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Statement of Facts and Contentions

COURT DETAILS

Court	Land and Environment Court of NSW
Division	Class 1
Registry	Land and Environment Court Sydney
Case number	2024/00248250

TITLE OF PROCEEDINGS

First Applicant	FAIRFIELD INVESTMENTS NO.1 PTY LTD ACN 651571792
First Respondent	FAIRFIELD CITY COUNCIL ABN 83140439239

FILING DETAILS

Filed for	FAIRFIELD CITY COUNCIL, Respondent 1
Legal representative	Adam Joseph Seton
Legal representative reference	
Telephone	02 4626 5077

ATTACHMENT DETAILS

In accordance with Part 3 of the UCPR, this coversheet confirms that both the Lodge Document, along with any other documents listed below, were filed by the Court.

Statement of Facts and Contentions (Signed Statement of Facts and Contentions.pdf)

[attach.]

Form A (version 1)

STATEMENT OF FACTS AND CONTENTIONS**COURT DETAILS**

Court	Land and Environment Court of New South Wales
Class	1
Case number	2024/00248250

TITLE OF PROCEEDINGS

Applicant	FAIRFIELD INVESTMENTS NO. 1 PTY LTD (ACN 651 571 792)
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Respondent	FAIRFIELD CITY COUNCIL (ABN 83 140 439 239)
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FILING DETAILS

Filed for	Fairfield City Council , respondent
Legal representative	Adam Joseph Seton Marsdens Law Group
Legal representative reference	PCN: 21609 Ref: ANF:ANF:455250
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PART A: FACTS**THE PROPOSAL**

- Development Application No. 69.1/2024 ("**the development application**") seeks consent for alterations and additions to the mixed use development approved under Development Consent No. 687.1/2014 ("**the development consent**") 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.
- The proposed alterations and additions include the following:
 - Construction of a further 3-4 storeys of residential units above the approved 8-12 storeys, resulting in a development comprising of an up to 15-storey mixed use development over 3 basement levels;

- (b) 1,107m² of commercial/retail floor space reduced from 1,413m²;
- (c) Increase the total number of apartments by 91 units, resulting in 381 units (comprising of 64 x infill affordable units and 317 x other units);
- (d) The total mix of 381 units inclusive of the proposed 91 additional units will provide a mix of:
 - (i) 7 x studio units (a reduction of 2 from the approved 9 units);
 - (ii) 111 x 1-bedroom units (an increase of 19 from the approved 92 units);
 - (iii) 217 x 2-bedroom units (an increase of 65 from the approved 152 units); and
 - (iv) 46 x 3-bedroom units (an increase of 9 from the approved 37 units).
- (e) Increase the maximum overall height of buildings by an additional 11.25m, from the approved 38m to 49.25m;
- (f) Increase the gross floor area ("**GFA**") by 6,784m² to 34,551m² according the Applicant's approved figure of 27,767m², resulting in a floor space ratio ("**FSR**") of 3.74:1;
- (g) Reconfiguration of car parking spaces within the approved basement and ground floor envelope to provide 441 total car parking spaces.
- (h) Other proposed changes to facilitate the additional 91 units include:
 - (i) Increase in the waste storage capacity with an additional waste storage room at ground level;
 - (ii) Removal of 2 x studio apartments;
 - (iii) Updated apartment mix; and
 - (iv) Inclusion of 6 car share spaces at ground level.

THE SITE

3. The site is known as 46 Court Road, Fairfield and is legally described as Lot 100 DP 1277808.
4. The site is an irregular shaped parcel with dual frontages to Court Road (66m) and The Horsley Drive (52m) and a total area of 9,252m². The Horsley Drive is a classified road situated within Zone SP2 pursuant to Fairfield Local Environmental Plan 2013 ("**FLEP 2013**").

5. The site is approximately 40m north of the intersection of Alan Street and The Horsley Drive, approximately 45m north of the intersection of Court Road and Spencer Street, and approximately 130m south of the intersection of Court Road and Nelson Street.
6. The development approved under the development consent is presently under construction on the site.
7. The site is situated within Zone MU1 Mixed Use pursuant to the provisions of FLEP 2013. An extract from the Land Zoning Map referred to in clause 2.2 of FLEP 2013 with the site outlined in red is provided at Figure 1 below:

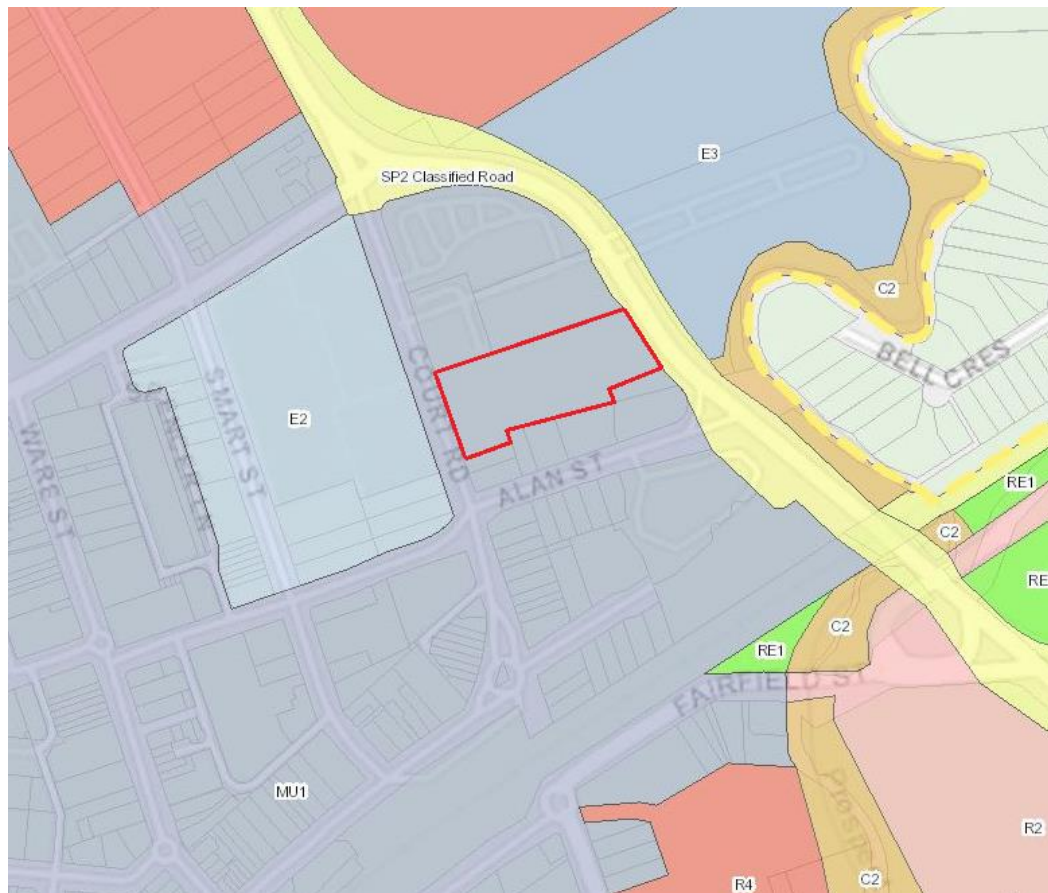


Figure 1: Extract from Land Zoning Map (Source: NSW Planning Portal Digital EPI Viewer).

