal*
- *Subdivision*

Residential Flat Buildings are permitted with consent in the R4 zone.

Multi Dwelling Housing is permitted with consent in the R3 zone and in the R4 zone.

Ancillary work such as demolition, tree removal and subdivision are permitted with consent in both zones.

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.

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

Council notes 4 parking spaces have been located on the R4 zoned land however these are primarily to serve the multi dwelling housing. Given multi dwelling housing is permitted in the R4 zone, there is no permissibility issue created by the location of these parking spaces. This is also generally in accordance with the SSDCP.

The proposed development is considered to be permissible in the two zones.

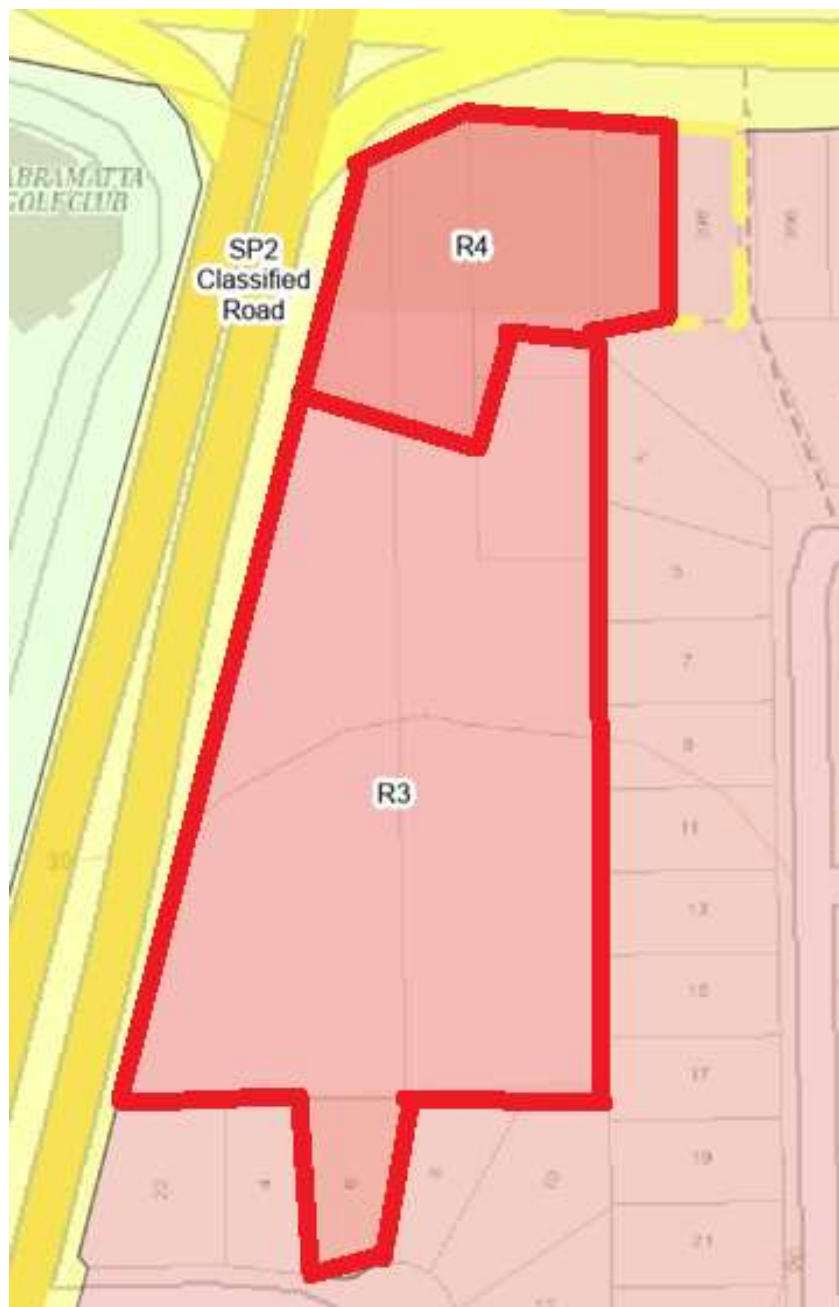


Figure 28. Zoning Map: R4 and R3, Fairfield LEP 2013.

Objectives of the Zones

R4 High Density Residential Zone

The proposal is considered to be consistent with 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.*

R3 Medium Density Residential Zone

The proposal is considered to be consistent with the relevant objectives of the R3 Medium Density Residential zone which are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

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

Clause	Development Standard	Proposal	Compliance
2.6 Subdivision – Consent Requirements	Land to which this Plan applies may be subdivided, but only with development consent.	The application proposes to amalgamate and subdivide the existing 6 lots to create two Torrens Title lots that align with the R4 and R4 zone boundaries. The following lot sizes are proposed: <ul style="list-style-type: none">▪ Lot 1 for the RFB will be 3,398m²▪ Lot 2 for the MDH will be 11,929m² Council's Subdivision Engineer's have assessed the proposed subdivision including the proposed easements and raised no issues with the proposal.	Yes

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
4.1 Minimum Subdivision Lot Size	The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.	No minimum subdivision lot size applies to the subject site.	Not applicable
4.3 Height of Buildings	20m maximum building height permitted on R4 zoned land	Maximum 19.97m building height is proposed on the R4 zone and complies.	Yes
	9m maximum building height permitted on R3 zoned land	Maximum 9m proposed.	Yes
4.4 Floor Space Ratio (FSR)	2:1 maximum FSR permitted on R4 zoned land	<p>R4 zoned site area is 3,398m² 2:1 allows 6,796m² 1.99:1 is annotated on plans equal to 6,778m²</p> <p>Council's assessment of the gross floor area (GFA) diagrams of the residential flat building finds that FSR has not been calculated correctly and will exceed the maximum 2:1.</p> <p>A Clause 4.6 Request to vary the FSR development standard was also not submitted as the applicant is of the opinion that the design is such that the spaces can be excluded.</p> <p>In this regard, the application cannot be positively determined as the provisions of Clause 4.6 of the LEP require a written request that addresses the criteria in Clause 4.6.</p>	No

	0.6:1 maximum FSR permitted on R3 zoned land	R3 zoned site area is 11,930m ² 0.6:1 allows 7,158m ² 6,931.86m ² is annotated on the plans which would equate to 0.58:1 The amended plans submitted in March and July 2024 appear to address the previous concerns raised by Council regarding the multi dwelling housing exceedances in FSR arising from miscalculations in GFA which were identified in the previous versions of the plans.	Yes
4.4A Exceptions to Maximum FSR in Zone R4	(1) This clause applies to land in Zone R4 High Density Residential (excluding any land in Bonnyrigg, Cabramatta, Canley Vale and Fairfield Heights)	The site is excluded from this Clause as it is located in Cabramatta.	Not applicable
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 has not been accompanied by a Clause 4.6 Request for Variation of the FSR development standard for the residential flat building as the applicant is of the opinion that the design is such that the spaces can be excluded from GFA therefore the exceedance to the maximum 2:1 FSR has not been satisfactorily addressed, hindering the jurisdictional ability to positively determine the DA.	No
5.10 Heritage Conservation	The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed	The subject site is located directly opposite Heritage listed Item 11 which is identified in Schedule 5 of the LEP as locally significant Red Gums located on the Cabramatta Golf Club.	Yes

	development on the heritage significance of the item or area concerned.	<p>Council's Heritage Advisor assessed the potential impacts of the development on the heritage trees and has raised no issues, advising the following:</p> <p>The Red Gum specimens (<i>Eucalyptus camaldulensis</i>) located on the golf course are significant for the local area and the local community for scientific and reasons of representativeness and rarity. The items present a rare remnant of native red gum forest which presently has very limited occurrence in the Fairfield area, particularly in Cabramatta.</p> <p>However, despite being a larger scale development, the proposal is not considered to adversely impact on the significance of the trees.</p>	
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>	Based on the current information before Council, it is considered that the objectives of this clause are not achieved as the proposed earthworks will likely have a detrimental impact on the environment with respect to the loss of significant existing vegetation that will be removed or impacted by earthworks; as well as due to the potential impacts on the privacy and amenity of adjoining southern neighbours as a result of the levels of the western circulation road directly affecting the windows and yards of southern neighbours.	No
	<p><i>(2) Development consent is required for earthworks unless—</i></p> <p><i>(a) the earthworks are exempt development under</i></p>	The proposed earthworks are ancillary to the development proposed at the site and consideration has been given to how the earthworks relate to the proposed site layout.	Yes

	<p><i>this Plan or another applicable environmental planning instrument, or</i></p> <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>Council has considered the matters in this clause as outlined below and has identified issues of concern with the proposed work as discussed below.</p>	<p>No</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>Council's Development Engineers assessed this aspect of the proposal and raised no concerns regarding any potential for adverse impacts on drainage patterns or soil stability.</p>	<p>Yes</p>
	<p><i>(b) the effect of the development on the likely future use or redevelopment of the land,</i></p>	<p>The earthworks are ancillary to the proposed development of the land as such the full impacts on the likely future uses has been able to be assessed by Council under this application, and issues of concern have been outlined within this report.</p>	<p>No</p>
	<p><i>(c) the quality of the fill or the soil to be excavated, or both,</i></p>	<p>This is a matter that can be normally addressed through conditions but has also been the subject of geotechnical and contamination investigations by the applicant which have found that subject to following the recommendations of these reports, any issues to do with the soil can be carried out appropriately.</p>	<p>Yes</p>

	<p><i>(d) the effect of the development on the existing and likely amenity of adjoining properties,</i></p>	<p>Based on the current information before Council, it is considered that the proposed earthworks will likely have a detrimental impact on:</p> <ul style="list-style-type: none"> - the environment with respect to the loss of significant existing vegetation that will be removed or impacted by earthworks, resulting in the loss of amenity and tree canopy cover; and - filling and levels as a result of the private circulation road and the siting of the development results in line of sight from the western driveway, that will result in views and headlight glare potentially affecting the windows of the south adjoining neighbouring residences, whose rear windows are on par with the proposed driveway levels after earthworks. <p>Camera views submitted in the March and July 2024 amended plans suggest that landscaping and fencing will provide a limited buffer between vehicles and the neighbours windows, also indicating that at least one window will be clearly visible, or based on some angles, hidden behind future tree planting that will take years to mature and be effective as screening.</p> <p>The applicant also proposed 2.4m high fencing along the southern boundary fencing of this height does not comply with Council's controls and Council raised concern that any fencing that is over 1.8m-2.2m is out of context in a low scale residential context.</p> <p>Additionally, insufficient detailing was submitted such as section diagrams illustrating the relationship of the proposed driveway levels and southern adjoining residences yards and</p>	No
--	---	--	----

