

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSWC-420
DA No.	DA 69.1/2024 PAN-415907
LGA	Fairfield City Council
Proposed Development	The application proposes alterations and additions to an approved mixed use development by proposing a further 3 storeys of residential units above an approved 8-12 storeys, resulting in an overall development comprising of up to 15-storey mixed use development to provide 356 (reduced from 381) residential units (57 x infill affordable units and 299 non-affordable units) under SEPP (Housing) 2021; 1,107m ² of commercial/retail floor space over 3 basement levels providing 435 car parking spaces.
Street Address	46 Court Road, Fairfield (Lot 100 DP 1277808)
Applicant/Owner	Ben Creighton (Think Planners) on behalf of Fairfield Investments No. 1 Pty Ltd
Date of DA Lodgement	22 March 2024
Total number of Submissions	3 total submissions
Number of Unique Objections	2 unique objections
Recommendation	Approval
Regional Development Criteria	Cost of development: \$30,030,000
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> ▪ Environmental Planning and Assessment Act 1979 (EP&A Act 1979) ▪ Environmental Planning and Assessment Regulation 2021 ▪ Fairfield Local Environmental Plan 2013 ▪ State Environmental Planning Policy (Housing) 2021 <ul style="list-style-type: none"> ▪ Chapter 2 Affordable Housing ▪ Chapter 4 Design of Residential Apartment Development ▪ State Environmental Planning Policy (Transport and Infrastructure) 2021 ▪ State Environmental Planning Policy (Resilience and Hazards) 2021

	<ul style="list-style-type: none"> ▪ State Environmental Planning Policy (Planning Systems) 2021 ▪ State Environmental Planning Policy (Sustainable Buildings) 2022 ▪ Fairfield City Centre Development Control Plan (DCP) 2013 ▪ Fairfield CityWide DCP 2024 (noting that the 2013 version applied at the time of lodgement) ▪ Apartment Design Guide
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> ▪ Attachment 1 – Draft Conditions of Consent ▪ Attachment 2 – Statement of Facts and Contentions Filed with NSW LEC ▪ Attachment 3 – Architectural Plans ▪ Attachment 4 – Photomontages ▪ Attachment 5 – Urban Design Study ▪ Attachment 6 – Landscape Plans ▪ Attachment 7 – Stormwater Concept Plans ▪ Attachment 8 – Survey Plans ▪ Attachment 9 – Access Report ▪ Attachment 10 – ADG Compliance Table ▪ Attachment 11 – Clause 4.6 Report ▪ Attachment 12 – Air Quality Report ▪ Attachment 13 – BASIX Certificate 1 ▪ Attachment 14 – BASIX Certificate 2 ▪ Attachment 15 – BCA Report ▪ Attachment 16 – Design Verification Statement ▪ Attachment 17 – Legal Advice from Applicant's Solicitor ▪ Attachment 18 – Noise Impact Assessment ▪ Attachment 19 – QS Report ▪ Attachment 20 – Statement of Environmental Effects ▪ Attachment 21 – Supplementary Planning Statement ▪ Attachment 22 – Traffic Impact Assessment ▪ Attachment 23 – Urban Design Report ▪ Attachment 24 – Waste Management Plan ▪ Attachment 25 – Transport for NSW (TfNSW) Concurrence ▪ Attachment 26 – Map of Properties Notified & Submissions Received ▪ Attachment 27 – Submissions x 3 (2 unique) ▪ Attachment 28 – Structural Engineer Letter
Clause 4.6 Requests	<p>A Clause 4.6 Request was submitted to address the variation to:</p> <ul style="list-style-type: none"> ▪ Variation to the internal apartment sizes prescribed in SEPP (Housing) 2021 – Chapter 2 Affordable Housing
Summary of key submissions	<ul style="list-style-type: none"> ▪ Increased noise ▪ Obstruction to views ▪ Loss of sunlight ▪ Blocking of sunset/sunrise and breeze. ▪ Protection of existing property impacted during construction
Report Prepared By	Venetin Aghostin, Senior Development Planner
Report Date	24 February 2025

Summary of s4.15 matters

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

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? **Yes**

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? **Yes**

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 the subject amending DA, Development Application No. 69.1/2024 (PAN-415907), proposing alterations and additions to the mixed use development approved under Development Consent No. 687.1/2014 granted by the Sydney West Joint Regional Planning Panel (JRPP) on 2 December 2015 for *“demolition of existing structures and the construction of an 8-12 storeys mixed-use development consisting of 4 multi-storey buildings containing 290 residential developments (9 studio apartment, 92 x 1-bedroom apartments, 156 x 2-bedroom apartments and 37 x 3-bedroom apartments) and 1,413m² of commercial/retail floor space above 3 levels of basement car park and associated landscaping”* on the land at No. 46 Court Road, Fairfield.

The development consent was granted for an 8 storey building facing Court Road (Building A), an 8 storey building facing The Horsley Drive (Building D) and two x 12 storey towers at the centre of the site (Buildings B and C).

The proposed Amending DA seeks alterations and additions including the following:

- Construction of a further 3 storeys of residential units above the approved 8-12 storeys, resulting in a development comprising of 11-storey and 15-storey mixed use development over 3 basement levels using the bonus FSR and height provisions under SEPP (Housing) 2021: Chapter 2 Affordable Housing.
 - 3 additional storeys to the approved 8 storeys at Buildings A and D facing Court Road and The Horsley Drive,
 - 3 additional storeys to the approved 12 storey towers at Buildings C and D,
- 1,107m² of commercial/retail floor space reduced from 1,413m².
- 69 new units are proposed to be constructed across the additional three storeys however 3 units from the approved Levels 2, 4 and 6 in Building A are proposed to be removed for BCA compliance. The development will therefore increase the total number of apartments by 66 units (a reduction of 25 units from 91 units proposed at time of lodgement)
- This will result in an increase to the approved 290 units to 356 units across the whole development. The 356 will be designated as follows:

- 57 x infill affordable units introduced to the development representing 15.1% of the GFA of the whole development,
- 299 x units not used for affordable housing.
- Increase the maximum overall height of buildings by an additional 11.25m, from the approved 38m to 49.25m under the bonus height provisions of the Housing SEPP.
- Increase the existing GFA of 27,767m² and current approved FSR of 3:1 as follows:
 - Increase GFA by 5,428m² (reduced from 6,784m² as originally proposed)
 - Increase the site's total GFA to 33,195m² (reduced from 34,551m² as originally proposed)
 - Increase the site's FSR to 3.59:1 (reduced from 3.74:1 as originally proposed).

The land is privately owned, zoned MU1 Mixed Use under the Fairfield LEP 2013 and has a total site area of 9,239m². The site is located toward the north-eastern periphery of the Fairfield Town Centre and has frontages to two roads being the classified The Horsley Drive to the east, and the local Court Road to the west. Vehicular access to the site is provided only via the local Court Road. The site is under construction in accordance with DA 687.1/2014 for the previously approved 8 to 12 storeys. The surrounding context is mixed use and adjoining developments include:

- To the west, the Fairfield City Central Shopping Centre which is located opposite the site on Court Road,
- To the north, fast-food restaurant and existing multi storey mixed used development with two 8 and 9 storey towers
- To the south and south-east, 2 to 3 storey commercial developments and a further fast food restaurant fronting Alan Street.

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 involves private infrastructure and community facilities over \$5 million which includes affordable housing development. Accordingly, the SWCPP is the consent authority in respect of the development application in accordance with Section 4.5 of the EP&A Act 1979.

This DA was the subject of a Class 1 Appeal lodged by the applicant who commenced Class 1 Land and Environment Court proceedings against the deemed refusal of the DA. A copy of Council's Statement of Facts and Contentions (SOFAC) which was filed with the Court on 16 August 2024 has been previously distributed to the Panel separately by Council's solicitors but is also attached to this report.

The Court has scheduled a hearing for the 8th and 9th April 2025 with experts appointed to deal with urban design, planning and waste contentions. Notwithstanding this, and despite the conciliation conference held on 13 September 2024 being terminated, there have been on-going meetings and discussions with the applicant and feedback provided by Council and which lead to amended material being submitted by the applicant including the applicant engaging an urban designer. The amended material has resolved all of Council's contentions and Council recommends the Panel determine the application.

There have been two briefings with the Panel in relation to this application. A briefing update meeting was held with the Panel on 9 September 2024 and a further briefing meeting was held on 3 December 2024 to provide an update on the status of discussions following the conciliation conference.

At the last briefing key issues discussed included that amended plans had been submitted by the applicant on a without prejudice basis which were being assessed by Council. The Panel outlined a timeline for the applicant to provide further material and for Council to meet with the applicant with a view to responding to any remaining issues.

As per the Panel's timeframes, a meeting was held with the applicant to discuss remaining issues and the applicant submitted further amended material on a without prejudice basis. The material has been assessed by Council and the applicant has responded to the remaining issues.

It is noted that the applicant engaged an urban designer which has facilitated improvements to the overall development and will now result in positive outcomes for the site. Comprehensive urban design analysis and modelling was also provided demonstrating the amended design will result in a built form that is acceptable in the context of this site and the broader town centre which is experiencing a transition in built form.

At the time of lodgement, the application proposed an FSR of 3.74:1 and an additional 91 units. However, in response to the issues identified, the design was amended to incorporate additional setbacks which have improved the bulk and scale, relationship to neighbouring properties and the public domain, and internal unit amenity and outlooks. The improvements have resulted in a reduction of 25 units and consequent reduction in the proposed FSR to 3.59. Whilst the height has not been reduced, the overall improvements have responded to concerns that Council had in relation to the impact of the additional 3 storeys and 11.25m in height.

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. Based on an assessment of the amended plans, the Urban Designer has concluded that the proposal as amended will result in an acceptable standard given the new SEPP provisions; and the development is compatible with the desired character of the town centre.

As the SOFAC outlines the issues arising from Council's assessment of the application with the original proposal, this report should be read in conjunction with the SOFAC. This report specifically addresses how the applicant's amended material has responded to the contentions. Compliance Tables addressing the areas of compliance or non-compliance with the planning controls such as the DCP and ADG have not been included in this report, on the basis that the SOFAC identified the non-compliances that were raised with the original proposal, with any other matter not identified in the SOFAC deemed to be either acceptable or compliant. This report does however address compliance against the SEPP (Housing) 2021 provisions within the body of the report.

The amended application has been considered in accordance with the relevant planning provisions including but not limited to SEPP (Housing) 2021: Chapter 2 Affordable Housing and Chapter 4 Design of Residential Apartment Development; the Apartment Design Guide (ADG); SEPP (Resilience and Hazards) 2021: Chapter 4 Remediation of Land; Fairfield LEP 2013; Fairfield City Centre DCP 2013 and Fairfield CityWide DCP 2013. The application as amended by the applicant is considered to be acceptable with respect to the planning provisions.

Any variations to the planning controls as outlined in the body of this report are considered minor and would not result in unreasonable impacts. A Clause 4.6 written request to vary the SEPP (Housing) 2021 development standard relating to internal apartment sizes was provided and Council is satisfied that the request demonstrates that the variations are not unreasonable, that there are sufficient planning grounds to support the variations, and the Clause 4.6 is supported.

Council's technical officers have assessed the application and any issues originally raised have now been satisfactorily responded to by the applicant. In this regard no further issues were raised by the relevant technical officers.

It is noted that at the last Panel meeting, Council notified the Panel that the Building Commission NSW had notified Council that on 6 November 2024 it had issued a Building Work Rectification Order requiring the developer to cease building work or take the specified action to remediate the serious defects set out in the Order. The reason for the Order has been cited as underestimated design loads and undersized load bearing elements.

This matter has proceeded to a Prohibition Order issued by the Building Commission stating that the issue of an occupation certificate is prohibited until such time that the Order is revoked by the Secretary.

Given the serious nature of the issue, Council recommends that any development consent that is issued be issued as a Deferred Commencement Consent only, in order to ensure that the matters raised in the Prohibition Order are rectified, and the Order revoked by the Secretary or their delegate, prior to any further construction being progressed and to ensure the issue of public safety is appropriately dealt with. The deferred commencement would ensure consent cannot be made Operative if the structural issues are not resolved. Further, if the structural issues are resolved and the Order revoked, then the consent can proceed to an Operative consent without further need for lodgement of a new application.

In addition, it is considered necessary that a condition be imposed requiring the certifying authority to require a peer review of any structural engineering certificate submitted in relation to the structural adequacy of the additional development with respect to the current approved buildings, prior to any issue of a construction certificate and prior to the issue of an occupation certificate

Jurisdictional Prerequisites

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

1. Clause 4.6 of the LEP with respect to exceptions to development standards has been satisfied by the submission of a Clause 4.6 written request to vary the SEPP (Housing) 2021 development standard relating to internal apartment sizes, satisfactorily demonstrating that the variations are not unreasonable and there are sufficient planning grounds to support the variations.
2. Clause 6.9 of the LEP with respect to essential services including but not limited to water, electricity, sewage, stormwater drainage and vehicular access has been satisfied.

3. Clause 6.12 of the LEP with respect to design excellence has been satisfied.
4. SEPP (Resilience & Hazards) for consideration of whether the land is contaminated. This matter was assessed under the previous DA 687.1/2014 for the lower levels of the buildings including basements. A detailed site investigation and remedial action plan was undertaken by the applicant prior to the issue of a construction certificate by the certifier which will need to be complied with prior to issue of an occupation certificate. As such, the site will be made suitable for the proposed use as part of the construction certificate. Additionally, Council's Public Health & Environment Section considered this matter and advised that a condition requiring a validation report be submitted prior to the issue of a construction certificate for the subject DA to ensure the site is suitable for the proposed development.
5. Clause 2.119 and 2.122 of SEPP (Transport & Infrastructure) has been satisfied 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.
6. Clause 2.48 of SEPP (Transport & Infrastructure) where the work is in the vicinity of electrical infrastructure. The application was referred to Endeavour Energy however no comments have been received to date.

The current application is not Integrated Development and there are no vehicular crossings along the classified road (The Horsley Drive). The development is a Traffic-Generating development under SEPP (Transport & Infrastructure) 2021 and was referred to Transport for NSW (TfNSW) who has provided conditions of consent to update their conditions which were previously imposed on the previous DA 687.1/2014.

The application was publicly notified on two occasions and Council received a total of 3 submissions, 2 of which are unique submissions. The amended plans which are the subject of this report were notified from 13 February 2023 to 26 February 2024. As notification ended recently, should any new late submissions be received, Council will provide a supplementary report addressing any issues that may be raised.

The key concerns raised in the two unique submissions received are in relation to increased noise, obstruction to views, loss of sunlight, and blocking of sunset/sunrise and breeze; and construction impacts arising from the construction underway associated with DA 687.1/2014. These issues have been addressed within this report but do not raise any issues that would warrant refusal of the application. Concerns to do with construction will be dealt with through the certifier and the Building Commission NSW.

Following consideration of the matters identified in the assessment of the application, should the Panel intend on determining the application in the form of an approval, draft conditions have been prepared for the Panel's consideration and review (refer to Attachment 1).



Figure 1. Photomontage of proposal from Court Road.



Figure 2. Photomontage of proposal from The Horsley Drive.

2. THE SITE AND LOCALITY

Subject Site

The site is known as 46 Court Road, Fairfield and is legally described as Lot 100 DP 1277808.

The site is an irregular shaped parcel with dual frontages to Court Road (66m wide) and The Horsley Drive (52m wide) and a total area of 9,239m².

The Horsley Drive is a classified road Zones SP2 Infrastructure pursuant to Fairfield LEP 2013. The site slopes from Court Road down to The Horsley Drive.

The development approved under the development consent is presently under construction on the site.

The site is situated within Zone MU1 - Mixed Use pursuant to Fairfield LEP 2013.

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

- The site is affected by mainstream flooding and is located in the medium risk and low risk and the flooding impacts were addressed under the previous DA 687.1/2014.
- The site is affected by the Bankstown Airport Obstacle Limitation Surfaces (OLS) height limit of 150m AHD but does not raise any concerns given the low height of buildings proposed.

Surrounding Area

The site is located toward the north-eastern periphery of the Fairfield Town Centre, which is characterised by a variety of commercial and residential developments. The Fairfield City Central Shopping Centre is located on the opposite (western) side of Court Road. The site adjoins a fast-food restaurant and existing multi storey mixed used development to the north. To the south and south-east of the site are 2 to 3 storey commercial developments and a further fast food restaurant fronting Alan Street.

The site was identified as forming part of the Court Road Precinct and identified as being adjacent to Key Sites under the Fairfield City Centre Urban Design Study (UDS) 2018, including the Neeta City shopping centre site at 1-29 Court Road (now known as Fairfield City Central) and the McDonald's Site at 56-62 Court Road, with the Aldi Key Site at 366 The Horsley Drive also being situated further to the north of the subject site. The UDS 2018 provided guidelines for future development potential of these Key Sites, including in terms of zoning, massing (between 7 and 23 storeys) and indicative yields on the nearby key sites of between 7 and 23 storeys. The UDS has not been adopted in the DCP controls, which currently permit lesser yields than the UDS.

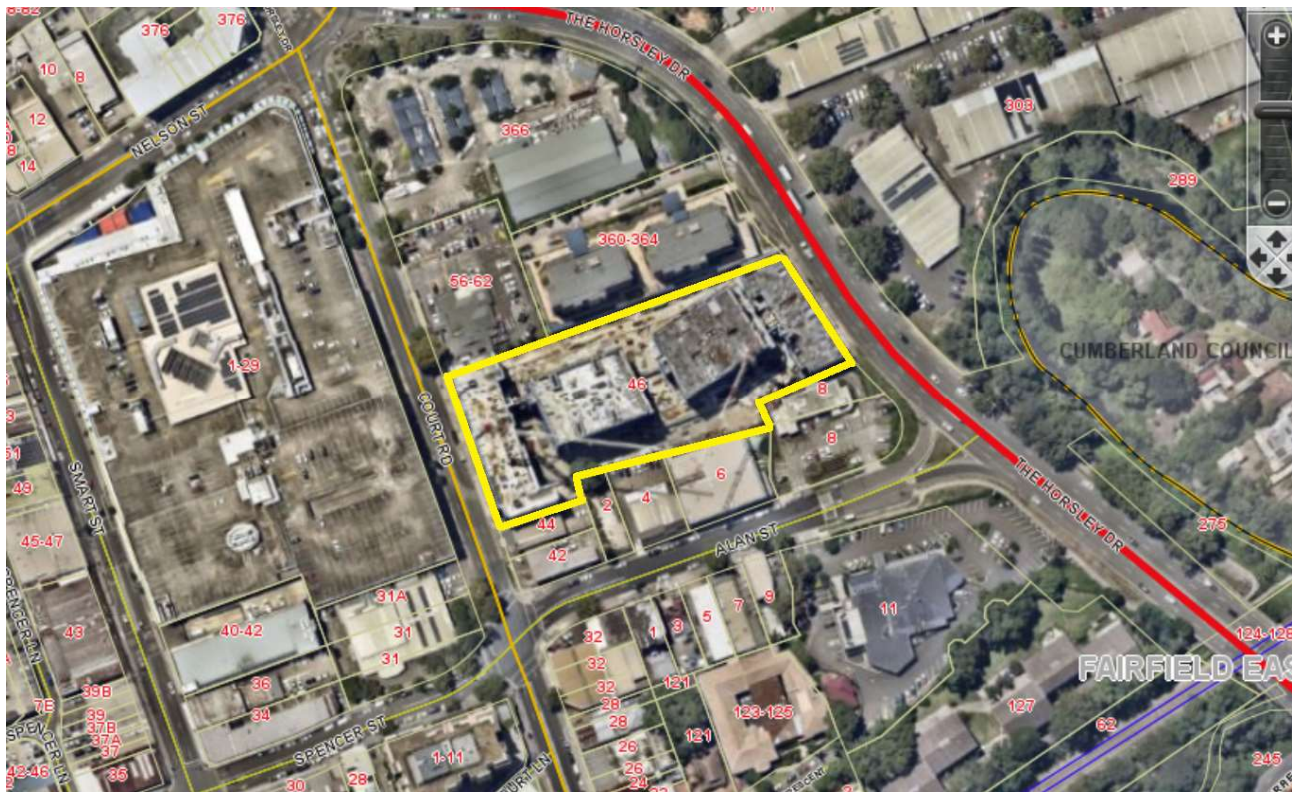


Figure 3. Aerial view of the site, outlined.

