

Council DA reference number	Lot number	DP number	Apartment/ Unit number	Street number	Street name	Suburb/Town	Postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy
338.1/2020	5	1257889		40	Malabar St	Fairfield	2165	2 - Residential - Single new dwelling	Fairfield Local Environmental Plan 2013	R2	4.4 - Floor Space Ratio	The variation requested is minor and is unlikely to result in unreasonable amenity impacts, and is consistent with the objectives of the developments standards and the zone.	4.40%	Council	19/10/2020
	71 Sec 8	1059													
274.1/2020	1	851043		1	Gilbert Street	Cabramatta	2166	5 – Residential – Seniors Living	Fairfield Local Environmental Plan 2013	R3	Clause 40(4)(a) Height in Zones Where Residential Flat Buildings Are Not Permitted Standard	<p>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</p> <p>The development and specifically the proposed new south-eastern, internally facing awning, seeks a variation to the SEPP</p> <p>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</p> <p>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</p> <p>The applicant has submitted a written request for the variation proposed to the standard pursuant to Clause 4.6 of the LEP.</p> <p>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</p> <p>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</p> <p>Accordingly, it is recommended that the variation to the SEPPs maximum 8m height standard be granted on the basis of the following reasons:</p> <ul style="list-style-type: none"> The applicant has stated that the reasons for the proposed variation are as follows: 	19% to 23%	Council	21/10/2020

											<div><div>a. <i>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.</i></div><div>b. <i>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</i></div><div>c. <i>The awning provides all weather protection for the upper level deck thereby enhancing the safety of its frail users, particularly during times of precipitation.</i></div><div>d. <i>The awning provides valuable solar protection to those residents resulting in a better enjoyment of the facility.</i></div><div>e. <i>No other secure outdoor spaces are available for residents at this end of the facility.</i></div><div></div><div><div>• 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 “<i>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.</i>”</div><div></div><div><div>• The applicant has stated that “<i>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</i>”. It is accepted that the variation to height does</div><div></div><div><div>• 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</div><div></div><div><div>• It is noted that there are no stated objectives for the 8m SEPP standard. The applicant has instead referenced the Fairfield LEP 2013 objectives of the height of building standard in Clause 4.3. Although the LEP height standard is not applicable as the SEPP standard prevails, the objectives of the LEP standard provide important objectives for the locality and include objectives to establish a maximum height for buildings, to ensure the height of buildings complements the streetscape and character of the area in which the buildings are located; and to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development. The proposed awning is consistent with these guidelines. Given the significant separation distances to neighbouring residents and given the minor scale of the awning, the proposal does not cause any adverse visual impact, nor disrupt any significant</div><div></div></div></div><div></div><div></div><div></div></div></div></div>
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											<ul style="list-style-type: none">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 development does not result in an abrupt change to the scale.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 & 186 Sec 1	1553		45	Lime Street	Cabramatta West	2166	13 - Subdivision only	Fairfield Local Environmental Plan 2013	R2	Clause 4.1 minimum subdivision lot size	The Applicant has submitted a written application justifying the minimum lot size variation of 26.7%, pursuant to Clause 4.6 Exceptions to development standards for the following reasons:	26.70%	Council	21/10/2020
	1	704545										<ul style="list-style-type: none">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 onThe 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 adjoiningThe 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 onThe variation improves the relationship and potential impacts to adjoining properties by clearly differentiating andThe 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 grant lot sizes as small as 200m² to accommodate the growing population in the Liverpool and Blacktown growth centres.			