		<p>windows, no fencing elevation plans to illustrate the treatment and articulation of any 2.4m fence, and clear camera views excluding future trees, to clearly show the extent of the neighbours yard and windows that are affected.</p> <p>Council is not satisfied that 2.4m fencing is an appropriate solution in terms of visual impacts and being uncharacteristic in a residential area, nor sufficient to block views and headlight glare into the southern properties. As such, the proposal is likely to result in unacceptable impacts on southern neighbours as a result of two-way traffic generated along the private road.</p>	
	<i>(e) the source of any fill material and the destination of any excavated material,</i>	This is a matter that can normally be addressed through conditions.	Yes
	<i>(f) the likelihood of disturbing relics,</i>	It is unlikely that the development would impact relics as the site is not mapped as being in an Aboriginal Potential Investigation Area (PIA).	Yes
	<i>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i>	Council's Development Engineers raised no concerns with the proposed earthworks in terms of any potential impacts to sensitive areas.	Yes
	<i>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i>	The measures proposed, through landscaping and a 2.1m high fence, to mitigate the adverse impacts from overlooking and direct headlight glare to the southern neighbours windows are not considered to be adequate to mitigate the impacts of the development.	No
6.9	This Clause prescribes that:	Development consent must not be granted as it is considered	No

Essential Services	<p><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></p> <p><i>(a) the supply of water,</i></p> <p><i>(b) the supply of electricity,</i></p> <p><i>(c) the disposal and management of sewage,</i></p> <p><i>(d) stormwater drainage or on-site conservation,</i></p> <p><i>(e) suitable vehicular access.</i></p>	<p>that suitable vehicular access has not been demonstrated. The design of the vehicular access does not allow the two-way simultaneous movement of a HRV waste collection truck and a passenger vehicle at the intersections of the development.</p>	
6.12 Design excellence	<p>(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</p>	<p>Following an assessment of the application, it is considered that the development does not exhibit design excellence and its contribution to the natural, cultural, visual and built character values of Fairfield is substandard.</p> <p>Development consent must not be granted as it is considered that the residential flat building does not exhibit design excellence.</p> <p>Further discussion is provided in Section 6 and Section 7.</p>	No

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

Clause	Provision	Comment	Satisfied
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
2.119 Development with frontage to classified road	Where development has a frontage to a classified road, the following objectives are relevant: <i>(1) The objectives of this section are— (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.</i>	The development is generally addressed these objectives.	Yes
	The following additional provisions are relevant: <i>(2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—</i>	All the required matters have been considered by Council as outlined below.	Yes
	<i>(a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and</i>	Vehicular access is proposed from Links Avenue which is not a classified road, thereby satisfying this provision.	Yes
	<i>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by</i>	Council's Traffic Engineers have raised concerns with these aspects of the proposal and is further	No

	<i>the development as a result of—</i>	discussed under the Key Issues section.	
	<i>(i) the design of the vehicular access to the land, or</i>	Council's Traffic Engineers have raised concerns with these aspects of the proposal and is further discussed under the Key Issues section.	No
	<i>(ii) the emission of smoke or dust from the development, or</i>	No issues have been raised by TfNSW with respect to this matter. This is a matter that is capable of being achieved during construction through appropriate measures and controls.	Yes
	<i>(iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and</i>	Council's Traffic Engineers have raised concerns with these aspects of the proposal and is further discussed under the Key Issues section.	No
	<i>(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.</i>	The development is sensitive to traffic noise and pollution however acoustic reports and air quality reports were submitted. The acoustic report incorporates measures to mitigate indoor noise however outdoor noise cannot be mitigated and most units will likely result in poor amenity to their POS and balconies. Notwithstanding this, the internal amenity will be achieved subject to recommendations of the acoustic report being implemented. The air quality report does not incorporate any recommendations. Council's Public Health & Environment (PH&E) assessed this aspect of the development and raised no concerns.	Yes

2.120 Impact of road noise or vibration on non-road development	Where residential accommodation is proposed to be located adjacent to a road that has an annual average daily traffic volume of more than 20,000 vehicles Council must consider the likely adverse affects of road noise.	All the required matters have been considered by Council as outlined below.	Yes
	The following additional provisions are relevant: <i>(2) Before determining a development application for development to which this section applies, the consent authority must take into consideration any guidelines that are issued by the Planning Secretary for the purposes of this section and published in the Gazette.</i>	Council's Public Health & Environmental (PH&E) section have considered the established guidelines.	Yes
	<i>(3) If the development is for the purposes of residential accommodation, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded— (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am, (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.</i>	An amended Acoustic Report was submitted to Council that concludes that if the construction of the proposed development is carried out as per the acoustic recommendations of this report, the proposed development will comply with the requirements of this Clause of the SEPP as well as Australian Standards AS 2017:2016; and the NSW Noise Policy for Industry (2017). Council's PH&E Section have reviewed the amended Acoustic Report and methodology and are satisfied with the findings of the report.	Yes
2.122 Traffic-generating development	Where a site is within a certain distance to a classified road, or where the size or number of car	The application was referred to TfNSW as the development is considered to meet the criteria for	Yes

	<p>parking spaces or traffic generated per hour is above the thresholds prescribed in Schedule 3 of the SEPP, the Transport for NSW (TfNSW) must be notified.</p>	<p>traffic-generating development as the site directly fronts two classified roads; and also because the proposal exceeds the thresholds of Schedule 3 of the SEPP with respect to the number of dwellings proposed and the number of car movements generated per hour by the development.</p> <p>TfNSW has reviewed the application and provided conditions of consent. This is discussed under the External Referrals section of this report.</p>	
	<p>The following additional provisions are relevant: <i>(4) Before determining a development application for development to which this section applies, the consent authority must—</i></p>	<p>All the required matters have been considered by Council as outlined below.</p>	Yes
	<p><i>(a) give written notice of the application to TfNSW within 7 days after the application is made, and</i></p>	<p>Notice of the application was given to TfNSW including subsequent amendments.</p>	Yes
	<p><i>(i) any submission that RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, TfNSW advises that it will not be making a submission), and</i></p>	<p>Council has considered the response of TfNSW as discussed under the Referrals section of this report.</p>	Yes
	<p><i>(ii) the accessibility of the site concerned, including—</i></p>	<p>Council's Traffic Engineers have raised concerns with these aspects of the proposal and the issues raised are discussed under the Key Issues section.</p>	No
	<p><i>(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and</i></p>		

	<i>(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and</i>		
	<i>(iii) any potential traffic safety, road congestion or parking implications of the development.</i>		

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 declares in Part 2.2 Development is declared to be State significant development for the purposes of the Act if the development is specified in Schedule 6 Regionally Significant Development. Schedule 6 states that General Development with a Capital Investment Value (CIV) of over \$30 million is regionally significant development.

At the time of lodgement, the application declared the estimated cost of development including GST to be \$50.2 million; but did not provide a CIV estimate. Notwithstanding this, by Council's estimation, the CIV will exceed the SEPPs \$30 million threshold and as such the application was 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 the above, 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)

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

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 28 August 2023 prior to the commencement of the new SEPP, SEPP (BASIX) 2004 applies.

E. SEPP (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 (Vegetation in Non-Rural Areas), of the SEPP (Biodiversity and Conservation) 2021 sets the rules for the clearing of vegetation in NSW on land zoned for urban and environmental purposes that is not linked to a development application. The subject development application proposes clearing of vegetation however as the proposed works are under an application, Chapter 2 does not apply. As such, the impacts of the proposed vegetation clearing are addressed in a different section of this report.

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. Based on a review of the available historical aerial photographs, the site appears to have been vacant with moderate vegetation coverage from at least 1943 until approximately 1944 when a dwelling was constructed in the central portion of the site. The dwelling underwent several modifications from approximately 1960 to 2005 including but not limited to, construction of an inground swimming pool, extension/modifications to the dwelling and construction of a circular driveway. The dwelling was demolished and removed from the site in approximately 2005 with demountable/container style buildings erected in the northern portion of the site in 2016.

The PSI Report concludes that the site can be made suitable for its intended land use as a medium density and high-density residential development subject to the implementation of the recommendations of the PSI. These include recommendations such as the classification of soil material designated for off-site disposal; investigation of the soil material in the vicinity of the former dwelling, pool and plant storage areas, analysis of soil materials within any landscaped areas with exposed soils; and validation of any material imported to the site.

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 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 of the nine design quality principles established in SEPP 65 has been undertaken. A detailed assessment against the criteria of the Apartment Design Guide (ADG) has also been undertaken and is outlined in Attachment 2 to this report.

Council engaged an Urban Design expert to assess the proposal and provide advice on the quality of the design of the development. In relation to the nine design quality principles in Schedule 9 of SEPP 65, the Urban Designer identified a range of issues with the proposal, consistent with Council's assessment, finding that the proposal does not meet 7 out of the 9 principles of good design under SEPP 65, and particularly does not meet objectives of the principles of:

1. Context
2. Built form and scale
3. Density
4. Landscape
5. Safety
6. Sustainability and
7. Amenity.

Council's assessment finds that the application does not meet the following criteria and design guidance of the ADG and does not present circumstances or merit that would warrant a flexible approach or warrant varying the criteria. These matters are listed below:

1. Building Setbacks, Separation and Visual Privacy
2. Solar and Daylight Access
3. Public Domain Interface
4. Communal Open Space (COS)
5. Deep Soil Zones in so far as loss of existing mature trees located in the deep soil zones
6. Pedestrian Access and Entries
7. Vehicle Access
8. Private Open Spaces and Balconies
9. Common Circulation and Spaces
10. Acoustic Privacy
11. Noise Pollution
12. Ground Floor Apartments
13. Landscape Design
14. Waste Storage Facilities

A detailed list of the non-compliances is provided as follows:

Building Setbacks, Separation and Visual Privacy

1. In addition to the normal ADG criteria for setbacks and separation, apartment buildings are required to have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping. Separation between windows and balconies as provided to the side and rear boundaries is not provided in accordance with the ADG design criteria.
2. Building setbacks to the eastern boundary to neighbouring R2 Zone do not comply as follows:
 - For the first four storeys, a 9m minimum setback is provided to the eastern boundary. This complies with the site specific DCP and ADG requirement for increased setbacks to a lower density zone; except for the setback to the corner of the neighbouring property at No. 1 Smiths Avenue. The setback is not dimensioned but appears to be 7.2m from the balcony instead of 9m; and is 7.7m from the visible part of balcony to the boundary, instead of 9m and does not comply.
 - At the 5th and 6th storey, the ADG requires a 12m setback to the east boundary consisting of 9m + 3m from a habitable space to a lower density zone. The plans amended in July 2024 show a 9m setback instead of 12m and does not comply. Also, the setback to the corner of neighbouring No. 1 Smiths Avenue appears to be 9m from the wall instead of 12m.
 - Plans are incorporated with the following measures:
 - 1.8m high sill windows to a living room with no other compliant outlook
 - Balcony opening replaced with wall resulting in poor outlook from balcony

The variations are considered to be unacceptable on the basis that the proposed 6 storey building does not achieve an appropriate scale compared to the eastern low density dwellings.

