Council DA reference number	Lot number	DP number 1257889	Apartment/ Unit number	Street number 40	Street name Malabar St	Suburb/Town Fairfield		Category of development 2 - Residential - Single new dwelling	Environmental planning instrument Fairfield Local Environmental	Zoning of land	Development standard to be varied 4.4 - Floor Space Ratio	Justification of variation The variation requested is minor and is unlikely to result in unreasonable amenity impacts, and is consistent with the	Extent of variation	Concurring authority Council	Date DA determined dd/mm/yyyy
	71 Sec 8	1059							Plan 2013			objectives of the developments standards and the zone.			
274.1/2020	1	851043		1	Gilbert Street	Cabramatta	2166	5 – Residential – Seniors Living	Fairfield Local Environmental Plan 2013	R3	Residential	Clause 40(4)(a) of the SEPP states that a consent authority must not consent to an application unless the development complies with all the standards which includes a standard for Height in Zones Where Residential Flat Buildings Are Not Permitted and prescribes that the height of all buildings in the proposed development must be 8m or less. The 8m control applies to the site as residential flat buildings are not permitted. The development and specifically the proposed new southeastern, internally facing awning, seeks a variation to the SEPP. The height of the awning is between 9.5m to 9.87m, resulting in an exceedance of 1.5m to 2m, equal to a variation between 19% and 23% for the high side. Notwithstanding the variation sought, it is noted that the proposed height of the awning sits well below the existing roof height of the building. According to the Roof Plan submitted by the applicant, the existing height of the adjacent roof is 11.13m, which will be some 1.26m above. The variation only arises as a result of the roof form such that the floor level of the two new decks directly below the awning. The applicant has submitted a written request for the variation proposed to the standard pursuant to Clause 4.6 of the LEP. It is considered that the applicant's written justification satisfactorily demonstrates that insisting on compliance with the height standard is unreasonable given the circumstances of this site and proposal, and also demonstrates that there are sufficient environmental planning grounds to justify the In this regard, the consent authority can be satisfied that the proposed development will be in the public interest because despite the proposed height contravention, the development remains consistent with the assumed underlying intent of the height standard and also remains consistent with the objectives. Accordingly, it is recommended that the variation to the SEPPs maximum 8m height standard be granted on the basis of the following reasons: • The applicant has stated that the reasons for	23%	Council	21/10/2020

								a. The proposed external resident decks need to align with the	
								adjacent aged care facility floor levels. This is in order to	
								comply with AS 1428.1 mobility criteria as well as occupational	
								health and safety issues affecting staff.	
								b. The proposed decks address significant well-being issues	
								affecting the residents of this aged care facility. This is in	
								relation to them having access to safe, user-friendly outdoor	
								facilities in close proximity to their accommodation. They offer	
								spaces where tactile, audible and visual stimuli can be	
								experienced using recognisable perimeter plantings and	
								c. The awning provides all weather protection for the upper	
								level deck thereby enhancing the safety of its frail users,	
								particularly during times of precipitation.	
								d. The awning provides valuable solar protection to those	
								residents resulting in a better enjoyment of the facility.	
								e. No other secure outdoor spaces are available for residents	
								at this end of the facility.	
				1					
								The height exceedance is solely to provide shelter to enable	
								practical use of the new decks. Without the awning, there would	
								be no height breach however, the use and amenity of the deck	
								would be diminished. The applicant has stated that "Lowering it	
								to an 8 metre height is not feasible because it would result in a	
								non-compliant head height clearance for the topmost deck."	
								non-compliant head height dealance for the topiniost deck.	
								The applicant has stated that "The relationship of the new	
								awning with the adjacent three storey roofs confirms that it is	
								lower. The awning height above the two storey buildings does	
								not have an environmental impact because they are a long	
								distance away". It is accepted that the variation to height does	
								The works all face in towards the property and will occupy	
								a small courtyard space between two existing buildings.	
								Therefore, no works are visible from either Cabramatta Road or	
								the Gilbert Street cul-de-sac. In this regard, there is no visual	
								impact nor any other adverse impacts including impacts	
				1			1	It is noted that there are no stated objectives for the 8m	
				1				SEPP standard. The applicant has instead referenced the	
				1			1	Fairfield LEP 2013 objectives of the height of building standard	
								in Clause 4.3. Although the LEP height standard is not	
				1			1	applicable as the SEPP standard prevails, the objectives of the	
								LEP standard provide important objectives for the locality and	
				1			1	include objectives to establish a maximum height for buildings,	
								to ensure the height of buildings complements the streetscape	
				1			1	and character of the area in which the buildings are located;	
								and to minimise the visual impact, disruption of views, loss of	
				1			1	privacy and loss of solar access to existing development. The	
								proposed awning is consistent with these guidelines. Given the	
				1				significant separation distances to neighbouring residents and	
								given the minor scale of the awning, the proposal does not	
				1				cause any adverse visual impact, nor disrupt any significant	
							1	dado any advorse visual impact, not distupt any significant	
<u> </u>	l	 1	I	<u> </u>	<u>I</u>		1		

												 Notwithstanding that the SEPP does not specify objectives 			
												for the 8m standard in Clause 40 (4) (a), a similar standard of			
												the SEPP within Clause (40) (4) (b) prescribes that a building			
												adjacent to a boundary of the site must not be more than 2			
												storeys in height" and a clear 'purpose' is stated for the similar			
												standard in (b) as being 'The purpose of this paragraph is to			
												avoid an abrupt change in the scale of development in the			
												streetscape'. Given that two storeys is likely to translate into an			
												8m overall height to the ceiling, the purpose in (b) is considered			
												to be relevant to the 8m control in (a). Given that the proposed			
												awning is essentially a roof feature and matches and/or is below			
												the existing building's roof features, it is considered that the			
												purpose of the controls relating to height are met as the			
												In this regard, despite the variation, the proposed			
												development is consistent with the assumed underlying			
												objectives/purpose of the height standard.			
												In this regard, insisting on compliance with the height			
												standard is considered to be unreasonable given all of the			
												Given all the above factors, there are sufficient environmental			
												planning grounds to justify the contravention.			
310.1/2020	185 &	1553		45	Lime Street	Cabramatta West	2166	,		R2	Clause 4.1	The Applicant has submitted a written application justifying the	26.70% Co	uncil 2	21/10/2020
	186								Environmental		minimum	minimum lot size variation of 26.7%, pursuant to Clause 4.6			
	Sec 1								Plan 2013		subdivision lot	Exceptions to development standards for the following reasons:			
											size				
	1	704545										The proposed subdivision will be like for like with the			
												current subdivision arrangement with just slightly more area.			
												Also, if the Applicant had chosen not to go to Council to			
												consolidate the rear lot, a dwelling can still be developed on			
												The subdivision will not impact the streetscape, minimum			
												landscape and urban design context.			
												The subdivision will be consistent with adjoining and			
												neighbouring lots.			
												There are no unacceptable additional impacts arising from			
												the variation. All other noticeable controls like setbacks,			
												landscapes and heights will be consistent with adjoining			
												The proposal satisfied the objectives of the R2 Low Density			
												Residential.			
												The non-compliance with the minimum lot size does not			
												contribute to unacceptable adverse environmental impacts on			
												·			
												The variation improves the relationship and potential			
												impacts to adjoining properties by clearly differentiating and			
												The proposed non-compliances isn't around height or FSR]
												that will contribute to bulk or height of future developments.]
												The proposed subdivision is consistent with acceptable lot			
												sizes for residential living across wider Sydney. For example			
												environmental planning instrument like the State Environmental			
												Planning Policy (Sydney Region Growth Centres) 2006 which			
•			1									· · · · · · · · · · · · · · · · · · ·			
												grant lot sizes as small as 200m ² to accommodate the growing			

