

12 February 2025

Att: Dennis Loether  
Partner  
Bartier Perry Pty Limited

Dear Dennis

## **SUPPLEMENTARY PLANNING STATEMENT – 46 COURT ROAD, FAIRFIELD**

Thank you for your request for a supplementary planning statement to address landscaped area, deep soil and solar access for the amending DA at 46 Court Road, Fairfield. This supplementary planning statement addresses the aforementioned matters.

### **The proposal**

The proposal is an amending DA to make alterations and additions to an approved and currently under construction mixed use development at 46 Court Road, Fairfield under DA687.1/14 (as modified).

This amending development application seeks to introduce a minimum of 15% affordable in-fill housing under the provisions of the Housing SEPP 2021. Accordingly, the amending DA benefits from a 30% height and FSR bonus. In total the cumulative number of units provided is 66, distributed as follows:

- 63 as affordable units, and
- 03 units for direct market sale.

This increases the total yield of the proposal from 290 units to 356 units, with an appropriate mix of studio, 1 bedroom, 2 and 3 and 4 bedroom units over Buildings A, B, C and D.

The development has substantially commenced with the envelope at ground level delivered in accordance with the Original Approved DA687.1/14 (as modified).

The proposal complies with the above height and FSR which is achieved through the provision of 15% of the GFA as affordable housing.

### **The site**

The subject site is currently undergoing construction for an approved (DA687.1/14) mixed use development consisting of four buildings over basement parking. As the site is a currently under construction, there is no significant vegetation within its

boundaries, with landscaping to occur in accordance with the approved DA687.1/14 (as modified).

The subject site is a significant land parcel located within the Court Road Precinct of the Fairfield Town Centre, 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. The development site is within 400m of the Fairfield Train Station and a bus interchange with services to Blacktown, Cabramatta, Bossley Park, Sydney, Liverpool, Bonnyrigg, Smithfield and Parramatta. Likewise a bus stop with regular services to Parramatta, Liverpool, Blacktown, Prairiewood and Smithfield is located at the site's frontage to Court Road.

The development site has a frontage to Court Road to the west and a large shopping centre from the north. The site also has a frontage to The Horsley Drive to the east, which is a north-south road network connecting Fairfield to two key arterial road network including the Cumberland Highway to the north and The Hume Highway to the south. The northern boundary is to a fast food outlet and mixed use development, with the southern boundary to commercial developments and a fast food restaurant with frontage Alan Street.



Figure 1 The Subject site in its context (Spatial Collaboration Portal)

## The Housing SEPP 2021

The Housing SEPP 2021 includes a series of non-discretionary standards at Cl.19 which if complied with prevent a consent authority from refusing the Development Application on the basis of a more onerous standard:

### **19 Non-discretionary development standards—the Act, s 4.15**

- 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.*

**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.*

- 2) *The following are non-discretionary development standards in relation to the residential development to which this division applies—*
  - a) *a minimum site area of 450m<sup>2</sup>,*
  - b) *a minimum landscaped area that is the lesser of—*
    - i) *35m<sup>2</sup> 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,*
  - 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,*
  - e) *the following number of parking spaces for dwellings used for affordable housing—*
    - i) *for each dwelling containing 1 bedroom—at least 0.4 parking spaces,*
    - ii) *for each dwelling containing 2 bedrooms—at least 0.5 parking spaces,*
    - iii) *for each dwelling containing at least 3 bedrooms— at least 1 parking space,*
  - f) *the following number of parking spaces for dwellings not used for affordable housing—*
    - i) *for each dwelling containing 1 bedroom—at least 0.5 parking spaces,*
    - ii) *for each dwelling containing 2 bedrooms—at least 1 parking space,*

- iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,
- g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,
- 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) if paragraphs (g) and (h) do not apply, the following minimum floor areas—
  - ii) for each dwelling containing 1 bedroom—65m<sup>2</sup>,
  - iii) for each dwelling containing 2 bedrooms—90m<sup>2</sup>,
  - iv) for each dwelling containing at least 3 bedrooms—115m<sup>2</sup> plus 12m<sup>2</sup> for each bedroom in addition to 3 bedrooms.
- i) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.

It is noted that Cl.19 (3) does not apply to development to which Chapter 4 of the Housing SEPP 2021 applies.

Chapter 4 relates to the Design Quality of residential flat buildings and at Cl.148 includes a series of non-discretionary standards:

**148 Non-discretionary development standards for residential apartment development—the Act, s 4.15**

- 1) The object of this section is to identify development standards for particular matters relating to residential apartment development that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**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.

- 2) The following are non-discretionary development standards—
  - a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,
  - b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide,

- c) *the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Other than internal apartment area, it is clear that landscape area, deep soil or solar access **are not** non-discretionary standards in Chapter 4 Cl.148.

