

# Clause 4.6 Variation to the Internal Apartment Size SEPP (Housing) 2021

46 COURT ROAD  
FAIRFIELD

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## CLAUSE 4.6 VARIATION REQUEST

### INTRODUCTION

This Cl.4.6 supports an **amending DA** to make alterations and additions to an approved and currently under construction mixed use development at 46 Court Road, Fairfield under DA687.1/14 (as modified).

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

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

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

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

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

The request seeks to vary the development standard for the minimum internal areas of some apartments within in-fill affordable housing developments under Cl.19(g) of *State Environmental Planning Policy (Housing) 2021* (Housing SEPP). This Clause 4.6 variation request demonstrates that:

- It is unreasonable and unnecessary to comply with the development standard in this instance;
- environmental planning grounds demonstrate that it is reasonable to vary the development standard
- The proposal meets the intent of the control and is consistent with relevant State Environmental Planning Policies and the Apartment Design Guideline.
- The proposal is consistent with the objectives of Cl.4.6 in that the facilitation of the variation will deliver better outcomes for and from the development through the provision of much needed affordable housing supply within an accessible location.

- The proposal is consistent with the likely future character of the Fairfield Town Centre outlined in adopted council masterplans.

Despite the minor non-compliances with the internal area standard, the minor departure assists in the delivery of affordable housing, consistent with the following Objects of the Environmental Planning and Assessment Act 1979:

*(d) to promote the delivery and maintenance of affordable housing,*

*(g) to promote good design and amenity of the built environment,*

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal and apply the flexibility within Cl.4.6 of Fairfield LEP 2013 to the internal apartment area standard of the Housing SEPP 2021 at Cl.19 (2) (c), given all apartments show good design and amenity, the majority of units complying and affordable housing being delivered.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.



## The site

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

The subject site is a significant land parcel located within the Court Road Precinct of the Fairfield Town Centre, approximately 45m north of the intersection of Court Road and Spencer Street and approximately 130m south of the intersection of Court Road and Nelson Street. The development site is within 400m of the Fairfield Train Station and a bus interchange with services to Blacktown, Cabramatta, Bossley Park, Sydney, Liverpool, Bonnyrigg, Smithfield and Parramatta. Likewise a bus stop with regular services to Parramatta, Liverpool, Blacktown, Prairiewood and Smithfield is located at the site's frontage to Court Road.

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



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

## PLANNING INSTRUMENT TO BE VARIED

This Clause 4.6 Variation Request seeks to vary *State Environmental Planning Policy (Housing) 2021*

The site is zoned MU1 Mixed Use under *Fairfield Local Environmental Plan 2013*. Shop top housing and residential flat buildings are permitted in the zone, making in-fill affordable housing permitted with consent via Chapter 2 Division 1 of the Housing SEPP 2021.

## DEVELOPMENT STANDARD TO BE VARIED

The Clause 4.6 Variation Request relates to the minimum landscaped area requirement of Cl.19(g) of *State Environmental Planning Policy (Housing) 2021*. This is a non-discretionary development standard stipulating that apartments should have the minimum internal area of the ADG. An extract of the clause states:

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

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

## OBJECTIVES OF THE STANDARD

Cl.15A includes a single objective that applies to the infill affordable housing division of the Housing SEPP 2021. The objective is:

*The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.*

The object of Cl.19 is as follows:

*(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

Neither objective within Cl.15 nor Cl.19 has a particular reference to the internal area of an apartment. It is noted that Cl.19 provides an administrative task in advising a consent authority that if identified standards are complied with, then a more onerous standard cannot be applied.

As Cl.19(g) refers to the ADG and the relevant objectives are:

- **Objective – 4D1:** *The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity*

- **Objective 4D-3:** *Apartment layouts are designed to accommodate a variety of household activities and needs*

## JUSTIFICATION OF THE PROPOSED VARIATION

### CI.4.6 of FLEP 2013

Clause 4.6 of FLEP 2013 provides that development consent may be granted for development even though the development would contravene a development standard. The objectives of clause 4.6 are:

- 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 particular circumstances.*

The operative provisions of the clause are as follows:

- 3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that —*
  - a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
  - b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

This document has been prepared in accordance with section 35B of the *Environmental Planning and Assessment Regulation 2021* to address the above requirements.

The key tests or requirements arising under clause 4.6 are as follows:

- That ‘compliance with the standard is unreasonable or unnecessary in the circumstances of the case’ does not always require the applicant to show that the relevant objectives of the standard are achieved by the proposal (Wehbe “test” 1). Other methods are available as per the previous 5 tests applying to SEPP 1, set out in *Wehbe v Pittwater*.
- There are planning grounds to warrant the departure, and these planning grounds are clearly articulated as reasons in arriving at a decision.

An earlier version of clause 4.6, prior to its amendment on 1 November 2023, contained an additional requirement that the development be “in the public interest”, including 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”.

This requirement is no longer expressly relevant to clause 4.6 variation requests.