3. Building setbacks to the southern and proposed multi dwelling housing development located over R3 Zone do not comply as follows:
 - For the first four storeys, a 7.5m setback instead of 9m setback is provided to proposed Unit 19 which is situated over the R3 zone. This does not comply with the DCP nor the ADG.
 - At the 5th and 6th storey, the ADG requires a 12m setback to the east boundary consisting of 9m + 3m from a habitable space to a lower density zone. Plans amended in July 2024 show 7.5m setback instead of 12m and does not comply.
 - Plans are incorporated with the following measures:
 - 1.8m high sill windows a living room with no other outlook.

The variations are considered to be unacceptable on the basis that the proposed 6 storey building does not achieve an appropriate scale compared to the lower density development proposed over the R3 zoned land.

4. Separation distances between the eastern and western wings of the building on the same site do not comply as follows:
 - The 2nd, 3rd and 4th storeys provide 3.4m instead of 6m separation; or 1.8m where 9m separation is required; or 6.8m separation where 12m is required and does not comply.
 - The 5th and 6th storeys provide 4.4m instead of 9m separation; or 0m to 1.1m where 13.5m separation is required and does not comply.

The result is a poorly designed irregular core where outlooks are obstructed and the building is cramped with inadequate separation distances. Privacy for units within the same building that are facing one another has not been adequately addressed.

Whilst the ADG allows no separation between blank walls, the site context is not one that can support no separation or reduced separations between any proposed blank walls. The context is one of low scale, detached, single and double storey dwellings characterised by substantial setbacks and smaller building footprints that should be respected by the development.

As such, the variation to setbacks are not supported. The architectural plans seek variations to the setback controls to the east boundary and the south boundary, by treating the eastern and southern elevations of the proposed building as a 'blank wall' (such as by way of solid walls or 1.8 window sills that do not enable outlooks other than of the sky).

Whilst these measures address the potential impacts of visual and acoustic privacy, the measures do not address the scale of the development compared to the surrounding neighbours; and diminishes the design quality of the external elevations; and diminishes the internal amenity for future occupants by preventing any views over the eastern and southern elevations.

5. Outlook and views from habitable rooms and private open spaces has been compromised at the southern and eastern elevations which is not appropriate for a site that is not otherwise constrained.

Solar and Daylight Access

6. Courtyards have been used as sources of sunlight for bedrooms and habitable rooms however the courtyards do not comply with the separation distance requirements as already detailed.
7. 1.8m high sill windows are proposed as a result of not complying with the building setback and separation distances, in an attempt to treat the space as 'non-habitable' and avoid increasing setbacks. The ADG suggests high level windows (with sills of

1,500mm or greater) should only be used as a secondary light source in habitable rooms. The following bedroom windows do not comply as the 1.8m high window sill is their primary source of sunlight, instead of being a secondary source:

- B2 in Unit A205
- B2 in Unit A206
- B2 in Unit A208
- B2 in Unit A305
- B2 in Unit A306
- B2 in Unit A308
- B2 in Unit A405
- B2 in Unit A406
- B2 in Unit A408
- B1 in Unit A505
- B1 in Unit B506
- B1 in Unit B508
- B2 in Unit A605
- B1 in Unit B606
- B1 in Unit B608

Public Domain Interface

8. Very few opportunities are provided for casual interaction between residents and the public domain.
9. The detailing of the second building entry which is the main entry opposite the multi dwelling housing development is not sufficient to create a sense of entry and is diminished and obstructed by the wall of the driveway to the basement.
10. The substation is prominently located within view and not integrated into the building. The location of the substation opposite multi dwelling housing units will also require easements over the units which can be avoided.
11. Pump room location has not been indicated.
12. A services room is located on the ground floor instead of the basement.
13. Temporary waste collection area and temporary bulky waste storage occupy a large portion of the ground floor and are within view.

Communal Open Space (COS)

14. The COS is not considered to be well designed, is not easily identified and provides limited usable area, minimal embellishments or facilities and no direct pedestrian linkage.
15. There is no direct pedestrian linkage to the facilities within the COS which are out of the main way.

16. The embellishment of the COS is not considered to be adequate and does not meet the design excellence provisions of Clause 6.12 Design Excellence of the LEP.
17. Whilst the pool has been removed from the amended plans, the eastern setback which is the only area on-site that receives a minimum 2 hours of sunlight, has not been embellished with a range of facilities for residents, and is primarily landscaped.
18. The plans provide a barbecue facility and three seats for groups, one play facility details of which are not provided. Seating for individuals and other features such as seating integrated into the landscaping elements along walkways and throughout the site have not been provided.
19. A vacant space has been provided labelled as a communal room/gym but the fit out of the space to show facilities such as a communal kitchen are not provided. Equipment has not been provided in the space and there is uncertainty regarding its use. Additionally, the building will cause 100% overshadowing to the proposed COS labelled as gym and the areas consisting of bench seating. It is unclear how the space can be improved to ensure functionality in all seasons especially winter.

Deep Soil Zones

20. Whilst deep soil zones are appropriately located along the perimeters of the site making it possible to retain existing significant trees, the application proposes to remove existing trees along the perimeter.

Pedestrian Access and Entries

21. There are no pathways proposed within the private circulation road which is intended to be shared with two-way traffic, pedestrians, cyclists and service vehicles. This is not considered to be an acceptable solution.
22. There is no pedestrian access to the site from Links Avenue which is the main entry and exit.
23. The main building entry and pedestrian access is provided from the south to the rear of the building, however the building does not appropriately address the southern public domain.
24. The site layout and the design does not provide a sense of entry or belonging with much of the ground floor and pedestrian access occupied by services, waste, open gym with no clear identity or purpose.
25. Amended plans have now further diminished the quality of the ground/street level by replacing solid wall of the expansive waste collection room with a 1.4m screen that is visible from the circulation road and will generate odour and attract vermin.
26. Rear access to the building is not easy to identify and is obstructed by the wall of the basement into the driveway which is also not integrated into the building design.

Vehicle Access

- 27. Car park access is not integrated with the building's overall façade and the car park not being located behind the building line as visible from the internal circulation road.
- 28. The finished levels of the western circulation road are on par with the window levels of southern residences who will be impacted by headlight glare. A 2.4m fence is proposed however does not comply with Council's controls, is uncharacteristic in a residential area and has not been demonstrated to be a sufficient measure.
- 29. Waste collection areas at ground level are no longer appropriately screened as a result of amended plans which replace solid wall with a 1.4m screen which is insufficient and results in a range of adverse impacts, odour, vermin and visual impacts.
- 30. No textures used to identify a pedestrian/cycleway and a separate pedestrian access has not been provided.
- 31. No motorbike parking spaces are proposed but there is sufficient space in the basement to achieve this with amended plans.

Private Open Spaces and Balconies

- 32. Balcony use will be limited for units facing the classified roads. Wintergardens or bay windows would have been appropriate however the proposal is at its maximum FSR limit and the current design cannot support the increased GFA.
- 33. Low balustrades are proposed at upper level communal corridors in order to exclude certain areas from the calculation of GFA. These are not considered to be a safe outcome as the design creates a risk of climbing and falls.

Common Circulation and Spaces

- 34. Incidental spaces, for example space for seating in a corridor, at a stair landing, or near a window are not provided along common corridors.
- 35. A community room has not been provided for activities such as owners corporation meetings or resident use and one that is ideally co-located with communal open space. The proposal is considered to be a large development consisting of 85 units in the residential flat building and 53 units in the multi dwelling housing but does not provide any such facilities.

Acoustic Privacy

- 36. Noise transfer has not been minimised for certain units where bedrooms are directly adjacent to the lifts or where a unit has bedrooms directly adjacent to the waste storage room at ground level.

37. Floor layouts have not sited the units to minimise impacts of road noise. For example storage, circulation areas and non-habitable rooms should be located to buffer noise from external sources

Noise Pollution

38. In noisy or hostile environments such as the subject site with its two frontages to two classified roads, the impacts of external noise and pollution should be minimised through the careful siting and layout of buildings, however the design does not adhere to the design guidance in this criteria. For example, alternative solutions such as orienting non-habitable spaces to the classified roads, or dual-aspect units, or providing two-storey units at the ground floor where bedrooms and living areas can be positioned on the upper level away from the classified road to protect against any potential collisions has not been explored.

Amended plans have slightly improved the situation by introducing a solid acoustic barrier to provide some measure of physical separation for ground floor units and assist in reducing the excessive noise, however due to the lack of sufficient physical separation, these spaces will remain noisy and likely unusable. Dust and air pollution is also likely to be an issue for these units.

Better amenity could have been achieved by orienting the living areas away from the classified roads however the proposed design ensures that solar access is achieved to 75% of units.

The application did not explore alternative orientations however it is noted the current site layout was subject to a Planning Proposal and site specific DCP controls and the applicant did not want to explore alternative building typologies to better respond to the site constraints.

It is noted whilst indoor spaces will be capable of being engineered to achieve acoustic amenity criteria, the private open spaces and external areas cannot be significantly shielded unless an alternative site layout is explored.

Ground Floor Apartments

39. Due to the location of the site fronting two classified roads the amenity of the ground floor units is unsuitable. Bedrooms and living spaces are proposed to be located 6m from the boundary to the classified roads, and private open spaces run along the classified road. Whilst the design enables compliance with solar access for 75% of units, the design does not deliver safety and amenity.