We understand that Fairfield City Council requires a Cl.4.6 Variation Request when a Development Application does not strictly comply with non-discretionary standards. Accordingly, a Cl.4.6 Variation Request has been prepared to address the internal apartment area which is referenced in both Cl.19 and Cl.148. This has been provided under separate cover.

Notwithstanding the above, a discussion is provided below on landscape area, deep soil and solar access.

### **1) Landscape Area**

The Housing SEPP 2021 requires 30% of the site as landscape area, which is achieved by the proposed amending DA and therefore no further consideration is necessary. Regardless, a brief discussion on the landscape area control of Fairfield City Centre DCP 2013 is provided below for completeness.

The Fairfield City Centre DCP 2013 requires 50% of the site as landscape area, noting that the existing approved DA provides for 36% of the site or 3,307m<sup>2</sup> as landscape area. This includes non-accessible green roofs.

The amending DA provides for 33.8% or 3,126m<sup>2</sup> of the site as landscaped area, which is a minor reduction of 2.2% and is not noticeable or apparent given its rooftop location.

The proposal has provided substantially improved landscaping across the site, with a focus on usability and overall amenity. This has resulted in deep soil areas increased above the original approved DA which enhances the overall landscape quality of the proposal. Refer to attached plans for detail.

The proposal removes landscape areas from the rooftop of Building A and D as there is not the structural capacity to support green roofs. An engineering statement is provided by EI Australia which confirms that the landscape area in the original approved DA on the roof of Building A and D cannot now be provided:

*We, EI Australia, are professional Engineers in accordance with the Building Code of Australia, The current Buildings A & D main structures, such as the Pile Foundation, Columns, Walls, Ground floor transfer slab,*



*and Level 1 & 2 transfer slabs designed and constructed don't have the structural capacity to accommodate a green roof RC-roof which covers the last level 10.*

It is acknowledged that that this results in a minor decrease in landscaped area of 2.2%, however this not noticeable given it was on the rooftop and:

- Enhanced landscaping provided at the Ground Level and Level 1
- Landscaped planters provided on Level 2 and 6 of Building B and Building C
- Landscaped planters provided on Level 7, Level 8 and Level 9 of Building A
- Landscaped communal open space provided on level 7 of Building A
- Landscaped planters provided on Building B and C at Level 8
- Landscape planters provided Level 9 of Building D
- Landscaped communal open space provided on Level 14 of Building B and C
- Revisions to the landscaping design has resulted in deep soil areas for planting increasing by an additional 156m<sup>2</sup>.

It is further noted that the provision of landscape area on the rooftop was inaccessible meaning it was problematic for maintenance, with only hatch access via the original approved DA. The rooftop as shown in the attached plans have been reallocated to provide a substantial environmental benefit through the inclusion of photovoltaic panels. This represents a substantial improvement to overall sustainability and amenity for residents as energy consumption is reduced, reducing the need for mechanical heating or cooling.

The minor reduction in landscaped area from the approved DA by 2.2% is therefore appropriate, noting that it complies with the Housing SEPP 2021. Refer to Sheet MA027, Revision 5 and dated 20 December 2024 for landscape areas.

## **2) Deep Soil**

Cl.19 (2) of the Housing SEPP identifies that a proposal is required to provide 15% of the site as a deep soil area and with a minimum dimension of 6m. However, per Cl.19 (3), subclause (2) does not apply, nor is deep soil referenced as a non-discretionary standard within Chapter 4 Cl.148. Accordingly, a Cl.4.6 is not required.

The Apartment Design Guideline at 3E includes design guidance for deep soil and the objective is reproduced below:

- *Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality*

The design criteria of the ADG identifies that deep soil zones can have a minimum dimension of 3m for sites up to 1,500 m<sup>2</sup> and 6m if greater than 1,500m<sup>2</sup>. However, the design guidance notes that the design criteria cannot be achieved on some sites such as:

- *the location and building typology have limited or no space for deep soil at ground level (e.g. central business district, constrained sites, high density areas, or in centres)*
- *there is 100% site coverage or non-residential uses at ground floor level*

In this regard, the proposal is a site where 6m cannot be provided at ground level due to the existing building under construction on the site. This limits the space for deep soil at ground level and effectively constrains the width of deep soil areas that can be provided. In this regard and noting that the minimum typical width of deep soil areas in the ADG is 3m, if this was applied, then the site would comfortably comply with the 15% minimum area provision.

Furthermore, the proposal remains consistent with the objective of the ADG for deep soil as discussed below.

ADG Objective – 3E1 Deep soil	Discussion
<i>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality</i>	<p>The proposal provides 1,428m<sup>2</sup> of deep soil with a minimum width of 3m. This is an increase above the existing total deep soil provision on the subject site of 1.6% or 156m<sup>2</sup> when areas of 3m or more are included. In cumulative terms, this represents an improvement of deep soil on the site from 13.8% in the approved DA to 15.4% in the amending DA subject of this application.</p> <p>Furthermore, the proposal includes areas of extensive landscaping on the site, providing 33.8% of the site as landscaped area, which provides substantial areas that support healthy plant and tree growth, contributing to an attractive urban environment and amenity for residents, workers and visitors. Likewise, the volume of deep soil on the site when combined with other landscaped areas, provides exceptional areas that assist with</p>

water management, along with enhancing air quality.