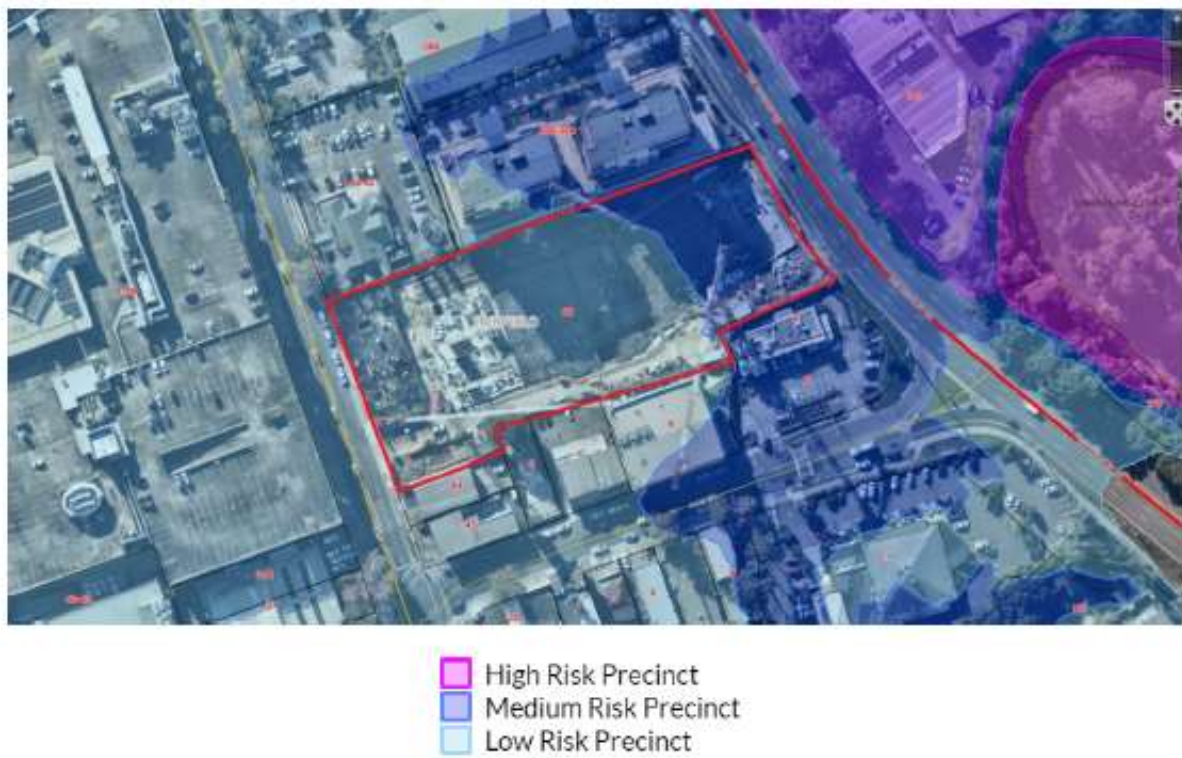


Figure 4: Mainstream flood mapping.



Figure 5: Bankstown Airport OLS 150.

3. DESCRIPTION OF THE PROPOSAL

Summary of Development

The proposed development as amended since lodgement with Council seeks consent for alterations and additions to the mixed use development approved under Development Consent No. 687.1/2014 granted by the Sydney West Joint Regional Planning Panel (JRPP) on 2 December 2015 for *“demolition of existing structures and the construction of an 8-12 storeys mixed-use development consisting of 4 multi-storey buildings containing 290 residential developments (9 studio apartment, 92 x 1-bedroom apartments, 156 x 2-bedroom apartments and 37 x 3-bedroom apartments) and 1,413m² of commercial/retail floor space above 3 levels of basement car park and associated landscaping”* on the land at 46 Court Road, Fairfield. A Construction Certificate was issued by a certifier in 2022 and the building has progressed through construction.

The development consent was granted for an 8 storey building facing Court Road (Building A), an 8 storey building facing The Horsley Drive (Building D) and two x 12 storey towers at the centre of the site (Buildings B and C).

Diagrams illustrating the approved development and the proposed development are provided at the end of this section.

The proposed Amending DA seeks alterations and additions including the following:

- Construction of a further 3 storeys of residential units above the approved 8-12 storeys, resulting in a development comprising of 11-storey and 15-storey mixed use development over 3 basement levels using the bonus FSR and height provisions under SEPP (Housing) 2021: Chapter 2 Affordable Housing.

- 3 additional storeys to the approved 8 storeys at Buildings A and D facing Court Road and The Horsley Drive,
 - 3 additional storeys to the approved 12 storey towers at Buildings C and D,
- 1,107m² of commercial/retail floor space reduced from 1,413m².
- 69 new units are proposed to be constructed across the additional three storeys however 3 units from the approved Levels 2, 4 and 6 in Building A are proposed to be removed for BCA compliance. The development will therefore increase the total number of apartments by 66 units (a reduction of 25 units from 91 additional units proposed at time of lodgement).
- This will result in an increase to the approved 290 units to 356 units across the whole development. The 356 will be designated as follows:
 - 57 x infill affordable units introduced, representing 15.1% of the GFA of the whole development,
 - 299 x units not used for affordable housing.
- Increase the maximum overall height of buildings by an additional 11.25m, from the approved 38m to 49.25m under the bonus height provisions of Housing SEPP.
- Increase the approved GFA of 27,767m² and FSR of 3:1 as follows:
 - Increase GFA by 5,428m² (reduced from 6,784m² as originally lodged)
 - Increase the site's total GFA to 33,195m² (reduced from 34,551m² as originally lodged)
 - Increase the site's FSR to 3.59:1 (reduced from 3.74:1 as originally lodged).

At the time of lodgement, the application proposed an FSR of 3.74:1 and an additional 91 units. However, as a result of contextual and urban design matters, amended plans were submitted incorporating additional setbacks to respond to streetscape, amenity, outlooks and so on, resulting in a reduction in 25 units and reduction in FSR to 3.59. Additionally, 6 car share spaces initially proposed to be operated from the site have been deleted from the proposal.

- Reconfiguration of car parking spaces within the approved basement and ground floor envelope to provide 431 total car parking spaces, compared to the 439 spaces required under the previous consent DA 687.1/2014. Parking will be designated as follows:
 - Retail tenancies - 52 retail parking spaces (including 4 accessible)
 - Residential units - 379 parking spaces, designated as follows:
 - a. 272 residential parking spaces assigned to the non-affordable units,
 - b. 29 residential parking spaces assigned to the affordable rental units,
 - c. 78 residential visitor spaces.

- A total of 135 bicycle parking spaces are designated as follows:
 - 119 residential bicycle parking spaces
 - 4 retail bicycle spaces
 - 12 visitor bicycle parking spaces.
- Sustainability initiatives include but are not limited to the following:
 - Solar PV System will be provided to the roof of Building A and Building D. A total of 177 Panels will be included which will support the common areas such as hallways, lifts and shared amenities.
 - Provisions for future use and installation of Electric Vehicle charging bays will be provided for the development. A total of 4 bays is proposed in Basement 1.
 - Water reuse strategies will be implemented to capture and reuse grey water for landscape irrigation.
 - Water-efficient tapware (like low-flow faucets and showerheads) will be specified for the additional units under this amending application.
 - Low VOC paints such as Dulux Enviro2 will be specified to internal spaces of the new additional units under this amending application, to contribute to healthier indoor air quality and reduce the environmental impact of the development.
- Improve overall quality of external appearance and finishes, incorporate top, middle and bottom building expression emphasised, improvements in detailing to achieve improved outcomes addressing the building separation issues between habitable windows.
- Construction materials have been updated and a range of materials included in consultation with Council's urban design expert to ensure a high quality finish to the approved and proposed development.
- Proposed fencing details were not provided and plans indicate a variety of fencing such as corrugated iron, mesh wire or timber. A condition is recommended requiring a detailed fence plan prior to the issue of a construction certificate to ensure there is a unified approach to boundary fencing, especially along the southern side where there are multiple neighbouring properties abutting the development site.
- 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 lane and loading bay. The applicant has proposed to relocate the original MRV loading bay and redesigned the space to facilitate access by Council's HRV.
- Three additional loading bays have been provided to accommodate the additional demands from the mixed-use development and the additional 66 units. Accordingly, the applicant has incorporated an additional bay suitable for an SRV accessed from the lane, as well as two van spaces within the enclosed car park area at-grade, to accommodate regular deliveries by smaller vehicles.

- Other proposed changes to facilitate the additional 66 units include: increase in the waste storage capacity, updated apartment mix as indicated in the architectural plans and improvements to the communal open spaces, landscaping, and pedestrian through links across the site.
- Changes have also been made to the approved drainage system with regard to the location of the on-site detention (OSD) system. The OSD tank is proposed to be located at the first floor level and has been designed in accordance with Council's Stormwater Management Policy 2017.
- An easement which was required to be registered along part of the east boundary and part of the south boundary over a drainage pipe that drains The Horsley Drive as approved under DA 687.1/2014 will be unimpacted by this proposal.

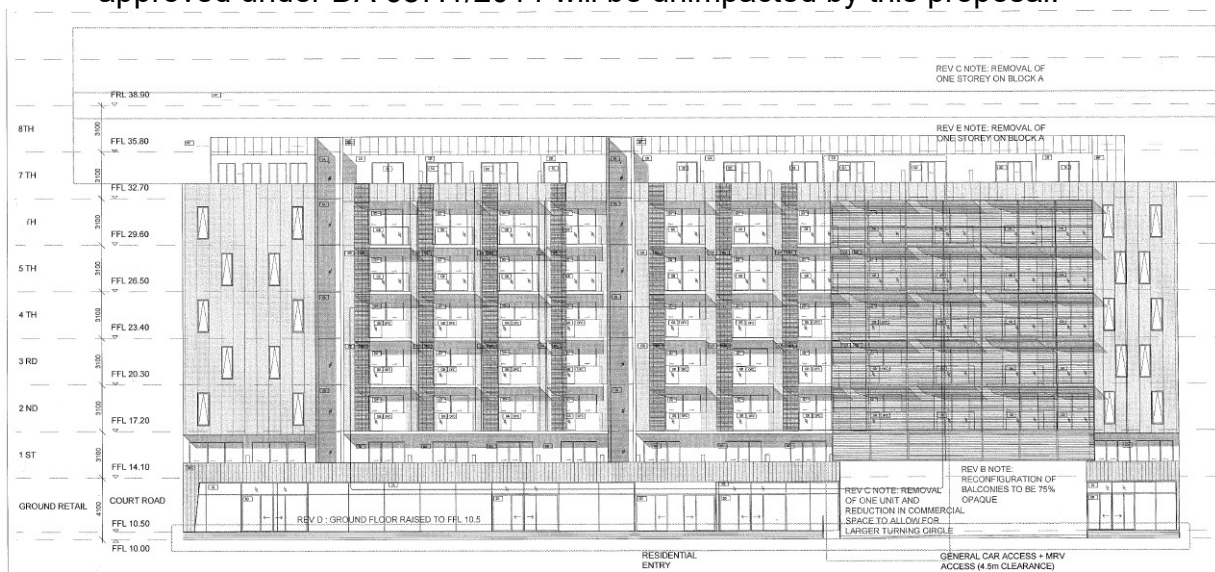


Figure 3: Approved Building A elevation to Court Road.



Figure 4: Approved Building D elevation to The Horsley Drive.

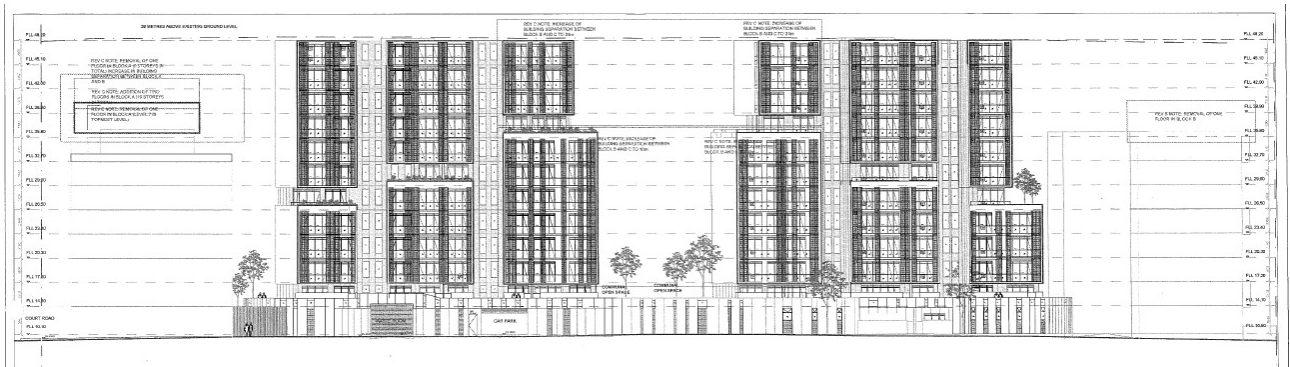


Figure 5: Approved south elevation of development facing the adjoining Alan Street properties.

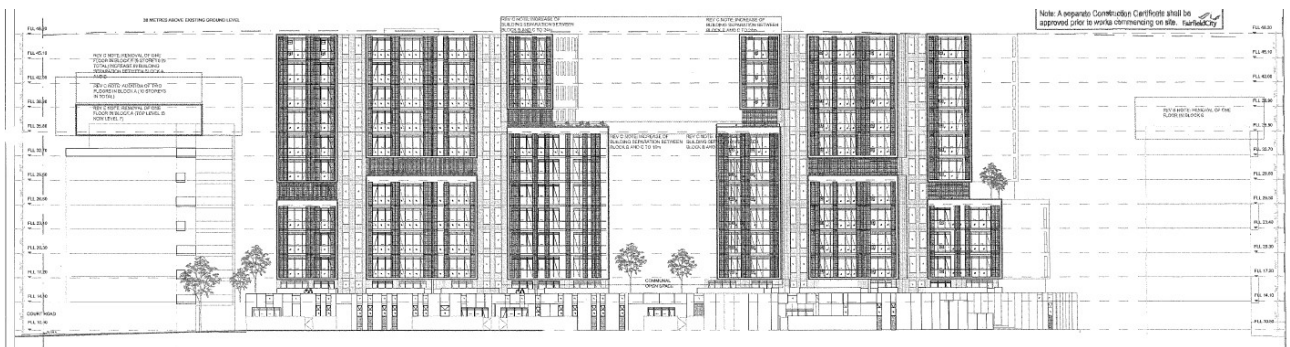


Figure 6: Approved north elevation of development facing the adjoining mixed-use development containing residential towers and McDonald's.

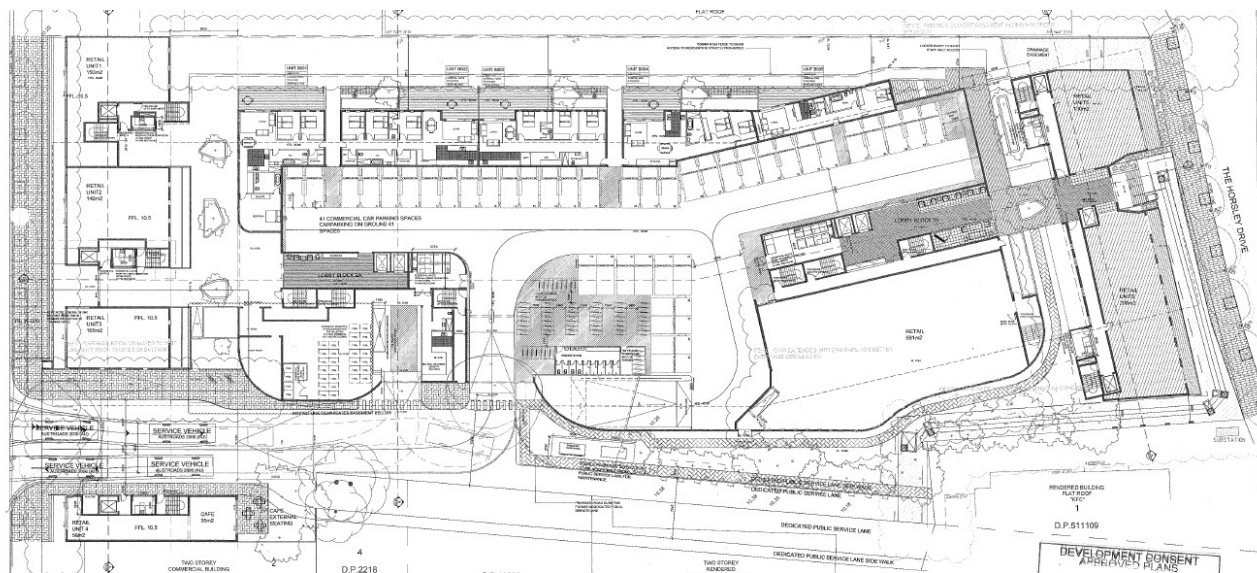


Figure 7: Approved site and ground floor plan.