8. An aerial photograph showing the subject site highlighted in blue is provided below at Figure 2:

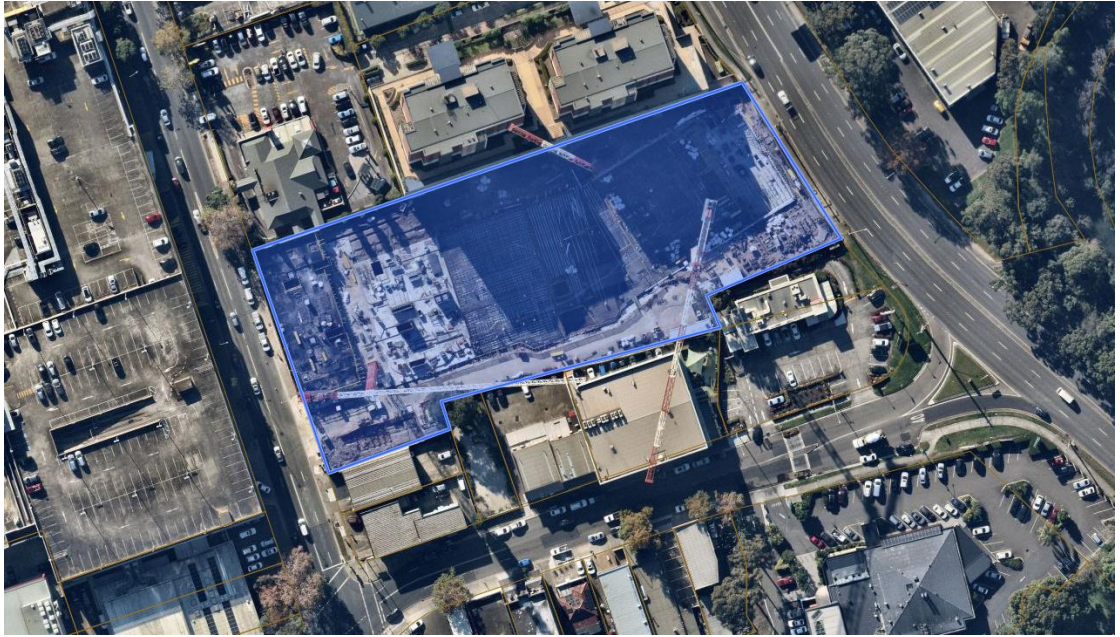


Figure 2: Aerial photograph of site (Source: Nearmap, 29 May 2024).

9. The site is affected by mainstream flooding and is located in the medium risk and low risk flooding precinct. An extract from the Respondent's flood mapping is provided below at Figure 3:

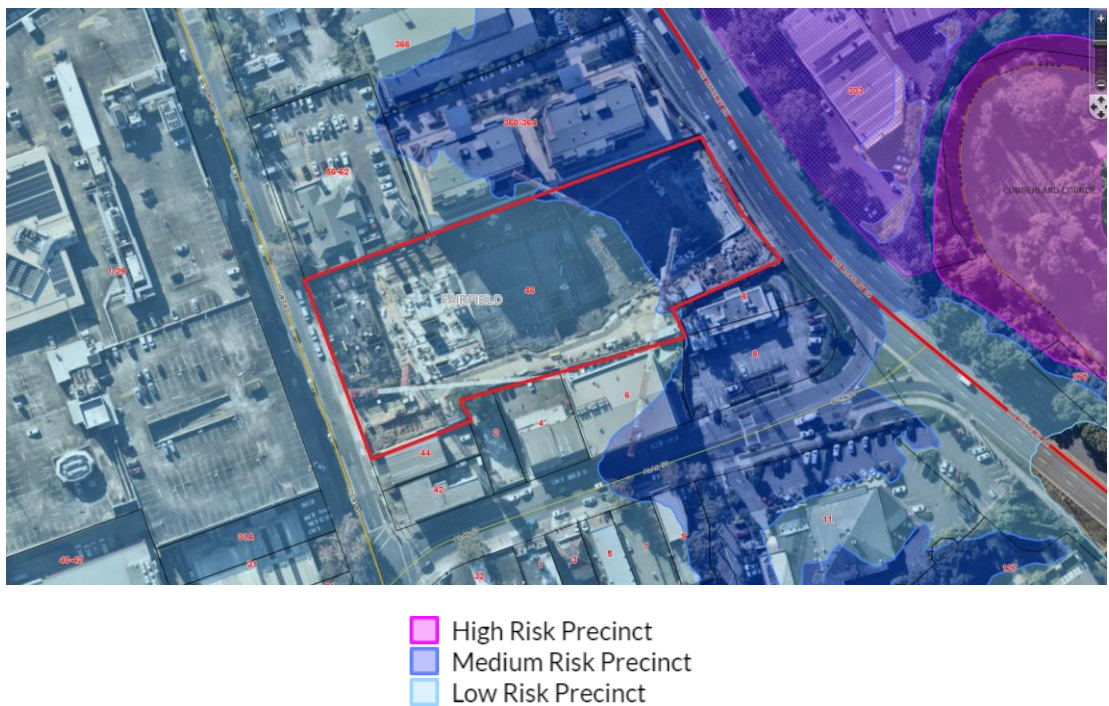


Figure 3: Mainstream flood mapping (Source: Respondent's mapping).

10. The site is affected by the Bankstown Airport Obstacle Limitation Surfaces (“**OLS**”) height limit of 150m AHD. An extract from the Respondent’s mapping showing the location of the site with reference to the OLS height limit area is provided below at Figure 4:

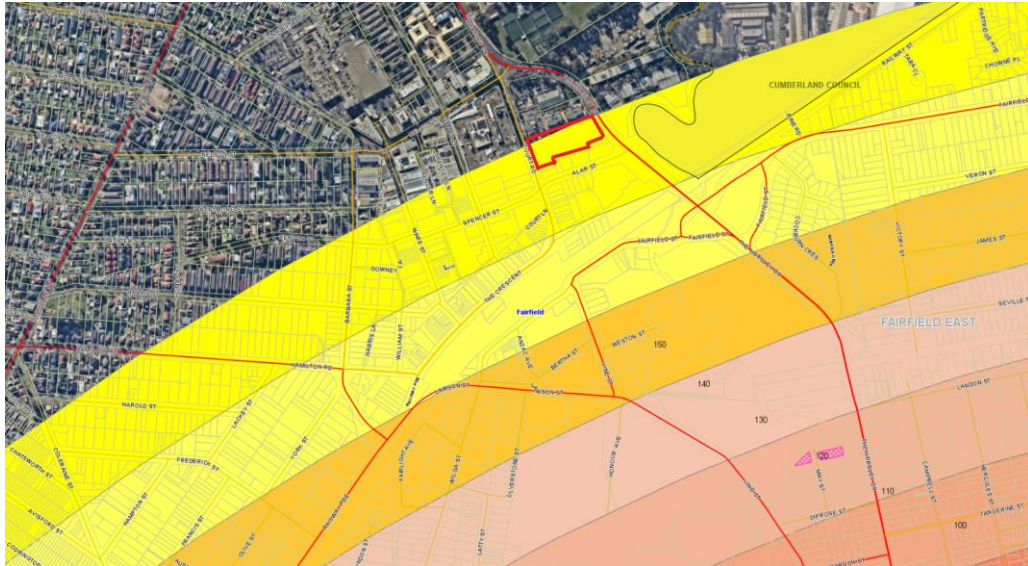


Figure 4: Bankstown Airport OLS 150 (Source: Respondent’s mapping).