											The current subdivision arrangement enables 2 x 2 storey dwellings to be proposed and approved by lodging a Development Application to Council and satisfying the objectives and controls as reflected in Chapter 5C of Development Control Plan 2013 or under the State of Environmental Planning Policy (Exempt and Complying Development Codes) 2008. This proposed subdivision once will approved will enable the same opportunity but with the residue The proposed subdivision achieves the objectives and controls under Clause 4.1B Minimum Subdivision Lot Sizes for Dual Occupancy of the LEP since the future development on the land will be lawfully erected under an environmental planning instrument, where the lot size of each resulting lot will be at least 300 square metres and there will be one dwelling on The subdivision as proposed is consistent with the provisions of orderly and economic development.			
582.1/2017	40, 41, 42 & 43	7225	27, 29, 31 & 33	Ascot Street	Canley Heights	2166	4 – Residential – New multi-unit	Fairfield Local Environmental Plan 2013	R4	4.3 Height of buildings	In accordance with Clause 4.3 of the Fairfield Local Environmental Plan (LEP) 2013, a building height development standard of 20 metres applies to the subject site. The maximum building height of the proposed development is 22.7 metres above natural ground and therefore exceeds the maximum. A written request was submitted to justify non-compliance with the 4.3 of Fairfield LEP as follows: Clause 4.6 Departure – Height Clause 4.6 Departure – Height Clause 4.3 under the Fairfield LEP 2013 stipulates a maximum building height of 20m for the subject site. The development exhibits the following building height elements: Portion – Pergola, bbq and communal toilet associated with rooftop common open space area – Maximum Height 20m – Departure 2m. Portion – Lift Overruns – Maximum Hight 20m – Departure 2.7m As the development seeks to vary this control, a clause 4.6 submission is required to be provided to vary this development These matters are addressed below, noting that the proposal has a bulk and scale that is consistent with the emerging built As shown on the section below, the variation to the height control is only limited to a small portion of the common open space area and the lift overruns for the development. The designs of the development ensures that habitable floor space is compliant with the maximum building height line, with the lift over run/common open structures recessed so that they are not visible/negligible when viewed from street level. Furthermore, the exceedance is considered incapable of being perceived having regard to the 20m height limit.	13.50%	Council	18/11/2020

						This indicates that the variation is not a means of achieving
' I						additional development yield on the site, but a site-specific
						design response to service the rooftop communal open space
						area. Despite the departure, the proposal continues to be
						consistent with the underlying intent of the control and the
						The written requests addresses Clause 4.6(3)(b) and Clause
						4.6(3)(a) and argues that strict compliance with Clause 4.3 of
						the Fairfield LEP is considered to be unreasonable and
						unnecessary in the circumstance of the case and that there are
						sufficient environmental planning grounds to justify
						ounterest of the first of the f
						In accordance with the provisions of this clause it is considered
						that compliance with the development standard is
						unreasonable or unnecessary in the circumstances of the case
				l		as the underlying objectives of the control are achieved.
			1	l		and and define the second of t
				l		The objectives of the building height development standard are
				l		stated as:
			1	l		• (a) to establish the maximum height for buildings,
			1			(b) to ensure that the height of buildings complements the
			1			streetscape and character of the area in which the buildings are
						• (c) to minimise the visual impact, disruption of views, loss of
						privacy and loss of solar access to existing development.
						January and a control of the control
						The development seeks to depart from the height control noting
						that the proposal remains consistent with the objectives of the
						clause and is a more appropriate outcome on the site because
						Non-compliance is minor in nature with the majority of the
						building being compliant with the building height control and
						with the lift overruns recessed, their impact to the streetscape
						is negligible as it will be visually unnoticeable when viewed
						is negligible as it times treating armenessable times treating
						The variation is primarily as result of appropriately providing
						rooftop common open space to the development. The resultant
						development is consistent with the 6 storey development
				l		as to opinion to consistent that the educity development
				l		Due to the minor nature of the variation it will not have any
			1			adverse amenity impacts. In this regard it is noted:
				l		auroros amorney impacto. In this regard it is noted.
			1			o The variation will be visually unnoticeable and will have no
			1	l		adverse impact on the physical bulk, height or scale of the
			1	l		o The variation will not lead to a reduction in solar penetration
			1	l		on site or to adjoining properties nor will it lead to sunlight loss
						o The proposed variation will not lead to view loss or interrupt
			1			views to and from the site.
			1			o The proposed variation will not lead to a reduction in privacy
			1			afforded to existing residents or future residents of the
				l		and the containing residence or rational residence or the
				l		The proposal has been designed to ensure that privacy
			1			impacts are mitigated that the proposal will not obstruct existing
				l		impacts are margated that the proposal will not obstruct existing
	l l	l			1	