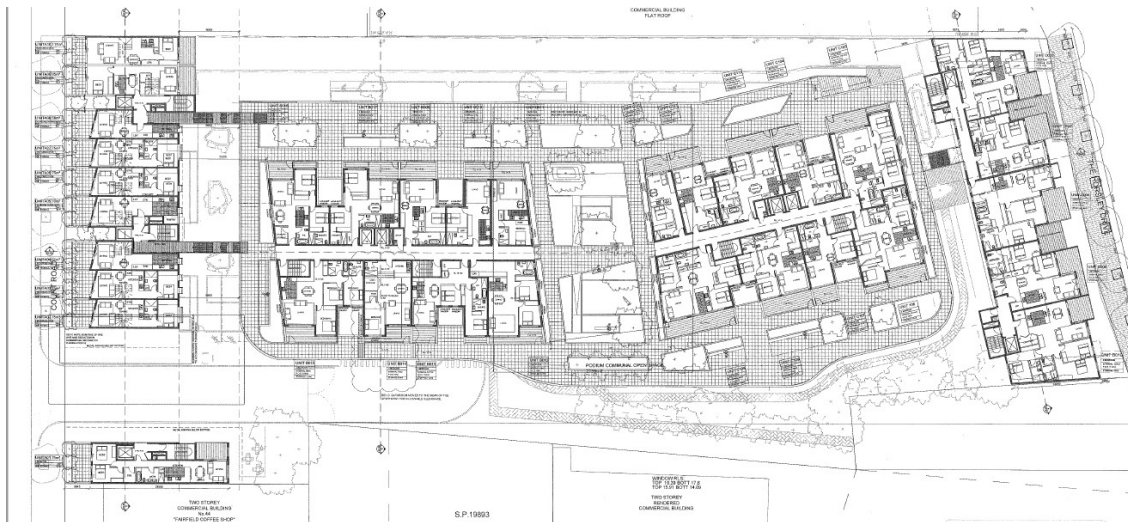


Figure 8: Approved first floor plan.

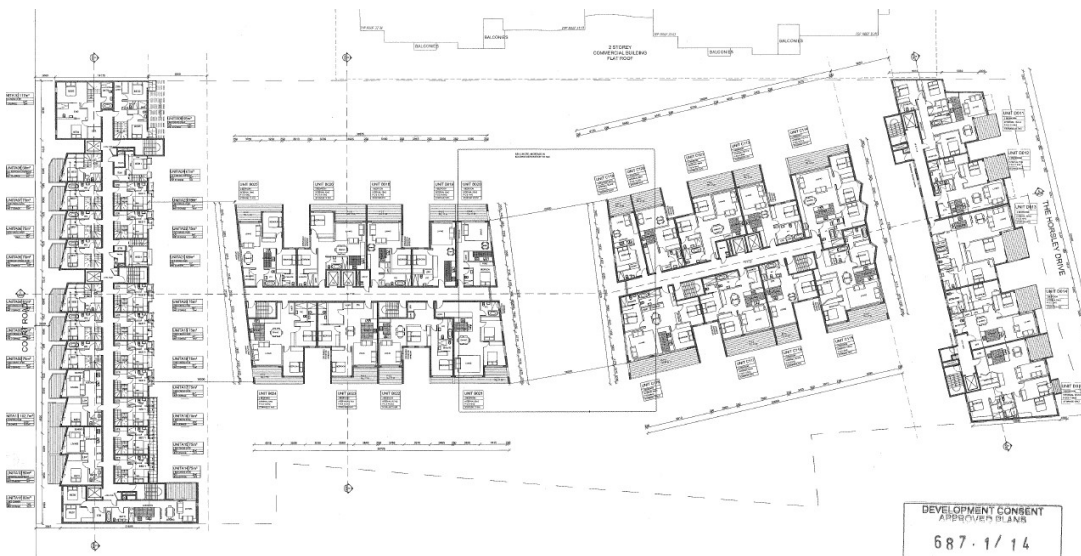


Figure 9: Approved second floor plan.

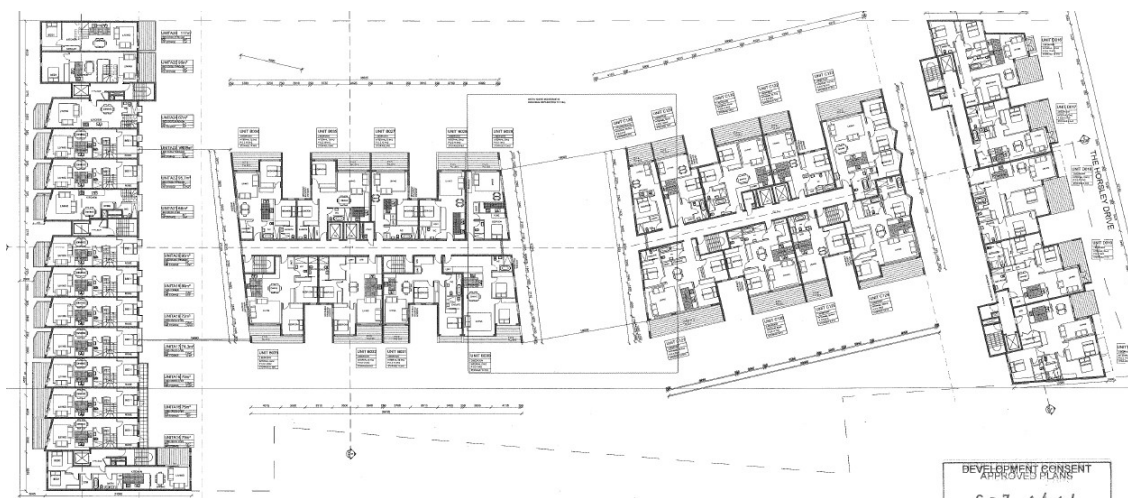


Figure 10: Approved third floor plan.

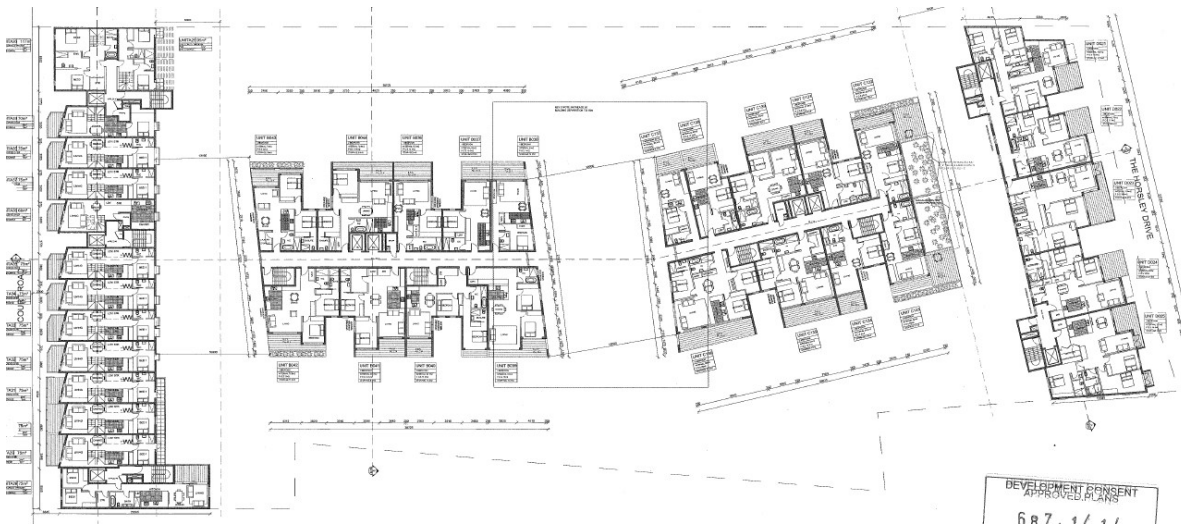


Figure 11: Approved fourth floor plan.

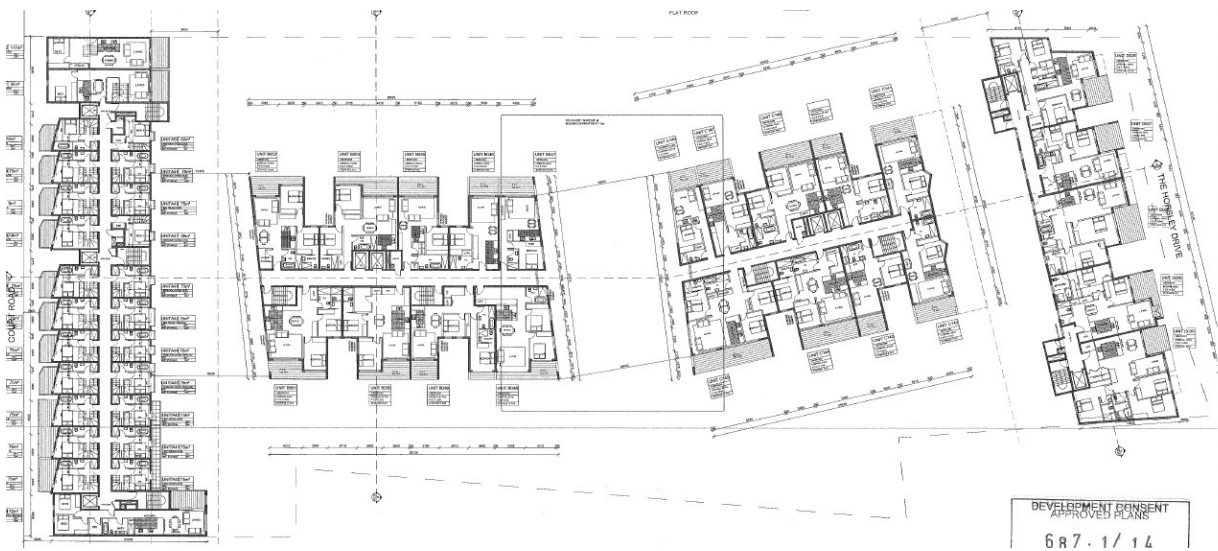


Figure 12: Approved fifth floor plan.



Figure 13: Approved sixth floor plan.



Figure 14: Approved seventh floor plan.

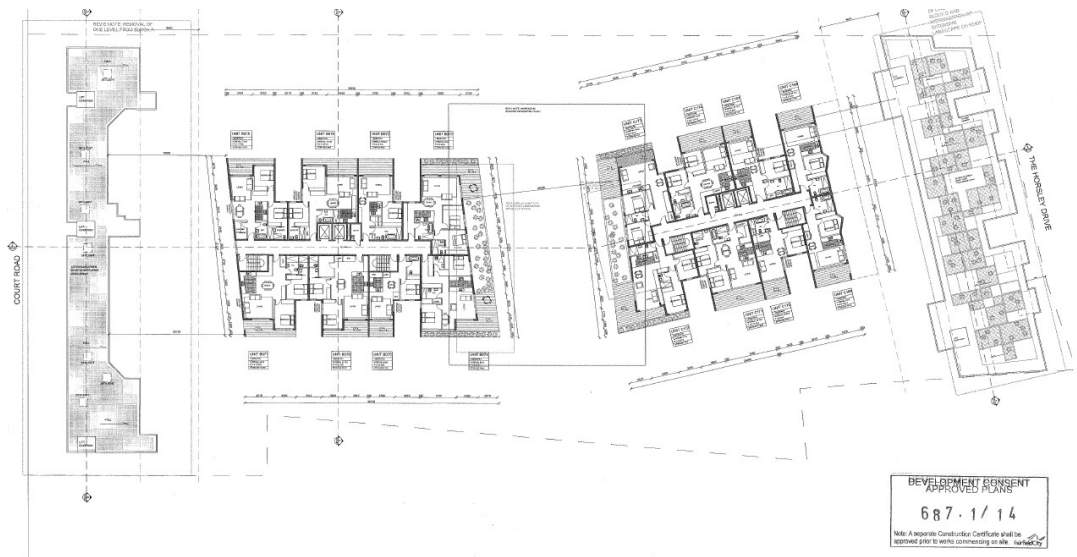


Figure 15: Approved eighth floor plan.

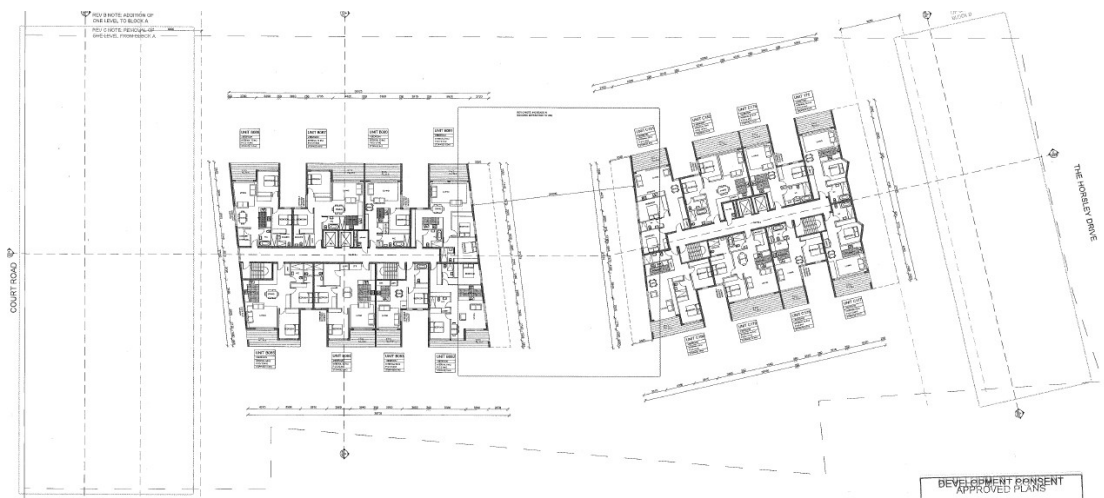


Figure 16: Approved ninth floor plan

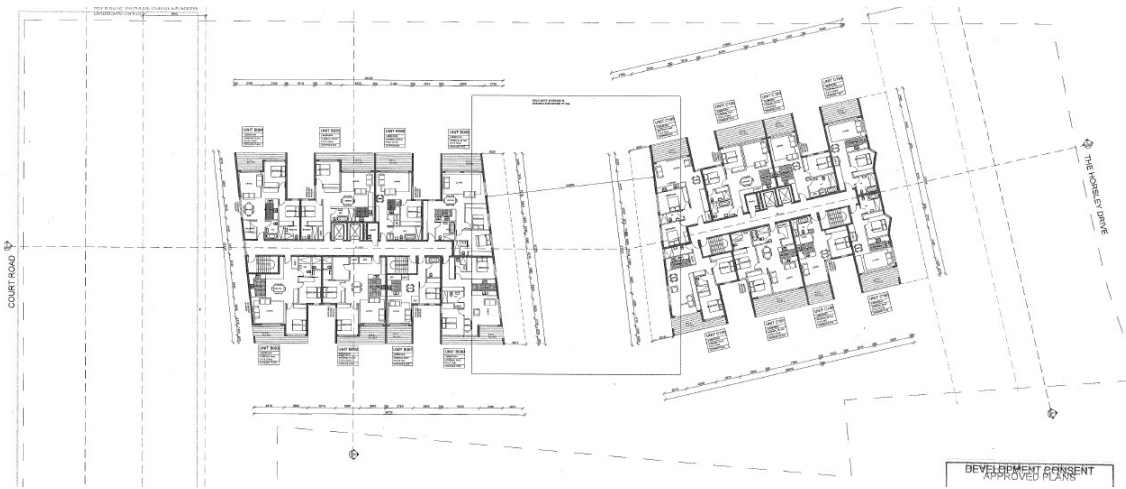


Figure 17: Approved tenth floor plan.

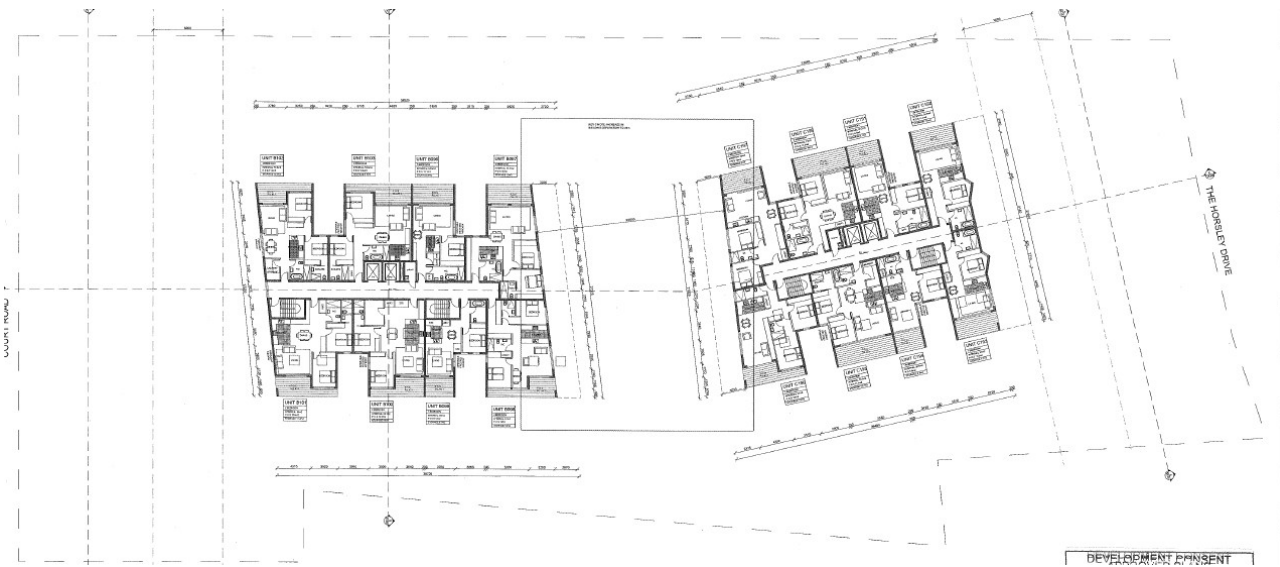


Figure 18: Approved eleventh floor plan.



Figure 19: Proposed west elevation of Building A to Court Road.



Figure 20: Proposed east elevation of Building D to The Horsley Drive.



Figure 21: Proposed south elevation proposing 3 storeys to each approved building.



Figure 22: Proposed north elevation proposing 3 storeys to each approved building.

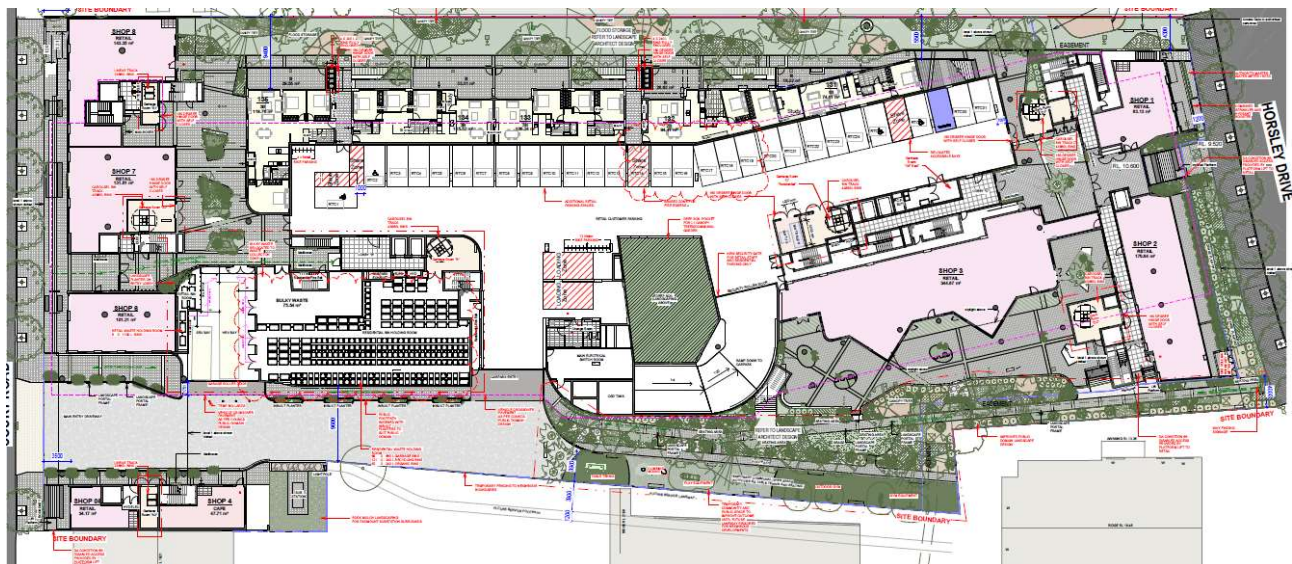


Figure 23: Proposed ground floor plan seeking changes to the loading, waste management areas, improving site-through links, adjustments to parking layout.