THE LOCALITY

11. 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.
12. The Fairfield City Central Shopping Centre is located on the opposite (western) side of Court Road.
13. The site adjoins a fast-food restaurant and existing multi storey mixed used development to the north.
14. 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.
15. 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 2018 (“**UDS 2018**”), including the Neeta City 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.

16. The site was noted in the subsequent Draft Fairfield City Centre UDS 2020 (“**Draft UDS 2020**”) as being unlikely to redevelop.

THE STATUTORY CONTROLS

17. Environmental Planning and Assessment Act 1979 (“**EP&A Act**”).
18. Environmental Planning and Assessment Regulation 2021.
19. State Environmental Planning Policy (Planning Systems) 2021 (“**SEPP Planning Systems**”).
- (a) Chapter 2: State and regional development
 - (b) Schedule 6: Regionally significant development
 - (i) The proposed development is regionally significant development within the meaning of clause 5 “Private infrastructure and community facilities over \$5 million” in Schedule 6 to SEPP Planning Systems as it includes affordable housing development with an estimated development cost of more than \$5 million. The Sydney Western City Planning Panel (“**SWCPP**”) is the consent authority in respect of the development application in accordance with section 4.5 of the EP&A Act.
20. State Environmental Planning Policy (Transport and Infrastructure) 2021 (“**SEPP T&I**”).
- (a) Chapter 2: Infrastructure, Part 2.3: Development controls.
 - (i) Section 2.48: Determination of development applications— other development.
 - (ii) Section 2.119: Development with frontage to classified road.
 - (iii) Section 2.120: Impact of road noise or vibration on non-road development.
 - (iv) Section 2.122: Traffic-generating development.
 - (v) Schedule 3: Traffic-generating development to be referred to TfNSW – Chapter 2.
21. State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- (a) Chapter 2: Vegetation in Non-Rural Areas
22. State Environmental Planning Policy (Sustainable Buildings) 2022.
23. State Environmental Planning Policy (Resilience and Hazards).

- (a) Chapter 4: Remediation of Land
24. State Environmental Planning Policy (Housing) 2021 (“SEPP Housing”).
- (a) Chapter 2: Affordable housing.
 - (i) Part 1: Preliminary.
 - (ii) Part 2: Development for affordable housing.
 - (A) Division 1: In-fill affordable housing.
 - (1) The development application relies upon clause 16 of SEPP Housing to facilitate the height and FSR of the proposed development.
 - (b) Chapter 4: Design of residential apartment development.
 - (i) Apartment Design Guide (“**ADG**”).
 - (c) Schedule 9: Design principles for residential apartment development.
25. Fairfield Local Environmental Plan 2013 (“FLEP 2013”).
- (a) As noted above, the site is situated within Zone MU1 Mixed Use pursuant to the provisions of FLEP 2013.
 - (b) Development for the purposes of residential flat buildings and shop top housing is permissible with consent in Zone MU1 Mixed Use under FLEP 2013.
 - (c) 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.
 - (d) 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.
 - (e) The site is within “Fairfield – Area D” on the Town Centre Precinct Map. Clause 7.6 of FLEP 2013 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. The site meets the requirements.
 - (f) Clause 7.7 of FLEP 2013 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. The site meets the requirements.

- (g) Clause 6.12 of FLEP 2013 applies to the proposed development as the site is within Zone MU1 Mixed use. In accordance with clause 6.12(3), development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence. In considering whether the development exhibits design excellence, the matters in clause 6.12(4) are applicable.
 - (h) Additional provisions of FLEP 2013 that are relevant to the proposed development include:
 - (i) Clause 4.5: Calculation of floor space ratio and site area;
 - (ii) Clause 4.6: Exception to development standards;
 - (iii) Clause 5.21: Flood planning;
 - (iv) Clause 5.22: Special flood considerations;
 - (v) Clause 6.2: Earthworks;
 - (vi) Clause 6.9: Essential services; and
 - (vii) Clause 7.1: Objectives of Part.
26. Fairfield City Centre Development Control Plan 2013 (“**Fairfield City Centre DCP 2013**”).
27. Fairfield City Wide Development Control Plan 2013 (“**FDCP 2013**”).
- (a) Chapter 1: Introduction
 - (b) Chapter 2: Development Application Process
 - (c) Chapter 3: Environmental Management and Constraints
 - (d) Chapter 11: Flood Risk Management
 - (e) Chapter 12: Car Parking, Vehicle and Access Management
 - (f) Appendix F: Landscape Planning
28. Fairfield City Council Stormwater Management Policy, September 2017.

ACTIONS OF THE RESPONDENT

Development Consent No. 687.1/2014

29. 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”

Modification Application No. 687.2/2014

30. On 11 February 2022, Modification Application No. 687.2/2014 was lodged with the Respondent seeking to modify the development consent under section 4.55(1A) of the EP&A 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.
31. On 29 April 2022, the Applicant withdrew the modification application.

Modification Application No. 687.3/2014

32. On 18 August 2023, Modification Application No. 687.3/2014 was lodged with the Respondent seeking to modify the development consent under section 4.55(2) of the EP&A 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.
33. On 5 June 2024, the Respondent issued correspondence to the Applicant raising various concerns in relation to the modification application.
34. Additional information and amended plans were submitted by the Applicant to the Respondent on a number of occasions.
35. On 4 July 2024, the Respondent issued email correspondence to the Applicant identifying the ongoing issues of concern in relation to the modification application.
36. The Respondent has not yet determined the modification application.

Development Application No. 69.1/2024 (Subject Application)

37. On 22 March 2024, the development application was lodged with the Respondent.
38. The development application was notified by the Respondent from 19 April 2024 to 10 May 2024. A total of 2 submissions from 2 individuals were received in response to the development application.
39. The issues raised in the submissions are summarised as follows:
 - (a) The first submission objects to the development raising concerns including, but not limited to, concerns in relation to increased noise, obstruction to views, loss of sunlight, and blocking of sunset/sunrise and breeze.
 - (b) The second submission states that 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 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. The Respondent provided the objector with the details of the Private Certifier to contact in relation to construction concerns.
40. On 18 April 2024, the development application was referred to Transport for NSW (“TfNSW”) for comment in connection with sections 2.119 and 2.122 of SEPP T&I.
41. On 26 April 2024, TfNSW issued correspondence to the Respondent confirming that the requirements previously specified in relation to its concurrence under section 138 of the Roads Act 1993 remained applicable and unchanged.
42. On 5 June 2024, the Respondent issued correspondence to the Applicant raising various concerns in relation to the proposed development.
43. On 12 June 2024, the parties met to discuss the development application and the concerns raised in the Respondent’s letter of 5 June 2024.
44. On 5 July 2024, the Applicant commenced proceedings in Class 1 of the Land and Environment Court’s jurisdiction appealing against the Respondent’s deemed refusal of the development application.
45. The development application has not yet been determined by the SWCPP.

PART B: CONTENTIONS

PART B1: CONTENTIONS THAT THE APPLICATION BE REFUSED

Non-Compliance with Setbacks, Building Height and Envelope Controls of Fairfield City Centre DCP 2013

1. The development application should be refused because the proposed development does not comply with the setbacks, building height and envelope controls in the Fairfield City Centre DCP 2013.