											<ul style="list-style-type: none">• 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	<p>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</p> <p>A written request was submitted to justify non-compliance with the 4.3 of Fairfield LEP as follows:</p> <p>Clause 4.6 Departure – Height</p> <p>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:</p> <p>Portion - Pergola, bbq and communal toilet associated with rooftop common open space area – Maximum Height 20m – Departure 2m.</p> <p>Portion – Lift Overruns – Maximum Hight 20m – Departure 2.7m</p> <p>As the development seeks to vary this control, a clause 4.6 submission is required to be provided to vary this development</p> <p>These matters are addressed below, noting that the proposal has a bulk and scale that is consistent with the emerging built</p> <p>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.</p> <p>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.</p>	13.50%	Council	18/11/2020

											<div><div>This indicates that the variation is not a means of achieving 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</div><div>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</div><div>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 as the underlying objectives of the control are achieved.</div><div>The objectives of the building height development standard are stated as:<ul style="list-style-type: none">• (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.</div><div>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</div><div><ul style="list-style-type: none">• 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• 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• Due to the minor nature of the variation it will not have any adverse amenity impacts. In this regard it is noted:<ul style="list-style-type: none">o The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of theo The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight losso The proposed variation will not lead to view loss or interrupt views to and from the site.o The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the• The proposal has been designed to ensure that privacy impacts are mitigated that the proposal will not obstruct existing</div></div> <td></td> <td></td> <td></td>			
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[illegible]

											<p><i>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.</i></p> <p>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.</p> <p>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</p>			
267.1/2020	N/A	N/A		N/A	Nineveh Crescent	Greenfield Park	2176	13 – Subdivision only	Fairfield Local Environmental Plan 2013	R2	<p>Clause 4.1 minimum subdivision lot size</p> <p>DA proposes to subdivide a small portion of road located adjacent to 51 Nineveh Crescent (Lot 5 DP 1198608), Greenfield Park. The subdivision will create one (1) residue allotment numbered 1 for Title Issue and Road Closure under</p> <p>The proposed lot has a total area of 43.8m² 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</p> <p>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 more regular lot of land and a consistent road frontage in line with residential developments along the street.</p> <p>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.</p> <p>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</p> <ul style="list-style-type: none"> <i>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 road closure and sale proposal and resolved on 26 May 2015 to formally close this part of Nineveh Crescent for future</i> 	90.30%	Council	18/11/2020

											<ul style="list-style-type: none">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 residentialThe 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 wouldThe 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 theCompliance with the development standard for minimum lot size in R2 Zone is unreasonable or unnecessary in the <p>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</p> <p>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</p>				
651.1/2018	31	1160188		45	Chifley Street	Smithfield	2164	4 – Residential – New multi-unit	Fairfield Local Environmental Plan 2013	R2	4.3 – Height of buildings	<p>A written request to vary the FSR standard under Clause 4.6 of the Fairfield LEP 2013 was submitted to Council.</p> <p>State Environmental Planning Policy No. 65 - Design Quality of Residential Flat Development is applicable to the subject application, as the proposal exceeds 3 storeys in height due to the basement protrusion above the ground and contains more</p> <p>The prescribed maximum height of buildings for the subject site is 9m. The Application involves exceedances of the 9m height limit for rooftop structures to a height of 535mm, which equates</p> <p>Accordingly, the Application has been accompanied by a written request under Clause 4.6 of the Fairfield LEP 2013 to vary the height of buildings standard.</p> <p>The variation is supported as the tests under Clause 4.6 are considered to have been met by demonstrating as follows:</p> <p>1. Is the planning control a development standard?</p> <p>Yes. Clause 4.3 of the Fairfield LEP 2013 establishes a numerical development standard for the maximum height of</p> <p>2. What is the underlying object or purpose of the</p>	6%	Council	18/11/2020