Figure 24: Proposed first floor plan alterations consisting of changes to the landscaping and common open space located at the Level 1 podium.

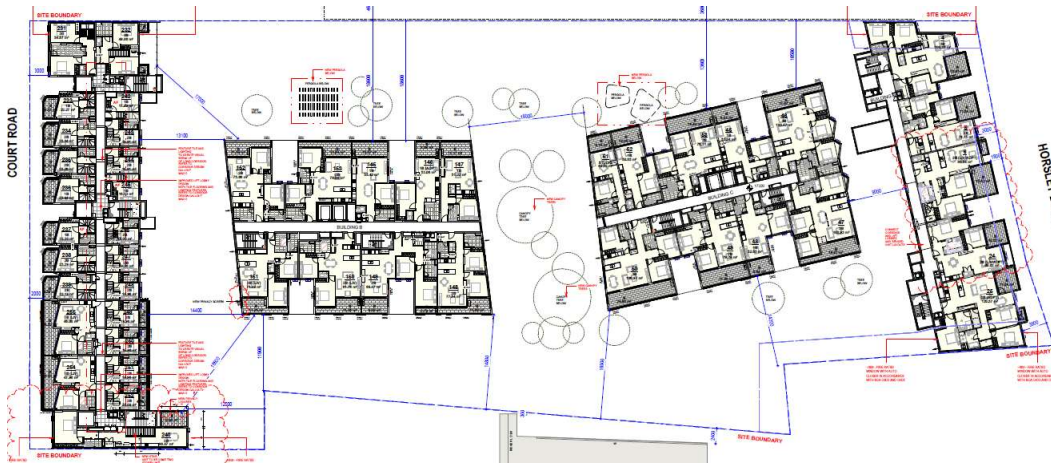


Figure 25: Proposed Level 1 plan alterations consisting of improvements to the corridors of approval levels plus detailing of fire safety measures. Similar improvements proposed for other levels.



Figure 26: Proposed Level 8 plan proposing additional storey to Building A Court Road and Building D The Horsley Drive.



Figure 27: Proposed Level 9 plan proposing additional storey to Building A Court Road and Building D The Horsley Drive.



Figure 28: Proposed Level 10 plan proposing additional storey to Building A Court Road and Building D The Horsley Drive.



Figure 29: Proposed Level 11 plan showing roof of amended Buildings A and D.

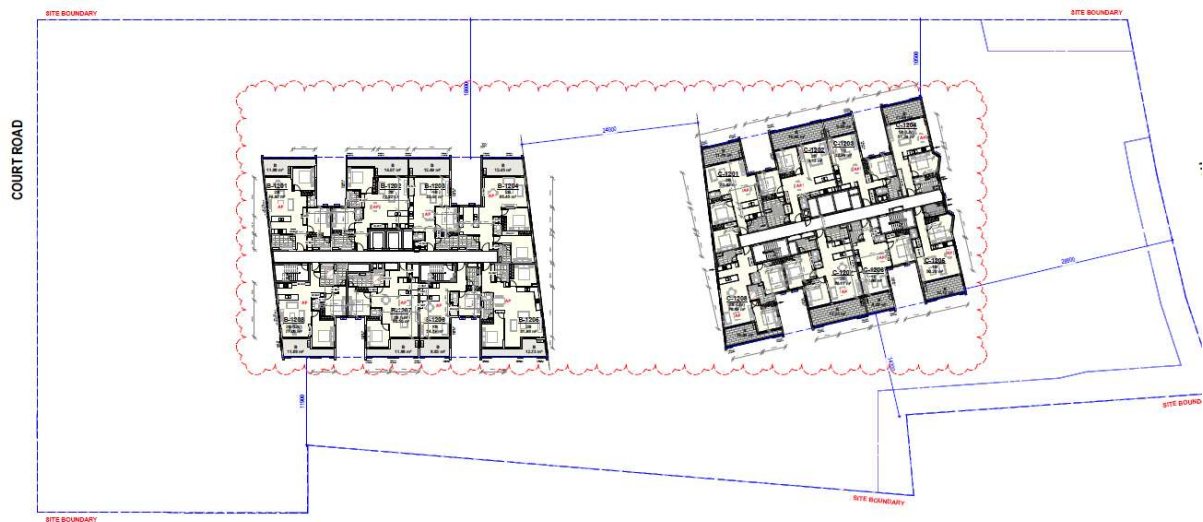


Figure 30: Proposed Level 12 plan proposing additional storey to Buildings B and C.



Figure 31: Proposed Level 13 plan proposing additional storey to Buildings B and C.

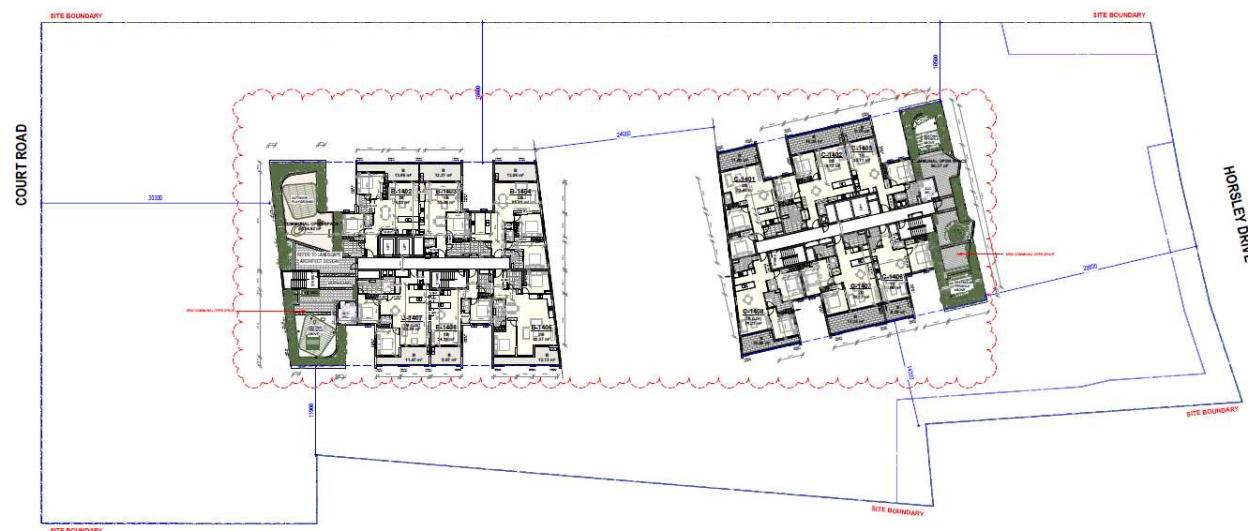


Figure 32: Proposed Level 14 plan proposing additional storey to Buildings B and C.

4. HISTORY AND BACKGROUND

Development Application Background

Development Consent No. 687.1/2014

On 2 December 2015, the JRPP determined to grant the development consent for development described in the Notice of Determination dated 21 December 2015 as follows:

“Demolition of existing structures and the construction of an 8-12 storeys mixed-use development consisting of 4 multi-storey buildings containing 290 residential apartments (9 Studio apartments, 92 x 1-bedroom apartments, 152 x 2-bedroom apartments and 37 x 3-bedroom apartments) and 1,413m² of commercial/retail floor space above 3 levels of basement car park and associated landscaping”

A construction certificate was issued in 2022 and the building is under construction.

As already noted, the Building Commission NSW has issued a Prohibition Order preventing the issue of an occupation certificate until the Order is revoked.

Modification Application No. 687.2/2014

On 11 February 2022, Modification Application No. 687.2/2014 was lodged with Council seeking to modify the development consent under section 4.55(1A) of the EP&AA Act to make amendments to the approved layout, particularly in terms of mechanical ventilation requirements, fire safety provisions, parking matters, basement levels and to make other design changes arising from compliance with other conditions of consent.

On 29 April 2022, the applicant withdrew the modification application.

Modification Application No. 687.3/2014

On 18 August 2023, Modification Application No. 687.3/2014 was lodged with the Council seeking to modify the development consent under section 4.55(2) of the EP&AA Act by proposing an increase in building height to facilitate the lift overrun and roof plant and changes to the site layout to address traffic, accessibility, landscape, mechanical ventilation requirements, fire safety provisions and parking matters.

During the course of the application, Council issued a number of letters to the applicant raising various concerns in relation to the modification application. Additional information and amended plans were submitted by the applicant on a number of occasions. Council's last letter was issued on 20 September 2024 however the applicant has not responded to the issues raised.

Council has not yet determined the modification application.

Development Application No. 69.1/2024 (subject application)

On 22 March 2024, the development application was lodged with Council.

On 18 April 2024, the application was referred to Transport for NSW (TfNSW) for comment in connection with Sections 2.119 and 2.122 of SEPP (Transport and Infrastructure) 2021.

On 26 April 2024, TfNSW issued correspondence confirming that the requirements previously specified in relation to its concurrence under Section 138 of the Roads Act 1993 remained applicable and unchanged.

On 5 June 2024, Council issued correspondence to the applicant raising various concerns in relation to the proposed development.

On 12 June 2024, the parties met to discuss the application and the concerns raised in the Council's letter of 5 June 2024.

On 5 July 2024, the applicant commenced proceedings in Class 1 of the Land and Environment Court appealing against the deemed refusal of the application.

On 16 August 2024, Council filed its Statement of Facts and Contentions (SOFAC) with the Court on 16 August 2024.

On 9 September 2024, a briefing meeting was held with the Regional Panel.

On 13 September 2024, a conciliation conference was held between the parties and whilst it was terminated, there have been further additional meetings and on-going discussions with the applicant. Feedback was provided by Council which lead to multiple submissions of amended material being submitted on a without prejudice basis by the applicant.

On 3 December 2024 a further briefing meeting was held with the Regional Panel to provide an update on the status of discussions following conciliation conference. Key issues discussed included that amended plans had been submitted by the applicant on a without prejudice basis which were being assessed by Council. The Panel outlined a timeline for the applicant to provide further material and for Council to meet with the applicant with a view to responding to the remaining issues. Council and the applicant have followed the Panel's timeline and all issues have been responded to.

Accordingly, an assessment report has been prepared for the Panel's consideration and determination of the matter based on the information submitted by the applicant responding to the issues identified.

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) who raised no issues with the proposal and have provided updated conditions of consent which are included in the draft conditions attached to this report. The application was referred to TfNSW as the development is a traffic-generating development and has frontages to a classified road in accordance with SEPP (Transport and Infrastructure) 2021. This proposal does not require concurrence under Section 138 of the NSW Roads Act 1993 for closure of existing accessways from the classified roads and ancillary civil works as these were addressed under DA 687.1/2014.

Endeavour Energy

Survey Plans submitted recently have indicated that 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. Endeavour has not provided any comments to date.

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. Additionally, the Urban Designer assessed the compatibility of the proposal against the character and context of the site and locality.

The Urban Designer identified a range of issues with the original proposal, finding that the proposal did not meet the principles of good design under SEPP 65 and did not meet design excellence provisions in Clause 6.12 of the LEP. The original proposal at the time sought to increase the approved four buildings and footprints by an additional 3 storeys over each building, without demonstrating how such an approach would fit within the surrounding character and context. Furthermore, the approach resulted in poor floor layout configurations, overlooking and privacy issues, inadequate building separation, and unacceptable detailing of blank elements facing the public domain.

It was recommended to the applicant to investigate alternative models and test these within an Urban Design Report which would likely result in FSR and/or height being reduced and massing shifting to achieve an acceptable outcome. These and other issues were conveyed to the applicant and multiple meetings were subsequently held between the applicant's representatives and Council officers including Council's Urban Designer to discuss the issues surrounding the application.

This lead to the applicant also engaging an urban designer which in conjunction with the applicant's architect has facilitated improvements to the overall development and have responded to the issues previously identified with the proposal and within the SOFAC. Further detail is provided under the relevant Contentions within this report.

The Urban Designer has advised that the amended proposal now satisfies the principles of good design under SEPP 65 and satisfies the design excellence provisions in Clause 6.12 of the Fairfield LEP. The development is also considered to be compatible with the character of the town centre.

Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined below.

Officer	Comments
Assets	No issues with the proposal.
Building	No issues with the proposal.
Engineering	No issues with the proposal.
Landscape Advisor	No issues with the proposal.
Place Manager	No issues with the proposal.
Property	No issues with the proposal.
Public Health & Environment	No issues with the proposal with respect to air quality, acoustic impacts and land contamination.
Traffic Engineer	No issues with the proposal.
Tree Management Officer	No issues with the proposal.
Waste Management	No issues with the proposal.

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/or advertisements on Council's website.

The application was originally notified in April 2024, and Council received 2 unique submissions raising concerns with the development. The amended plans which are the subject of this report were renotified from 13 February 2025 to 26 February 2025 and Council received 1 further submission from a resident who has already objected for the same reasons. In this regard, there are a total of 3 submissions received including 2 unique submissions.

As notification ended recently on 26 February 2024, should any new late submissions be received, Council will provide a supplementary report addressing any issues that may be raised.

A copy of the submissions is included in the attachments to this report. A summary of the key issues of concern are provided in the Table below, including Council's response. It is considered that the issues raised would not warrant refusal of the application for the reasons provided below.

Table 1. Summary of Objections Received

Issues of Concern	Council Comment
SUBMISSION 1	
Increase in noise arising from the proposed increase in storeys	The development is residential in nature and not considered to be a noise generating development. However the potential for plant and machinery to impact neighbours has been addressed in an acoustic report, which recommends that with the implementation of acoustic recommendations, noise criteria can be met for nearest sensitive receivers. Council's Public Health and Environment (PH&E) Section has assessed this aspect of the proposal and requested that an amended acoustic report be submitted. The amended report has been assessed and the PH&E Section considers that acoustic impacts have been satisfactorily addressed and unlikely to result in adverse impacts.
Obstruction to views arising from the increase in storeys	Council notes that there are no significant regional views that would be obstructed by the proposal. The resident resides in one of the two existing tower buildings located to the immediate north of the subject site. The neighbouring Tower A was approved at 8 storeys and Tower B at 9 storeys. The consent DA 687.1/2014 has already approved 2 x 8 storey perimeter buildings and 2 x 12 storey towers at the centre of the subject site. In this regard the approved development that is currently under construction will already block any views that this resident has enjoyed over the years. Notwithstanding this, there are no significant regional views that are considered necessary to preserve.
Loss of sunlight	The resident is located north of the development site and will not be impacted by overshadowing from the proposed increase in storeys under this DA.
Blocking of sunset/sunrise and breeze	The development is to the south side of the resident and will not obstruct western sunset views. The development may obstruct sunrise views however this would already be the case under the approved consent DA 687.1/2014 currently under construction. There is adequate building separation between the proposed development and the resident's tower buildings to maintain natural breezes and this is not considered to be a matter that would warrant refusal of the application.
Should maintain the same heights as other existing buildings in the town centre	With the 30% bonus height provision that is now allowed for development proposing affordable housing under SEPP (Housing) 2021, other development in the town centre may utilise this bonus. This means future redevelopment in the town centre may be redeveloped to similar heights as the current proposal.

SUBMISSION 2	
The individual conditionally agrees with the development on the grounds that protection to their property is reinstated.	The submission raises concerns relating to damage that has been caused to the existing northern adjoining mixed-use development at No. 360-364 The Horsley Drive, Fairfield as a result of construction works being carried out on the subject site. Under DA 687.1/2014. Council provided the objector with the details of the Private Certifier to contact in relation to construction damage as the responsibility is with the certifier to address and resolve any issues or complaints. Any damage caused by the builders will need to be rectified by the developer.

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 (Planning Systems) 202:
- SEPP (Resilience & Hazards)
- SEPP (Sustainable Buildings) 2022)
- SEPP (Transport & Infrastructure) 2021
- SEPP (Housing) 2021:
 - Chapter 2 Affordable Housing
 - Chapter 4 Design of Residential Apartment Development
 - Apartment Design Guide
- Fairfield City Centre DCP 2013
- 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 zoned MU1 Mixed Use under the Fairfield LEP 2013.

The proposal development is characterised as follows:

- *Commercial Premises*
- *Residential Flat Building*
- *Shop Top Housing*

Commercial Premises, Residential Flat Buildings and Shop Top Housing are permitted with consent in the MU1 zone.

The FLEP 2013 provides the following definitions:

commercial premises means any of the following—

- (a) *business premises,*
- (b) *office premises,*
- (c) *retail premises.*

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.

shop top housing means one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities.

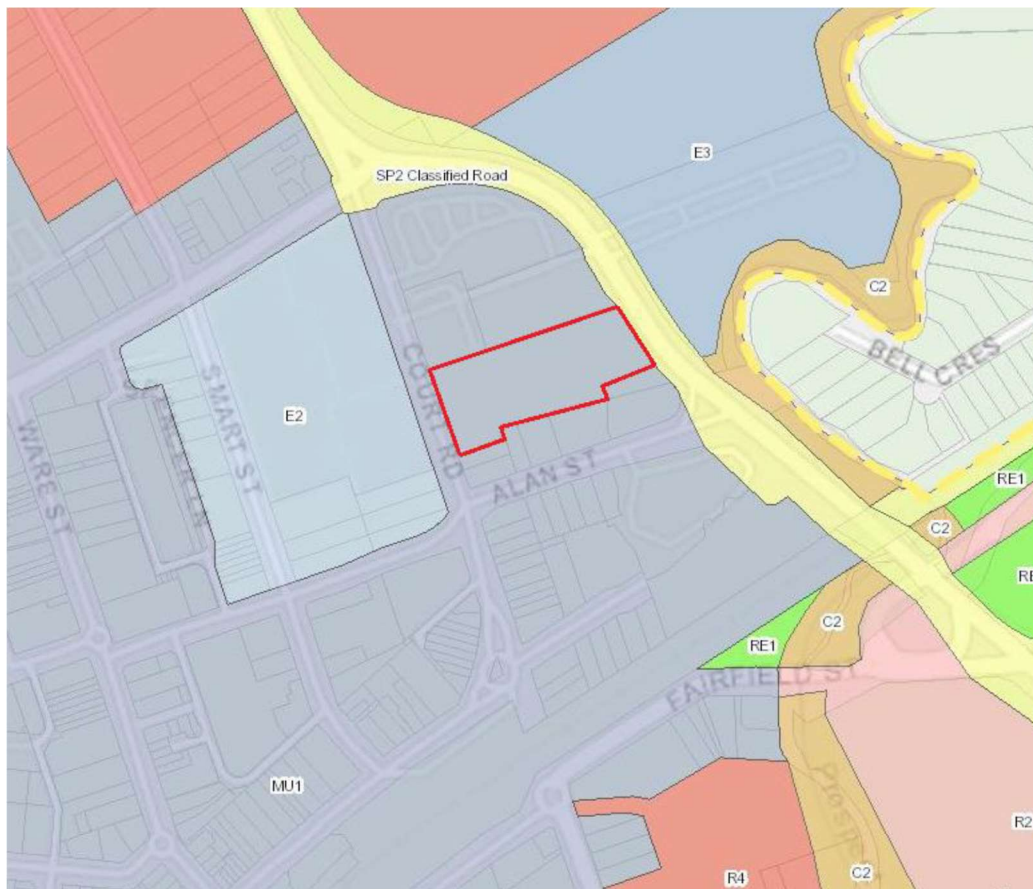


Figure 33: Zoning Map: MU1 Mixed Use under Fairfield LEP 2013.