Particulars

- (a) The subject site is identified by the site-specific controls as being in sub-precinct No. 3 and is subject to the controls in Section 4.5 "Periphery Precincts" of the Fairfield City Centre DCP 2013, which include height and building envelope controls such as in Fig. 4.7-3 (see extract below). Figure 4.7-3 identifies a maximum of 8 storey perimeter buildings and a maximum of 12 storeys for the central towers, and also identifies required separation distances between each of the four buildings.
- (b) The development consent was granted for 8 storey perimeter buildings and 12 storey towers consistent with the Fairfield City Centre DCP 2013 (with exception of some separation distances). However, the proposed alterations and additions do not comply with the controls as detailed below:
 - (i) The DCP requires setbacks for the primary street frontage to be a minimum 3m except where a retail/commercial frontage is required. In this case, a nil setback is permitted for the ground floor only for Court Road and The Horsley Drive frontages. The first 6 storeys of Building A to Court Road and Building D to The Horsley Drive as approved are setback 3m to the building line as per the DCP, but balconies encroach into the setback. The proposed additional 3 storeys to Buildings A and D increase these buildings from 8-stories to 11-stories but maintain the approved setback, which is considered inappropriate and out of scale with the pedestrian environment. As the DCP did not envisage an 11-storey perimeter building to the street frontages, the 3m front setback control of the DCP is not relevant and has not been demonstrated to be sufficient given the height and scale that is proposed.

- (ii) The DCP requires the side boundary setback to be zero if within 21m of a primary street or otherwise 6m. The DCP did not envisage 11-storey perimeter buildings and does not have a relevant side setback control for the proposed development. The proposal provides a zero setback to the side boundaries for the additional 3 storeys to the approved 8-storey building. This is considered inappropriate and out of scale with the pedestrian environment, and is also considered out of character with the locality and with adjoining properties which are unlikely to be able to build as high as this proposal due to the fragmented ownership pattern and smaller lot size. This will also result in unacceptable visual impacts arising from the height of blank walls visible from the public domain.
- (iii) The additional 3 storeys proposed to the approved 12-storey tower buildings known as Buildings B and C will increase the number of storeys to 15 storeys and does not comply with height controls of the DCP in Fig. 4.7-3, which envisaged a maximum 12 storeys.
- (iv) The proposal does not comply with envelope controls of the DCP in Figure 4.7-3, particularly with respect to building separations between Buildings A and B and between Buildings C and D, as follows:
 - (A) Building A at Level 7 being the 8th storey - Unit 14A separation distance to Unit 13A and the units adjoining Unit 13A is only 3.7m balcony to balcony instead of the required 18m in the ADG, and the higher requirement of 24m that is required by the site-specific DCP.
 - (B) Building A at Level 8 being the 9th storey - Unit 15A separation distance to Unit 16A and the units adjoining Unit 16A is 2.7m instead of the required 24m, which is required by both the ADG and the site-specific DCP.
 - (C) Building A at Level 9 being the 10th storey - Unit 28A separation distance to Unit 16A and the units adjoining Unit 16A is 3.4m instead of the required 24m, which is required by both the ADG and the site-specific DCP.
 - (D) Building A at Level 10 being the 11th storey – The COS separation distance to Building B is 18m instead of the required 24m, which is required by both the ADG and the site-specific DCP.



Figure 5: Fig 4.7-3 Court Road Precinct– Plan View and Permitted Building Height (Source: Fairfield City Centre DCP 2013).

Character and Context Analysis

2. The development application should be refused because the proposed development is not compatible with the desired future character of the Court Road Precinct.

Particulars

- (a) Section 20(3) of SEPP Housing provides as follows:

“(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—*

- (a) *the desirable elements of the character of the local area, or*

- (b) *for precincts undergoing transition—the desired future character of the precinct.”*

- (b) Section 147 of SEPP Housing provides as follows:

“147 Determination of development applications and modification applications for residential apartment development

- (1) *Development consent must not be granted to residential apartment development, and a development consent for residential apartment development must not be modified, unless the consent authority has considered the following—*

- (a) *the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9,*
- (b) *the Apartment Design Guide,*
- (c) *any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.”*

- (c) Design Quality Principles 1 and 2 in Schedule 9 to SEPP Housing provide as follows:

“1 Context and neighbourhood character

- (1) *Good design responds and contributes to its context, which is the key natural and built features of an area, their relationship and the character they create when combined and also includes social, economic, health and environmental conditions.*
- (2) *Responding to context involves identifying the desirable elements of an area’s existing or future character.*
- (3) *Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.*
- (4) *Consideration of local context is important for all sites, including sites in the following areas—*
 - (a) *established areas,*

- (b) *areas undergoing change,*
- (c) *areas identified for change.”*

“2 Built form and scale

- (1) *Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*
- (2) *Good design also achieves an appropriate built form for a site and the building’s purpose in terms of the following—*
 - (a) *building alignments and proportions,*
 - (b) *building type,*
 - (c) *building articulation,*
 - (d) *the manipulation of building elements.*
- (3) *Appropriate built form—*
 - (a) *defines the public domain, and*
 - (b) *contributes to the character of streetscapes and parks, including their views and vistas, and*
 - (c) *provides internal amenity and outlook.”*
- (d) Objective 3A-1 in the ADG provides as follows:

“Objective 3A-1

Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.”

- (e) The Fairfield City Centre (including the Court Road Precinct) is undergoing significant change and is likely to support a transformative increase in housing density. As the first development to adopt the height and FSR bonuses permitted by Chapter 2 of SEPP ARH within the City Centre, it is important that the proposed development provides an appropriate town centre response and design outcome within its project constraints.

- (f) The development application was not accompanied by sufficient detail or analysis to demonstrate that the proposed development is compatible with the desired future character of the Court Road Precinct.
- (g) The following matters would be expected to be addressed in a comprehensive urban design analysis to support the proposed development:
 - (i) How the new massing will fit within its context having regard to current and potential future neighbouring developments.
 - (ii) How the proposed development is consistent with the Fairfield City Centre Vision.
 - (iii) How the development may impact and be impacted by solar access, wind, visual impact and privacy considerations if neighbouring properties redevelop as envisaged by the UDS 2018 and Draft UDS 2020. In particular, the development application needs to address how the 11-storey perimeter building addressing Court Road can accommodate the additional height without impacting upon the streetscape and separation between a potential future development at the Neeta City (Fairfield City Central) Key Site.
 - (iv) A Visual Impact Analysis addressing the increased height on the subject site.
 - (v) Alternate massing and modelling forms having regard to precinct analysis and justification as to why the proposed development is the most suitable outcome for the site.
 - (vi) How the proposed development is consistent with the desired outcomes of the Fairfield City Centre DCP 2013, the UDS 2018 and Draft UDS 2020 and the ADG and, where non-compliances or inconsistencies arise, detailed justification as to why the proposed development is nonetheless a suitable outcome.
 - (vii) Aesthetics including scale, form and detail especially when considering street facades and key vistas, including the use of precedent projects/images to explain the relevance of the project and its approach.
 - (viii) Satisfactory responses to the various urban design issues raised in the contentions including façade and block modelling.

Amenity

3. The development application should be refused because it has not been demonstrated that the proposed development will provide adequate amenity to future residents.

