

DATE OF DETERMINATION	17 March 2025
DATE OF PANEL DECISION	17 March 2025
DATE OF PANEL BRIEFING	3 March 2025
PANEL MEMBERS	Justin Doyle (Chair), Louise Camenzuli, David Kitto, Kevin Lam, Ninos Khoshaba
APOLOGIES	None
DECLARATIONS OF INTEREST	None

Papers circulated electronically on 28 February 2025.

MATTER DETERMINED

PPSSWC-420 – Fairfield – DA69.1/2024 - 46 Court Road, Fairfield - 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; 1,107m² of commercial/retail floor space over 3 basement levels providing 435 car parking spaces

PANEL CONSIDERATION AND DECISION

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

Structural Integrity

The application involves alterations and additions to a development that was approved by the Panel in December 2015.

The approved development is currently under construction.

In November 2024, the Building Commission NSW imposed a building rectification order on the approved development requiring the developer to cease work or take action to remediate serious building defects, including “underestimated design loads and several load-bearing elements being undersized”.

This order now prohibits the granting of any occupation certificates for the approved development before the order is revoked.

During the assessment process, Council received advice from the Applicant’s principal structural engineer confirming that “the structural integrity of the buildings currently under construction at the site can accommodate the additional loads that will be imposed” by the additional three levels of the proposal.

Given the critical importance of ensuring the alterations and additions to the approved development will be structurally sound to protect public safety, Council recommended 3 conditions be included in any consent for the development:

- Schedule A, Condition 1: a deferred commencement condition preventing the Applicant from acting on the consent until the current order issued by the Building Commission NSW on the approved development is revoked, and requiring the consent to lapse if this does not occur within 12 months of the date of the determination

- Schedule B, Condition 4: requiring a certificate from a suitably qualified structural engineer that has been peer reviewed “by a suitably qualified and chartered structural engineer that is a member of Engineers Australia” to be submitted to the satisfaction of the principal certifying authority prior to the issue of a construction certificate. The certificate must confirm that the “existing buildings, as constructed, are structurally adequate to withstand the forces and loading of the alterations and additions”
- Schedule 8, Condition 60: requiring a certificate from a suitably qualified structural engineer that has been peer reviewed “by a suitably qualified and chartered structural engineer that is a member of Engineers Australia” to be submitted to the principal certifying authority prior to the issue of an occupation certificate.

While the Panel supports the intent of Council’s recommended conditions, it is not convinced that the proposed imposition of the deferred commencement condition is necessary.

This is mainly because the order relates to the construction of the approved development, not the proposed development, and the resolution of the structural problems of the approved development may not be suitable for the proposed alterations and additions to this development. There is no point in fixing the approved development and then potentially having to fix it again if it is not suitable to accommodate the proposed development. Ensuring the structural integrity of the approved development as amended by the proposed development should be the priority now. Also, the Panel considered the imposition of a 12-month deadline for satisfying the deferred commencement condition to be overly strict.

At the final briefing the Applicant advised the Panel that an independent structural engineer has already been appointed to peer review the structural design of both the approved development with the addition of the proposed development. This engineer is a registered structural engineer under the Design and Building Practitioners Scheme for regulated buildings (such as these buildings), which is administered by the Building Commission NSW; and representatives of the Building Commission NSW confirmed in writing that they had no objection to this appointment.

The Applicant has subsequently provided written advice to the Panel Secretariat confirming this.

After considering the matter carefully, the Panel is satisfied that:

- The whole development (the approved development with the addition of the proposed development) is capable of being designed to be structurally sound and comply with the relevant requirements in the National Construction Code/Building Code of Australia
- The structural integrity of the whole development can be ensured with some minor amendments to recommended Conditions 4 and 60 (see below).

Application to vary a development standard:

The application includes the development of 57 infill affordable housing units.

Under Chapter 2 of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP), these units must comply with the non-discretionary development standards in Section 19 of the SEPP. The primary aim of these standards is to prevent consent authorities from requiring more onerous standards for infill affordable housing.

In this case, 22 of the infill affordable housing units do not comply with the minimum internal area requirements in Section 19(g) of the Housing SEPP:

- 2 units have internal areas of 74.93 m² instead of 75 m²
- 11 units have a bedroom that is between 0.2 – 0.9 m² less than the minimum standard of 10 m² (excluding wardrobe)
- 6 units have a living room that is less than 4 m wide, although 3 of these units have an alternate living room that complies with the standard and the other 3 only have a small area where the width is 3.7 metres but otherwise comply with the standard

- The 3 units have cross overs that are 2.9 m at some points rather than 4 m, but these apartments have 2 living areas, one of which complies with the relevant standards and the other that is slightly undersized and adjacent to a balcony.

The Panel has considered the Applicant's Clause 4.6 written request to vary these development standards made under cl 4.6 (3) of the *Fairfield Local Environmental Plan 2013* (Fairfield LEP) and Council's consideration of the request in its assessment report and is satisfied that compliance with these standards is unnecessary in this instance, first because they are non-discretionary standards design to prevent consent authorities from imposing stricter standards on infill affordable housing which is not relevant here, and second the non-compliances are generally minor variations to the standards in the Apartment Design Guide and will not compromise the general amenity of any of these apartments

Development application

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

The decision was [unanimous](#).

REASONS FOR THE DECISION

The Panel determined to approve the application for the reasons set out above and in Council's Assessment Report.