Landscape Design

40. Notwithstanding that new planting is proposed which will contribute positively, the overall landscape design is not considered to be sustainable as it does not maximise preservation of existing trees that are located at the perimeters of the site and are capable of being retained and protected.

41. Further, the existing trees are taller than the proposed buildings and will instantly achieve an appropriate scale along the western elevations, where the proposed trees are smaller and medium trees which will not achieve the same height and scale as the large trees that are required to scale against the building; and will take years to fully mature.

Waste Storage Facilities

42. Waste storage facilities are not designed to minimise impacts on the streetscape, building entry and amenity of residents.
43. Waste storage areas are no longer located discreetly and occupy a large part of the ground floor footprint. Additionally the waste area is not appropriately screened.

H. Fairfield CityWide 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 6A Multi-Dwelling Housing
- Chapter 7 Residential Flat Buildings
- Chapter 10 Miscellaneous Development (containing the site specific DCP)
- Chapter 12 Car Parking, Vehicle and Access Management
- Chapter 14 Subdivision

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, 12 and 14 and it is noted that the proposal complies with the overall number of parking spaces required for the site.

The proposal does not comply with the controls in Chapter 7 of the DCP however it is noted that the DCP largely overlaps with the controls in the ADG and the ADG prevails over most of the controls.

The proposal also does not comply with the site specific controls in Chapter 10 of the DCP, which also require compliance with parts of Chapter 6A of the DCP. An extract of the site specific DCP is provided in the figures below.

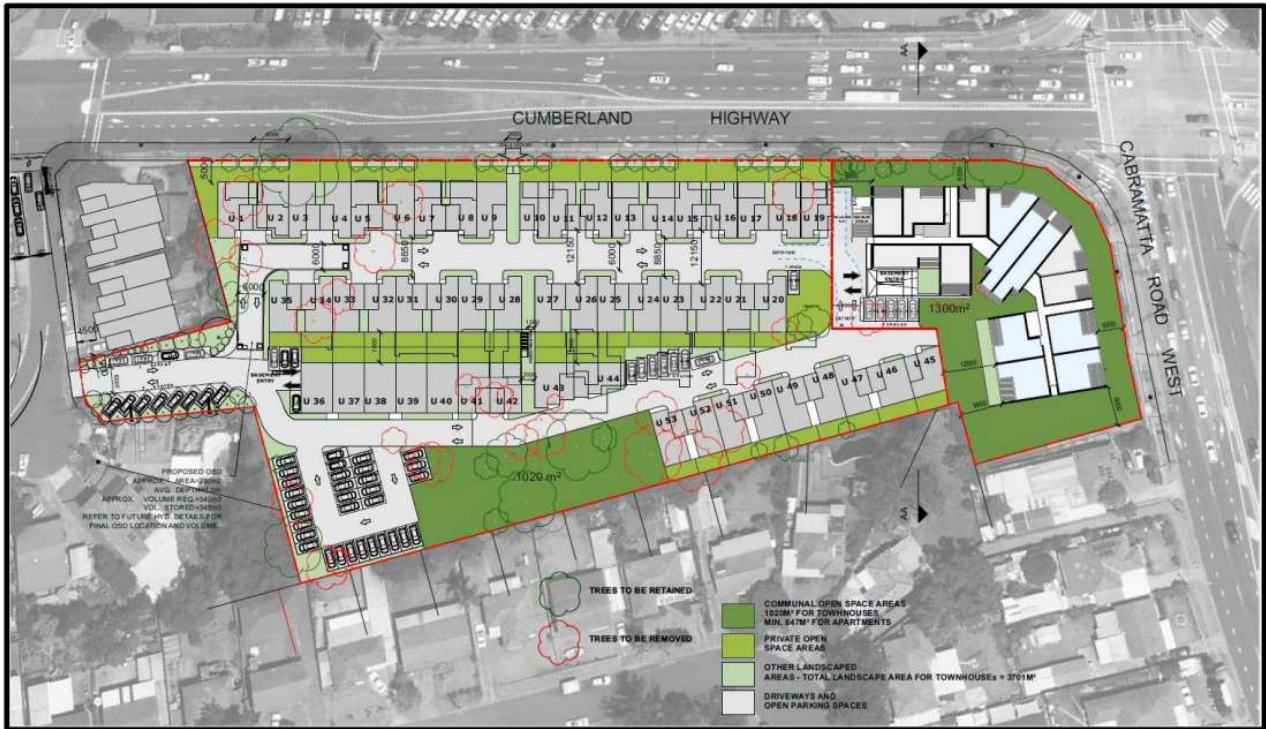


Figure 2 Site layout and building setbacks and Common Open Space

Figure 29. Site specific DCP layout, building setbacks and common open space

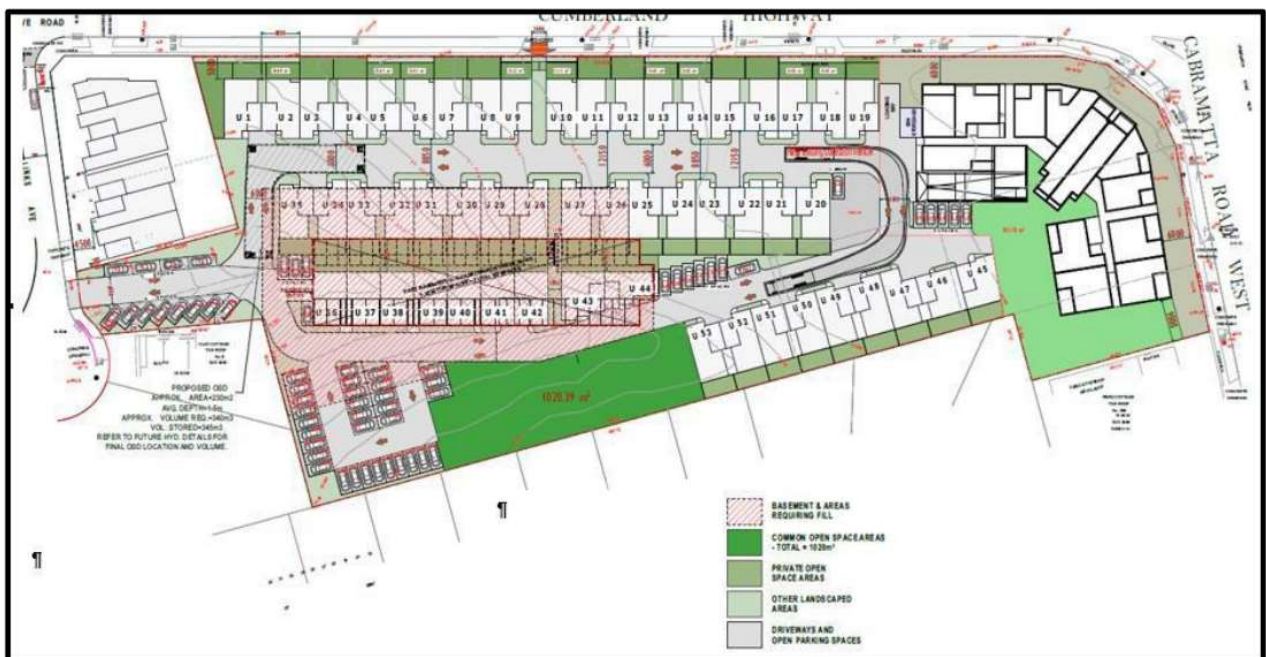


Figure 3 - Basement and Fill Areas

Figure 30. Site specific DCP basement and fill areas

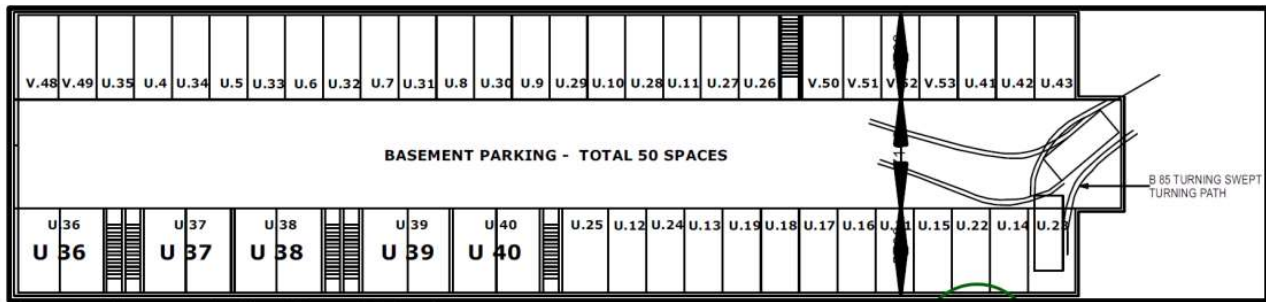


Figure 4 Basement Parking Plan on R3 Land

Figure 31. Site specific DCP basement plan

Inconsistencies with Site Specific DCP controls in Chapter 10

The application does not comply with the following matters and it is considered that the non-compliances are considered to be unacceptable having regard to the overall extent of issues with the proposal as discussed in the Key Issues section of this report:

Site Design and Layout

1. Site layout is not in accordance with Figure 2 of the site specific DCP, incorporating the following inconsistencies:
 - Design and dimensions of the circulation road are less than the DCP and have adversely impacted the ability for vehicles to achieve two-way simultaneous movement and impacts the ability to provide safe pedestrian access. Carriageway excluding curb is less than 6m in two locations (3m and 5.4m is proposed); carriageway including curb along the eastern road is less than 8.85 (6m is proposed); and carriageway width between units with garages opposite is less than 12.15m (as low as 9.6m).
 - Design of the circulation road and the waste storage and collection areas does not facilitate the safe and efficient collection of waste by Council's Heavy Rigid Vehicle (HRV), specifically the design of the road at the bends does not permit two vehicles to pass one another at the same time and is likely to result in potential conflicts and hazards.
 - Increased loss of vegetation on the site beyond what the DCP allowed
 - Reduced setbacks and separation distances to lower density zones
 - Reduced setback between the residential flat building to the south to the multi dwelling housing which is now only 7.5m instead of 9m.
 - Reduced setback at ground and first floor from Unit 1 to the south adjoining neighbouring dwelling.
 - Three multi dwelling housing units originally located south of the residential flat building have been relocated to the south-east part of the site where their own solar access and amenity is improved however the three units are unacceptably close to the east boundary and result in inadequate setbacks and visual impacts to east adjoining neighbours.
 - Communal car parking area that was originally required to be located at-grade at the south-east corner of the site has been relocated south of the residential flat building. Whilst this location presents an improved outcome to the solar access for the three units as the car park will instead be overshadowed, the poorer outcome to neighbours is not appropriate.