Particulars

- (a) Section 147 of SEPP Housing was extracted in particular (b) of Contention 1 above.
- (b) Design Quality Principle 6 in Schedule 9 to SEPP Housing provides as follows:

“6 *Amenity*

- (1) *Good design positively influences internal and external amenity for residents and neighbours.*
- (2) *Good amenity contributes to positive living environments and resident well-being.*
- (3) *Good amenity combines the following—*
- (a) appropriate room dimensions and shapes,*
 - (b) access to sunlight,*
 - (c) natural ventilation,*
 - (d) outlook,*
 - (e) visual and acoustic privacy,*
 - (f) storage,*
 - (g) indoor and outdoor space,*
 - (h) efficient layouts and service areas,*
 - (i) ease of access for all age groups and degrees of mobility.”*

(c) Having regard to the various matters raised below, it has not been demonstrated that the development application is consistent with key provisions of the ADG relating to amenity and Design Quality Principle 6 in Schedule 9 to SEPP Housing. The proposed development will not protect and enhance the amenity of residents of the approved or additional proposed apartments.

Privacy

- (d) Whilst the plans do not contain sufficient dimensions to undertake a full analysis, the proposed development appears to introduce additional non-compliances with the separation distances specified in the design criteria for Objective 3F-1 of the ADG that have not been satisfactorily justified, including:
- (i) The separation distance of 18m recommended by Objective 3F-1 is not provided between habitable rooms of Building A to Building B at Level 7 being the 8th Storey. The plans do not provide dimensions, but the separation distance appears to be as low as 12.7m instead of 18m as required by the ADG. The separation also does not comply with the greater requirement of 24m specified in site-specific controls of Fairfield City Centre DCP 2013 as indicated in Figure 4.7-3 above.
 - (ii) The separation distance of 24m recommended by Objective 3F-1 is not provided between habitable rooms of Building A to Building B at Level 8 through to Level 10, being the 9th Storey through to the 11th storey. The plans do not provide dimensions, but the separation distance appears to be 13.40m instead of 24m as required by the ADG. The separation also does not comply with the greater requirement of 24m specified in site-specific controls of Fairfield City Centre DCP 2013 as indicated in Figure 4.7-3 above.
 - (iii) The separation distance of 24m recommended by Objective 3F-1 is not provided between habitable rooms of Building C to Building D at Level 8 through to Level 14, being the 9th Storey through to the 15th storey. The plans do not provide dimensions but the separation distance ranges and appears to be as low as 12.5m instead of 24m as required by the ADG. The separation also does not comply with the lesser requirement of 18m specified in site specific controls of Fairfield City Centre DCP 2013 as indicated in Figure 4.7-3 above.
 - (iv) Separation between proposed units within each building does not meet the required separation distances of the ADG and the following issues have been identified:
 - (A) Building A at Level 7 being the 8th storey - Unit 14A separation distance to Unit 13A and the units adjoining Unit 13A is only 3.7m

balcony to balcony instead of the required 18m in the ADG, and the higher requirement of 24m that is required by the site-specific DCP is not met.

- (B) Building A at Level 8 being the 9th storey - Unit 15A separation distance to Unit 16A and the units adjoining Unit 16A is 2.7m instead of the required 24m, which is required by both the ADG and the site-specific DCP.
- (C) Building A at Level 9 being the 10th storey - Unit 28A separation distance to Unit 16A and the units adjoining Unit 16A is 3.4m instead of the required 24m, which is required by both the ADG and the site-specific DCP.
- (D) Building A at Level 10 being the 11th storey – The COS separation distance to Building B is 18m instead of the required 24m, which is required by both the ADG and the site-specific DCP.
- (v) Building separations and setbacks to the north and south adjoining properties have not been identified or dimensioned on the plans.
- (e) The plans show planters adjacent to windows to units on Level 1 of Buildings B and C as being removed, which has a negative impact on the privacy and amenity of those units.
- (f) The upper levels of Building A have adjoining balconies with resulting negative impacts on privacy and amenity, as well as acoustic performance.
- (g) The upper levels of Building D appear to have large balconies facing each other. The ability to provide privacy through screens is to be demonstrated, as is solar performance to living and POS areas.

Room Sizes and Layout

- (h) Section 19(2)(g) of SEPP Housing sets out the following non-discretionary development standard:

“(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—

...

(g) *the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,*

...”

- (i) Part 4D of the ADG specifies requirements in relation to the minimum areas and dimensions of apartments.
- (j) It has not been demonstrated that the proposed development complies with the minimum requirements of Part 4D of the ADG. The following is a non-exhaustive list of non-compliances identified:
 - (i) A number of 1-bedroom apartments do not provide a minimum area of 50m², including but not limited to Units 32A and 33A;
 - (ii) A number of 2-bedroom apartments do not provide a minimum area of 70m², including but not limited to Units 3A, 31A and 34A,
 - (iii) A number of 2-bedroom apartments with 2 bathrooms do not provide a minimum area of 75m², including but not limited to Units 4A, 5A, 7A, 8A, 9A, 10A, 11A, 12A, 13A, 16A, 17A, 18A, 19A, 20A, 21A, 22A, 24A and 25A;
 - (iv) A number of units have bedroom dimensions less than 3m, ranging from 2.4m, 2.5m, 2.6m, 2.7m, 2.8m and 2.9m, including but not limited to Units 2A, 6A, 8A, 26A, 14A, 20A, 21A, 22A, 23A, 24A, 25A and 99A;
 - (v) A number of cross-through or cross-over units have a width of only 3.9m instead of 4m, including but not limited to Units 1A, Unit 2A, Unit 14A, Unit 15A, Unit 96A and Unit 97A.
 - (vi) Type B adaptable units as illustrated on Drawing No. MA123 of the architectural plans have living areas with a width of 3470mm and not 4000mm.
 - (vii) The “Type B” adaptable unit within Building D has a distance from the rear of the kitchen to the glass that exceeds 8m, contrary to the design criteria for Objective 4E-2 of the ADG relating to open plan layouts.
- (k) No written request has been submitted under clause 4.6 of FLEP 2013 in relation to the contravention of the non-discretionary development standard in section 19(2)(g) of SEPP Housing.

Communal Open Space (“COS”)

- (I) The design criteria for Objective 3D-1 in the ADG specifies that COS has a minimum area equal to 25% of the site. The plans appear to include some amendments to the identified COS areas. The areas of COS identified on Drawing No. MA029 are unsatisfactory and inconsistent with ADG guidance as:
- (i) Flood affected areas and isolated areas of landscape surrounded by ramps/driveways appear to be included.
 - (ii) A number of POS areas at Level 1 appear to be included as COS.
 - (iii) As raised below, areas of the COS at Level 1 will have adverse impact upon the amenity of Level 1 units having regard to the removal of planter boxes.
 - (iv) There are inadequate on-site amenities and facilities to accommodate all ages and residents of the 381 units. For example, no community rooms have been incorporated and a poor range of facilities is otherwise available, with no children's facilities or indoor spaces adjacent to COS that can be used as a shared space for larger gatherings.
 - (v) The COS on Level 10 is not adequately dimensioned and will not facilitate a range of activities to accommodate all age groups.
 - (vi) The COS would not achieve sufficient solar access in line with the design criteria for Objective 3D-1 in the ADG. Whilst the approved development did not meet this criteria, given the development application seeks to intensify the number of occupants the Applicant should explore providing additional consolidated areas COS of sufficient size and with the ability to achieve sufficient sunlight, such as on the rooftops, whilst maintaining areas of rooftop landscaping deleted by the application.
 - (vii) There is no clear rationale for the loss of COS at Level 1 to create a void above a new landscaping area proposed in the car park level below, which is unable to receive sunlight due to its location. The Applicant has suggested this amendment is in response to a condition of the development consent; however, the condition has been misinterpreted by the Applicant and the loss of approved Level 1 COS is inappropriate.