												<div>The objectives of Clause 4.3 are:</div> <div>(a) to establish the maximum height for buildings,</div> <div>(b) to ensure that the height of buildings complements the streetscape and character of the area in which the buildings are</div> <div>(c) to minimise the visual impact, disruption of views, loss of privacy and loss of solar access to existing development</div> <div>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</div> <div>The variation does not hinder the attainment of the relevant aims of the Fairfield LEP 2013.</div> <div>The variation is not antipathetic to the relevant objectives of the R2 Low Density Residential zone, as follows:</div> <div><div>To provide for the housing needs of the community within a low density residential environment; and</div><div>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</div></div> <div>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</div> <div>The relevant objectives specified in Section 1.3 of the Act are:</div> <div>(c) to promote the orderly and economic use and development of land, and</div> <div>(g) to promote good design and amenity of the built</div> <div>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.</div> <div>4. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the</div> <div>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</div> <div>5. Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the Applicant's written justification well</div>			
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												<p>The Applicants Clause 4.6 justification is well founded and makes the following key points:</p> <p>i. The minor height breach is less than the required floor level</p> <p>ii. The proposed two storey buildings are consistent with the desired character and scale of the area which anticipates two</p> <p>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</p> <p>iv. There are no adverse impacts on any adjoining land that result from the minor breach in height.</p> <p>The variation does not result in any other non-compliance or variation of a development standard.</p> <p>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</p>			
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	<p>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</p> <p>Clause 4.4 of the Fairfield LEP 2013, allows for a maximum FSR of up to 2:1 for residential flat building development within</p> <p>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</p> <p>1(c). Exceptions to maximum floor space ratio in Zone R4 (FSR) (Clause 4.4A)</p> <p>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</p> <p>4.4A Exceptions to maximum floor space ratio in Zone R4</p> <p>(1) This clause applies to land in Zone R4 High Density Residential (excluding any land in Bonnyrigg, Cabramatta, Canley Vale and Fairfield Heights).</p> <p>(2) Despite clause 4.4, the maximum floor space ratio for a building on land to which this clause applies is as follows—</p> <p>(a) if the building has a street frontage of less than 30</p> <p>(b) if the building has a street frontage of at least 30 metres, but less than 45 metres:</p> <p>(i) 1.25:1 if the site has a depth of less than 40 metres, or</p> <p>(ii) 1.5:1 if the site has a depth of at least 40 metres.</p> <p>(c) if the building has a street frontage of at least 45 metres:</p> <p>(i) 1.5:1 if the site has a depth of less than 40 metres, or</p> <p>(ii) 2:1 if the site has a depth of at least 40 metres.</p>	60.75%	Council	14/12/2020

												<div>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</div> <div>Exceptions to Development Standards (Clause 4.6 FLEP</div> <div>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 609.78m² of floor space, which equates to a variation of 60.75%.</div> <div>Relevant excerpts of the Clause 4.6 written request are provided as follows:</div> <div>3. Proposed Variation</div> <div>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.</div> <div>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</div> <div>4. Clause 4.6 Variation to Development Standard</div> <div>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</div> <div>Clause 4.6(3)-(5) of the FLEP 2013 provides that:</div> <div>4.6 Exceptions to development standards</div> <div>(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</div> <div>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,</div> <div>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</div> <div>(4) Development consent must not be granted for development that contravenes a development standard unless:</div> <div>(a) the consent authority is satisfied that:</div>			
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												<div><div>(i) the Applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and</div><div>(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</div><div>(b) the concurrence of the Secretary has been obtained.</div><div></div><div>5. Justification for Contravention of the Development</div><div></div><div>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</div><div></div><div>Clause 4.6(3)(a) unreasonable and unnecessary</div><div></div><div>The development seeks to depart from the FSR control noting that the proposal remains consistent with the objectives of the clause and is a more appropriate outcome on the site because</div><div></div><div>The objectives of the FSR development standard are stated as:</div><div>(1) The objectives of this clause are as follows:</div><div>(a) to provide an appropriate density of development consistent with the established centres hierarchy,</div><div>(b) to ensure building density, bulk and scale make a positive contribution toward the desired built form as identified by the established centres hierarchy.</div><div></div><div>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.</div><div></div><div>In Wehbe Preston CJ states:</div><div></div><div>The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the</div><div></div><div>The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved</div><div></div><div>The variation to the FSR development standard is consistent with clause 4.6(3)(a) and flexibility should be applied in this case because the objectives of the maximum FSR development standard are achieved notwithstanding the non-compliance with the numerical control in the standard.</div><div></div></div>			
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													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:			
													Clause 4.6(4)(a)(i) the consent authority is satisfied that the Applicant's written 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			
													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)(iii)).			
													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			