The proposed development will permit the site to develop to	
its full zoning potential whilst complementing the future vision	
envisioned for the site by providing an attractive residential flat	
building that provides a good address to the street frontage	
and complying with key planning controls applying to the	
The prepagal is not legated within a law density area and	
The proposal is not located within a low-density area and	
the proposal represents an appropriate built form on the site;	
The non compliance is the direct result of providing	
additional amenities to the residents and not an attempt to gain	
additional saleable floor space;	
The sites location in a high density residential precinct	
where ground level space is taken up with large podiums;	
driveways that service parking; spaces for the provision of	
garbage movements and pick up; and the location of essential	
services such as fire panels and substations warrants the	
provision of communal open space in the form of a roof top	
A roof top terrace is also a preferable location in the	
circumstances as it will benefit from being elevated and	
enjoying views and excellent solar access and provide superior	
open space amenity to building occupants than at grade open	
As outlined above the proposal remains consistent with the	
underlying objectives of the control and as such compliance is	
considered unnecessary or unreasonable in the circumstances.	
The above discussion demonstrates that there are sufficient	
environmental planning grounds to justify the departure from	
environmental planning grounds to justify the departure from	
The written requests addresses Clause 4.6(4)(a)(ii) and argues	
that the proposed development will be in the public interest	
because it is consistent with the objectives of the building height	
development standard (Clause 4.3) of the Fairfield LEP 2013 as	
discussed above as well as the objectives of the R4 High	
In accordance with the provisions of Clause 4.6(4) Council can	
be satisfied that this written request has adequately addressed	
the matters required to be demonstrated by Clause 4.6(3).	
As addressed the proposed development is in the public	
interest, as it remains consistent with the objectives of the	
building height control. In addition, the proposal is consistent	
with the objectives of the R4 zone, being:	
with the objectives of the N4 zone, being.	
To provide for the housing needs of the community within a	
high density residential environment.	
To provide a variety of housing types within a high density To provide a variety of housing types within a high density	
residential environment. • To enable other land uses that provide facilities or services to	
meet the day to day needs of residents.	
To maximise opportunities for increased development on all	
land by encouraging site amalgamations.	

											The proposal is consistent with the zone objectives as ensures			
											that the desired high density nature of the zone is achieved and			
											there is not a significant change to the character of the locality.			
											In addition, the proposal complements and enhances the local			
											streetscape by virtue of the careful siting of the development.			
											successcape by virtue of the careful staing of the development.			
											Having regard to matters raised above, it is considered that the			
											written request for a variation to the maximum building height			
											standard has reasonably established that compliance with the			
											standard is unreasonable and unnecessary. The proposed			
											height of 22.7 metres represents a variation of 13.5% to the			
											maximum 20 metre building height development standard.			
											It is considered that the written request has demonstrated that			
											the variation to the development standard is unlikely to result in			
											· · · · · · · · · · · · · · · · · · ·			
											unreasonable amenity impacts, is consistent with the objectives			
											of the development standards and the zone, and would			
											therefore be in the public interest. Accordingly, the written			
											request for a variation to the building height development			
											standard is considered reasonable. Given that the proposed			
											development generally complies with all other relevant planning			
											controls and the overall design of the development is unlikely to			
											result in any adverse amenity impacts, it is considered that the			
											variation will result in an acceptable environmental planning			
267.1/2020	N/A	N/A		Nineveh	Greenfield Park	2176	13 – Subdivision only		R2	Clause 4.1	DA proposes to subdivide a small portion of road located	90.30% Co	uncil	18/11/2020
				Crescent				Environmental		minimum	adjacent to 51 Nineveh Crescent (Lot 5 DP 1198608),			
								Plan 2013		subdivision lot	d Greenfield Park. The subdivision will create one (1) residue			
										size	allotment numbered 1 for Title Issue and Road Closure under			
											The proposed lot has a total area of 43.8m ² and is located			
											within the footway along Nineveh Crescent, Greenfield Park.			
											The purpose of this subdivision and road closure is to facilitate			
											future amalgamation of the redundant piece of road with the			
											adjoining residential property at 51 Nineveh Crescent in order to			
											In this regard, the title issue and road closure of this portion of			
											land will therefore facilitate the future amalgamation with the			
											existing residential lot at 51 Nineveh Crescent and will create a			
								1	1	1				
									1		more regular lot of land and a consistent road frontage in line			
											with residential developments along the street.			
											with residential developments along the street.			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m².			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the minimum lot size variation of 90.3% pursuant to Clause 4.6			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the minimum lot size variation of 90.3% pursuant to Clause 4.6 Exceptions to Development Standards, for the following			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the minimum lot size variation of 90.3% pursuant to Clause 4.6 Exceptions to Development Standards, for the following • The purpose of the subdivision application is to facilitate			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the minimum lot size variation of 90.3% pursuant to Clause 4.6 Exceptions to Development Standards, for the following • The purpose of the subdivision application is to facilitate closure of Proposed Lot 1 currently part of Nineveh Crescent,			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the minimum lot size variation of 90.3% pursuant to Clause 4.6 Exceptions to Development Standards, for the following • The purpose of the subdivision application is to facilitate closure of Proposed Lot 1 currently part of Nineveh Crescent, for future sale to the adjoining owner (Lot 5 DP1198608) for			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the minimum lot size variation of 90.3% pursuant to Clause 4.6 Exceptions to Development Standards, for the following • The purpose of the subdivision application is to facilitate closure of Proposed Lot 1 currently part of Nineveh Crescent, for future sale to the adjoining owner (Lot 5 DP1198608) for combine development. Fairfield City Council considered this			
											with residential developments along the street. There is a minimum lot size of 450m² under Fairfield LEP 2013 for subdivision located within an R2 – Low Density Residential Zone. The application proposes to create proposed allotment 1 with a site area of 43.8m². The Applicant submitted written application justifying the minimum lot size variation of 90.3% pursuant to Clause 4.6 Exceptions to Development Standards, for the following • The purpose of the subdivision application is to facilitate closure of Proposed Lot 1 currently part of Nineveh Crescent, for future sale to the adjoining owner (Lot 5 DP1198608) for			

651.1/2	018	31 11601	38	45	Chifley Street	Smithfield	2164	4 – Residential – New multi-unit	Fairfield Local Environmental Plan 2013	R2	4.3 – Height of buildings	By applying a variation under section 4.6 of Fairfield LEP 2013 granting approval of the subdivision application, this proposed lot 1 can be legally closed and upon sale consolidated with the adjoining property for future residential The proposed Lot 1 was a legacy of an intended road design in 1970's for subdivisions shown on DP568558 and DP607075. The road design has since been changed and this proposed Lot 1 intended for forming a cul-de-sac at that time is no longer required. A change of use for residential purpose for proposed Lot 1 in line with the zoning at this location would The subdivision application if approved will achieve a better streetscape for Nineveh Crescent at this location, as Lot 5 DP 1198608 with this proposed Lot 1 included, will have a road frontage consistent with other residential developments on the Compliance with the development standard for minimum lot size in R2 Zone is unreasonable or unnecessary in the It is considered that the non-compliance within the development standard does not raise any significant matters with respect to State or Regional planning and no public benefit is obtained to adhering to the relevant planning controls. Accordingly, the variation proposed to the development standard pursuant to Clause 4.6 of the Fairfield LEP 2013 is therefore considered Based on the assessment of the application, including the consideration of Clause 4.6 of Fairfield LEP 2013, and other provisions of Section 4.15 of the Environmental Planning and Assessment Act, 1979, it is considered that the proposal is satisfactory and is unlikely to detrimentally impact the environment or the amenity of nearby residents, and is in the A written request to vary the FSR standard under Clause 4.6 of the Fairfield LEP 2013 was submitted to Council. State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development is applicable to the subject site is 9m. The Application has been accompanied by a written request under Clause 4.6 of the Fairfield LEP 2013 to vary the he	6%	Council	18/11/2020
												The variation is supported as the tests under Clause 4.6 are considered to have been met by demonstrating as follows:			