Private Open Space (“POS”)

- (m) Many of the proposed balconies in the additional units do not meet the requirements of Part 4E of the ADG. The following concerns are raised:
- (i) The plans contain no dimensions to allow the annotations to be scrutinised. However, the total areas specified on the plans in general appear to be overstated and to include areas of less than the minimum depth of 2m.
 - (ii) A number of apartments are expressly identified as having less than the required balcony areas under the design criteria for Objective 4E-1.
 - (iii) Many split-level apartments are provided with two balconies of undersized proportions, which is unacceptable given the areas specified in the design criteria for Objective 4E-1 are intended to provide the minimum useable external area off a living room to meet the needs of the occupants.
 - (iv) Many of the balconies at the upper levels of Building A are convoluted shapes which are considered unlikely to meet the minimum widths or sizes specified in the design criteria for Objective 4E-1.
 - (v) Balconies at the upper levels of Building B and C contain dogleg arrangements and it is not clear whether the Applicant has sought to include these under width areas within the total area.
 - (vi) The plans do not indicate whether or not clothes lines are provided within the units or on the balconies.
 - (vii) The plans indicate air conditioning condensers are to be located within the POS. However, the impact on the usable areas for the POS is unclear and clarification is required as to actual usable POS area.

Solar Access

- (n) It has not been demonstrated that the existing or proposed additional units will achieve solar access in line with the design criteria for Objective 4A-1 in the ADG, nor that the proposed development will not have adverse overshadowing impacts on adjoining properties.
- (o) The development application was not accompanied by detailed sun view or daylight access plans, and the submitted shadow diagrams are inaccurate as they

do not illustrate shadows cast by the adjoining development to the north. The north point also varies on the plans and needs to be clarified.

- (p) The impacts of additional overshadowing on the ability of other affected properties to be redeveloped has not been demonstrated.

Storage

- (q) The proposed development does not comply with the minimum storage requirements in Part 4G of the ADG. The plans contain inadequate detail to verify the information provided in the table detailing storage provisions. The storage areas shown in the basement are not sufficient for the number of units proposed, and the dimensions of those areas (including width, depth, height and volume) are not indicated. The new residential storage area at ground level is inconveniently located.

Ceiling Heights

- (r) It has not been demonstrated that the proposed development can provide the minimum 3.1m ceiling heights required to accommodate services. Heights of 3.15m to 3.2m are recommended.

Common Circulation

- (s) The increase in unit numbers requires the adequacy of the proposed lift services to be reviewed, particularly in relation to the number of units and lift services at Level 8 of Building A.
- (t) Level 8 of Building A also incorporates an uninterrupted lobby of 55m in length without access to natural light and ventilation, which is an unacceptable outcome and inconsistent with the design guidance for Objective 4F-1 in the ADG.
- (u) The proposed additional storeys on Building C include a fully enclosed corridor, which is unacceptable and inconsistent with the design guidance for Objective 4F-1 in the ADG.
- (v) The Applicant should provide a wayfinding strategy for the development given the increased density and the number of pedestrian and vehicular entries and lift lobbies, which should in particular clarify how the lift lobbies for the Court Road building are intended to operate and address the additional escape stairs and level changes now incorporated in the plans.

Car Parking

- (w) There is no separation or security provided between the proposed retail and residential parking to avoid retail spaces being used by residents and vice versa.
- (x) The intended usage of the car share spaces is unclear as they are located adjacent to the retail spaces instead of the residential spaces. Further details are required in relation to the intended usage and management of these spaces.

Floor Space Ratio

4. The development application must be refused because it has not been demonstrated that the proposed development does not exceed the maximum FSR under section 16(1) of the Housing SEPP.

Particulars

- (a) Section 16 of the Housing SEPP provides as follows:

“16 Affordable housing requirements for additional floor space ratio

- (1) *The maximum floor space ratio for development that includes residential 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).*
- (2) *The minimum affordable housing component, which must be at least 10%, is calculated as follows—*

$$\text{affordable housing component} = \frac{\text{additional floor space ratio}}{(\text{as a percentage})} \div 2$$

...”

- (b) The maximum permissible FSR under FLEP 2013 is 3.5:1.
- (c) The development application seeks to rely upon the maximum additional FSR of 30% available under section 16(1) of SEPP Housing (being 4.55:1) and in turn a building height bonus of 30% under section 16(3) (49.4m), based on 15.5% (or 5,349m²) of the development being provided as affordable housing. However, according to the submitted plans the proposed FSR is only 3.73:1, equating to a GFA of 34,551m².

- (d) The following discrepancies have been identified with respect to the Applicant's calculations of the FSR, GFA and affordable housing component:
- (i) No survey plan has been submitted to verify the current site area.
 - (ii) The approved development had a FSR of 3.1:1, which would equate to a GFA of 28,622.3m². However, the Applicant states that the approved FSR was 3:1, equating to a GFA of 27,767m².
 - (iii) The Applicant has not calculated the GFA of the development in accordance with the definition of that term in FLEP 2013. The following areas required to be included in the GFA have not been included:
 - (A) Internal staircases within apartments are not included.
 - (B) Horizontal corridors adjacent to fire stairs and corridors between buildings are not included despite the spaces being fully enclosed on the majority of their sides and also roofed.
 - (C) Parking that exceeds the requirements of Fairfield City Centre DCP 2013 and SEPP Housing has not been included as GFA.
 - (iv) The GFA diagrams are unclear as to the amount of retail floor space that is proposed or retained.
- (e) The GFA of the proposed development appears to have been underestimated having regard to the above, and the percentage of GFA proposed to be used for the affordable housing component may therefore be less than 15.5%. This will affect the bonus FSR and in turn height that is available to facilitate the development under sections 16(1) and (3) of SEPP Housing.
- (f) It therefore has not been demonstrated that the proposed development complies with the maximum FSR under section 16(1) of SEPP Housing.

Building Height

5. The development application must be refused because it has not been demonstrated that the proposed development does not exceed the maximum height under section 16(3) of the Housing SEPP.

Particulars

- (a) Section 16(3) of SEPP Housing provides as follows:

“(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).”

- (b) The maximum permissible building height under FLEP 2013 is 38m but the proposed development relies upon the maximum additional building height of 30% on the basis of the development providing a 15.5% affordable housing component and therefore being entitled to the maximum additional FSR of 30% under section 16(1) of SEPP Housing.
- (c) Concerns are raised in Contention 4 above about the additional FSR that is available under section 16(1) of SEPP Housing having regard to the calculation of the affordable housing component of the development. If the development is not entitled to the maximum additional FSR of 30%, it follows that the additional building height able to be accessed will be reduced.
- (d) In any case, the architectural plans contain insufficient details to demonstrate the maximum height of the buildings and whether or not they would be accommodated within the additional building height applicable under section 16(3) of SEPP Housing.
- (e) It is unclear what the Applicant has determined to be the existing ground level for the purposes of determining the height of the buildings having regard to the excavation carried out on the property.
- (f) It therefore has not been demonstrated that the proposed development complies with the maximum building height under section 16(3) of SEPP Housing.

Public Domain Interface

- 6. The development application should be refused because the proposed development has an unacceptable interface with the public domain.

Particulars

- (a) The scale of the proposed development as presented to Court Road and The Horsley Drive in addition to the simple repetition of façade elements creates an excessively dominant and inappropriate outcome on the street frontages.