Objectives of the Zones

Zone MU1 Mixed Use

The proposal is considered to be consistent with the relevant objectives of the MU1 Mixed Use zone which are as follows:

- To encourage a diversity of business, retail, office and light industrial land uses that generate employment opportunities.
- To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.
- To support the development of Bonnyrigg, Prairiewood, Fairfield and Cabramatta as the principal locations for specialist cultural, retail, business, tourist and entertainment facilities and services.

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 2. Fairfield LEP 2013

Clause	Development Standard	Proposal	Satisfied
4.3 Height of Buildings And 7.7 Fairfield – Height of Buildings	<p>The site is subject to a maximum height of buildings of 38 metres pursuant to the Height of Buildings Map referred to in Clause 4.3 of FLEP 2013; however, Clause 7.6 of FLEP 2013 also applies.</p> <p>Clause 7.7 states that the height of a building on land in “Fairfield – Area D” must not exceed 26m unless the specified requirements relating to lot size, width and depth are met.</p> <p>The site meets the requirements and therefore maximum 38m is allowed.</p>	<p>Maximum 38m allowed under LEP plus 30% bonus under SEPP Housing allows a maximum height of 49.4m as follows:</p> <p>Approved Height: 38m Proposed Height: 48.5m</p>	Yes
4.4 Floor Space Ratio (FSR) And 7.6 Fairfield – Floor Space Ratio	<p>The site is subject to a maximum floor space ratio of 3.5:1 pursuant to the Floor Space Ratio Map referred to in Clause 4.4 of FLEP 2013; however, Clause 7.6 also applies.</p> <p>The site is within “Fairfield – Area D” on the Town Centre Precinct Map. Clause 7.6 states that the floor space ratio of a building on such land must not exceed 2.5:1 unless the specified requirements relating to lot size, width and depth are met.</p> <p>The site meets the requirements and therefore maximum 3.5:1 is allowed.</p>	<p>Maximum 3.5:1 allowed under LEP plus 30% bonus under SEPP Housing allows a maximum FSR of 4.55:1.</p> <p>Approved FSR: 3:1 Proposed FSR: 3.59:1</p> <p>Proposed GFA 33,195m² Site area is 9,239m²</p>	Yes
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	This Clause enables council to exercise an appropriate degree of flexibility in applying	The application has been accompanied by a Clause 4.6 Request for Variation of the	Yes

Exceptions to development standards	certain development standards to achieve better outcomes for and from development	variations to the non-discretionary standards in Chapter 2 Affordable Housing in SEPP (Housing) 2021 relating to internal apartment sizes. The written request satisfactorily addresses the criteria in Clause 4.6. Further detail is provided under the Contentions section of this report. In this regard, the application can be positively determined.	
6.2 Earthworks	This clause sets out the provisions that Council must consider to ensure that earthworks will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.	The proposal does not result in earthworks as the application is primarily for the construction of the additional storeys at the top of the building. Earthworks were considered under the previous DA 687.1/2014 and were determined to be acceptable.	Yes
6.9 Essential Services	This Clause prescribes that: <i>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required—</i> (a) <i>the supply of water,</i> (b) <i>the supply of electricity,</i> (c) <i>the disposal and management of sewage,</i> (d) <i>stormwater drainage or on-site conservation,</i> (e) <i>suitable vehicular access.</i>	Council is satisfied that essential services for the development are available or that adequate arrangements have been made to make them available.	Yes
6.12 Design excellence	(1) The objective of this clause is to ensure that development exhibits design excellence that contributes to the natural, cultural, visual and built character values of Fairfield	Following an assessment of the application as amended, it is considered that the development exhibits design excellence.	Yes

B. State Environmental Planning Policy (Housing) 2021

Chapter 1 Preliminary and Chapter 2 Affordable Housing

The application has been assessed against the relevant provisions of SEPP (Housing) 2021 as outlined below:

Table 3. SEPP (Housing) 2021: Chapter 1 Preliminary and Chapter 2 Affordable Housing

Clause	Provision	Comment	Satisfied
Chapter 1 Preliminary			
8 Relationship with other environmental planning instruments	<i>(1) Unless otherwise specified in this Policy, if there is an inconsistency between this Policy and another environmental planning instrument, whether made before or after the commencement of this Policy, this Policy prevails to the extent of the inconsistency. (2) State Environmental Planning Policy (Sustainable Buildings) 2022, Chapter 2 prevails over this policy, Chapter 4, to the extent of an inconsistency.</i>	SEPP ARH prevails over the LEP in relation to inconsistencies relating to maximum building height and FSR.	Yes
Chapter 2 Affordable Housing			
13A Application of Chapter 4 to affordable housing	<i>Development to which this chapter, Part 2, Division 1, 5 or 6 applies may also be residential apartment development under Chapter 4. Note— See section 144(6).</i>	The development is for infill affordable housing (under Part 2 Division 1) and is also residential apartment development (under Chapter 4).	Yes
Part 2 Development for Affordable Housing Division 1 In-fill affordable housing			
15B Definitions	<i>(1) In this division— affordable housing component, of development, means the percentage of the gross floor area used for affordable housing. residential development means development for the following purposes— (a) attached dwellings, (b) dual occupancies, (c) dwelling houses, (d) manor houses, (e) multi dwelling housing, (f) multi dwelling housing (terraces), (g) residential flat buildings,</i>	The development includes a 15.5% of the GFA to be used for affordable housing. The development is for the purpose of residential flat buildings and shop top housing.	Yes Yes

	<p>(h) semi-detached dwellings, (i) shop top housing. (2) In this division, residential development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation is taken to be used for the purposes of affordable housing.</p>		
15C Development to which division applies	<p>(1) This division applies to development that includes residential development if— (a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and (b) the affordable housing component is at least 10%, and (c) all or part of the development is carried out— (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone. (2) Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division. (3) In this section—relevant zone means the following— (a) Zone E1 Local Centre, (b) Zone MU1 Mixed Use, (c) Zone B1 Neighbourhood Centre, (d) Zone B2 Local Centre, (e) Zone B4 Mixed Use.</p>	<p>This Division is applicable to the proposal for the following reasons:</p> <p>a) The LEP permits the proposed residential flat buildings and shop top housing development, and</p> <p>b) 15.1% of the GFA will be for the affordable housing component.</p> <p>c) the land is located in an accessible area as it is less than 400m walking distance to the public entrance of Fairfield Train Station, and also to bus stops.</p> <p>2) Not relevant.</p> <p>3) Site is zoned MU1 Mixed Use.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Yes</p> <p>Not applicable</p> <p>Yes</p>
16 Affordable housing requirements	<p>(1) The maximum floor space ratio for development that includes residential</p>	<p><u>(1) FSR</u></p>	<p>Yes</p>

<p>for additional floor space ratio</p>	<p><i>development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).</i></p> <p><i>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</i></p> <p><small>affordable housing component = additional floor space ratio × 2 (as a percentage)</small></p> <p><i>(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).</i></p> <p><i>Example—</i> <i>Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.</i></p> <p><i>(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.</i></p>	<p>30% bonus FSR allows maximum 4.55:1 by the SEPP calculated as follows: 3.5:1 LEP + 30% SEPP = 4.55:1</p> <p>Proposed FSR: 3.59:1</p> <p>(2) Affordable Housing Component: 15.1% provided where only 10% is required</p> <p><u>(3) Height</u> 30% bonus building height allows a maximum height of 49.4m by the SEPP calculated as follows: 38m LEP building height plus 30% SEPP i.e. 11.4m = 49.4m</p> <p>Approved Height: 38m Proposed Height: 48.5m</p> <p>4) This section is applicable as the LEP prescribes a maximum FSR for the site.</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
<p>18 Affordable housing requirements for additional building height</p>	<p><i>(1) This section applies to development that includes residential development to which this division applies if the development—</i></p>	<p>This section does not apply to the application since the application seeks to utilise additional FSR permitted under Section 16. This section appears to relate to sites and proposals that have no FSR</p>	<p>Not relevant</p>

	<p>(a) includes residential flat buildings or shop top housing, and</p> <p>(b) does not use the additional floor space ratio permitted under section 16.</p> <p>(2) The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3).</p> <p>(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</p> <p><small>affordable housing component = additional building height ÷ 2 (as a percentage)</small></p>	prescribed by the LEP and are seeking height bonus only.	
19 Non-discretionary development standards—the Act, s 4.15	<p>(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</p> <p>Note— See the Act, section 4.15(3), which does not prevent development consent being granted if a non-discretionary development standard is not complied with.</p> <p>(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—</p>	The proposal does not comply with all of the following matters as identified below.	No
	(a) a minimum site area of 450m ² ,	9,239m ²	Yes
	<p>b) a minimum landscaped area that is the lesser of—</p> <p>(i) 35m² per dwelling, or</p> <p>(ii) 30% of the site area,</p>	<p>The control is calculated as the lesser of the following:</p> <p>i) 35m² x 356 dwellings = 12,4605m², or</p> <p>ii) 30% of 9,239m² = 2,771.70m²</p>	Yes

		<p>The lesser of the above control requires 2,771.70m² for the subject site.</p> <p>The plans as originally lodged proposed 1,574m² landscaping equal to 17% and did not comply with this development standard. The original plans resulted in a significant reduction on the 36% landscaping approved under DA 687.1/2014. A Clause 4.6 request was not submitted to provide reasons for the variation and Council raised this as an issue in the Statement of Facts and Contentions (SOFAC) filed with the Court.</p> <p>Amended plans were recently submitted by the applicant demonstrating that landscaping across the site can be increased to 34% equal to 3,142m². This now complies with the SEPP and is acceptable.</p>	
	<p><i>(c) a deep soil zone on at least 15% of the site area, where—</i></p> <p><i>(i) each deep soil zone has minimum dimensions of 3m, and</i></p> <p><i>(ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site,.....</i></p> <p><i>....Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.</i></p>	<p>This development standard is not applicable to this application on the basis that it is development to which Chapter 4 Design of Residential Apartment Development of the SEPP applies.</p>	<p>Not applicable</p> <p>ADG prevails</p>
	<p><i>(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter,</i></p>	<p>This requirement for 3 hour solar access is not applicable to the proposal given that Chapter 4 Design of Residential Apartment Development of the SEPP applies to the development. In this regard, solar access is assessed against the ADG controls which only require at least 2 hours of solar access, not 3. Further detail is provided in the contentions regarding solar access.</p> <p>This control is not applicable pursuant to Section 19(3) Non-</p>	<p>Not applicable</p> <p>ADG prevails</p>

		discretionary development standards, which states that subsection (2)(c) and 2(d) do not apply to this development given Chapter 4 applies.	
	<p><i>(e) the following number of parking spaces for dwellings used for affordable housing—</i></p> <p><i>(i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces,</i></p> <p><i>(ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,</i></p> <p><i>(iii) for each dwelling containing at least 3 bedrooms— at least 1 parking space,</i></p>	<p>57 affordable housing units are proposed which require parking as follows:</p> <ul style="list-style-type: none"> - 0.4 spaces x 30 1-bedroom affordable units = 12 spaces - 0.5 spaces x 21 2-bedroom affordable units = 10.5 spaces - 1 space x 6 3-bedroom affordable units = 6 spaces <p><u>Total required = 29 spaces</u></p> <p>Provides more than the minimum required and complies with the SEPP.</p>	Yes, surplus
	<p><i>(f) the following number of parking spaces for dwellings not used for affordable housing—</i></p> <p><i>(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,</i></p> <p><i>(ii) for each dwelling containing 2 bedrooms—at least 1 parking space,</i></p> <p><i>(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,</i></p>	<p>299 non-affordable housing units are proposed, which require parking as follows:</p> <ul style="list-style-type: none"> - 0.5 spaces x 92 for 1-bedroom units = 46 spaces - 1 space x 170 for the 2-bedroom units = 170 spaces - 1.5 spaces x 37 for the 3-bedroom units = 55.5 spaces <p><u>Total required = 272 spaces</u></p> <p>Provides more than the minimum required and complies with the SEPP. See further below.</p>	Yes, surplus
	<p><i>(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,</i></p>	<p>Certain proposed units do not comply with the minimum internal areas specified by the ADG. As this requirement is a non-discretionary standard imposed under the affordable housing provisions, that is being varied, Council's contentions identified that a Clause 4.6 written request to vary the controls would be required addressing the matters in Clause 4.6 of Fairfield LEP 2013.</p> <p>A Clause 4.6 report was submitted as part of the amended material, and it is considered that the request satisfactorily</p>	No, Clause 4.6 provided

		<p>addresses the matters required to be addressed in Clause 4.6 including demonstrating that compliance with the standard would be unreasonable given that the variations do not result in dysfunctional layouts and the sizes of most units are over the minimum ADG areas.</p> <p>In this regard, the variations to the minimum internal areas are considered to be acceptable and would not result in adverse impacts or poor amenity. The Clause 4.6 is supported.</p>	
	<i>(h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,</i>	Not relevant.	Not applicable
	<i>(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas—</i> <i>(i) for each dwelling containing 1 bedroom—65m²,</i> <i>(ii) for each dwelling containing 2 bedrooms—90m²,</i> <i>(iii) for each dwelling containing at least 3 bedrooms—115m² plus 12m² for each bedroom in addition to 3 bedrooms.</i>	Not relevant as paragraph (g) applies.	Not applicable
	<i>(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.</i>	Pursuant to this Section 19(3) Non-discretionary development standards, subsection (2)(c) and 2(d) do not apply to this development given Chapter 4 applies.	Yes
20 Design requirements	<i>(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to</i>	Section 20(1) is not relevant as the proposal is not for a development type listed in the section and on the basis that Chapter 4 of the SEPP applies to the proposal.	Not applicable

	<p><i>which the guide is not inconsistent with this policy.</i></p> <p><i>(2) Subsection (1) does not apply to development to which Chapter 4 applies.</i></p> <p><i>(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—</i></p> <p><i>(a) the desirable elements of the character of the local area, or</i></p> <p><i>(b) for precincts undergoing transition—the desired future character of the precinct.</i></p>	<p>(3) Council considers that the amended proposal satisfies this key provision of SEPP Housing which is that the design of the residential development is compatible with the desirable elements of the character of the local area, as well as the desired future character of this precinct.</p>	Yes
21 Must be used for affordable housing for at least 15 years	<p><i>(1) Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development—</i></p> <p><i>(a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and</i></p> <p><i>(b) the affordable housing component will be managed by a registered community housing provider.</i></p> <p><i>(2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.</i></p>	<p>Applicant seeks to utilise the affordable rental housing for a period of at least 15 years. These requirements can form a condition of consent if consent is issued.</p>	Yes, subject to conditions
22 Subdivision permitted with consent	<p><i>Land on which development has been carried out under this division may be subdivided with development consent.</i></p>	<p>Subdivision whilst allowed with development consent is not proposed by this application.</p>	Not applicable

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 development. A detailed assessment of the application was undertaken against Chapter 4 and the ADG and Council's SOFAC outlines the issues identified in Council's assessment. The application as amended by the applicant has responded to the contentions. This report has been structured to specifically address how the applicant's amended material has responded to these matters. Compliance Tables addressing Chapter 4 and the ADG outlining areas of compliance or non-compliance with the provisions have not been attached with this report since the SOFAC identifies the non-compliances with the original proposal, with any other matter not identified in the SOFAC deemed to be either acceptable or compliant.

An Urban Design expert was also 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. Based on an assessment of the amended plans, the Urban Designer has concluded that the proposal as amended will result in an acceptable standard of design and will achieve design excellence; and the development is compatible with the desired character of the town centre. The application is therefore considered to be satisfactory and consistent with SEPP 65 and the ADG.

C. Fairfield City Centre DCP 2013

As the site is located in the Fairfield Town Centre, the application has been assessed against the relevant controls of the Fairfield City Centre DCP 2013. The proposal as amended is considered to be satisfactory with respect to the controls in the DCP. It is noted that the variations to the DCP were outlined in detail in the attached SOFAC, and have also been addressed in the previous section.

Notwithstanding the non-compliances with this DCP, such as with respect to height and number of storeys, the proposal has demonstrated that the amended proposal can fit in with the context and desired character, can meet the objectives of the controls, exhibits design excellence and is unlikely to impede the ability of adjoining properties from developing to their full potential.

D. Fairfield CityWide 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 11 Flood Risk Management
- Chapter 12 Car Parking, Vehicle and Access Management

Retail parking

The proposal is satisfactory with respect to controls in Chapter 12 and it is noted that the proposal complies with the number of parking spaces required for the site for the retail component, which is 1 space per 25m² of floor area. The residential parking has been assessed against the SEPP (Housing) 2021 controls and is also compliant.

Overland flooding

The proposal is also satisfactory with respect to the flood controls of Chapter 11 noting that the site is affected by overland flooding from the side of The Horsley Drive. This was addressed under the previous DA 687.1/2014 and remains unimpacted by this proposal except for landscaping being proposed within the approved flood storage area, which is deemed to be acceptable by Council's Development Engineer. The Court Road frontage of the site where the site's vehicular access is proposed is free of any inundation and therefore no issues of concern have been raised by the Development Engineer for the proposed alterations and additions proposed under this application including the increase in 66 units.

E. 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 regionally significant development for the purposes of the Act if the development is specified in Schedule 6 Regionally Significant Development. Schedule 6 states that private infrastructure and community which includes affordable housing development with an estimated development cost of more than \$5 million as regional development. Accordingly, the SWCPP is the consent authority in respect of the development application in accordance with Section 4.5 of the EP&A Act 1979 which has a cost exceeding \$30 million.

F. SEPP (Sustainable Buildings) 2022

The applicant has submitted two BASIX Certificates in support of the application however the certificates do not appear to reflect the plans and number of dwellings proposed in this application. This was raised in the SOFAC however was not addressed. Notwithstanding this, it can be addressed via a condition requiring an updated Certificate to be issued prior to the issue of a Construction Certificate.