- The substation location is considered to be unacceptable as units opposite the substation face the substation while units behind the substation will require easements restricting the use of their POS.
- Reduced size of COS 2 which is now 96m² instead of 140.52m²
- Large area at ground level now dedicated to waste collection, this has resulted in reduced design quality and no discernible main entry point to the building.
- Waste storage room increased in size however the concern is it is directly adjacent to the adjoining apartment unit without adequate separation.

Vehicular and Pedestrian Access

2. The DCP required traffic control measures to be considered at the sites entrance to mitigate potential impacts of existing traffic movements along Links Avenue. Amended plans now incorporate a range of traffic control measures where the original plans did not propose any measures. Council's Traffic Engineers have reviewed these measures and raise concerns with the proposal. The proposal is not considered to be acceptable with respect to the adequacy of mitigation measures in dealing with the impacts of the development on the intersection of Links Avenue with Orange Grove Road and the impact on Links Avenue neighbours.
3. A two-way internal access road that is provided in the site specific DCP is not compliant with Australian Standards. Concerns have been raised by Council's Traffic Engineer and by Council's Waste Management Section as the design does not enable Council's HRV waste collection vehicle (as well as emergency vehicles) to pass another vehicle at the corners of the development. The applicant has indicated that to achieve two-way vehicle movement at the bends, that the design will result in the loss of units at each bend.
4. The carriageway width of the internal road network curb to curb was to be a minimum of 6m. The application proposes 6m to the eastern and western road and complies, however the following areas of the road do not comply:
 - Road proposed to the new Block H which was not envisaged in the site specific DCP layout is not dimensioned but appears to be only 3m and is unacceptable as it does not allow the two-way movement of vehicles accessing the three units in Block H.
 - The road connecting to the northern at-grade car park is not dimensioned but appears to incorporate a 5.4m wide dimension at a bend which will not allow vehicles to move simultaneously in and out of the car park and may also make accessing the car parking spaces adjacent to that area difficult to manoeuvre in/out of.
5. The carriageway width including the curb was required to be 8.85m. The carriageway width does not comply with this control along the eastern carriageway and only 6m has been provided. This is unacceptable given the lack of a pedestrian footpath.
6. The DCP required the carriageway width between properties situated adjacent to each other across the internal road network to be 12.15 metres measured from the

building line of the garage. The proposed units with opposite garages are as close as 9.6m and do not comply. This is unacceptable given the lack of a pedestrian footpath.

7. The DCP has as its objective that internal vehicle and pedestrian circulation should function like a street, minimise the dominance of the driveway, and minimise impact on habitable spaces.

The DCP states that: *“The two-way internal road is to serve as a shared pedestrian and vehicle environment. Appropriate traffic calming mechanisms are to be detailed as part of the relevant development application.”*

The application as originally lodged had no traffic control measures along the circulation road and concern was raised that residents would illegally park in front of their units blocking and reducing the road to one-way and further exacerbating the poor pedestrian amenity. The applicant introduced ‘no parking’ restrictions along the circulation road in March 2024. Council’s Traffic Engineer requested that these be replaced to ‘no stopping’ to deter vehicles from illegally parking and obstructing two-way traffic flow. The applicant’s response submitted in September 2024 accepted this restriction by way of a condition.

Whilst traffic measures along the road consisting of signage which may or may not be obeyed by residents, are now included, consistency with the above objective and with the control is not considered to be possible with the current design. It is considered essential to incorporate a designated pedestrian pathway, that is clearly delineated, straight/direct and defined, to protect pedestrians, prams, wheelchair users, children and cyclists from the two-way traffic movements generated by the 138 dwellings proposed on the site which will have a combined total of 243 active car parking spaces. As such, while the DCP might envisage a shared pedestrian and vehicle environment, this may not be considered possible, safe nor suitable in the current design.

8. A Pedestrian Access and Mobility Plan (PAMP) was submitted in March 2024 prepared by a traffic consultant. Issues of concern were identified with the PAMP however a revised PAMP was not submitted. The PAMP does not identify the key desire lines, does not show pedestrian access within the proposed development, and does not address this DCPs requirement for impact on the strategic cycling corridor and walking corridor in Transport NSW Sydney Cycling Future 2013.

Council’s Traffic Engineers also raised issues with the PAMP noting that the PAMP does not note what pedestrian facilities are adequate now, but may need upgrading in the future upon occupation, in any case the applicant is required to upgrade any pedestrian facility that would primarily benefit and mitigate the impact of the development on traffic congestion in the area. A revised PAMP addressing these matters was not submitted.

9. No accessible parking spaces have been provided for residents and visitors.

Building Height

10. The maximum height of the multi dwelling housing for the R3 Medium Density Residential portion of the site is 2 storeys plus attic (excluding basements) and 9 metres as outlined on the Fairfield LEP 2013 Height of Building Maps. The 15 remaining units which have a third storey are designed as an attic and do not technically comply with the DCP. However, the Planning Proposal appears to have envisaged the 3 storey design despite not technically being space within an “attic”.

Rear Building Setback

11. The DCP required a minimum 4.5m setback to the rear of Links Avenue properties. Unit 1 does not comply and instead of 4.5m, is setback as follows:
 - 1m ground
 - 2.8m to 4.1m first floor
12. The DCP does not appear to include the Smiths Avenue neighbouring properties in the control that requires a minimum 4.5m setback to the rear of Links Avenue properties. Smiths Avenue properties are identical to Links Avenue properties in that they all have their rear yards directly adjacent to the development site and the same characteristics of open rear yards and low scale single/double storey detached dwellings. As such it is considered that this control should apply to any part of the proposed development that is situated adjacent a boundary that is the rear boundary of a residential neighbour.

The following setbacks are provided to the rear boundaries of Smiths Avenue properties:

- Block H – 2.21m setback from ground and first floor.
Note: Block H was not envisaged in the SSDCP and does not have an envelope nor a control.
- Block G - 3.5m setback from ground floor.
Note: 5.72m from first floor which is more appropriate.

Building Setbacks and Separation

13. Building setbacks are not in accordance with Figure 2 of the DCP but it is noted that the DCP requires consistency with the ADG for setbacks. As such, the variations to setbacks were addressed in the previous section.
14. The minimum separation distance between dwellings sharing private open space to the rear is required to be 7m by the DCP. The DCP includes a requirement that the private open space for these units is to be designed in a manner that reduces overlooking and promotes privacy. This control applies to Blocks C and E which are located above the basement. While the numerical requirement is achieved by the amended July 2024 plans, the section diagram show that the higher Block C has not been designed to reduce overlooking into Block E.

Natural Ventilation

15. The DCP requires natural ventilation for all dwellings however the Acoustic Report submitted finds that natural ventilation of the units facing Cumberland Highway such as by opening windows will result in unacceptable exceedance of established acoustic criteria. In order to comply with the criteria, the report recommends that these units be mechanically ventilated, advising that whilst, *“...specific ventilation requirements are outside of our scope of expertise; however, an acoustically insulated building must be kept virtually airtight to exclude external noise. Therefore, mechanical ventilation, noise absorbing ventilators or air-conditioning are needed to provide fresh air and to control odours.”*

In this regard, while the proposal is unable to provide natural ventilation to units facing Cumberland Highway, natural air can be drawn via a mechanical system. Council's Public Health & Environment (PH&E) Section has raised no issues with the proposed mechanical ventilation.

Communal and Private Open Space

16. Block G setbacks of 3.5m do not enable any viable screen planting or canopy trees to screen the row of two storey built forms running along the rear of neighbouring properties. The trees are too close to the buildings and any canopy/trunk growth will impinge on the building and the useability of the space, rendering the proposed landscaping unviable or the private open space unusable.
17. POS of 6 x units on the eastern boundary are dysfunctional for a range of reasons including the inadequate 3.5m depth, the unviable tree planting, the level changes between the proposed deck and natural ground level, presence of a swale, pits and the proposed 1.5m wide drainage easement running through all the yards of Block G. These units will have poor amenity and POS that is disproportionate to the size of the units which in Block G are all 4 bedroom units plus studies and multiple living areas.
18. Unit 51 has the benefit of being conveniently located adjacent to the landscaped communal open spaces yet has been designed without an outlook or relationship to the COS.
19. COS across the site is not considered to be adequately embellished to provide adequate passive recreation opportunities to meet the needs of 53 units. There are inadequate facilities in the COS, pedestrian access is poor and limited to one point via a long path and no alternative steps, with the space seeming disconnected from the circulation road due to the level differences. There is also no ability to access the terraced area for passive recreation; and opportunities for passive recreation across the site are non-existent.

Tree Protection

20. The existing trees identified green on Figure 2 of the site specific DCP are required to be retained unless agreed by Council. Council's assessment finds that some 13 trees that the DCP required to be retained are proposed for removal as outlined below. An Arboricultural Assessment Report was provided however the

recommendations for removal of these trees are not supported on the basis that the trees contribute to streetscape and neighbourhood amenity and screening of the development that will take years to establish if the trees are removed and replaced with new planting. As such the proposed tree removal is not supported.

The following trees were shown in the DCP as required to be retained:

1. T69 is a 19m tall tree of high retention value and located along the perimeter of the site and should be protected and retained.
2. T75 is a 25m tall tree of high retention value and is located along the perimeter of the site and should be protected and retained. The Arboricultural Report states that tree roots are lifting the public footpath however this is a minor issue as the footpath is maintained by Council and does not warrant removal of the tree.
3. T7 is a 21m tall tree of high retention value and is positioned in a smaller pocket of COS between the multi dwelling housing and residential flat building. Given its location in COS and its high retention value, the proposed removal is not supported.
4. T19 is a 14m tall tree of medium retention value. It is located between the multi dwelling housing and the eastern neighbours and should be retained to maintain the amenity and natural screening.
5. T28 is a 32m tall tree of medium retention value. It is located within the main COS and should be retained and incorporated into the landscaped area.
6. T36 is a 25m tall tree of high retention value. It is located within the main COS and should be retained and incorporated into the landscaped area.

The following tree was not shown in the DCP as required to be removed/retained:

7. T70 is a 16m tall tree of medium retention value and should continue to be pruned for overhead lines which is normal practice all over NSW. Notwithstanding this, the tree is located along the perimeter of the site and should be retained and protected.