Amendments should be undertaken to provide a distinct base, middle and top consistent with the approved development.

- (b) The provision of three-four additional storeys of solid walls on the north and south elevations of Buildings A and D and on the west elevation of Building B and the east elevation of Building C is also considered an inappropriate interface with the public domain. Additionally, the blank solid walls associated with Buildings A and D being right on the boundary are proposed at a height that is highly unlikely to be matched by the adjoining properties given their size and dimensions and fragmented ownership patterns.
- (c) In addition, significant changes are otherwise proposed to the facades when compared to the approved development application which not been clearly identified on the plans or explained. This includes (but is not limited to) the apparent deletion of large groups of façade elements, such as screens to Building A, inclusion of inappropriate blade walls, modifications to the concept of the cantilevered design of the eastern elevation of Building D and lack of clarity as to the expression of a base/middle/top as expressed in the approved development. These changes have eroded the clear and simple architectural language and concept approved under the development consent.
- (d) The design of all boundary fence and walls and their interface with adjoining properties is also unclear.

Landscaping

- 7. The development application should be refused because the proposed development incorporates inadequate landscaped and deep soil areas to accommodate the additional units.

Particulars

- (a) Section 19(2)(b) of SEPP Housing provides the following non-discretionary development standard:

“(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—

...

- (b) a minimum landscaped area that is the lesser of—*

- (i) *35m² per dwelling, or*
 - (ii) *30% of the site area,*
- (c) *a deep soil zone on at least 15% of the site area, where—*
 - (i) *each deep soil zone has minimum dimensions of 3m, and*
 - (ii) *if practicable, at least 65% of the deep soil zone is located at the rear of the site,”*
- (b) The proposed development provides a total of 1,574m² landscaped area according to the submitted architectural plans. The non-discretionary development standard in section 19(2)(b) of SEPP Housing requires a minimum of 30% of the site area, which equates to 2,770.20m² of landscaped area.
- (c) The approved development was assessed to have a total of 13% of the site area as deep soil. The submitted plans identify that the development now proposes 1,023m² (or 11% of the site area) as deep soil, large parts of which consist of areas of less than the 6m width contemplated by the design criteria for Objective 3E-1 in the ADG. The development application has not explored opportunities to provide the minimum 15% required, not to retain the approved percentage of deep soil zones. It would appear the site is capable of providing 15% given the ground level of the site is not fully occupied by retail development.
- (d) The Respondent calculates that the development application provides for a total of 419m² as deep soil zones when flood affected areas are excluded, which is substantially lower than the 15% required (equating to 1,385m²) at the 3m width specified by section 19(2)(c) of SEPP Housing. Applying the ADG criteria of 7% and 6m width, it appears that only approximately 200m² of effective deep soil is provided, which is again substantially less than the 646m² contemplated.
- (e) No written request has been submitted under clause 4.6 of FLEP 2013 in relation to the contravention of the non-discretionary development standard in sections 19(2)(b) and (c) of SEPP Housing.
- (f) The submitted landscape design otherwise raises the following concerns:
 - (i) The area calculations rely upon a large landscape area previously on Level 1 (and accessible as COS) which has been dropped to ground level and is now isolated by driveway and ramps, substantially in shade, provides little

benefit to the residents and has questionable capacity to fulfil the desired outcomes, such as high quality tree canopy, deep soil, and COS.

- (ii) Flood affected areas are included in the landscaped area but are unlikely to include any tree canopy and therefore serve as proper landscaped area, deep soil, or COS.
- (iii) Landscape planters at Level 1 have been relocated to podium edges, resulting in a significant loss of privacy to nearby apartments.
- (iv) Insufficient details and analysis has been provided as to the type of activities to be included in the landscaped areas to suit the higher density to be facilitated by the proposed development.
- (v) The amount of solar access to be achieved to the landscaped areas needs to be verified having regard to the concerns raised above as to a lack of details relating to solar access and overshadowing.

Design Excellence

8. The development application must be refused because the consent authority would not be satisfied that the proposed development exhibits design excellence as required by clause 6.12(3) of FLEP 2013.

Particulars

- (a) Clause 6.12 of FLEP 2013 provides as follows:

“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.*
- (2) *This clause applies to development involving the construction of a new building or external alterations to an existing building on the following land*
 - (a) *land in Zone R4 High Density Residential, Zone E2 Commercial Centre or Zone MU1 Mixed Use,*
 - (b) *land identified as “Area G” on the Land Zoning Map.*

- (3) *Development consent must not be granted for development to which this clause applies unless the consent authority considers that the development exhibits design excellence.*
- (4) *In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—*
 - (a) *whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
 - (b) *whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
 - (c) *whether the development detrimentally impacts on view corridors,*
 - (d) *how the development addresses the following matters—*
 - (i) *the suitability of the land for development,*
 - (ii) *existing and proposed uses and use mix,*
 - (iii) *heritage issues and streetscape constraints,*
 - (iv) *the relationship of the development with other development (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks , amenity and urban form,*
 - (v) *bulk, massing and modulation of buildings,*
 - (vi) *street frontage heights,*
 - (vii) *environmental impacts such as sustainable design, overshadowing, wind and reflectivity,*
 - (viii) *the achievement of the principles of ecologically sustainable development,*
 - (ix) *pedestrian, cycle, vehicular and service access, circulation and requirements,*
 - (x) *the impact on, and any proposed improvements to, the public domain,*
 - (xi) *the interface with the public domain,*

(xii) *the quality and integration of landscape design.”*

- (b) Having regard to the contentions raised above and the considerations in clause 6.12(4) of FLEP 2013, the consent authority would not consider that the proposed development exhibits design excellence as required by clause 6.12(3).

Waste Management

9. The development application should be refused because the proposed waste management arrangements are inappropriate and does not meet the Respondent's current requirements.

Particulars

- (a) The Respondent's bin allocations/calculations are based upon the following:

Type of Premises		Garbage Generation		Recycling Generation		Organics Generation	
MUDs		120L/unit/week		80L/unit/week		40L/unit/week	
No. of Units	381	$(87 \times 120L) / 660L = 69.27$		$(381 \times 80L) / 240L = 127$		$(381 \times 40L) / 240L = 63.5$	
Number of Bins		70x 660L bins		127x 240L bins		64x 240L bins	

- (b) No Waste Management Plan (“WMP”) has been submitted, which prevents a detailed assessment from being conducted. A WMP and amended architectural plans are to be submitted addressing the issues identified in the following particulars.
- (c) A total of 70 x 660L garbage bins, 17 x 240L recycling bins and 64 x 240L organics bins are required based on the increased number of units. It must be demonstrated that the development can accommodate this number of bins.
- (d) Swept path models are to be provided illustrating how the Respondent's standard heavy rigid waste collection vehicle will enter, service and exit the site. A 0.5m unobstructed clearance is required from all obstructions for the vehicle's ingress and egress manoeuvres. The model is to provide on-street parking on both sides of the road adjacent to the development to demonstrate unobstructed access during a “business as usual” configuration. The submitted swept path diagrams show a HRV conflicting with the pedestrian thoroughfare through the site.
- (e) Detailed elevations need to be provided showing the on-site manoeuvres of the Respondent's standard heavy rigid waste collection vehicle, as well as a detailed

cross section of the basement ramp outlining the maximum gradients/rate of change.