G. 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 development.

This matter was assessed and addressed under the previous DA 687.1/2014 for the construction of the lower levels of the buildings at the site, including basements. Condition No. 28 was imposed on the previous consent requiring a detailed site investigation subsequent to demolition works and prior to issue of a construction certificate, to assess the potential for land contamination at the subject premises. A construction certificate was issued by a certifier and construction underway following the submission of a detailed site investigation and remedial action plan. The completion of any remediation works will be in accordance with the previous consent.

In this regard the site can be made suitable for the development, subject to compliance with the documentation forming the construction certificate, thereby satisfying the provisions of Chapter 4 Remediation of Land of the SEPP. Additionally, Council's Public Health & Environment Section have requested that a condition be imposed on this consent requiring a validation report be submitted prior to issue of a construction certificate for this development, to ensure that remediation under DA 687/1/2014 and under its associated construction certificate be appropriately completed.

H. 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 4. 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 submitted Survey Plan shows that works are near electrical infrastructure. Endeavour Energy has not provided comments to date.	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 satisfactory with respect to these objectives and is unlikely to impact the adjoining classified road.	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 unchanged by this application and will be from Court Road.	Yes
	<i>(b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—</i>	The development is unlikely to impact the classified road. TfNSW has also provided its concurrence/conditions.	Yes
	<i>(i) the design of the vehicular access to the land, or</i>	The design of the vehicular access remains unchanged, other than in minor ways and is acceptable.	Yes
	<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>	Vehicles do not use the classified road to access the land. All access is from the local Court Road.	Yes
	<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 from the classified road however acoustic reports and air quality reports were submitted. The acoustic report incorporates measures to mitigate indoor noise. Building D will be the most affected as it fronts The Horsley Drive the classified roads shielding the remaining buildings on the site. 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 as it identifies the air pollution is	Yes

		<p>below established thresholds.</p> <p>Council's Public Health & Environment (PH&E) section assessed this aspect of the development and raised no concerns.</p> <p>The application is acceptable with respect to this matter.</p>	
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 above and below.	Yes
	<p>The following additional provisions are relevant:</p> <p><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></p>	Council's Public Health & Environmental (PH&E) section have considered the established guidelines.	Yes
	<p><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—</i></p> <p><i>(a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,</i></p>	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 established criteria. Council's PH&E Section have reviewed the amended Acoustic Report and methodology and are satisfied with the findings of the report.	Yes

	<i>(b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.</i>		
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 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.	The application was referred to TfNSW who has raised no issues with the proposal and provided conditions which are included in the draft conditions in Attachment 1.	Yes
	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>	All the required matters have been considered by Council as outlined below.	Yes
	<i>(a) give written notice of the application to TfNSW within 7 days after the application is made, and</i>	Notice of the application was given to TfNSW.	Yes
	<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>	Council has considered the response of TfNSW which are included as conditions in Attachment 1.	Yes
	<i>(ii) the accessibility of the site concerned, including—</i>	Council's Traffic Engineers have assessed the proposal and raised no concerns. Whilst the development increases the number of units by 66, car parking is generally unchanged from the original consent which required 449 spaces where this application is proposing	Yes
	<i>(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and</i>		
	<i>(B) the potential to minimise the need for</i>		

	<i>travel by car and to maximise movement of freight in containers or bulk freight by rail, and</i>	435 spaces. As such, movement is likely to be generated by pedestrians rather than vehicles. The development is unlikely to impact the local or classified road network and will have adequate parking to accommodate the demand generated by the proposal	
	<i>(iii) any potential traffic safety, road congestion or parking implications of the development.</i>		

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 City Centre (DCP) 2013; and the Fairfield CityWide DCP 2013 are the relevant DCPs and have been considered and addressed in Council's Statement of Facts and Contentions which was filed with the NSW Land and Environment Court, and also 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 particularly the imposition of conditions to do with affordable housing.

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 is unlikely to result in adverse impacts in the locality.

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

The application has demonstrated that the site is suitable for the development, and that the proposal fits in within the locality, including that there is adequate infrastructure to accommodate the demands of the development, and any site 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 in the public interest as the potential impacts have been adequately mitigated, the proposal has an appropriate level of compliance with the relevant planning controls, adheres to good design principles, and exhibits design excellence.

7. CONTENTION 1: NON-COMPLIANCE WITH SETBACKS, BUILDING HEIGHT AND ENVELOPE CONTROLS OF FAIRFIELD CITY CENTRE DCP 2013

Contention 1 identified that the development would not comply with the setbacks, building height and envelope controls of the Fairfield City Centre DCP 2013. The DCP does not envisage development taller than the approved 8 and 12 storeys as such there are no height and setback controls for the scale proposed. Council's Urban Designer has assessed the applicant's response to this issue and advised that amended plans provide an appropriate design response for the site, and that this contention has been responded to.

Contentions responded to by the applicant:

- a. Contentions 1a and 1b(iii) are considered to be responded to by the applicant despite the development not complying with the Periphery Precinct height controls in the DCP. This is on the basis that the amended application has responded to the issue in relation to compatibility with the local context and issues regarding the impacts of the extra height such as overshadowing, solar access, public domain interface, amenity, impact on neighbouring properties and so on. Given that the extra height is permitted by SEPP (Housing) 2021 on the basis that 15.1% of the development is for affordable housing, the variation is considered unlikely to adversely impact the locality.
- b. Contention 1b(i) regarding setbacks to Court Road and The Horsley Drive has been responded to by the applicant. The DCP did not envisage development taller than the approved 8 and 12 storeys and as such there are no setback controls applicable to the additional 3 storeys proposed under this DA.

In order to determine what would be an appropriate setback for this proposal having regard to the ability of adjoining sites to develop, the applicant provided a comprehensive urban design study and extensive mass modelling examining controls against the likely height of surrounding sites and the amalgamation patterns.

From this study, amended plans were submitted which adjust the proposal having regard to the likely future context. In this regard, a minimum 3.7m setback is now provided to Court Road, improving the scale and appearance to Court Road and the interface with the immediately adjoining properties.

A variable setback has been maintained to The Horsley Drive which ranges from 3m to 5.1m and greater. Along this frontage, the urban design study has identified that this setback is appropriate as it will achieve consistency with the immediately adjoining southern KFC property if ever developed.

The proposal as amended has been considered carefully by Council's urban designer who has advised that the proposal setbacks are acceptable and in this regard the applicant has responded to this contention.

- c. Contention 1b(ii) regarding side setbacks to boundaries has been responded to by the applicant. As mentioned, since the DCP did not envisage development taller than the approved 8 and 12 storeys, there are no setback controls applicable to the additional 3 storeys proposed under this DA. Following the urban design study and mass modelling, amended plans were submitted which improved the development by increasing setbacks. These setbacks have better regard to the context of the site, the likelihood of future redevelopment on neighbouring sites, and have resulted in improvement of internal amenity. Additionally, the development will no longer present with three storeys of blank boundary walls that would have had unacceptable visual impacts. The following setbacks are noted:
- Building A (Court Road):
 - Level 8 (9th storey) - minimum 8.5m or greater setback proposed, where zero setback was originally proposed
 - Level 9 (10th storey) - minimum 8.5m or greater setback proposed, where zero setback was originally proposed
 - Level 10 (11th storey) - minimum 8.5m or greater setback proposed, where approximately 2-3m setback was originally proposed. The northern space will be used as a private courtyard and the southern space as a surplus communal open space.
 - Building D (The Horsley Drive):
 - Level 8 (9th storey) – zero setback maintained
 - Level 9 (10th storey) – minimum 4.9m to 7.4m proposed where zero setback was originally proposed, with private courtyards replacing the area
 - Level 10 (11th storey) - minimum 4.9m to 7.4m proposed where zero setback was originally proposed.
- d. Contention 1b(iv) regarding building envelope controls has been responded to by the applicant. As already mentioned, since the DCP did not envisage development taller than the approved 8 and 12 storeys, there are no building separation controls applicable to the additional 3 storeys proposed under this DA.

Given that SEPP 65 (i.e. Chapter 4 of Housing SEPP) and the Apartment Design Guide (ADG) are also applicable to this proposal, the proposal has been assessed against the building envelope controls of the ADG which are addressed under Contention 3 Amenity.

Resolution: The applicant has responded to Contention 1.

8. CONTENTION 2: CHARACTER AND CONTEXT ANALYSIS

Contention 2 identified that the proposed development as originally submitted was not compatible with the desired future character of the Court Road Precinct.

In order to determine the desired future character the applicant provided a comprehensive urban design study and extensive mass modelling examining how the development would fit in with the desired future character and context of the Fairfield City Centre as well as with the heights and envelopes of immediately adjoining sites to demonstrate that the development would not hinder the ability of adjoining sites to develop.

From this study amended plans were submitted responding to the contextual fit, increasing setbacks to the Court Road frontage and the side setbacks of Buildings A and B, as well as increasing setbacks between the tower buildings and a range of detailed design improvements. Council's Urban Designer assessed the amended plans and documentation and has raised no further issues with respect to the compatibility of the proposal with the local context.

In this regard, Council considers that the amended proposal responds to a key provision of SEPP Housing which is that the design of the residential development would be compatible with the desirable elements of the character of the local area, as well as the desired future character of this precinct. Additionally, the development satisfies the design quality principles of SEPP 65 and the ADG, achieving appropriate building alignments and proportions, articulation, manipulation of building elements, defining the public domain, contributing to the character of streetscapes and parks, and achieving good internal amenity and outlook.

Contentions responded to by the applicant:

- a. Contention 2a has been responded to by the applicant as amended material has satisfactorily demonstrated that the development would be compatible with the character of the local area.
- b. Contention 2b has been responded to by the applicant as the amended material demonstrates high quality design when evaluated against the design principles of SEPP 65 and the ADG. Additionally, Council engaged an expert architect/urban designer who has advised that the amended proposal responds to the urban design matters raised.
- c. Contention 2c has been responded to by the applicant as the amended design is considered to meet the detailed design quality principles of context and neighbourhood character and built form and scale.
- d. Contentions 2d, 2e, 2f and 2g(i)-(viii) has been responded to by the applicant as a comprehensive urban design study and site analysis was submitted by the applicant which demonstrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context having regard to the transitional nature of the Fairfield Town Centre.

Resolution: The applicant has responded to Contention 2.

9. CONTENTION 3: AMENITY

Contention 3 identified that the proposed development as originally submitted would not provide adequate amenity to future residents. The amended plans have responded to these contentions. Council's Urban Designer assessed the amended plans and documentation and has raised no further issues with this contention.

Contentions responded to by the applicant:

- a. Contention 3a has been responded to by the applicant as the amended material demonstrates high quality design when evaluated against the design principles of SEPP 65 and the Apartment Design Guide.
- b. Contention 3b and 3c have been responded to by the applicant as the amended design is considered to meet the detailed design quality principles of Amenity which includes achieving internal and external amenity for residential and neighbours, acceptable living environments and resident well-being, appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all groups and degrees of mobility.
- c. Contentions 3d(i)-(iv) with respect to privacy and building separations have been responded to by the applicant. The development has utilised the existing approved and under construction building envelopes such that the proposal does not comply with the numerical controls specified by the ADG for building separation however the amended plans have redesigned the development to address all the issues of concern that may arise from lesser building separations such as through corridor design, window orientation, landscaping planters to increase separation distance etc. Council considers that the proposed separations are acceptable and would not result in adverse impacts. The following non-compliances are noted:

The ADG prescribes the following for levels 9 storeys and above:

- 24m between habitable rooms/balconies
- 18m separation between habitable and non/habitable
- 9m separation between non-habitable and another non-habitable

Proposed separations as amended are as follows:

Building A Court Road

Building A separation to Building B

Separation of 15.3m to 18.2m is proposed at Level 8, 9, and 10 however the design has treated all opposing openings and spaces as non-habitable through detailed lobby design, landscaping, privacy screen where units have another compliant outlook.

Building A setbacks to north and southern boundaries

A setback of at least 8.5m is provided to the north boundary and at least 9m to the south boundary, from blank walls which are not required to have a setback and are acceptable.

Buildings B and C Towers

Building B separation to Building C

Separation from the new level 12 and above is 24m and complies.

Buildings B and C setbacks to south boundary (Minor variation to balcony)

The majority of the setback of Buildings A and B to the south exceeds the required 12m. At the closest point to the boundary, there is 11.9m which is 100mm less than required and is acceptable and of no consequence. At the widest point there is a 25m setback. As such setbacks to the south exceed the minimum criteria of the ADG except for a minor point.

Buildings B and C setbacks to north boundary (Minor variation to balcony)

The majority of the setback of Buildings A and B to the north exceeds the required 12m. Building A is 18m from the boundary and complies. Building C has a variable setback and is between 10.5m to 17m from the north boundary.

The breach caused by Building C only affects 1 angled unit and only a portion of its balcony area, at each level which is located 10.5m from the boundary instead of 12m. A small privacy screen is proposed to the affected area and therefore any overlooking has been satisfactorily addressed. At Level 14 the breach occurs by the corner of a new communal space proposed at that level however the separation distance is addressed by the inclusion of planters and a pergola minimising any minor possibility of overlooking.

Building D The Horsley Drive

Building D separation to Building C (Minor non-compliance to 3 windows)

Appears to be 10m between blank walls which don't have a separation requirement in the ADG. The 10m distance was considered acceptable from other aspects such as in terms of built form, architectural quality, amenity impacts etc.

Appears to be 13m where 18m is required from 1 kitchen window at each level to a lobby which has been architecturally treated as a non-habitable space. All other units have windows oriented and angled to increase separation distance. As this affecting only 3 units across the 3 additional levels, this is considered a minor variation and is acceptable. Furthermore, the design has adequately treated the spaces to avoid any overlooking.

Building D setbacks to north and southern boundaries

A setback of 4.9m to 7.4m is provided to the south boundary and at least 4.9m to 6m to the north boundary, from blank walls which are not required to have a setback and are acceptable.

- d. Contentions 3h and 3i regarding room sizes and layout has been responded to by the applicant. Amended plans have addressed the problematic layouts and sizes of the units identified in Contention 3j through a complete redesign. The amended floor layouts have improved and achieve a high quality amenity outcome.

e. Contention 3k regarding the lack of a Clause 4.6 request has also been responded to by the applicant. Some 22 units do not meet the minimum dimensions of apartment sizes, living rooms, bedrooms or wardrobe dimensions as follows:

- 2 units are 74.93m² instead of 75m².
- 11 units have a bedroom that is less than the minimum ADG criteria of 10m² size by a minor 0.2m², 0.3m², 0.7m² or 0.9m².
- 6 units have a minimum width that is less than 4m. Three of the six units have an alternative living room that meets the requirement. Three of the units have a 3.7m wide living room due to the angled wall approved under DA 687.1/2014 but the majority of the space is at least 4m.
- 3 units are cross over units with a width that is less than 4m. At some points the units are only 2.89m however their associated upper level meets the minimum 4m. This affects a small number of units and the layouts are otherwise functional.

As this requirement is a non-discretionary standard imposed under the affordable housing provisions, which is not complied with, a Clause 4.6 written request to vary the controls was submitted addressing the matters in Clause 4.6 of Fairfield LEP 2013. The Clause 4.6 has been assessed and the written justification adequately demonstrates that compliance with the standard would be unreasonable and there are planning grounds to warrant the departure particularly given that the variations do not result in dysfunctional layouts and the sizes of the affected units are over the minimum ADG areas.

f. Contentions 3l(i)-(vii) regarding communal open space (COS) have been responded to by the applicant. Amended plans were submitted addressing the design concerns identified by Council and plans now demonstrate a high level of amenity for residents. The plans also demonstrate that there would be 37% COS across the site, which is higher than the minimum 25% required by the current ADG.

The current ADG requirement for solar access is that developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).

The plans submitted demonstrate 16.5% of the COS receives solar access. The principal usable area which is likely to be the Level 1 central area would likely meet this criteria. Additional pockets of COS are provided across the site including at upper levels. It is considered that the intent of the ADG criteria has been met, and in fact improved upon compared to the current approved development.

g. Contentions 3m(i)-(vii) regarding private open space have been responded to by the applicant. Amended plans were submitted addressing the design concerns identified by Council and plans now demonstrate compliance with ADG requirements.

h. Contentions 3n and 3o regarding solar access to proposed units has been responded to by the applicant. The following is noted:

- Amended plans and views from the sun demonstrate that Building A uplift has been amended to provide living room windows along the facade which capture sun from 1pm onwards during winter solstice.
- Amended plans show privacy screens provided with 300-400mm spacing, angled for privacy to the adjacent units. However, solar access is still achieved to meet ADG as per the views from sun.
- Whilst some units do not achieve solar compliance, this is acceptable as the overall calculations provided indicate the ADG is met. These units include Building B 1208, 1308,1408, Building C 1208,1308,1408.

It is noted that the development achieves a high level of solar access and 78% of units equal to 279 units will achieve more than 2 hours of sunlight in mid-winter. This exceeds the minimum 70% criteria of the ADG.

However, a further 77 units will not receive sunlight representing 22% of the development. This is non-compliant with the ADG criteria of 15% however this is unavoidable as these units are on the southern side of the towers approved under DA 687.1/2014 and the buildings are currently under construction thereby limiting the typology to the building footprints being constructed. The non-compliance with the ADGs 15% criteria is considered acceptable particularly given more than the ADGs 70% of units achieve more than 2 hours of sunlight.

- i. Contentions 3n and 3p regarding solar access to adjoining properties has been responded to by the applicant. It is noted that southern properties will be affected by increased overshadowing from this proposal and are unlikely to achieve or find it challenging to achieve the ADGs minimum 70% solar access for future development of those properties. Notwithstanding this, it is considered that based on the merits of the proposal and the context of the site, the increased overshadowing is acceptable.

With respect to impacts on adjoining properties particularly Allan Street properties to the south, it is noted that the approved buildings under DA 687.1/2014 will already overshadow these blocks and this is inevitable due to their southern orientation and surrounding built up context.