		The objectives of Clause 4.3 are:	
		(a) to establish the maximum height for buildings,	
		(b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are	
		streetscape and character of the area in which the buildings are	
		(c) to minimise the visual impact, disruption of views, loss of	
		privacy and loss of solar access to existing development	
		3. Is compliance with the development standard	
		consistent with the aims of the Policy, and in particular	
		does compliance with the development standard tend to hinder the attainment of the objects specified in section	
		The variation does not hinder the attainment of the relevant aims of the Fairfield LEP 2013.	
		aims of the Faimeld LEF 2013.	
		The variation is not antipathetic to the relevant objectives of the	
		R2 Low Density Residential zone, as follows:	
		To provide for the housing needs of the community within a	
		low density residential environment; and	
		To enable other land uses that provide facilities or services	
		to meet the day to day needs of residents.	
		The variation to the height limit is not antipathetic to the	
		objectives of Clause 4.3 of the Fairfield LEP as the variation	
		does not result in the loss of views or adversely impact solar	
		access or privacy. Further, the development remains	
		The relevant objectives specified in Section 1.3 of the Act are:	
		(c) to promote the orderly and economic use and development	
		of land, and	
		(g) to promote good design and amenity of the built	
		The variation to the standard does not hinder the attainment of	
		the above objectives and does not prevent adjoining land from	
		similarly meeting those objectives.	
		4. Is compliance with the development standard	
		unreasonable or unnecessary in the circumstances of the	
		Notwithstanding the noncompliance with the height standard,	
		the objectives underpinning Clause 4.3 of the Fairfield LEP are	
		achieved. It is unreasonable and unnecessary to strictly apply the development standard in these circumstances, particularly	
		noting the minor breach of the height standard and the limited	
		E. Are there sufficient environmental planning are under	
		5. Are there sufficient environmental planning grounds to justify contravening the development standard and	
		therefore is the Applicant's written justification well	

406.1/2019	25 & 26	9441	34-36	Vine Street	Fairfield	2165	4 – Residential – New multi-unit	Fairfield Local Environmental Plan 2013	R4	Clause 4.4 – Floor space ratio	The Applicants Clause 4.6 justification is well founded and makes the following key points: i. The minor height breach is less than the required floor level ii. The proposed two storey buildings are consistent with the desired character and scale of the area which anticipates two iii. The elevated section of the site beyond 9m faces the industrial buildings and is lower in height than several of these industrial buildings. The industrial zone has no height limit or iv. There are no adverse impacts on any adjoining land that result from the minor breach in height. The variation does not result in any other non-compliance or variation of a development standard. Based on the assessment of the submitted documentation, it is considered that the written request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and that compliance with the development standard is unreasonable or A maximum FSR of 0.8:1 is permitted for this site based on the site frontage. However the Applicant has sought a variation to Clause 4.4A, seeking an FSR of 1.286:1 equal to a variation of	60.75% C	council	14/12/2020
											Clause 4.4 of the Fairfield LEP 2013, allows for a maximum FSR of up to 2:1 for residential flat building development within Whilst Clause 4.4 allows a maximum FSR of up to 2:1 across the R4 zone, Clause 4.4A of the LEP 2013 sets out additional provisions and criteria, which determine the applicable FSR, based on the street frontage and depth of each individual site 1(c). Exceptions to maximum floor space ratio in Zone R4 (FSR) (Clause 4.4A) Pursuant to Clause 4.4A of Fairfield LEP 2013, the maximum FSR permitted on site is determined by its street frontage to Vine Street and site depth. Clause 4.4A Exceptions relevantly 4.4A Exceptions to maximum floor space ratio in Zone R4 (1) This clause applies to land in Zone R4 High Density Residential (excluding any land in Bonnyrigg, Cabramatta, Canley Vale and Fairfield Heights). (2) Despite clause 4.4, the maximum floor space ratio for a building on land to which this clause applies is as follows— (a) if the building has a street frontage of less than 30 (b) if the building has a street frontage of at least 30 metres, but less than 45 metres: (i) 1.25:1 if the site has a depth of less than 40 metres, or (ii) 1.5:1 if the site has a depth of less than 40 metres, or (ii) 1.5:1 if the site has a depth of less than 40 metres, or (iii) 2:1 if the site has a depth of less than 40 metres, or			

					1 1 2 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1	
					In accordance with Clause 4.4A(2)(a), a maximum FSR	
					development standard of 0.8:1 applies to the subject site. The	
					Application proposes a floor space ratio of 1.286:1 and	
					therefore does not comply with this development standard. This	
					Exceptions to Development Standards (Clause 4.6 FLEP	
					The maximum allowable FSR permitted at the subject site is	
					0.8:1. The Application proposes an FSR of 1.286:1 and	
					therefore exceeds the FSR development standard by 609.78m ²	
					of floor space, which equates to a variation of 60.75%.	
					Relevant excerpts of the Clause 4.6 written request are	
					provided as follows:	
					3. Proposed Variation	
					The total GFA has been increased as a response to council	
					assessment letter dated 21 April 2020 and email	
					correspondence dated 28 October 2020. The increase in GFA	
					is generated by the inclusion of additional floor area of	
					residential foyers and/or breezeways into the total calculation.	
					residential toyers and/or breezeways into the total calculation.	
					It is to be acknowledged that there is no change made to the	
					built form of the proposed development illustrated on both	
					Architectural Issue A plans and Issue D plans. The built form is	
					also identical as the development approved under previous	
					consent of DA 154.1/2014. The increase in total GFA is purely	
					numerical adjustment in accordance with latest caselaw. The	
					proposed development will have identical bulk and scale and	
					4. Clause 4.6 Variation to Development Standard	
					Clause 46 of the Egirfield Legal Environmental Plan 2012	
					Clause 4.6 of the Fairfield Local Environmental Plan 2013 enables Council to grant consent for development even though	
					the development contravenes a development standard. The	
					clause aims to provide an appropriate degree of flexibility in	
					applying certain development standards to achieve better	
					applying certain development standards to achieve better	
					Clause 4.6(3)-(5) of the FLEP 2013 provides that:	
					4.6 Exceptions to development standards	
					(3) Development consent must not be granted for development	
					that contravenes a development standard unless the consent	
					authority has considered a written request from the Applicant	
					that seeks to justify the contravention of the development	
					(a) that compliance with the development standard is	
					unreasonable or unnecessary in the circumstances of the case,	
					(b) that there are sufficient environmental planning grounds to	
					justify contravening the development standard.	
					(d) Development of the state of	
					(4) Development consent must not be granted for development	
					that contravenes a development standard unless:	
				<u> </u>	 (a) the consent authority is satisfied that:	