The following trees were shown to be retained by the DCP but were identified by the Arboricultural Report as of low retention value and are therefore proposed for removal. However the following trees that contribute to the streetscape and residential amenity despite being classified as low significance, and given their location mainly along the perimeters of the site, their removal is not supported:

8. T68 is a group of 6-7m tall trees.
9. T72 are 6-8m tall row of three trees.
10. T73 is a 4-6m tall tree.

11. T74 is an 8.5m tall tree.

The following trees were shown to be retained by the DCP and are located in the yards of Block G. The Arboricultural Report identifies these as of low retention value and are therefore proposed for removal. However the following trees that contribute to the residential amenity despite being classified as low significance, and given their location in the rear yards of Block G units and ability to provide screening to the eastern neighbours, their removal is not supported:

12. T8 is a 9.5m tall tree

13. T16 is a 20m tall tree

Inconsistencies with Built Form controls in Chapter 6A Multi Dwelling Housing

The site specific DCP controls in Chapter 10 have required that the built form of the multi dwelling housing comply with specific controls in Chapter 6A Multi Dwelling Housing of the Fairfield CityWide DCP 2013. The non-compliances with Chapter 6A are as follows:

Building Form Multi Dwelling Housing

1. To achieve balanced built form, the DCP requires that the overall GFA of the upper floors be a maximum of 65% of the total GFA of the ground level. Amended plans reduced the variation from 134% to 130% as a result of originally miscalculating and exceeding FSR.

The variation is not considered to be acceptable given the low scale, low density residential neighbours, together with the non-compliant setbacks and issues identified in this assessment. Additionally, the reduction of the upper level footprints particularly along the eastern and southern interfaces of the site will reduce the impacts on residents, improve articulation of the long unbroken forms, reduce the number of windows directly facing into each other and so on.

2. The DCP states that the distance between any two habitable rooms of separate dwellings on the same property shall be no less than 9m. This conflicts with the site specific DCP controls in Chapter 10 which allow less than 9m.
3. Notwithstanding the above, the DCP requires facing windows closer than 9m to be provided with appropriate privacy measures. The following units do not include appropriate privacy measures:
 - The units in Block D and F have 7m to 8.15m separation at ground floor and 8.2m separation at first floor with windows directly facing one another.
 - Units facing each other along western access road are separated 8.5m to 8.85m at both ground and first floor.
 - Units facing each other along eastern access road have 8.5m separation at ground floor.

It is considered that a more considerate architectural design solution is required that avoids the repetitiveness of the built form and provides an alternate response to the row of opposing windows and POS.

The DCP requires some dwellings to be lowered in height to comply with these requirements, however as already noted, the upper levels to ground level ratio is 130% where the DCP allows up to 65%, indicating that the development is an over intensification of the site that will result in poor amenity and privacy outcomes.

4. The DCP requires that for buildings with parapet walls and skillion (flat) roofs, the maximum height of the building be limited to 8 metres from ground level (existing) and walls are to be articulated. The proposal comprising 24 out of 53 units do not comply with the maximum 8m height. Council notes that while the development complies with the LEPs numerical control for overall height does not meet the DCPs specific controls relating to wall heights and ridge heights and in such way is inconsistent with the streetscape and established character of the surrounding residential neighbourhood.
5. The DCP states that distance between any window and door opening of a habitable room and non-habitable room on the same property shall be no less than 6 metres. None of the units in this development meet this requirement.
6. The DCP sets out the window requirements for non-habitable rooms however a Window Schedule was not provided and these details have not been annotated on the plans, as such the proposal is unlikely to comply.
7. The development requires 6 single storey accessible villas to be provided in order to comply with the DCPs accessibility controls. No villas have been provided. However 6 out of the 53 units have a bedroom on the ground floor as required by Chapter 10. The variation is not supported in view of the exceedance of the upper to ground floor GFAs and setbacks and it is considered that there is possibility for the site to provide villas if compliance with the built form controls are met therefore the variation is not considered to be reasonable.
8. No accessible parking spaces have been provided at-grade.
9. Building elevations fronting the street or internal driveways are required to be divided into segments or bays no longer than 5m. This is not achieved for most blocks. Only Block A and Block B facing Orange Grove Road meet this requirement. The multi unit housing is repetitive in form and this is exacerbated by the non-compliant upper to lower level GFA ratio.
10. The majority of the 53 units have a combined living and dining room that is less than the minimum width of 4m that is required by the DCP. The width is severely deficient given the size of the units. All 53 units are either 3 bedders with studies or 4 bedders with studies and less than 4m wide living spaces will provide poor amenity considering the likely occupation of each dwelling given the number of rooms.
11. Certain bedrooms of units in Block A, Block B and Block H are less than the minimum 3m in width.
12. The minimum amount of storage space has not been provided. All 53 units have been provided with 8m³ which is generally sufficient for 2 bedroom units, however as all 53 units are 3-4 bedroom units plus studies, a minimum 10m³ is required.

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 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, nor that the natural constraints 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 is not in the public interest as the potential impacts are not adequately mitigated, the proposal has a low level of compliance with the relevant planning controls and does not adhere to good design principles, raises concerns with health and safety, 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. Traffic Impacts and Internal Circulation

The development application was referred to Council's Traffic & Transport Branch for assessment as well as to Transport for NSW (TfNSW) as the development is a traffic-generating development and has frontages to a classified road in accordance with SEPP (Transport and Infrastructure) 2021. The development also requires TfNSW concurrence under Section 138 of the NSW Roads Act 1993 for closure of five existing accessways from the classified roads and ancillary civil works.

TfNSW initially did not support the proposal, raising issues with the application which Council conveyed to the applicant in writing, such as:

- traffic generation adopted being low given the lack of public transport in the area;
- SIDRA Network Modelling found to contain parameter errors, producing unreliable results, key intersections excluded from modelling for example Orange Grove Road and Cabramatta Road; and Cumberland Highway and Viscount Road
- Require mitigation measures if deterioration in the Level of Service (LOS) is computed, and
- Council to consider reviewing the access and internal swept paths
- Council to consider left-in left-out onto Links Avenue given the roads poor horizontal geometry

The applicant submitted amended plans and information in March 2024 including but not limited to the Addendum Traffic and Parking Statement which was referred to TfNSW for further consideration.

The revised estimated traffic generation of the development based on the updated and corrected modelling lead to an increase in the total estimated peak hour traffic generation which as amended is estimated to result in the following additional vehicle trips:

- 57 AM peak hour vehicle trips (increased from 52) (20% Inbound and 80% Outbound trips for typical residential development)
- 60 PM peak hour vehicle trips (increased from 48) (80% Inbound and 20% Outbound trips for typical residential development).

TfNSW was satisfied with the amended development in how it responds to the first three issues raised; and provided their concurrence on 14 May 2024. The last two issues are matters for Council to assess and are addressed below.

Further amended plans submitted by the applicant in July 2024 have also been referred to TfNSW who advised Council on 12 August 2024 that the amendments do not change the comments already provided to Council.

Council's Traffic Engineer who has assessed the application and considered the comments by TfNSW 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 in March 2024, July 2024 and September 2024 and was reviewed by Council's Traffic Engineer who advised that the application is not able to be supported primarily due to the following issues:

Impacts of traffic generation on the nearby intersection

The Traffic Engineer advised that the applicant responded to Council's letter dated 26 August 2024 by providing traffic SIDRA intersection analysis for the future year 2032. The updated modelling was reviewed and while the Level of Service shows no significant impact arising from the proposed development on the nearby intersection, other critical factors of signalised intersections such as average delay, queue lengths and degree of saturation shows otherwise.

The proposal is nearly doubling the average delay and the queuing for vehicles travelling from Links Avenue. For right-turn movement from Links Avenue the queue length increases from 29m to 80m, and the average delay increases from 75.8 seconds to 132.3 seconds while the degree of saturation surges from 0.49 to 1.014 exceeding the maximum practical degree of saturation for signalised intersections.

The application cannot be supported due to the average delay, queue lengths and the degree of saturation at Links Avenue being considerably impacted by the traffic generation of the proposal causing longer wait time for residents in the area. The queue length would increase beyond the site access which would not allow residents to take the right turn from the driveway onto Links Avenue which will result in queuing internal to the site.

Loss of on-street parking along Links Avenue

The applicant's proposal for alterations to the existing regulatory signage and line marking on Links Avenue including the proposed extension of 'No Stopping' restrictions in Links Avenue would result in the loss of on-street parking spaces presently used by existing residents and/or their visitors.

The applicant proposed to confine the 'No Stopping' restriction to peak hours which would minimise the impact of the loss but would still result in the loss of on-street parking spaces.

Council notes that the applicant has accepted to bear the cost of changes to the line marking and signage. Such a change would also require referral to Fairfield Traffic Committee for further consideration.

TfNSW comments for left-in and left-out from Links Avenue

Regarding TfNSW's comment recommending that Council consider a left-in and left-out arrangement at the entry/exit driveway of the site due to the geometry of the driveway, Council's Traffic Engineers consider that this strategy will exacerbate issues further down south along Links Avenue as the vehicles turning left out of the site will have to make a U-turn (as Links Avenue is a no-through road) to then join the queue on Links Avenue, in order to turn on to Orange Grove Road/Cumberland Highway.

Reference is made to the traffic modelling results which indicates that the 95th percentile back of queue on Links Avenue would be approximately 80m which would extend past the site's access point. Vehicles exiting from the proposed development in a left out arrangement would struggle to join the queue even with the right-turn that is currently proposed. It is considered that if TfNSW's left-out only strategy is implemented, all the traffic from the development will be redirected south to make a U-turn to join the queue at Links Avenue which would lead to additional impacts to residents further south. Therefore, it would be preferable to contain the impacts within the proposed development site by permitting right-turn onto Links Avenue, rather than shifting the burden onto other residents on Links Avenue. In the proposed arrangement, vehicles will be queued within the site, and priority will be to the traffic already within Links Avenue.

Intersection areas within development do not accommodate two-way movement

Council's Traffic Engineers advised that from the swept path diagrams provided it does not appear that a service vehicle (such as Council's HRV waste collection vehicle) can pass another vehicle particularly on bends where sight distance is reduced, presenting a safety issue that needs to be adequately addressed, without causing another vehicle to reverse.