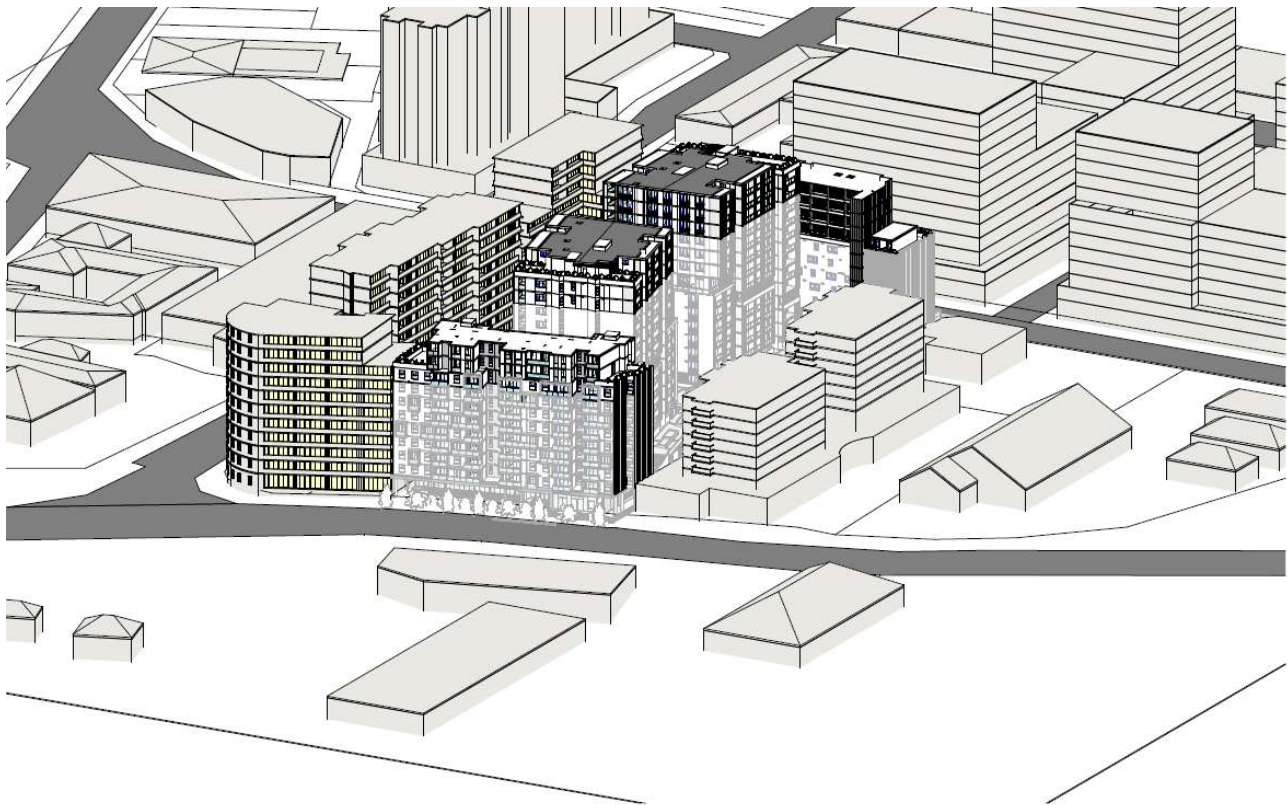
As a consequence of the orientation and being located in a town centre environment, overshadowing to the south is inevitable and unavoidable but unlikely to impinge on the future redevelopment ability of adjoining properties.

The impact to any other surrounding property from this proposal is also considered reasonable. The western Fairfield City Central Shopping Centre is large enough to be capable of incorporating adequate amenity and solar access despite being impacted by this proposal to a minor extent. Other southern properties that are affected by the increase in shadows from this proposal will also likely be impacted more by the redevelopment of Alan Street and the shopping centre property than the subject site.

- j. Contentions 3q regarding storage requirements has been responded to by the applicant. Storage on floor layouts has also been revised to improve functionality in the internal layouts.

- k. Contentions 3r regarding ceiling heights has been responded to by the applicant. Council's Urban Designer has accepted that 3100mm floor to floor as proposed will be sufficient to accommodate services.
- l. Contentions 3s, 3t, 3u, 3v regarding common circulation have been responded to by the applicant. Adequacy of lifts has been reviewed, lobby of Building A has been completely redesigned and provides and provides a high quality amenity outcome. Building C lobbies have also been redesigned and have an opening at each end for light and ventilation. Way finding has been resolved and detailed information provided in the plans.
- m. Contentions 3w and 3x regarding car parking have been responded to by the provision of a boom grate to prevent retail customers from accessing the residential basement. Whilst Basement 1 will have residential spaces adjacent to retail staff spaces, the use of this level can be managed by the building managers to ensure there is no conflict between the two uses.

Resolution: The applicant has responded to Contention 3.



SECTION 34 - "FUTURE"
SECTION 34 LODGE/MENT SET
ISSUED FOR APPROVAL
No.
H212 8199 1144
W 811823 2019/19/19
Registered Professional Architect: George O'Donovan NSW 6783

08/09/20
08/09/20
14/02/24
Date

LEVEL 

SCENARIO 1 - VIEW FROM SUN
- JUNE 21 9AM

46 Court Road - Fairfield
EVO FAIRFIELD

MA1040 3

Figure 34: Views from sun June 21 9am illustrating the future context.

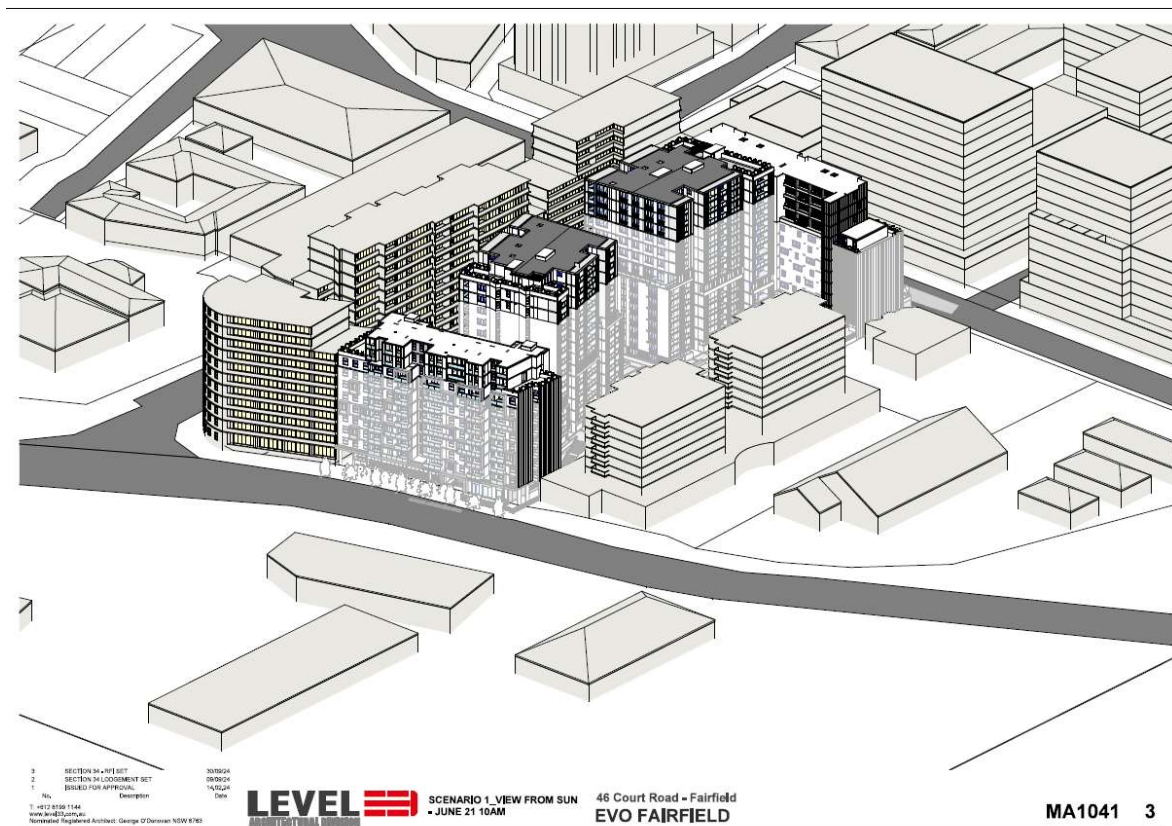


Figure 35: Views from sun June 21 10am illustrating the future context.

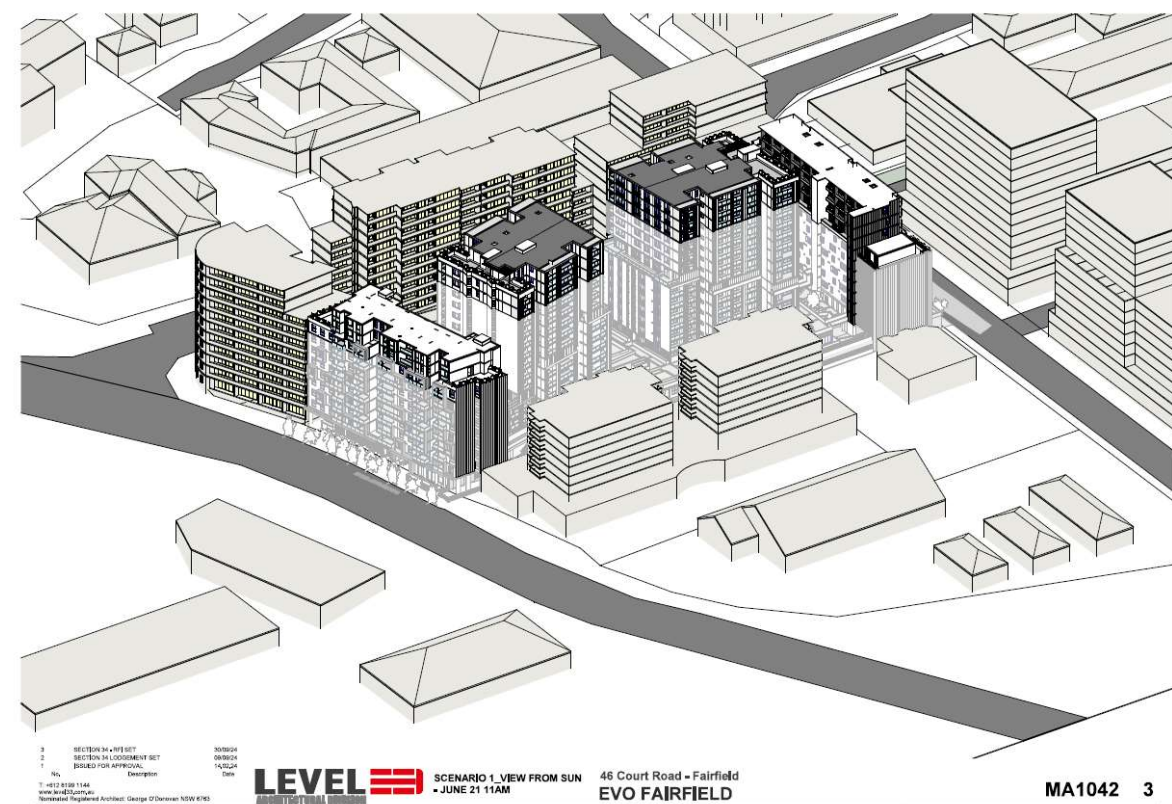


Figure 36: Views from sun June 21 11am illustrating the future context.

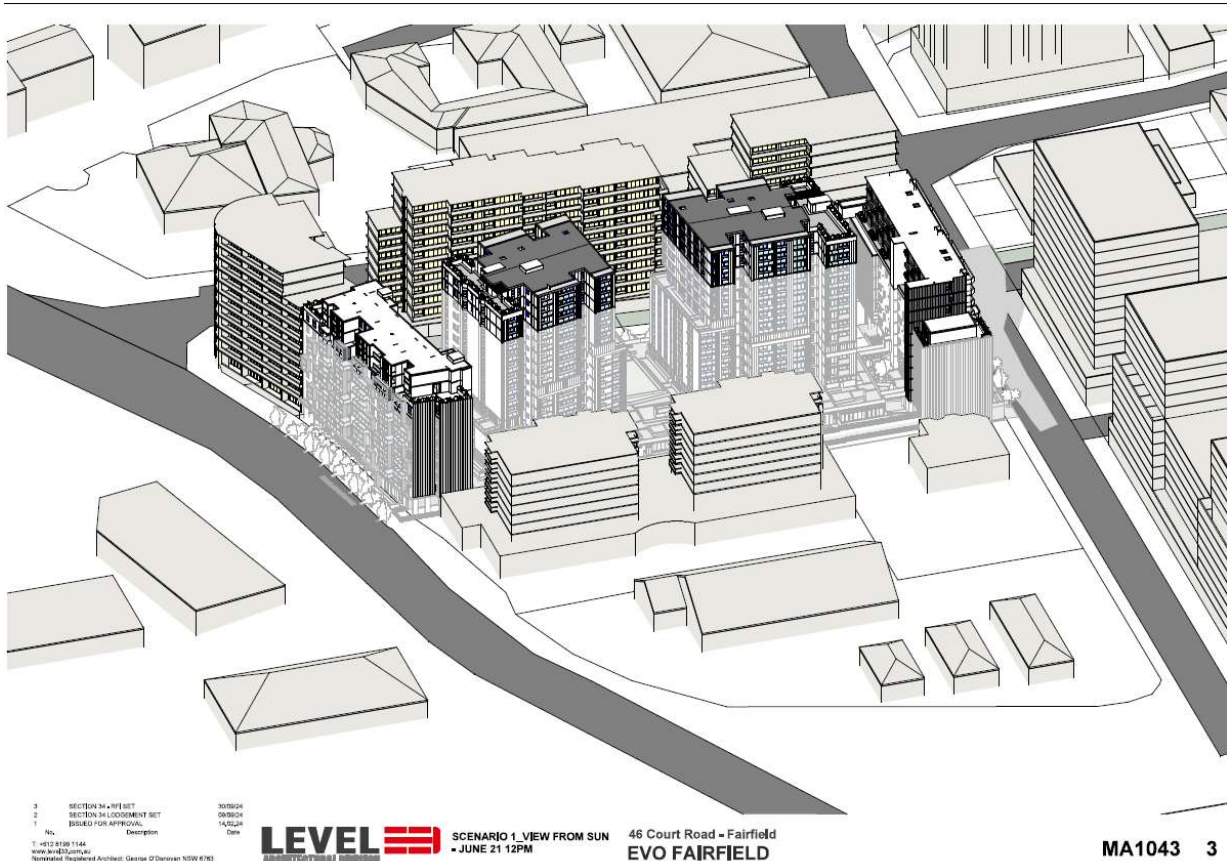


Figure 37: Views from sun June 21 12pm illustrating the future context.

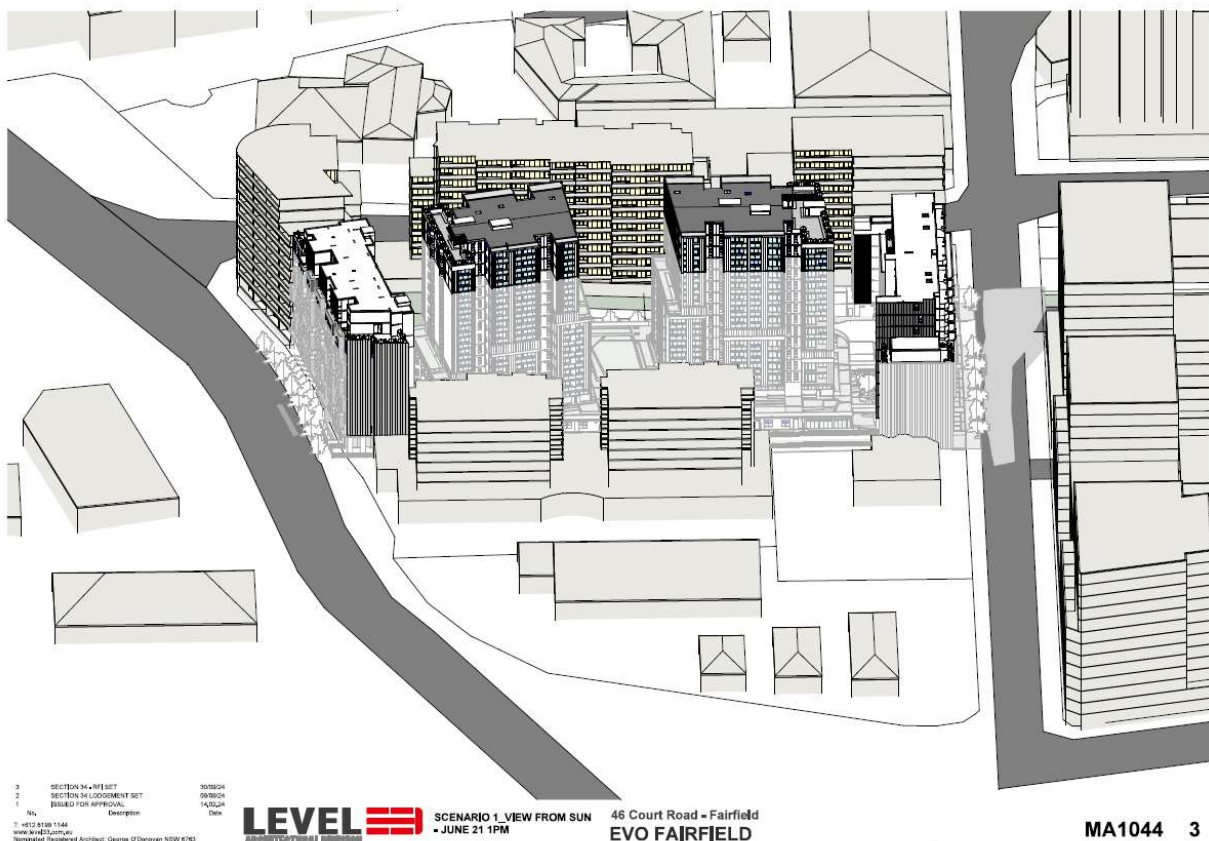


Figure 38: Views from sun June 21 1pm illustrating the future context.

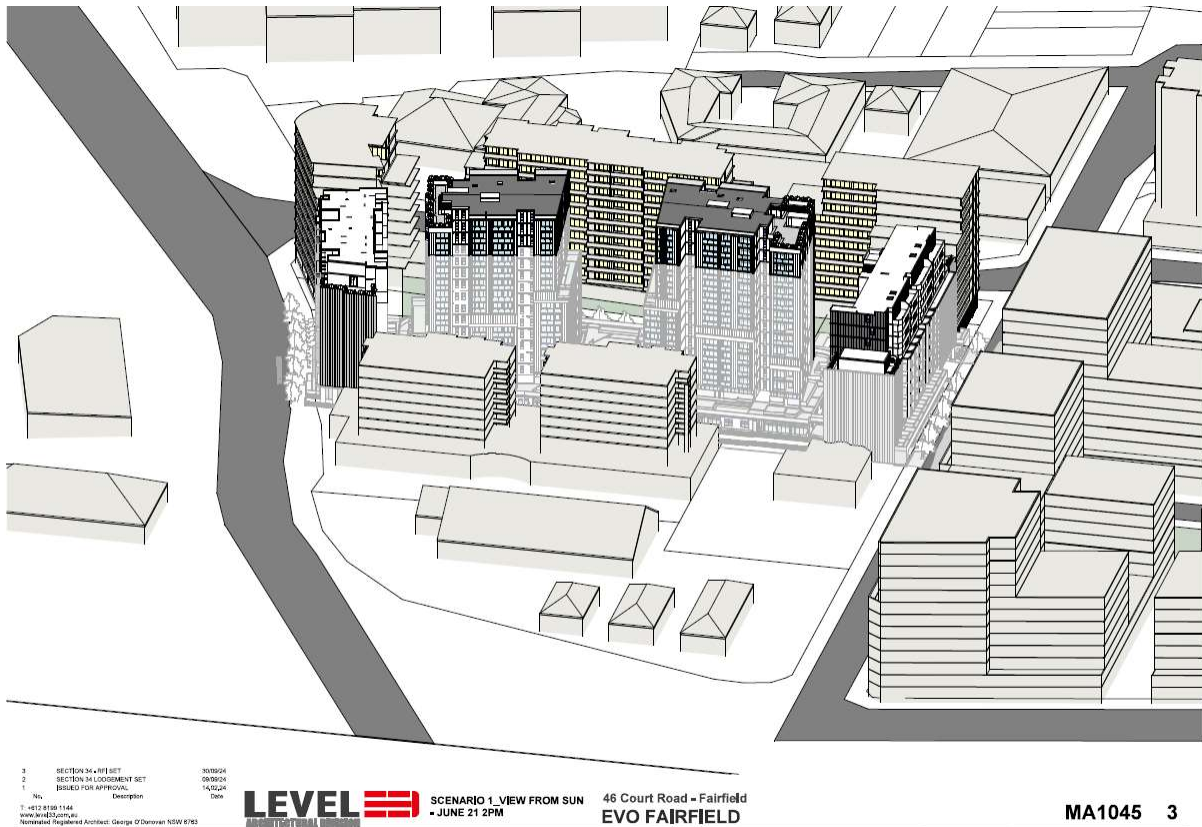


Figure 39: Views from sun June 21 2pm illustrating the future context.