The objective is therefore satisfied.

Council can be satisfied that the proposal is an appropriate design response for the subject site for the following reasons:

- The area less than 6m is largely a result of an existing building under construction on the site, and is consistent with the design guidance of the ADG which recognises there are circumstances where deep soil provision is not achievable, including *the location and building typology have limited or no space for deep soil at ground level...*
- The proposal provides 15.4% of the site as deep soil when areas with a width of 3m are included, which is the minimum dimension recognised for deep soil in the ADG.
- The departure from the 6m minimum width recommended for sites above 1,500m<sup>2</sup> when considered against the original approved deep soil areas on the site, is not apparent, noting that it also was less than 6m and with this proposal providing more deep soil than the original approved DA (+165m<sup>2</sup>)
- The proposal provides for landscaping on structure which is recommended by the ADG when a proposal does not achieve its numerical deep soil area.
- The proposal provides 33.4% of the site as landscaped area, providing a high quality environment for residents, along with workers and visitors. Importantly, the proposal provides substantial deep soil areas and other landscaped areas that allow natural infiltration of water, tree planting, air quality and reduction in urban heat. This along with the broader amenity benefits of increased shade to communal and publicly accessible areas, ensures that the proposal remains consistent with the intent of the deep soil provisions within the ADG.
- The non-compliance with a 6m minimum width does not result in any adverse environmental impacts to surrounding developments, or the amenity that they currently have, or their future development potential. Despite the numerical non-compliance, there is no resulting detrimental impact on overall amenity, the area for planting of trees and other associated green landscaping, and the management of water and air quality.

The proposal therefore satisfies the objectives of the ADG for deep soil. Refer to Sheet MA028, Revision 5 and dated 20 December 2024 for landscape areas.



### 3) Solar Access

Cl.19 2 (d) states that 3 hours of solar access to living rooms and private opens space of at least 70% of dwellings are to receive a minimum of 3 hours direct solar access at mid-winter between 9AM and 3PM. Per, Cl.19 (3), this does not apply to the subject proposal as it is development to which Chapter 4 applies.

The Development Application was submitted to Council in February 2024, with it accepted in March 2024. As this clearly after 13 December 2023 the proposal benefits from amendments to the Housing SEPP 2021 which brought it into alignment with the solar access requirements for apartment buildings in Chapter 4, that is, 2 hours solar access applies, not 3 hours.

This is confirmed by the DPHI circular issued in December 2023 associated within infill affordable housing. On page 16 it is specifically stated that 2 hours solar access should be applied to residential flat developments in the Sydney Metropolitan Region, not 3 hours:


### Residential amenity of affordable housing

Residential amenity is one of the design quality principles under Chapter 4 of the Housing SEPP that must be considered in the assessment of residential apartment development. Good residential amenity combines 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 age groups and degrees of mobility. It is important that amenity is maximised across a development, and that affordable dwellings are not subject to a lower standard. For example, if 70% of dwellings across a development achieve the ADG criteria for solar access (minimum 2 hours to living areas), then a similar percentage of the affordable dwellings should meet that standard.

The proposal provides 83.3% of all apartments associated with the amending DA (55 of 66) with at least 2 hours of direct solar access at mid-winter and therefore complies with the ADG.

Of the uplift, 11 units receive less than 2 hours solar access at mid-winter which is a minor variation of 1 unit of the uplift with 10 units being 15%. It is noted that the minor non-compliance is a result of the existing approved envelope on site which is under construction. Irrespective, all apartments have extensive glazing to living areas which provides direct daylight access, providing year round amenity.

Solar access diagrams are shown in sheets MA140 through to MA142, revision 4 and dated 21 October 2024. Solar access calculations are shown in sheet MA144, revision 5 and dated 20 December 2024. These architectural drawings along with view from the sun diagrams on sheets MA400 through to MA406, revision 5 and dated 20



December 2024, clearly indicate that the proposal complies with the 2 hour solar access standard, along with minimising non compliance to being one unit above the 15% threshold. The proposal clearly therefore meets the objective of the ADG for solar access which is to:

*To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space*

## **Conclusion**

This supplementary planning statement has been prepared to address landscape area, deep soil and solar access requirements as they relate to the proposal. A clause 4.6 Variation Request is not required for the reasons outlined in this planning statement, with the proposal complying the objective of the ADG and the Fairfield City Centre DCP 2013 despite any minor numerical departure.

Should you require any further information, I can be contacted on 9687 8899.

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