The applicant responded in September 2024 stating that:

- *The internal roads have been designed to allow for two passenger vehicles to pass one another, while allowing vehicle passing and waiting opportunities to give way to larger service vehicles and waste collection trucks. This is anticipated in the SSDCP, which does not provide for additional width at corners for a waste collection vehicle and car to turn the corner together (townhouses would require to be removed at each corner to facilitate this).*
- *A combination of traffic convex mirrors, signage and line markings will also be provided to improve sight lines, to allow for passenger vehicles and trucks to give way to each other around bends.*
- *Movement of larger service vehicles and removalist trucks can be limited by way of a strata by-law, in coordination with a booking system to regulate, minimise and manage truck movements within the site.*

Council's Traffic Engineer advised that despite the provision of traffic measures to improve the sight lines, the traffic measures are considered to be inadequate to prevent the conflict between trucks and cars and would still not be practically safe to allow a truck and car to make simultaneous movements safely given it's a two-way road. Furthermore, the provision of convex mirrors on external setting is unacceptable as it will be less effective, and the image that convex mirrors display is distorted causing further safety concerns and potential for vandalism.

Reduced carriageway width

Council's Traffic Engineer provided the following advice in relation to the applicant's proposal to reduce the DCPs minimum 6m wide carriageway requirement for internal roads:

- Part of the proposed carriageway has been reduced from the required 6m down to 3m wide which will in no way accommodate the two-way movement of vehicles

without impacting one another. The design requires a minimum 6m wide road to access Block H.

- The design proposes 5.4m wide road at a bend in the northern car park and this will not allow vehicles to move simultaneously in and out of the car park. This would require swept paths to demonstrate that vehicles are able to make that turn without impacting one another or any structures alongside the road. However, it seems likely that the end parking spaces might have issues accommodating vehicle manoeuvres.

Safe reversing into HRV loading bay and Loading Dock Management Plan

A Loading Dock Management Plan was submitted in March 2024 prepared by a traffic consultant. Council's Traffic Engineer has advised that the Plan does not state how a HRV such as a waste collection vehicle will reverse safely into the loading dock; and raised concerns regarding vehicle and pedestrian conflict that have not been adequately addressed, advising that measures such as a warning sign may be missed particularly by visitors. The applicant responded in September 2024 stating that a revised plan will be submitted to identify all proposed measures however a revised plan has not been submitted.

Splay at the driveway

Council's Traffic Engineer required that the splay triangle at the driveway be designed as per AS/NZS 2890.1:2004 and shown on the plans, to ensure motorists and pedestrians have adequate sight distance at driveways and ramps to basement parking. The applicant responded in September 2024 that sight line triangles/splays have been factored into the proposed design. However, the architectural design does not provide any demarcation showing the sight triangles/splays.

Swept paths to certain parking spaces

Council's Traffic Engineer requested that swept paths to vehicle parking spaces in basement parking spaces 121, 107, 111 and 114 should be shown. The applicant's response states that this has been incorporated in the design however, no swept paths assessment has been presented in the submitted information.

Pedestrian Access and Mobility Plan

A Pedestrian Access and Mobility Plan (PAMP) was submitted in March 2024 prepared by a traffic consultant. Council's Traffic Engineers reviewed the PAMP and advised that the PAMP does not note what pedestrian facilities are adequate now but may need upgrading in the future upon occupation, advising that in any case the applicant is required to upgrade any pedestrian facility that would primarily benefit and mitigate the impact of the development on traffic congestion in the area. The applicant responded in September 2024 stating that the PAMP will be revised however a revised PAMP has not been submitted.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

2. FSR Exceedance

The proposed residential flat building exceeds the maximum 2:1 FSR that is permitted by Fairfield LEP 2013 over the R4 zoned land. The exceedance occurs as a result of the GFA diagrams excluding the following areas that are considered by Council to meet the definition of GFA:

- Waste storage rooms at ground floor
- Bulky waste storage room at ground floor
- Common corridors at ground floor where only shortest ends are open/unenclosed
- Space between lift and fire stairs at ground floor but purpose of the space is not annotated and it does not appear to be a plant room.

The issues were conveyed to the applicant in Council's letter dated 5 July 2024 and the applicant submitted amended plans on 29 July 2024 which attempted to resolve the issue by replacing the solid wall of the ground floor waste collection area with a 1.4m screen to avoid including the space as GFA. However it is considered that the space remains predominantly enclosed and due to its depth, it is considered that the space must still be included in GFA calculations.

It is also noted that the July 2024 amendments to the residential flat building have further reduced the quality of the residential flat building. The replacement of solid wall with 1.4m high screens will create significant odour issues, attract vermin, present poorly to the adjacent areas including a common corridor and entry into the building resulting in adverse impacts on the amenity of occupants and the overall quality of the rear elevation of the building. Additionally the design does not comply with Council's waste requirements which require rooms to be fully enclosed and mechanically ventilated.

In this regard, the application cannot be positively determined as the provisions of Clause 4.6 of the LEP require a written request that addresses the criteria in Clause 4.6. A Clause 4.6 Request for Variation of the FSR standard was not submitted as the applicant is of the opinion that the design is such that the spaces can be excluded.

Furthermore, an amended acoustic report was not submitted to address the acoustic impacts that will now arise as a result of the loss of solid walls.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

3. Loss of Existing Mature Trees

Existing vegetation on the site consisted of some 75 trees that were assessed in 2015 as part of the Planning Proposal. The subsequent site specific DCP that was adopted included a plan identifying the trees that are required to be retained on the site.

Documentation submitted with the application such as Survey Plans and Arboricultural Report did not align with the number of trees that were identified in each of the document when compared to the DCP. As such, a reassessment of vegetation was undertaken by the applicant's consultants in February 2024 which identified that 14 trees were not present or

dead and each are identified with details provided in the amended Arboricultural Report. The following is noted:

- 37 existing trees are proposed to be removed. This includes 13 trees that the site specific DCP required to be retained.
- 14 trees are proposed to be retained
- 5 trees were identified as exempt species
- 5 trees were approved for removal under a tree permit according to the report.

An Arboricultural Report was provided seeking to justify the further removal of 13 trees which the site specific DCP identifies to be retained. However the recommendations for removal of these trees are not supported on the basis that the trees contribute to streetscape and neighbourhood amenity and screening of the development that will take years to establish if the trees are removed and replaced with new planting. Furthermore, the trees are presently located along the frontages of the site where the deep soil zones are proposed and do not warrant removal, otherwise the trees are in the COS areas and will improve the amenity of the COS. As such the proposed tree removal is not supported and this was detailed in the previous section under the DCP assessment.

Although the site does not appear on the NSW Biodiversity Values Map (BVM), the development application was initially referred to Council's Natural Resources Branch for assessment as Council's mapping identifies that the site is in a Conservation Significance Assessment (CSA) area, highlighting the existence of native vegetation and/or habitat.

Natural Resources advised that notwithstanding that the CSA has been assessed as Low; the development should be designed to minimise impacts on the area with biodiversity significance, such as by not removing high tree retention remnant trees outlined in the Arboricultural Report, for example Tree 51, *Eucalyptus moluccana* and Tree 36 *Eucalyptus tereticornis*. This was conveyed to the applicant who responded by redesigning the development to further minimise the impacts, incorporating the retention of Tree 51, but not Tree 36.

Natural Resources acknowledge that established guidelines have been taken into account by the applicant's ecologist in the consideration of potential impacts on threatened biota. Natural Resources does not raise any issues with the amended proposal from an ecological perspective.

In this regard, while the concerns for the loss of the trees are not based on their ecological value, the concerns are on the basis of the landscape sustainability and the significant amenity that these trees afford, and having regard to their locations in areas that are capable of being retained and protected.

The Urban Designer Council engaged to advise on the quality of the development also noted the following:

- Tree retention would greatly enhance the scheme by providing shade and reducing the apparent scale of the scheme in the landscape, promote biodiversity and retain more moisture in the soil.
- The scale of the existing trees is important to the development.

- The species of trees specified for Cabramatta Road such as the Melaleuca Linearifolia and the Ceratopetalum Gummifera are considered bushes that grow to a maximum of 10m.
- For buildings to appear of an appropriate scale for their environment, especially the Cumberland Plain which has large scale trees, the canopy of the trees should be higher than the buildings. The specified species will not achieve this. Larger ones should be specified.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

4. Design Quality

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 SEPP (Housing) 2021 does not meet 7 out of 9 of the principles of good design particularly context, built form and scale, density, landscape, safety, sustainability and amenity.

Further, a detailed assessment against the criteria of the Apartment Design Guide (ADG) has also been undertaken and was outlined in Section 6 of this report as well as in Attachment 2 to this report. That assessment also identifies that while the numerical non-compliances generally relate to building setbacks, separation and windows, the design in general does not achieve consistency with the ADG across a whole range of criteria.

In addition to the assessment of the application against the design excellence and SEPP 65 design quality provisions, Council also engaged an Urban Design expert to assess the proposal and provide advice on the quality of the design of the development. The Urban Designer has provided advice that confirms Council's findings.

The issues that have been identified were conveyed to the applicant to address since Council's initial letter dated 23 December 2023 and subsequent letters. A meeting was also held at Council's offices in February 2024 between the applicant's representatives, Council officers and the Urban Designer to discuss the issues surrounding the application. Council acknowledged that while a Planning Proposal to change the zoning and controls of the site has already been approved, fundamental concerns have been identified with the proposed development which are not satisfactorily addressed in the detailing of this proposal.

Whilst the applicant submitted amended plans to Council in March 2024 and July 2024, such amendments have been minor in nature and have not satisfactorily addressed the issues raised, nor to demonstrate consistency with the design excellence and design quality principles.

With respect to the building envelope, the development does not meet the following criteria and does not present circumstances or merit varying the criteria:

- Building setbacks to the eastern boundary to neighbouring R2 Zone do not comply;

- Building setbacks to the southern and proposed multi dwelling housing development located over R3 Zone do not comply;
- Separation distances between the eastern and western wings of the building on the same site do not comply; and
- Privacy measures to mitigate the non-compliant building setback include solid walls or 1.8m high sill windows which in turn compromise aesthetic quality of the external elevations as well as internal amenity, outlooks and solar access as high sill windows are only permitted where there is a secondary window that meets the building setbacks and separation criteria. In this case, 14 bedroom windows do not comply as the 1.8m high window sill is their primary source of sunlight, and/or their secondary source does not meet the separation distances.