												<div><div>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:</div><div></div><div>Clause 4.6(4)(a)(ii) in public interest because it is consistent with objectives of the development standard and the objectives of the zone</div><div></div><div>The proposed development is in line with public interest as</div><div></div><div><ul style="list-style-type: none">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</div><div></div><div><ul style="list-style-type: none">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</div><div></div><div><ul style="list-style-type: none">The thoughtfully-designed and well-articulated built form of the proposed development is of good input into the redevelopment of the locality.</div><div></div><div><ul style="list-style-type: none">The development proposal includes landscape works bringing positive contribution to the setting of the building and improving the presentation of the proposed residential flat</div><div></div><div>6. Conclusion</div><div></div><div>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</div><div></div><div>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.</div><div></div><div>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,</div><div></div><div>For the above reasons, this Clause 4.6 has presented the justification for the FSR variation and is worthy of council's</div></div>			
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												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 Residential Zone.			
199.1/2019	27, 28, 29 & 30	728		121-123	Kiora Street	Canley Heights	2166	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.	1.10%	Council	14/12/2020
	Sec 54														
												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:			
												<i>(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</i>			
												<i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,</i>			
												<i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i>			
												<i>(4) Development consent must not be granted for development that contravenes a development standard unless:</i>			
												<i>(a) the consent authority is satisfied that:</i>			
												<i>(i) the Applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i>			
												<i>(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</i>			

												<div><div>The Applicant has submitted to Council a written request seeking to justify the contravention of the height standard. The Applicants' written request has been carefully considered against the provisions of Clause 4.6(4) and appropriately</div><div>It is considered that the Applicant's written justification satisfactorily demonstrates that insisting on compliance with the height of building standard is unreasonable given the circumstances of this site and proposal, and also demonstrates that there are sufficient planning grounds to justify the contravention. In this regard, Council is satisfied that the proposed development will be in the public interest because despite the proposed height contravention, the development remains consistent with the objectives of the height standard</div><div>The Applicant has provided the following reasons for justifying the variation to the LEPs maximum 20m height standard:</div><div><div><div>• The non-compliance is minor in nature with the majority of the building being compliant with the building height control and with the lift overrun recessed, the impact to the streetscape is negligible as it will be visually unnoticeable when viewed from</div><div>• The variation is primarily as a result of appropriately providing a more efficient lift service to the complex. A hydraulic lift that has plant beneath it could be provided, however, the</div></div><div>Due to the minor nature of the variation (220mm) it will not have any adverse amenity impacts. In this regard, it is noted:</div><div><div>○ The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of the</div><div>○ The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss</div><div>○ The proposed variation will not lead to view loss or interrupt views to and from the site.</div><div>○ The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the</div><div>○ The non-compliance is the direct result of providing an appropriate lift service to the residents and not an attempt to gain additional saleable floor space.</div></div><div>After reviewing the Applicant's written request for a Clause 4.6 Variation to the Height of Building:</div><div><div>• It is agreed with the Applicant that a height compliant development would result in an inferior lift service. This would not achieve a better planning outcome when weighed up against any negative consequences of varying the height</div></div></div></div>			
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											<ul style="list-style-type: none">• The variation to height does not result in any adverse environmental impacts as evident when considering the variation against the objectives of the height control.				
											<ul style="list-style-type: none">• In this regard, insisting on compliance with the height standard is considered to be unreasonable given all of the				
											<ul style="list-style-type: none">• Given all the above factors, there are sufficient environmental planning grounds to justify the contravention.				
205.1/2020	4	1013056		1	Villawood Place	Villawood	2163	8 – Commercial / retail / office	Fairfield Local Environmental Plan 2013	B2	Clause 4.3 – Height of buildings	<p>The subject application is seeking development consent for an extension to the approved 8-storey mixed-use building, comprising of a 4-storey addition, which will also accommodate updated fire egress and waste facilities. As a result, the maximum height of the building will be increased from 8 to 12</p> <p>The application is referred to the Fairfield Local Planning Panel (FLPP) for determination in accordance with the Minister's 9.1 Direction, as the Application proposes development to which State Environmental Planning Policy (SEPP) No. 65 - Design Quality of Residential Apartment Development applies and is</p> <p>The subject site is zoned B2 Local Centre under Fairfield Local Environmental Plan (LEP) 2013. The proposed development is permitted with consent within the B2 zone.</p> <p>The site is located within a prominent corner location within the Villawood Town Centre which has previously been approved for the construction of an 8-storey mixed use building comprising 6 ground floor retail tenancies, a café, community facility, public works and 119 residential units above basement level car parking. This application was approved on 10 February 2016 by the Sydney West Joint Regional Planning Panel and is</p> <p>At the time of the approval (prior to the gazettal of the amended LEP) a maximum building height of 8 storeys applied to the subject site. On this basis, the approved development complied with the maximum building height standard at the time.</p> <p>Accordingly, the subject application is seeking development consent to construct an additional four storeys above the approved building within the northern portion of the site and one additional floor within the southern portion of the site in response to the increased building heights permitted on site.</p> <p>The proposal will therefore result in a part- 9 and part-12 storey building at the subject site, which is consistent with the increased building heights permitted on site under the recently</p> <p>The key planning considerations associated with the Application relates to the proposed scale of the development and the potential amenity impacts of the built form upon the neighbouring properties. Concerns were initially raised in relation to the bulk and scale of the development, solar access, bedroom sizes, façade design, particularly the treatment of the</p>	6.1% and 5.7%	Council	14/12/2020