- (f) A designated waste cupboard/room has not been provided on each residential level within proximity to the central elevator core. The infrastructure is to be designed to accommodate and permit unobstructed resident access to the chute inlet (garbage), recycling bin (240L) and organics bin (240L) and must incorporate the following:
 - (i) Accessed via 180-degree, outwards opening, self-closing, sealed doors;
 - (ii) Mechanically ventilated;
 - (iii) Water & tile to permit scheduled cleaning; and
 - (iv) Hot and cold tap facilities.
- (g) The architectural plans are to be updated to demonstrate accessible resident access is provided to all waste streams within each of the respective towers.
- (h) Waste chute rooms are to be provided within ground floor to accommodate the bin infrastructure (660L) proposed to service the garbage chute system. The chute room shall incorporate the following infrastructure:
 - (i) Circular carousel system large enough to accommodate a minimum of 4x 660L bins;
 - (ii) Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm;
 - (iii) Bunded bin wash bay to permit scheduled washing of bin infrastructure (660L & 240L); and
 - (iv) Room must be enclosed, walled and not permit through access to other on-site infrastructure.
- (i) The bulky goods room is to be relocated within close proximity to the proposed loading bay. Additionally, the architectural plans are to be updated to incorporate the following features for the bulky goods room:
 - (i) Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm; and

- (ii) Room must be enclosed, walled and not permit through access to other on-site infrastructure.
- (j) The waste collection room is to be relocated within close proximity to the proposed loading bay. Additionally, the architectural plans are to be updated to incorporate the following features for the waste collection room:
 - (i) Room must be large enough to accommodate the entire bin allocation (as set out above) with 200mm clearance between each bin for manoeuvrability;
 - (ii) Accessed via dual, 180-degree, outwards opening, self-closing sealed doors with a minimum opening of 1800mm; and
 - (iii) Room enclosed, walled and not permit through access to other on-site infrastructure.
- (k) All on-site waste infrastructure (chute room, waste storage, waste collection and bulky waste) are to be amended to accommodate the following infrastructure:
 - (i) Floor grade to central drainage point (connected to sewer);
 - (ii) Floors waterproofed and extended 1200mm high on walls;
 - (iii) Hot and cold water taps;
 - (iv) Mechanical ventilation;
 - (v) Sensor lighting; and
 - (vi) Unobstructed minimum height clearance of 2700mm.

Modification Application No. 687.3/2024

10. The development application should be refused because the application relies on the positive determination of Modification Application No. 687.3/2024 which has been lodged but not yet been determined by the Respondent.

Particulars

- (a) A separate Modification Application No. 687.3/2024 has been lodged with Respondent seeking to modify elements of the development approved under the development consent.
- (b) The subject development application is premised upon the favourable determination of the modification application.

- (c) It would be premature (and not orderly development) for the Court to grant development consent to the subject development application in circumstances where the modification application has not yet been approved and the Applicant has not identified how it intends to proceed, including the mechanism via which it intends to address the discrepancies with the two applications.

Public Interest

- 11. The development application should be refused because approval of the proposed development is not in the public interest having regard to the contentions raised above and the objections raised in the submissions received by the Respondent (as summarised in Part A above).

PART B2: CONTENTIONS THAT THERE IS INSUFFICIENT INFORMATION

Insufficient Information

- 12. The development application should be refused because inadequate information has been submitted to enable a proper assessment of the development application.

Particulars

- (a) The development application was not accompanied by a survey plan prepared by a registered land surveyor identifying the total site area, existing levels and any existing or proposed easements/restrictions affecting or nearby the site. It is unclear whether referral to Endeavour Energy is required under section 2.48 of SEPP T&I based on proximity to electrical infrastructure.
- (b) The development application was not accompanied by a detailed landscape plan prepared by a landscape architect.
- (c) It is unclear why the submitted BASIX Certificate No. 1741028M (dated 22 March 2024) assesses 133 dwellings given 91 additional dwellings are proposed for the site. A revised BASIX Certificate which is reflective of the current proposal is required.
- (d) The letter of owner's consent from company director, Mr Eddy Haddad, is not published on the company letterhead of the Applicant.
- (e) The Roof Plan indicates new hatched areas for mechanical plant and solar panels not previously approved under DA 687.1/2014. Details of the type of plant and dimensions have not been provided, nor any elevations/sections/information to

demonstrate this area would not result in adverse impacts, including visual impacts and acoustic impacts on the locality.

- (f) An acoustic report was not submitted to demonstrate that the proposed development will not result in unacceptable acoustic impacts to the surrounding locality or be subject to such unacceptable impacts. In this regard, the application has not addressed the potentially adverse acoustic impacts to and from the development arising from the classified road, from the revised service and truck loading area, from surrounding commercial properties, and from new mechanical plant proposed on the roof. The consent authority cannot be satisfied as to the matters in sections 2.119(2)(c) and 2.120(3) of SEPP T&I in the absence of an acoustic report.
- (g) An air quality report was not submitted to demonstrate that the proposed development will not result in unacceptable impacts from vehicle emissions from The Horsley Drive, which is a classified road, and any required measures to ameliorate potential vehicle emissions. The consent authority cannot be satisfied as to the matter in section 2.119(2)(c) of SEPP T&I in the absence of an air quality report.
- (h) The architectural plans do not enable a full assessment of the proposed development (including in terms of the ADG and compliance with other built form controls) as they contain insufficient information in relation to the following matters (in addition to any other inadequacies identified in the contentions above):
 - (i) Multiple versions of architectural plans have been submitted with the development application. The Applicant should identify one version of plans that are relied upon or otherwise clarify the distinctions between/reasons for multiple sets of plans. It is noted that only one version has been filed with the Class 1 Application.
 - (ii) Streetscape elevations illustrating the proposed development in the context of adjoining properties were not submitted.
 - (iii) The north point varies on the drawings. The plans should identify magnetic and solar north and the accuracy of solar diagrams to solar north should be verified.

- (iv) The architectural plans submitted lack sufficient details and dimensions, including in terms of the following:
- (A) No dimensions are provided in relation to:
 - (1) Setbacks and separation distances between walls/windows/balconies/boundaries;
 - (2) Building and unit depths;
 - (3) Dimensions and areas of bedrooms;
 - (4) Widths of living rooms and dining rooms;
 - (5) Widths of cross-over and cross-through units;
 - (6) Wardrobe lengths, depths and heights;
 - (7) Balcony depths and balcony areas excluding depths under 1m and storage such as air conditioning units; and
 - (8) Dimensions of internal and external storage cupboards, including depth, width, height and volume etc.
 - (B) The elevation and section plans do not identify the maximum height of each buildings in metres to different points, e.g. to the top of the parapet, top of the lift, top of screens etc. The maximum height of the development has therefore not been established.
 - (C) Floor to ceiling heights are not dimensioned in metres and finished levels are not annotated.
 - (D) Parking spaces have not been assigned or numbered.
 - (E) Plans showing calculations for landscaped areas, COS and deep soil zone do not contain any dimensions and include areas that are less than the minimum dimensions required by the ADG. Calculations should only include areas meeting the minimum dimension.
 - (F) The floor layout plan for Unit 3 in Building D is missing.
 - (G) The location of wall services including kitchen exhaust, hot water units and the like.

- (i) The Applicant has not provided the registration details of City West Housing evidencing that they are a Registered Community Housing Provider who will manage the affordable housing component of the development.

SIGNATURE



Signature

Capacity

Date of signature

Manager Development Planning

16 / 08 / 2024