### **Relevant Case Law**

Clause 4.6(3)(a) emphasises the need for the proponent to demonstrate how the relevant development standard is unreasonable or unnecessary in the circumstances. The ways in which compliance with a development standard may be held to be “unreasonable or unnecessary” are well established. In *Wehbe v Pittwater Council* [2007] NSWLEC 827 (Wehbe), Preston CJ provided a non-exhaustive list through which an applicant might establish that compliance with a development standard is unreasonable or unnecessary.

While *Wehbe* related to objections made pursuant to State Environmental Planning Policy No. 1 – Development Standards (SEPP 1), in *Initial Action Pty Limited v Woollahra Municipal Council* [2018] NSWLEC 118 (Initial Action) the Court held that the common ways of demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are equally applicable to clause 4.6. Further, in *Initial Action* the Court confirmed that it is not necessary for a non-compliant scheme to be a better or neutral outcome and that an absence of impact is a way of demonstrating consistency with the objectives of a development standard. Therefore, this must be considered when evaluating the merit of the deep soil departure. The five common methods for demonstrating that compliance with a development standard is unreasonable or unnecessary as outlined in *Wehbe* are:

- 1) Demonstrating that the objectives of the development standard is achieved, despite the noncompliance [42]
- 2) Establishing that the underlying objective or purpose is not relevant and compliance is therefore unnecessary [45]
- 3) Showing that the underlying objective or purpose would be defeated or thwarted if compliance required, confirming that compliance is unreasonable [46]
- 4) Establishing that the standard has been virtually abandoned or destroyed through council's own actions. Therefore given council's granting of consents that depart from the standard, compliance is unnecessary and unreasonable [47]
- 5) Demonstrating that the zoning of the land is unreasonable or inappropriate, meaning that compliance with the development standard is also unreasonable or unnecessary [48]

This Cl.4.6 applies method 1 of *Wehbe*.



## The Variation and Design Response

The architectural plans that accompany this Clause 4.6 departure illustrate that the amending DA proposes departures from the minimum internal areas of apartments identified in 4D Apartment Size and Layout of the Apartment Design Guideline.

The following tables identify the departures.

| ADG 4D-1: Unit Area:   | Building B                         | ADG Requirement  | Apartment Size      |
|--|------------------------------------|------------------|---------------------|
| 70m <sup>2</sup> for 2 bedroom apartment with 5m <sup>2</sup> for each additional bathroom   | B1201 – 2 bedroom with 2 bathrooms | 75m <sup>2</sup> | 74.93m <sup>2</sup> |
|  | B1301 – 2 bedroom with 2 bathrooms | 75m <sup>2</sup> | 74.93m <sup>2</sup> |
| The departure from the development standard is 0.07m <sup>2</sup> , which is indistinguishable and when rounding is applied is 75m <sup>2</sup> and compliant. |                                    |                  |                     |

| ADG 4D-311: Master bedroom area  | Building A  | Building B   | Building C   | Building D  |
|--|---|--|--|---|
| 10m <sup>2</sup> , excluding wardrobe  | One unit (A-701) with an area of 9.3m <sup>2</sup> (0.7m <sup>2</sup> less) | A total of six units (B-1207, B-1208, B-1307, B-1308, B-1407, B-1408) with an area of 9.7m <sup>2</sup> (0.3m <sup>2</sup> less) | A total of three units (C-1202, C-1302, C-1402) with an area of 9.8m <sup>2</sup> (0.2m <sup>2</sup> less) | One unit (D-902) with an area of 9.1m <sup>2</sup> (0.9m <sup>2</sup> less) |
| <p>The variation across the three buildings relates to 11 units out of 66. In other words, 55 apartments have master bedrooms which meet the development standard, confirming that this is a minor departure from the development standard.</p> <p>When rounding is applied to 9 of the apartments, they achieve compliance with the 10m<sup>2</sup> requirement. The variation is therefore in reality to two apartments.</p> <p>Apartment A701 has been setback from the northern boundary to provide articulation and landscaping along this façade. This has resulted in a minor variation in the width of the bedroom, noting that all other aspects of the apartment comply with the minimum dimension and that a study room is included which provides flexibility in terms of how the apartment can be used, along with ensuring there is appropriate space for the occupant of the one bedroom apartment. Given the apartment is 12.05m<sup>2</sup> oversized, the minor reduction in bedroom size is not noticeable given the overall layout and spaces provided for the resident.</p> |   |  |  |   |

|  |  |
|--|--|
|  | In Building D along the northern boundary a 6m setback has been applied to facilitate separation between the northern site, along with providing landscaped area. This has resulted in a minor reduction in size of the bedroom in D-902 which is a single bedroom unit. The apartment has an area of 52.51m <sup>2</sup> which is above the minimum of 50m <sup>2</sup> for a single bedroom apartment. Therefore, despite the minor non-compliance, the bedroom as demonstrated on the plans can accommodate necessary furniture comfortably, with the living areas also generous apportioned to facilitate different layouts and use by the resident. Given the apartment is 2.51m <sup>2</sup> oversized, the minor reduction in the bedroom area is not noticeable, with appropriate floor area and storage for comfortable living and use by the resident. |
|--|--|