			I		(i) the Applicant's written request has adequately addressed the	
					matters required to be demonstrated by subclause (3), and	
					(ii) the proposed development will be in the public interest	
					because it is consistent with the objectives of the particular	
					standard and the objectives for development within the zone in	
					which the development is proposed to be carried out, and	
					(b) the concurrence of the Secretary has been obtained.	
					(b) the concurrence of the Secretary has been obtained.	
					5. Justification for Contravention of the Development	
					5. Justification for Contravention of the Development	
					The written request refers to Clause 4.6(3)(a) and	
					demonstrates that compliance with the development standard is	
					unreasonable or unnecessary in the circumstances of the case	
					Clause 4.6(3)(a) unreasonable and unnecessary	
			l			
			l		The development seeks to depart from the FSR control noting	
			l		that the proposal remains consistent with the objectives of the	
			l		clause and is a more appropriate outcome on the site because	
					The objectives of the FSR development standard are stated as:	
					(1) The objectives of this clause are as follows:	
					(a) to provide an appropriate density of development consistent with the established centres hierarchy,	
					(b) to ensure building density, bulk and scale make a positive	
					contribution toward the desired built form as identified by the	
					established centres hierarchy.	
					In Wehbe v Pittwater Council [2007] NSWLEC 827 Preston CJ	
					comprehensively established five potential tests for determining	
					whether strict compliance with a development standard is	
					unreasonable or unnecessary.	
					In Wehbe Preston CJ states:	
			l		The most commonly invoked way is to establish that	
			l		compliance with the development standard is unreasonable or	
			l		unnecessary because the objectives of the development	
			l		standard are achieved notwithstanding non-compliance with the	
			l			
			l		The rationale is that development standards are not ends in	
			l		themselves but means of achieving ends. The ends are	
			l		environmental or planning objectives. Compliance with a	
			l		development standard is fixed as the usual means by which the	
			l		relevant environmental or planning objective is able to be	
			l		achieved. However, if the proposed development proffers an	
			l		alternative means of achieving the objective, strict compliance	
			l		with the standard would be unnecessary (it is achieved	
			l			
			l		The variation to the FSR development standard is consistent	
			l		with clause 4.6(3)(a) and flexibility should be applied in this	
			l		case because the objectives of the maximum FSR	
			l		development standard are achieved notwithstanding the non-	
			l		compliance with the numerical control in the standard.	

				I	1	<u> </u>		I	The written request refers to Clause 4.6(3)(b) and	
									demonstrates that there are sufficient environmental planning	
									grounds to justify contravening the development standard as	
									grounds to justify contravening the development standard as	
									Clause 4.6(3)(b) sufficient environmental planning grounds	
									Clause 4.6(3)(b) sufficient environmental planning grounds	
									The discussion helps, demonstrates that there are sufficient	
									The discussion below demonstrates that there are sufficient	
									environmental planning grounds to justify the departure from	
									Same as approved DA 154.1/2014	
									The second to the stress of Decision of	
									The proposed development under current Development	
									Application is identical to what has been approved under DA	
									154.1/2014. The previous consent granted for the old DA has	
									demonstrated Council's support and approval with the same	
									The total GFA has been increased as a response to council	
									assessment letter dated 21 April 2020 and email	
									correspondence dated 28 October 2020. The increase in GFA	
									is generated by the inclusion of additional floor area of	
									residential foyers and/or breezeways into the total calculation.	
									It is to be acknowledged that there is no change made to the	
									built form of the proposed development illustrated on both	
									Architectural Issue B plans and Issue A plans. The built form is	
									also identical as the development approved under previous	
									consent of DA 154.1/2014. The increase in total GFA is purely	
									numerical adjustment in accordance with latest caselaw. The	
									proposed development will have identical bulk and scale and	
									Density commensurate with site dimension	
									The subject site, albeit without 30m frontage, is of a dimension	
									and area that has sufficient capacity to accommodate the	
									Firstly, from a numeric point of view, the subject site has a	
									27.43m street frontage, that is 91.4% of the minimum 30m (or	
									8.6% less than 30m). While the density proposed of this	
									development is 1.286:1 FSR, being only 85% of the 1.5:1. It is	
									considered that the proposed density is proportionate and	
									Physically observing the site would also lead to similar	
									conclusion. Comparing the subject site with a theoretical site,	
									that is with the minimum site dimension specified under Clause	
									4.4A(2)(b)(ii), it can be observed that the subject site is of	
									similar, or arguably even higher, capacity to accommodate the	
									density proposed. It makes more planning sense and has more	
									merit to allow a larger development for the subject site which is	
									only marginally under the minimum width of 30m but has a	
									In Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1008,	
									Pearson C held at [60] that environmental planning grounds as	
									identified in cl 4.6 must be particular to the circumstances of the	
									proposed development on a site. This finding was not disturbed	
									on appeal in Four2Five Pty Ltd v Ashfield Council [2015]	
									S. Special in Contact to City Like Colonial (Local)	
<u> </u>	1	<u> </u>					<u>. </u>	I		