												<div><div>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%.</div><div></div><div>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</div><div></div><div>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</div><div></div><div>Exceptions to development standards (Clause 4.6)</div><div></div><div>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</div><div></div><div>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.</div><div></div><div>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.</div><div></div><div>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:</div><div></div><div>Clause 4.6 – Exceptions to Development Standards</div><div></div><div><i>The alteration and additions proposed to the approved 8 storey development will exceed Council's prescribed maximum building height development standards.</i></div></div>			
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												<p><i>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 outcomes for and from development by allowing flexibility in</i></p> <p><i>Comment: The LEP prescribes maximum building heights of 30 and 39 metres. The proposed building height is 31.84 metres for the 9 storey portion of the building, and 41.24 metres for the 12 storey portion of the building, each representing an approximate 6% variation to the development standard.</i></p> <p><i>On 21 April 2020, the Villawood Town Centre Planning Proposal and Villawood Town Centre Development Control Plan were endorsed by Council's Outcomes Committee. The recommendations presented to that meeting were as follows:</i></p> <p><i>1) Council adopt the Planning Proposal, as exhibited, to amend Fairfield Local Environmental Plan (LEP) 2013 for land identified as Villawood Town Centre.</i></p> <p><i>2) Pursuant to Section 3.36 of the Environmental Planning and Assessment Act 1979, Council proceed to finalise the Planning Proposal under delegated authority in accordance with the Guide to Preparing LEPs.</i></p> <p><i>3) Council adopt the draft Villawood Town Centre Development Control Plan (DCP) as amended post exhibition.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>The endorsed Villawood Town Centre Development Control Plan 2020, now in effect, envisages a part 9 and part 12 storey development upon the site.</i></p> <p><i>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</i></p>			
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											<div><div>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</div><div>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</div><div>(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.</div><div>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</div><div>The height of buildings development standard is not expressly excluded from the operation of this clause.</div><div>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</div><div>(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</div><div>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case,</div><div>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</div><div>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</div><div>Comment: This submission is a written request for consideration by the consent authority.</div></div>			
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												<div><div>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</div><div></div><div>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.</div><div></div><div>(4) Development consent must not be granted for development that contravenes a development standard</div><div></div><div>(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.</div><div></div><div>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</div><div></div><div>Comment: The objectives of Clause 4.3 Height of Buildings are as follows:</div><div></div><div>(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.</div><div></div><div>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</div><div></div></div>			
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												<div><div>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</div><div></div><div>The site is zoned B2 Local Centre pursuant to the LEP. The objectives of the zone are as follows:</div><div><div><div>• 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.</div><div></div><div>• To encourage employment opportunities in accessible</div><div></div><div>• To maximise public transport patronage and encourage walking and cycling.</div><div></div><div>• To provide for shop top housing that supports local</div><div></div><div>• To ensure that mixed use developments include an active street frontage by locating business, retail and community uses</div><div></div></div><div>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</div><div></div><div>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 in these</div></div></div>			
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