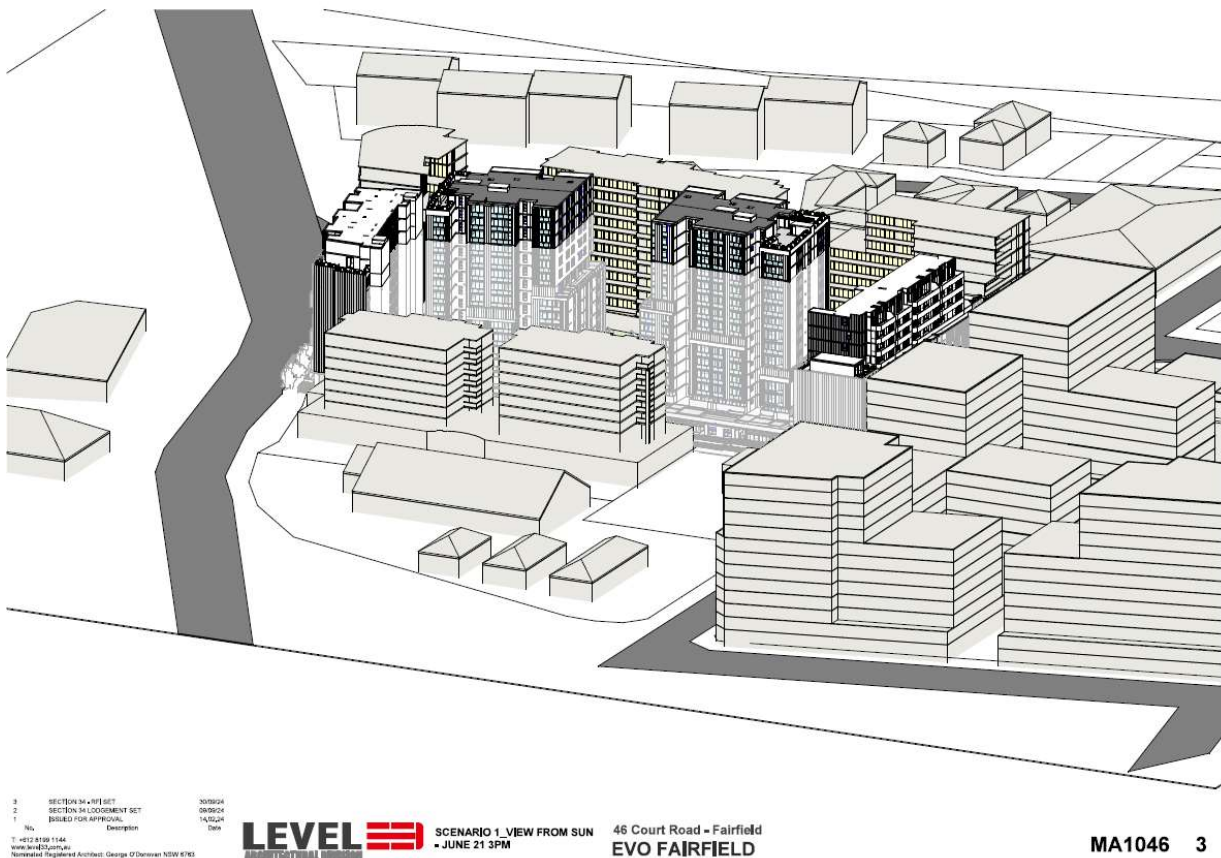


Figure 40: Views from sun June 21 3pm illustrating the future context.

10. CONTENTION 4: FLOOR SPACE RATIO

Contention 4 identified that the application had not adequately demonstrated that the proposed development does not exceed the maximum FSR under section 16(1) of SEPP Housing. This contention has been fully responded to by the applicant through the submission of updated information.

Contentions responded to by the applicant:

- a. Contentions 4a and 4b - were responded to through updated information submitted by the applicant verifying that the development will be entitled to the maximum 30% FSR bonus and the maximum 30% height bonus permitted under the SEPP Housing. This is on the basis that 15.1% of the GFA of the development will be for the affordable housing component.
- b. Contention 4c (and also Contention 5 Building Height as discussed in the section below) have been responded to by the applicant through submission of amended diagrams correcting the previously inaccurate measurements of GFA and FSR. The amended plans were assessed and deemed to accurately reflect the GFA and FSR and in accordance with the LEPs GFA definition. In turn, the site is confirmed to be entitled to the maximum 30% bonus FSR and height permitted by the SEPP and not a lesser bonus.
- c. Accordingly, whilst the development is entitled to a total FSR of 4.55:1 with the LEP and SEPP bonus combined, the proposal is significantly under the maximum. Amended FSR is 3.56:1 and complies as further outlined below. In this regard, Contention 4 has been responded to by the applicant however the following details are noted:
 - i. The original plans assessed by Council proposed 91 additional units at the site to achieve a total of 381 units at the site.
 - ii. Amended plans incorporated increased setbacks to the design upon Council's request to ensure a contextual fit and better amenity outcomes, and GFA was recalculated to include areas that had been excluded by the applicant.
 - iii. This resulted in a reduction of 25 proposed units. The amended DA now proposes 66 units to achieve a total of 356 units at the site. The GFA and FSR will be as follows:
 1. Approved GFA under DA 687.1/20104 was 27,767m² and approved FSR was 3:1. The amended plans will be increased as follows:
 - Increase approved GFA by 5,428m² (reduced from 6,784m² as originally lodged)
 - Increase the site's total GFA to 33,195m² (reduced from 34,551m² as originally lodged)
 - Increase the site's FSR to 3.59:1 (reduced from 3.74:1 as originally lodged).

d. Contention 4d, 4e and 4f has been responded to by the applicant through submission of:

- A Survey Plan was submitted verifying the site area as 9,239m² and architectural plans reflect this.
- Revised GFA diagrams of the approved development and the proposed development including residential and retail areas have been updated to correctly include all the inclusions/exclusions as per the LEPs definition of GFA.

Resolution: The applicant has responded to Contention 4.

11. CONTENTION 5: BUILDING HEIGHT

Contention 5 identified that the application had not adequately demonstrated that the proposed development does not exceed the maximum height under section 16(3) of SEPP Housing. This contention has been responded to by the applicant through the submission of updated information.

Contentions responded to by the applicant:

- a. Contentions 5a. and 5b. were responded to by the applicant through updated information verifying that the development will be entitled to the maximum 30% FSR bonus and the maximum 30% height bonus permitted under the SEPP Housing. This is on the basis that 15.1% of the GFA of the development will be for the affordable housing component.
- b. Contention 5c (and also Contention 4 FSR as discussed in the section above) were responded to by the applicant through the submission of amended diagrams correcting the previously inaccurate measurements of GFA and FSR. The amended plans were assessed and deemed to accurately reflect the GFA and FSR and in accordance with the LEPs GFA definition. In turn, the site is confirmed to be entitled to the maximum 30% bonus FSR and height permitted by the SEPP and not a lesser bonus.
- c. Contention 5d, 5e and 5f are also responded to by the applicant through detailed section plans, elevation plans as well as 3D height plane diagrams. The plans demonstrate that the existing ground level for the purpose of determining the height of the buildings is RL 10.5. Based on this existing ground level, the maximum 36m height permitted by the LEP plus the 30% bonus height permitted by the SEPP allows a maximum height of 49.40m for the site. The maximum height of the two tallest central tower buildings are proposed to be 48.5m and is 900m below the height limit. The two lower perimeter buildings facing Court Road and The Horsley Drive are under the height limit.

Resolution: The applicant has responded to Contention 5.

12. CONTENTION 6: PUBLIC DOMAIN INTERFACE

Contention 6 identified that the development would have an unacceptable interface with the public domain due to a number of factors including but not limited to the scale as presented to Court Road and to The Horsley Drive, repetition of façade elements without a distinct base, middle and top; blank elevations visible from the public domain and so on. Council's Urban Designer has considered this contention against the amended plans and advised that the applicant has responded to this contention with the buildings as amended exhibiting design excellence and high quality outcomes for the site and the public domain.

Contentions responded to by the applicant:

- a. Contention 6a regarding scale of the development as presented to the two street frontages has been responded to by the applicant through submission of amended plans incorporating increased setbacks to the sides, including architectural detailing to ensure the two buildings facing the streets have a distinct base, middle and top.
- b. Contention 6b regarding 3-4 storeys of blank walls proposed at boundaries in the original plans has been responded to by the applicant by removing solid walls, incorporating setbacks at boundaries enabling units facing property boundaries to have windows and more appropriate design expression and detailing.
- c. Contention 6c regarding façade changes has been responded to by the applicant by returning the architectural detailing which was approved under the previous DA 687.1/2014 to the subject DA plans. It is noted that the initial plans illustrated significant changes to the external detailing of the approved buildings when compared to the approved plans under DA 687.1/204 however the accompanying documentation did not acknowledge that the Amending DA sought consent for changes to the approved finishes. Notwithstanding this, amended plans were submitted which have improved the external detailing and finishes of all buildings including approved levels and proposed levels.

Contentions capable of being responded to by the applicant via conditions:

- a. Contention 6d identified that boundary fence and walls and their interface with adjoining properties is unclear. Given this, it is recommended that this matter be address through conditions requiring detailed fencing plans to be provided to Council, and approved by Council prior to the issue of a construction certificate.

Resolution: The applicant has responded to Contention 6.

13. CONTENTION 7: LANDSCAPING

Contention 7 identified that the application did not provide adequate landscape and deep soil areas particularly the non-discretionary standards in Section 19(2)(b) of SEPP Housing. This contention has been responded to by the applicant through the submission of updated information.

Contentions responded to by the applicant:

- a. Contention 7a and 7b have been responded to by the applicant through the submission of amended plans which demonstrate compliance with the minimum landscaped area standard in Section 19(2)(b) of SEPP Housing. According to the SEPP, the site requires a minimum 30% of the site area to be landscaped, equal to 2,771.70m².

The plans as originally lodged proposed 1,574m² landscaping equal to 17% and did not comply with this development standard. The original plans also resulted in a significant reduction on the 36% landscaping approved under DA 687.1/2014. It was considered unacceptable to reduce the landscaping requirement where the number of units and population is proposed to be increased at the site.

As this SEPP requirement is a development standard, Council raised concern that a Clause 4.6 request was not submitted to provide reasons for the variation and Council raised these issues in the contention.

Amended plans were recently submitted by the applicant demonstrating that landscaping across the site can be increased to 34% equal to 3,142m². This now complies with the SEPP and is acceptable and adequate to accommodate the needs of future residents.

- b. Given compliance with the standard is achieved, a Clause 4.6 request is no longer necessary, resulting in Contention 7e also being responded to.
- c. Contention 7c and Contention 7d regarding deep soil zones are responded to by the applicant as the SEPP expressly excludes the deep soil zone (DSZ) standard specified in Section 19(2)(c) of the SEPP, from applying to development involving residential apartment buildings as DSZs are covered under Chapter 4 Design of Residential Apartment Development of the SEPP. Section 19(3) which states:

....Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.

In this regard, Contention 7d is responded to as the DSZ development standard of this Part of the SEPP is not applicable to the proposal.

Chapter 4 of the SEPP and the current ADG require a minimum 15% of the site to be dedicated as deep soil zones. Given the size of the site, the minimum dimensions of the deep soil zones are required to be at least 6m. Amended plans have also been submitted by the applicant demonstrating that 15.43% deep soil can be achieved across the site, compliant with the percent requirement of the ADG, but not the depth as this was approved under DA 687.1/2014 and envelopes are already under construction. Whilst the proposal does not comply with the ADG criteria for depth, the variation is considered to be acceptable.

- d. Contention 7f regarding detailing of the landscape design has been responded to by the applicant. All the matters from i)-v) have been addressed by the applicant. The amended plans have improved the landscaping across the site and at upper levels and improved solar access in comparison to the approval under DA 687.1/2014. The landscaping as amended is considered to exhibit design excellence.

Resolution: The applicant has responded to Contention 7.

14. CONTENTION 8: DESIGN EXCELLENCE

Contention 8 identified that the development as originally submitted did not exhibit design excellence as required by Clause 6.12(3) of Fairfield LEP 2013 due to the issues identified in the contentions within the SOFAC. This contention has been responded to by the applicant through the submission of comprehensive information addressing the criteria of this Clause.

Contentions responded to by the applicant:

- a. Contention 8 has been responded to by the applicant with the submission of comprehensive amendments and information in response to the Contentions 1-7 as discussed above. As all the detailed issues raised in the previous contentions have been responded to by the applicant, Council considers that the proposed development now achieves an acceptable standard of architectural design, materials and detailing and that the form and external appearance of the development will improve the quality of the public domain. The specific criteria in Clause 6.12 as outlined in Council's SOFAC have been satisfactorily addressed.

Resolution: The applicant has responded to Contention 8.

15. CONTENTION 9: WASTE MANAGEMENT

Contention 9 identified the waste management contentions that needed to be met by any proposal seeking to increase the number of units and population at the site, particularly given that Council's waste collection requirements are different now compared to when the original DA was approved in 2014.

The applicant has responded by the submission of amended plans which satisfactorily address all the contentions identified by Council's waste branch subject to conditions of consent.

The applicant has demonstrated that Council's standard heavy rigid vehicle (HRV) will enter, service and exit the site appropriately; and waste management plans were submitted addressing the contentions. In this regard, all the contentions raised in 9a)-k) have been responded to by the applicant.

Resolution: The applicant has responded to Contention 9.

16. CONTENTION 10: MODIFICATION APPLICATION NO. 687.3/2024

Contention 10 identified that the applicant has an undetermined Modification Application (MA) currently lodged with Council known as MA 687.3/2024 which was lodged prior to the subject DA but is yet to be determined. This contention is capable of being resolved given the progress that has been made in the Amending DA Plans and documentation despite the MA being undetermined.

The MA generally sought minor amendments to the approved plans including but not limited to changes in lift overrun height, finishes, alteration of retail tenancies, alterations to fire stairs and lifts, ground floor elements, basement and parking layout, ground level waste management areas, laneway changes and so on. Some of the changes shown in the MA have been absorbed into the DA plans as they relate to the increase in units proposed under the DA, such as expansion of waste storage areas, architectural detailing and finishes.

Given that the subject DA plans have progressed further along than the MA plans, the DA can be determined without relying on the MA to be determined concurrently. Whilst the applicant has not indicated how they intend to proceed with the MA, once the subject DA has been determined, Council will consult with the applicant separately regarding the MA.

Resolution: The applicant has responded to Contention 10.

17. CONTENTION 11: PUBLIC INTEREST

Contention 11 identified that the development would not be in the public interest if approved due to the issues identified in the contentions within the SOFAC. Notwithstanding, the applicant has responded to the remaining contentions demonstrating that an appropriate outcome for the site can be achieved. It is considered that the development as amended would be in the public interest as it will increase the supply of affordable housing in a manner that is consistent with the planning controls at the same time as achieving an acceptable standard of urban design, architecture and design quality.

Resolution: The applicant has responded to Contention 11.

18. CONTENTION 12: INSUFFICIENT INFORMATION

Contention 12 identified that certain documents had not been submitted to enable a proper assessment of the application, or required clarification of documents that were submitted. The applicant has responded to this contention either through information submitted by the applicant or through conditions of consent that can address any minor unresolved matters.

Contentions responded to by the applicant:

- a. Contention 12a was responded to through the submission of a Survey Plan.
- b. Contention 12b was responded to by the submission of a detailed Landscape Plan.
- c. Contention 12d was not addressed by the applicant but Council considers the contention to be addressed.

The contention identified that the land owner's consent letter for lodgement of the application was not on the correct letterhead. The landowner on the title is listed as Fairfield Investments No. 1 Pty Ltd where the letter provided has Level 33 as its letterhead.

Notwithstanding the letterhead, the ASIX Annual Review Statement submitted indicates that the person who has signed the owner's consent letter is listed as both the company director and secretary of Fairfield Investments No. 1 Pty. No other persons are identified as officeholders. As such, the letter originally submitted with the application is considered sufficient as it has been provided by the person named as director and secretary. On this basis, owner's consent for lodgement of the application has been provided.

- d. Contention 12e - Solar panels were provided as part of amended plans demonstrating some 170 panels will be installed to the roof of the two buildings facing Court Road and The Horsley Drive and for common use.
- e. Contention 12f - An Acoustic Report was submitted and was assessed and found to be acceptable.
- f. Contention 12g - An Air Quality Report was submitted and was assessed and found to be acceptable.
- g. Contention 12h - Revised Architectural Plans detailing the architectural requirements in (i)-(iv) were submitted and are considered acceptable.

Contentions capable of being resolved through conditions:

- h. Contention 12c requiring revised BASIX reflecting the architectural plans and number of units proposed was not addressed by the applicant however this is a matter that can be addressed through conditions requiring amended BASIX Certificates prior to the issue of a construction certificate.
- i. Contention 12i requiring the registration details were not provided for City West Housing evidencing that they are a Registered Community Housing Provider who will manage the affordable housing component of the development. However, this is a matter that can be addressed through conditions.

Resolution: The applicant has responded to Contention 12.

19. 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 and in Council's Statement of Facts and Contentions filed with the NSW LEC. Following an assessment of the relevant planning controls, Council's contentions, it is considered that the applicant has responded to the matters raised and as identified in this report.

20. RECOMMENDATION

That the Development Application DA 69.1/2024 for the proposed alterations and additions to an approved mixed use development by proposing a further 3 storeys of residential units above an approved 8-12 storeys mixed, resulting in an overall development comprising of up to 15-storey mixed use development to provide 356 residential units (57 x infill affordable units and 299 non-affordable units) under SEPP (Housing) 2021; 1,107m² of commercial/retail floor space over 3 basement levels providing 435 car parking spaces, at the site known as 46 Court Road, Fairfield, be determined by the Panel pursuant to Section 4.16(1) (a) of the *Environmental Planning and Assessment Act 1979*. Draft conditions have been provided at Attachment 1 to this report should the Panel determine to approve the application.