In particular, the Panel concluded that:

- The development is consistent with the provisions of the relevant environmental planning instruments, including the Housing SEPP, *State Environmental Planning Policy (Resilience and Hazards) 2021*, *State Environmental Planning Policy (Transport and Infrastructure) 2021*, *State Environmental Planning Policy (Sustainable Buildings) 2022* and the Fairfield LEP
- The proposed variations to the non-discretionary development standards in Chapter 2 of the Housing SEPP are minor and justified
- The site will be remediated to a satisfactory standard for the development under the conditions of the development consent for the building that is currently being constructed on the site
- The development in its amended form exhibits design excellence and satisfies the requirements in Clause 6.12 of the Fairfield LEP, meets the design principles for residential apartment development in Schedule 9 of the Housing SEPP, and is generally consistent with the requirements in the Apartment Design Guide
- The development can be made structurally sound, subject to compliance with certain conditions
- The impacts of the development are acceptable and can be suitably controlled by conditions
- The development will deliver essential housing, including 57 affordable housing units close to the Fairfield railway station and town centre for the growing population of Western Sydney, consistent with the strategic planning objectives for the area
- The development is in the public interest.

CONDITIONS

The development application was approved subject to the conditions in Council Assessment Report with the following amendments:

- Delete Deferred Commencement text at the start of the conditions and Schedule A and make any consequential changes to the remaining conditions of consent to reflect these deletions
- Replace Condition 4 with the following:

Prior to the issue of a Construction Certificate, a certificate from a suitably qualified structural engineer must be submitted to the satisfaction of the certifier certifying that whole development (the development approved under DA 69.1/2024 with the addition of the development approved under this DA) will be structurally sound in accordance with the relevant requirements in the NCC/BCA.

This certificate must be accompanied by a peer review of the certificate prepared by an independent structural engineer who is registered under the Design and Building Practitioners Scheme for regulated buildings that is administered by the Building Commission NSW.

A copy of the certificate and peer review must be provided to Fairfield City Council at the same time as they are provided to the certifier.

- Replace Condition 60 with the following:

Prior to the issue of an occupation certificate, a certificate from a suitably qualified structural engineer must be submitted to the satisfaction of the certifier certifying that whole development (the development approved under DA 69.1/2024 with the addition of the development approved under this DA) is structurally sound and complies with the relevant requirements in the NCC/BCA.

This certificate must be accompanied by a peer review of the certificate prepared by an independent structural engineer who is registered under the Design and Building Practitioners Scheme for regulated buildings that is administered by the Building Commission NSW.

A copy of the certificate and peer review must be provided to Fairfield City Council at the same time as they are provided to the certifier.






CONSIDERATION OF COMMUNITY VIEWS

Council exhibited the application in April 2024 and received two objections. It then exhibited the revised plans for the application in February 2025 and received a further objection from one of the residents who originally objected to the application.

These objections raised concerns about:

- Increased noise
- Obstruction of views
- Loss of sunlight
- Blocking of sunset/sunrise and breeze
- Excessive height compared to other buildings in the town centre
- Rectification of property damage caused during the construction the approved building on site.

In coming to its decision, the Panel considered these matters and was satisfied that they had been satisfactorily addressed in Council's assessment report and the recommended conditions of consent.

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

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSWC-420 – Fairfield – DA69.1/2024
2	PROPOSED DEVELOPMENT	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; 1,107m2 of commercial/retail floor space over 3 basement levels providing 435 car parking spaces.
3	STREET ADDRESS	46 Court Road, Fairfield (Lot 100 DP 1277808)
4	APPLICANT/OWNER	Applicant: Think Planners Owner: Fairfield Investments No.1 Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> Environmental planning instruments: <ul style="list-style-type: none"> State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Housing) 2021 Fairfield Local Environmental Plan 2013 Draft environmental planning instruments: Nil Development control plans: <ul style="list-style-type: none"> Fairfield City Centre Development Control Plan 2013 Fairfield City Wide Development Control Plan 2013 Planning agreements: Nil Provisions of the <i>Environmental Planning and Assessment Regulation 2021</i>: Nil Coastal zone management plan: Nil The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality The suitability of the site for the development Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations The public interest, including the principles of ecologically sustainable development
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> Council assessment report: 24 February 2025 Written submissions during public exhibition: 3 Total number of unique submissions received by way of objection: 2
8	MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> Briefing: 9 September 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Kevin Lam, Hugo Morvillo <u>Council assessment staff</u>: Venetin Aghostin, Liam Hawke, Sunnee Cullen Briefing: 3 December 2024 <ul style="list-style-type: none"> <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Ninos Khoshaba, Marie Saliba <u>Council assessment staff</u>: Venetin Aghostin, Liam Hawke <u>Applicant representatives</u>: Ben Creighton

		<ul style="list-style-type: none">• Final briefing to discuss council’s recommendation: 3 March 2025<ul style="list-style-type: none">○ <u>Panel members</u>: Justin Doyle (Chair), David Kitto, Louise Camenzuli, Ninos Khoshaba, Kevin Lam○ <u>Council assessment staff</u>: Venetin Aghostin, Sunnee Cullen○ <u>Applicant representatives</u>: Ben Creighton, Adam Byrne, Eddy Haddad
9	COUNCIL RECOMMENDATION	Approval
10	DRAFT CONDITIONS	Attached to the Council assessment report