							In this particular case the variation to the FSR control does not	
							impact on the ability of the proposal to accord with all other	
							development standards and controls. Having regard to the	
							above there are well founded environmental planning grounds	
							to vary the development standard in this instance.	
							The written request refers to Clause 4.6(4)(a)(i) and	
							demonstrates that the Applicant's written request has	
							adequately addressed the matters required to be demonstrated	
							by subclause (3) of Clause 4.6 of the LEP as follows:	
							by subclause (5) of Clause 4.6 of the LEP as follows.	
							Clause 4.6(4)(a)(i) the consent authority is satisfied that	
							the Applicant's written request has adequately addressed	
							The Applicant & Writer request has adequately addressed	
							In the recent judgment in Randwick City Council v Micaul	
							Holdings Pty Ltd [2016] NSWLEC 7 the Chief Judge upheld the	
							Commissioner's approval of large variations to height and FSR	
							controls on appeal. The Chief Judge observed in his judgment	
							at [39] that Clause 4.6(4) does not require the consent authority	
							to be satisfied directly that compliance with each development	
							standard is unreasonable and unnecessary in the	
							circumstances of the case, but only indirectly by being satisfied	
							directinstances of the ease, but only maneetly by being satisfied	
							In another recent judgment in Zhang and anor v Council of the	
							City of Ryde [2016] NSWLEC 1179 the former Commissioner	
							Brown has established three preconditions at [59] imposed by	
							Clause 4.6 on the Court in exercising the power to grant	
							consent to the proposed development.	
							The first precondition (and not necessarily in the order in cl 4.6)	
							requires the Court to be satisfied that the proposed	
							development will be consistent with the objectives of the zone	
							The second precondition requires the Court to be satisfied that	
							the proposed development will be consistent with the objectives	
							of the standard in question (cl 4.6(4)(a)(ii)).	
							The third presendition requires the Court to be estisfied that the	
							The third precondition requires the Court to be satisfied that the	
							written request demonstrates that compliance with the	
							development standard is unreasonable or unnecessary in the	
							circumstances of the case and with the Court finding that the	
							matters required to be demonstrated have been adequately	
							addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). This precondition	
							also requires the Court to be satisfied that the written request	
							demonstrates that there are sufficient environmental planning	
							grounds to justify contravening the development standard and	
							with the Court finding that the matters required to be	
							This request has demonstrated the strict numeric compliance	
							with the development standard is unreasonable or unnecessary	
							in the circumstances of the case and there are sufficient	
							environmental planning grounds to justify the contravention of	
							the FSR control. The request has further demonstrated how the	
							proposal is consistent with the objectives of the zone and the	
<u> </u>	 <u> </u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>	I		

	The written request refers to Clause 4.6(4)(a)(ii) and demonstrates that the proposal is in the public interest because
	it is consistent with the objectives of the development standard and the objectives of the zone as follows:
	Clause 4.6(4)(a)(ii) in public interest because it is consistent with objectives of the development standard
	The proposed development is in line with public interest as
	The proposal has improved the land utilisation of R4 – High
	Density Residential zoned land in Fairfield, comparing to existing situation as being left as underdeveloped dwelling
	The proposed development contributes to additional housing supply in R4 – High Density Residential zone to meet the growing population in Fairfield local governmental area and the
	The thoughtfully-designed and well-articulated built form of the proposed development is of good input into the
	redevelopment of the locality.
	The development proposal includes landscape works bringing positive contribution to the setting of the building and improving the presentation of the proposed residential flat
	6. Conclusion
	The Development Application is for proposed residential flat building at 34-36 Vine Street, Fairfield. An exception is sought, pursuant to Clause 4.6 of Fairfield Local Environmental Plan 2013 to the maximum permissible floor space ratio prescribed by Clause 4.4 of the of Fairfield Local Environmental Plan
	The proposed maximum variation to the development standard is 0.486:1 (equivalent of 60.75% of 0.8:1 FSR limit). It is
	acknowledged that the proposed 1.286:1 FSR not only is identical with the approved FSR under previous consent of DA 154.1/2014, but also does not generate unacceptable
	environmental planning impacts. The proposal fully complies ADG separation distance and the FSR standard under the
	FLEP 2013, and therefore presents an appropriate and reasonable density that is commensurate with the subject site. Given the above assessment it is found that strict compliance
	with the FSR standard is unnecessary and unreasonable. With the variation of floor space ratio, the proposed
	development is capable to provide high level of both internal and external amenity in terms of sufficient setback, abundant
	direct sunlight access, and contributing to the streetscape as well as consistency with relevant objectives of both the FSR standard and the R4 High Density Residential zone. Therefore,
	For the above reasons, this Clause 4.6 has presented the justification for the FSR variation and is worthy of council's
	, , , , , , , , , , , , , , , , , , ,

										Based on Council's assessment, the development is consistent with other relevant planning instruments and it is considered that the Application provides an appropriate response to the characteristics of the site. It is considered that the variation sought will not result in an unacceptable environmental planning outcome. It is also considered that the development will be in the public interest because it is consistent with the objectives of the FSR standard and the objectives of the R4 High Density			
199.1/2019	27, 28, 29 & 30 Sec 54	728	121-123	Kiora Street	Canley Heights	 4 – Residential – New multi-unit	Fairfield Local Environmental Plan	R4	Clause 4.3 – Height of buildings	The proposal seeks to exceed the 20m maximum height of building standard prescribed by Clause 4.3 of the LEP, by a maximum of 220mm, equal to 1.1% variation. The variation arises from the lift overrun only and not the rest of the building. The Applicant's written justification satisfactorily demonstrates that insisting on compliance with the height standard is unreasonable given the circumstances of this site and proposal, and also demonstrates that there are sufficient planning The application has been assessed in accordance with SEPP No. 65 – Apartment Design Guide, SEPP (Affordable Rental Housing 2009, Fairfield Local Environmental Plan 2013 and Fairfield Development Control Plan 2013 and generally Variation to Clause 4.3 Height of Building Standard The proposed maximum height of building is 20.22 metres, exceeding the prescribed limit by 220mm or equivalent to a 1.1% variation. The exceedance is from the lift overrun only and the rest of the building meets the development standard. The Applicant has submitted to Council a written request for variation of this standard pursuant to the provisions of Clause 4.6 of the LEP which allows flexibility in certain circumstances. Clause 4.6(3) and Clause 4.6(4) of the LEP prescribes that: (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the Applicant that seeks to justify the contravention of the development (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, (b) that there are sufficient environmental planning grounds to justify contravening the development standard unless: (a) the consent authority is satisfied that: (i) the Applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the obje	1.10%	Council	14/12/2020

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			development would result in an inferior lift service. This would
against any negative consequences of varying the height			
			against any negative consequences of varying the height