The consequence of the variations is considered to be an inadequate transition between the 6-storey scale compared to the low scale, two storey context. The privacy measures proposed to mitigate non-compliant building setbacks result in unacceptable impacts and reduce the quality of the building. Other elements of the design are also inconsistent with the ADG such as interface to public domain, pedestrian access and entries, vehicle access, acoustic privacy, landscape design, waste storage facilities and so on.

In this regard, the proposed development is unable to be supported as it does not produce quality outcomes for neighbours and future residents.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

5. Inconsistencies with Site Specific DCP

The proposed development has a low level of consistency and compliance with both numerical requirements of the site specific DCP contained in Chapter 10 and Chapter 6A, but also with the objectives. It is considered that the application does not display sufficient merit that would warrant a flexible application of the DCP, or variations to the DCP controls, as the proposed variations are not likely to lead to acceptable environmental and built outcomes.

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.

That assessment also identifies that the design in general does not achieve consistency with the DCP across a whole range of criteria. The issues that have been identified were conveyed to the applicant since an initial letter dated 23 December 2023 and subsequent letters. It has been consistently advised that the overall scheme for the site remains problematic however amendments submitted in March and July 2024 only incorporate minor improvements.

Whilst there are a whole range of concerns, the development does not meet the following fundamental requirements:

- Design and dimensions of the circulation road and the separation between buildings are less than the DCP and have impacted the ability for vehicles to achieve two-way simultaneous movement, and impacted the ability to provide safe pedestrian access. This has been detailed further above.
- Loss of existing significant trees beyond what the DCP allowed.
- Setbacks to the Links Avenue and Smiths Avenue residents is less than the required 4.5m.
- Building heights inconsistent with the local context and upper floor ratio to lower floors unjustifiable given the repetitive built form and privacy and overlooking issues created (130% proposed where Chapter 6A permits 65%).
- Privacy and overlooking between the development is not mitigated through articulation and breaks in the built form and reorientation of windows.
- Inadequate separations between the buildings, together with the repetitive design with windows facing each other directly across a distance of less than 9m.
- Privacy and headlight glare to the southern neighbours windows and yard proposed to be addressed via a 2.4m high fence which is uncharacteristic in a low scale residential local context.
- Poor quality embellishment of the communal open spaces and dysfunctional and unviable private open space and landscaping of units along the eastern boundary.
- Less than 4m wide living spaces to the majority of the units within the development which is disproportionate with the 3+ study and 4+ study mix of units proposed, and likely to provide poor amenity for the number of occupants capable of occupying the dwellings.

The consequence of the variations is considered to be a development that does not fit in with the context of the site and results in unacceptable impacts and low quality outcomes. In this regard, the proposed development cannot be supported.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

6. 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. Amended plans and additional information was submitted by the applicant in March 2024, July 2024 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:

Multi Dwelling Units - Collection Vehicle Access

No updated swept path diagrams were submitted to address the issue that was previously raised by Council to do with the Updated Traffic and Parking Assessment Report. The updated report proposes a three-point turn for Council's HRV to manoeuvre within/against an active carriageway. The proposed manoeuvre will inhibit the provision of a safe and efficient waste collection service.

Multi Dwelling Units - Bin Towing Device Storage

The architectural plans propose a 'mobile bin towing device' storage area opposite the lift (drawing no. 40, issue D). The storage area for the Bin Tug/Towing Device does not incorporate the following infrastructure:

- Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm
- Room enclosed, walled, and not permit through access to other on-site infrastructure
- Sufficient size to accommodate tug/towing device and trailer (to permit the movement of 14x 240L bins)
- Electrical charge capabilities (specific to system proposed) to permit scheduled charging.

Multi Dwelling Units - Bin Movements (Units 36-42)

A 'mobile bin towing device' is proposed to permit the bin movements of Block E (Units 36-42). Supporting documentation was not provided outlining how the proposed towing device will move the 14x 240L bins from Basement 1 to the designated storage area/s without the use of a trailer.

Residential Flat Building - On-Site Loading Infrastructure

The proposed HRV loading bay is enclosed by screening. This will inhibit unobstructed access to the rear (200mm) of the vehicle and side access for the driver to permit scheduled collections. Consideration may be given to the removal of the screening and installed line marking to identify the area. The line marked area to be enforced through the installation of traffic signage, 'No stopping – waste collection vehicle excepted' to permit unobstructed access for Councils collection vehicles to perform collections.

Notwithstanding the above comments, updated swept paths were not provided inhibiting a detailed assessment from being able to be undertaken.

Residential Flat Building - Waste Collection Infrastructure (Ground Floor)

The respective waste collection infrastructure located adjacent to the loading bay (Waste collection Area & Bulky Waste Storage) proposes 'screening <1.4m high'. This infrastructure is not permitted and will inhibit the provision of a safe and efficient waste collection service.

The respective rooms are required to incorporate the following, consistent with previous advice/comments provided:

- Room/s large enough to accommodate the entire bin allocation/area allocation

- Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm
- Room enclosed, walled, and not permit through access to other on-site infrastructure.

With additional supporting infrastructure for each room provided responsive to On-Site Waste Infrastructure requirements outlined below.

Residential Flat Building - Chute Room

An updated WMP has not been provided to address the following issues:

- The WMP outlines 'chute will discharge from a chute outlet point with 2x 240L waste bins under the chute outlet point' instead of referencing 3x 660L bins.
- Section 4.2 & 4.3 of the WMP outlines '*bins positioned under the chute outlet point of three (3) bins mechanically operated linear track system*'. This then contrasted by the proposed bin capacity of '*2x 660L bin systems being 1320L*'. The WMP (section 4.2 & 4.3) and architectural plans were not updated to accommodate 3x 660L bins (1,980L).
- The current configuration of the linear track system will not permit the storage of 3x 660L bins. The chute outlet of each respective chute is located centrally on the system, when the system rotates forward only 2x 660L bins can be utilised. This is inconsistent with the proposed 3x 660L bin providing 1,980L of waste.
- Consideration may be given to rotating the 660L bins clockwise 90 degrees and shifting the linear track to the west to align parallel to wall.

Residential Flat Building - Waste Storage Room

An updated WMP was not provided to address the requirement that waste storage rooms (01 – 02) located within basement 1 to be locked and not accessible to residents. Resident access to bin infrastructure to be provided on each residential level within the bin cupboards only.

Residential Flat Building - On-site Waste Infrastructure

On-site waste infrastructure (chute room, waste storage, waste collection and bulky waste) are required to accommodate the following infrastructure:

- Floor grade to central drainage point (connected to sewer)
- Floors waterproofed and extended 1200mm high on walls
- Hot & Cold water tap/s
- Mechanical ventilation
- Sensor lighting
- Unobstructed minimum height clearance of 2700mm.

Residential Flat Building - Bilock Access

To permit unobstructed access for Council's collection contractors to perform scheduled collections the waste collection infrastructure located on ground floor (Waste Collection Room & Bulky Waste Room) is required to be keyed to Councils Bi-lock key system.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

7. Acoustic Impacts

The development application was referred to Council's Public Health and Environment (PH&E) Branch for assessment with respect to acoustic impacts to and from the development and from road noise. PH&E initially raised issues with the information as originally lodged, primarily to do with information deficiencies within the Acoustic Report, which were conveyed to the applicant to address. The applicant submitted an amended Acoustic Report in March 2024 however the acoustic report does not address the changes in the plans involving the deletion of solid wall of the waste room and the impact on adjoining residents as such the impacts of the revised development have not been fully addressed.

The following additional advice was provided by PH&E:

Traffic and Environmental Noise Assessment

The amended Acoustic Report concludes that if the construction of the proposed development is carried out as per the acoustic recommendations of this report, the proposed development will comply with the requirements of SEPP (Transport and Infrastructure) 2021, AS 2017:2016, and NSW Noise Policy for Industry (2017). PH&E have reviewed the report and methodology however the report does not address the changes to the construction of the waste room in the July 2024 architectural plans.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

Noise Impact from Vehicle Movement from the Proposed Development

The original Acoustic Report did not address noise impacts from the vehicle movements associated with over 240 total on-site parking spaces across the site. However, in the amended Acoustic Report, further information was provided regarding traffic noise and its impact on the neighbouring properties. Noise from traffic generation and cars using the internal driveway and carpark were assessed in the report. As per the amended report, noise from the carpark and driveway will comply with the noise trigger level; and noise from the electrical substation will be inaudible inside the habitable space.

However, noise from the waste collection is not based on an assessment of the changes to the construction of the waste room incorporated into the July 2024 architectural plans.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

8. Air Quality Impacts From the Classified Road

An Air Quality Assessment Report was submitted with the application due to the site location on two classified roads and the potential for air pollution from passing vehicles to impact the proposed development. Air quality sampling was carried out within the subject areas in order

to determine if there were any potential contaminants present that occupants of the site may be exposed to.

The Air Quality Report concluded that all relevant Contaminants of Potential Concerns (CoPCs) measured on the 11 May 2023 were below the adopted assessment criteria and all CoPCs are classed as acceptable according to the relevant standards; and not identifying the need for any further control measures or recommendations.

Council's PH&E Branch have reviewed the impacts of air pollution on the development and are satisfied that adverse impacts are unlikely.

Resolution: The issue has been resolved.

9. Staging Details

Following Council's final assessment of the application, Council identified that the proposed staging plans show that part of the proposed 'vehicle access' i.e. private road, the HRV loading bay and four parking spaces associated with the Stage 1 multi dwelling housing development are proposed to be constructed as part of Stage 2 residential flat building however this is not possible as these elements are required for Stage 1.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application.

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 as the key issues as outlined in Section 7 have not been resolved satisfactorily through amendments and the following matters remain unacceptable:

- Traffic impacts and mitigation measures
- Design of circulation road, servicing of the site and swept paths
- Floor Space Ratio exceedance
- Loss of existing mature trees
- Design quality not achieved
- Building setbacks and design inconsistent with the ADG
- Inconsistencies with Site Specific DCP
- Inadequate arrangements for waste management
- Acoustic impacts of waste rooms.

Q. RECOMMENDATION

That the Development Application DA 260.1/2023 for the proposed two staged development of the site to construct 53 Multi Dwelling Housing comprising and a 6-storey Residential Flat Building containing 85 units, basement parking and ancillary work including subdivision/amalgamation, tree removal at the site known as 400-404 Cabramatta Road West, Cabramatta be refused pursuant to Section 4.16(1) (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft reasons for refusal attached to this report at Attachment A.