											The variation to height does not result in any adverse			
		i									environmental impacts as evident when considering the			
		i									variation against the objectives of the height control.			
		1												
		1									 In this regard, insisting on compliance with the height 			
		i									standard is considered to be unreasonable given all of the			
		i												
		1									Given all the above factors, there are sufficient			
		i									environmental planning grounds to justify the contravention.			
205.1/2020	4	1013056	1	Villawood	Villawood	2163	8 – Commercial /	Fairfield Local	B2	Clause 4.3 –	The subject application is seeking development consent for an 6.1% ar	d Counc	il 14/1:	2/2020
		i		Place			retail / office	Environmental		Height of	extension to the approved 8-storey mixed-use building, 5.7%			
		i						Plan 2013		buildings	comprising of a 4-storey addition, which will also accommodate			
		1									updated fire egress and waste facilities. As a result, the			
		i									maximum height of the building will be increased from 8 to 12			
		i												
		i									The application is referred to the Fairfield Local Planning Panel			
		i									(FLPP) for determination in accordance with the Minister's 9.1			
		i									Direction, as the Application proposes development to which			
		i									State Environmental Planning Policy (SEPP) No. 65 - Design			
		i									Quality of Residential Apartment Development applies and is			
		i												
		i									The subject site is zoned B2 Local Centre under Fairfield Local			
		i									Environmental Plan (LEP) 2013. The proposed development is			
		i									permitted with consent within the B2 zone.			
		i												
		i									The site is located within a prominent corner location within the			
		i									Villawood Town Centre which has previously been approved for			
		i									the construction of an 8-storey mixed use building comprising 6			
		i									ground floor retail tenancies, a café, community facility, public			
		i									works and 119 residential units above basement level car			
		i									parking. This application was approved on 10 February 2016 by			
		İ									the Sydney West Joint Regional Planning Panel and is			
		i												
		i									At the time of the approval (prior to the gazettal of the amended			
		i									LEP) a maximum building height of 8 storeys applied to the			
		i									subject site. On this basis, the approved development complied			
		i									with the maximum building height standard at the time.			
		i									Accordingly, the subject application is seeking development			
		i									consent to construct an additional four storeys above the			
		i									approved building within the northern portion of the site and one			
		i									additional floor within the southern portion of the site in			
		i									response to the increased building heights permitted on site.			
											- saparita to the meredeed sanding heighte permitted on otto.			
		İ						1			The proposal will therefore result in a part- 9 and part-12 storey			
		İ						1			building at the subject site, which is consistent with the			
		İ						1			increased building heights permitted on site under the recently			
		İ						1						
		İ									The key planning considerations associated with the Application			
		İ						1			relates to the proposed scale of the development and the			
		İ						1			potential amenity impacts of the built form upon the			
		İ						1			neighbouring properties. Concerns were initially raised in			
		i									relation to the bulk and scale of the development, solar access,			
		İ						1			bedroom sizes, façade design, particularly the treatment of the			
								<u> </u>						
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				1		The proposed building height for the 9-storey (southern) portion
						of the building is 31.84 metres and therefore exceeds the height limit by 1.84 metres, which is equal to a variation of 5.7%. The
						proposed building height of the 12-storey (northern) portion of
						the building is 41.24 metres and therefore exceeds the height
						limit by 2.24 metres, which is equal to a variation of 6.1%.
						Accordingly, a written request to vary the height standard under
						Clause 4.6 of the Fairfield LEP 2013 has been submitted to
						Council. The non-compliance with the height control is
						proposed as a result of the lift overruns and shade structures located on the rooftop level communal open space above Level
						9. It is considered that the written request has demonstrated
						that the variation to the development standard is unlikely to
						result in any unreasonable amenity impacts, is consistent with
						the objectives of the zone and would be in the public interest.
						Accordingly, the written request for a variation to the height
						Whilst it is acknowledged that the proposed building will exceed
						the maximum building height development standard, it is
						considered that the applicant has adequately demonstrated that
						the development results in a bulk and scale which appropriately responds to the existing and future character of the surrounding
						locality, and is consistent with the recent amendments to the
						Fairfield LEP 2013 and updated DCP requirements which now
						Exceptions to development standards (Clause 4.6)
						In accordance with Clause 4.3 of the Fairfield Local Environmental Plan (LEP) 2013, a building height development
						standard of 30 metres within the southern portion and a
						maximum building height standard of 39 metres applies to the
						The proposed building height of the 12-storey (northern) portion
						of the building is 41.24 metres and therefore exceeds the height
						limit by 2.24 metres, which is equal to a variation of 6.1%. This
						non-compliance with the height control is proposed as a result
						of the lift overrun and fire egress stairs above the twelfth storey.
						The proposed building height for the 9-storey (southern) portion
						of the building is 31.84 metres and therefore exceeds the height
						limit by 1.84 metres, which is equal to a variation of 5.7%. This
						non-compliance with the height control is proposed as a result of the lift overrun and shade structure within the rooftop
						communal open space area above ninth storey.
						The written request states that the application proposes to
						contravene the building height development standard contained
						within Clause 4.3 of Fairfield LEP and relevant excerpts of the
						Clause 4.6 written request are provided as follows:
						Clause 4.6 – Exceptions to Development Standards
						The alteration and additions proposed to the approved 8 storey
						development will exceed Council's prescribed maximum
ı I		1	1	I	i l	building height development standards.

					The objectives of this clause are as follows— (a) to provide an	
					appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better	
	1				outcomes for and from development by allowing flexibility in	
					outcomes for and from development by allowing flexibility in	
	1				Comment: The LEP prescribes maximum building heights of 30	
					and 39 metres. The proposed building height is 31.84 metres	
	1				for the 9 storey portion of the building, and 41.24 metres for the	
					12 storey potion of the building, each representing an	
					approximate 6% variation to the development standard.	
					On 21 April 2020, the Villawood Town Centre Planning	
	1				Proposal and Villawood Town Centre Development Control	
	1				Plan were endorsed by Council's Outcomes Committee. The	
					recommendations presented to that meeting were as follows:	
					d) Council adopt the Blanning Brancast as a 17 % to	
					1) Council adopt the Planning Proposal, as exhibited, to	
					amend Fairfield Local Environmental Plan (LEP) 2013 for land identified as Villawood Town Centre.	
					identined as villawood Town Centre.	
					2) Pursuant to Section 3.36 of the Environmental Planning	
	1				and Assessment Act 1979, Council proceed to finalise the	
					Planning Proposal under delegated authority in accordance	
					with the Guide to Preparing LEPs.	
					The same of the sa	
					3) Council adopt the draft Villawood Town Centre	
					Development Control Plan (DCP) as amended post exhibition.	
					4) In accordance with Clause 21 of the Environmental	
					Planning and Assessment Regulation 2000, Council give public	
					notice within 28 days of its decision to adopt the Villawood	
					Town Centre DCP. The DCP will come into effect when the	
					associated Planning Proposal LEP is gazetted. 5) Upon gazettal of the Villawood Town Centre LEP	
					Amendment and the Villawood Town Centre DCP coming into	
					force, the Villawood Town Centre Structure Plan be repealed.	
					15.55, ale villarese remi della di della ri ilari be repedied.	
					The Planning Proposal was subsequently earmarked by the	
					NSW Department of Planning in Tranche Two of its fast-	
					tracked assessment program, and building height amendments	
					to the LEP was gazetted on 5 June 2020.	
					The endorsed Villawood Town Centre Development Control	
					Plan 2020, now in effect, envisages a part 9 and part 12 storey	
					development upon the site.	
					The current proposal seeks flexibility in application of the	
					development standard, where a breach to the maximum	
					building height is entirely consistent with the maximum height of	
					buildings envisioned for the site. The proposed development	
					will result in a part 9 and part 12 storey building, and having a	
					maximum building height of 41.24 metres, topping out at RL	

				The proposed development is consistent with the desired
				maximum building heights for development upon the site
				(Villawood Town Centre Urban Study, Villawood Town Centre
				Planning Proposal and Villawood Town Centre Development
				Control Plan 2020), and is consistent with the scale of building
				Control Flan 2020), and is consistent with the scale of building
				It is therefore suggested that an appropriate degree of flexibility
				in application of the development standard should be applied in
				the circumstances, enabling the achievement of building
				heights envisioned for the site following years of public
				Theights envisioned for the site following years of public
				(2) Development consent may, subject to this clause, be
				granted for development even though the development would
				contravene a development standard imposed by this or any
				other environmental planning instrument. However, this clause
				does not apply to a development standard that is expressly
				excluded from the operation of this clause.
				excluded from the operation of this clause.
				Comment: The development standard proposed to be
				contravened is Clause 4.3(2) Height of Buildings. The southern
[]				portion of the site has a height of 31.84 metres (9 storeys), and
				represents a 6.1% variation to the 30 metre development
				standard. The maximum height of the proposed development at
				41.24 metres (12 storeys), represents a 5.7% variation to the
				41.24 metres (12 storeys), represents a 5.170 variation to the
				The height of buildings development standard is not expressly
				excluded from the operation of this clause.
				excluded from the operation of this claded.
				The proposed development has been assessed and considered
				having regard to the matters for consideration under Clause
				4.6(3) and 4.6(4) of the Fairfield Local Environmental Plan as
				110(0) and 110(1) of the Familia 200al 211110 minorital Flam as
				(3) Development consent must not be granted for development
				that contravenes a development standard unless the consent
				authority has considered a written request from the applicant
				that seeks to justify the contravention of the development
				(a) that compliance with the development standard is
				unreasonable or unnecessary in the circumstances of the case,
				(b) that there are sufficient environmental planning grounds
				to justify contravening the development standard.
				The written requests addresses Clause 4 5(2)/h) and Clause
				The written requests addresses Clause 4.6(3)(b) and Clause
				4.6(3)(a) and argues that strict compliance with Clause 4.3 of
				the Fairfield LEP is considered to be unreasonable and
				unnecessary in the circumstance of the case and that there are
				sufficient environmental planning grounds to justify
				Comment: This submission is a written request for
				consideration by the consent authority.
				Consideration by the consent authority.
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			1	1	T	т т	
							The development is clearly consistent with the intended height
							in storeys for development designated for the site, allowing
							appropriate ceiling heights for each building level and noting
	[there is provision only for communal open space atop the lower
							podium levels of the building, and not atop Level 11. The roof
							level affords provision for lift overruns and a modest
							mechanical equipment enclosure only. There are no adverse
							environmental impacts resulting from the minor building height
							breaches, as the encroaching elements are set back from the
							si cacinos, ae ano enercacining ciomento are consactinom are
							The proposed development's consistency with the height in
							storeys intended for the site is considered sufficient
							environmental planning grounds in the circumstances to justify
							the very minor contravention of the development standard.
							(4) Development consent must not be granted for
		- 1					development that contravenes a development standard
							(a) the consent authority is satisfied that—
							(i) the applicant's written request has adequately
							addressed the matters required to be demonstrated by
							(ii) the proposed development will be in the public interest
							because it is consistent with the objectives of the
							· · · · · · · · · · · · · · · · · · ·
							particular standard and the objectives for development
							within the zone in which the development is proposed to
							(c) the concurrence of the Planning Secretary has been
							obtained.
							The written requests addresses Clause 4.6(4)(a)(ii) and argues
							that the proposed development will be in the public interest
							because it is consistent with the objectives of the building height
							development standard (Clause 4.3) of the Fairfield LEP 2013 as
							discussed above as well as the objectives of the R4 High
							also as over as well as the espectator of the fitting in
							Comment: The objectives of Clause 4.3 Height of Buildings
							are as follows:
							(a) to establish the maximum height for buildings,
	[(b) to ensure that the height of buildings complements the
	[streetscape and character of the area in which the buildings are
	[(c) to minimise the visual impact, disruption of views, loss of
							privacy and loss of solar access to existing development.
							All of the stated objectives are satisfied by the proposed
							All of the stated objectives are satisfied by the proposed
							development of part 9 and part 12 storey building. The intended
	[development is consistent with the desired future height of
							buildings within the town centre, consistent with building
	[separation and visual privacy requirements of the Apartment
							Design Guide and recently adopted DCP, and is consistent with
							the intended density of development desired by Council for the
1			I	1	1	1	

	The proposed development (alterations and additions) has no impact on the natural landform, and in urban design terms, reinforces the corner treatment of the street block as the tallest building within the town centre as intended. The scale and intensity of development is consistent with the desired future character of the Villawood Town Centre, which is designated for urban renewal, and has exceptional access to the myriad facilities this centre will ultimately offer, including exceptional The site is zoned B2 Local Centre pursuant to the LEP. The objectives of the zone are as follows: To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in,
	 work in and visit the local area. To encourage employment opportunities in accessible To maximise public transport patronage and encourage walking and cycling. To provide for shop top housing that supports local To ensure that mixed use developments include an active street frontage by locating business, retail and community uses
	The proposed development is consistent with these objectives, promoting a mixture of compatible land uses, an appropriate density of commercial and residential housing densities to support the Villawood Town Centre and maximise public transport usage, exhibits a variety of housing types consistent with demand in the locality, and is of an appropriate design quality to complement the desired future character of this high density precinct. The proposed resident population will assist in
	written request for a variation to the maximum building height standard has reasonably established that compliance with the standard is unreasonable and unnecessary in these