| ADG 4D-3.3: Living Room Width:   | Building A  | Building C   |
|--|---|--|
| The ADG requires the living room of a 2 bedroom apartment to have a minimum width of 4m. | Apt.240: 2.891m, with second living area compliant at 4.24m<br><br>As a living room has a width of 4m, the proposal complies. | C-1208: The living area ranges from 3.71m to 4m due to the angled wall of the original approved DA. This is a variation of 290mm and not noticeable, with the majority of the space at 4m. |
|  | Apt.256: 2.891m with second living area compliant at 4.11m<br><br>As a living room has a width of 4m, the proposal complies.  | C-1308: The living area ranges from 3.71m to 4m due to the angled wall of the original approved DA. This is a variation of 290mm and not noticeable, with the majority of the space at 4m. |
|  | Apt.270: 2.891m with second living area compliant 4.14m<br><br>As a living room has a width of 4m, the proposal complies.     | C-1408: The living area ranges from 3.71m to 4m due to the angled wall of the original approved DA. This is a variation of 290mm and not noticeable, with the majority of the space at 4m. |

| ADG 4D-3.4   | Building A                | Comment  |
|--|---------------------------|--|
| <b>Overall Depth of Cross Through apartment</b>  |                           |  |
| <b>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</b> | Apt.240: 2.891m- above 4m | Whilst these depths exceed 18m, the units are they are within an envelope approved by the original DA. |
|  | Apt.256: 2.891m- above 4m |  |
|  | Apt.270: 2.891m- above 4m | It is noted that the apartments have two living areas, one of which is                                 |

slightly undersized and adjacent to a balcony.

However the apartments, other than internal corridors and the secondary living area, comply with the 4 m width.

### **Clause 4.6(3) - Compliance Unreasonable and Unnecessary**

In accordance with the provisions of Cl.4.6(3)(a) it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as:

- There is no specific objective for the internal area of apartments standard, with the objective of Cl.19 administrative or Cl.15 to facilitate the delivery of affordable homes for low and very low income households, which this proposal complies with.
- The proposal is consistent with the Principles of The Housing SEPP 2021, in particular:
  - o Principle A through the provision of diverse housing types
  - o Principle B through providing 66 units, of which 63 are dedicated as affordable housing, consistent with the requirements of Part 2, Division 1 of the Housing SEPP 2021
  - o Principle C by providing new apartments that comply with objectives of the ADG, along with high quality areas of public domain
  - o Principle D by increasing the housing within an accessible location, making use of existing and planned infrastructure and services.
  - o Principle E through providing high quality areas of landscaped communal open spaces, private open spaces and landscaped public domain, along with measures that improve water quality and reduce energy use through photovoltaic panels.
  - o Principle F through providing additional yield that is consistent with the desired future character of the Fairfield Town Centre, as established in its Master Plans and LEP development standards.
  - o Principle H by providing 63 affordable rental homes in an area with high need as articulated in Council's Housing Strategy.

- The proposal provides 15% affordable housing and is consistent with Objective 15A, despite some minor non-compliances with the internal apartment area standard,
- Importantly, the proposal will be in keeping with the character of new apartments delivered in the area, including those that apply the infill affordable housing provisions of the Housing SEPP 2021.
- The footprint of the building has been established by the Original Approved DA which is under construction. This has an impact compliance as the envelope is already established, noting that the objective of the relevant standard is achieved.

In Wehbe it was set out that compliance can be considered unreasonable or unnecessary where:

*The objectives of the standard are achieved notwithstanding non-compliance with the standard*

There is no specific objective to the standard, rather a single objective to the division, and this is considered below for completeness.

| Objectives   | Discussion  |
|--|---|
| <i>Cl.15 The objective of this division is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.</i>   | The proposal provides a total of 66 additional units, with 63 to be dedicated as affordable housing. The proposal is consistent with this objective.  |
| <i>Cl.19(1) The object of this section is to identify development standards for particular matters relating to development for the purposes of in-fill affordable housing that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.</i> | The proposal is consistent with Cl.19, which has an administrative function that prevents a consent authority from applying a more onerous standard. Despite not achieving strict compliance with the minimum internal area standard in all apartments, the proposal is therefore not inconsistent with the intent of this objective. |

As there is no objective, it is relevant to consider the relevant objectives Apartment Design Guideline at 4D. The proposal remains consistent with the relevant objectives of the ADG as discussed below.

| ADG 4D Apartment Size and Layout | Discussion  |
|----------------------------------|---|
| <b>Objective – 4D1</b>           | All new apartments delivered via this amending DA achieve compliance with the minimum internal rea, |

|   |  |
|---|--|
| <p><i>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</i></p> | <p>except for 2 apartments out of a total of 66. In other words, 64 apartments meet the minimum area requirement.</p> <p>The non-compliance is very minor in two apartments within building B which have a second bedroom. These are apartments B-1201 and C-1301 which have an internal area of 74.93m<sup>2</sup>. This increases the size of a 2 bedroom apartment from 70m<sup>2</sup> to 75m<sup>2</sup>, with the apartments being undersized by only 0.07m<sup>2</sup>.</p> <p>This is indistinguishable in terms of area and by rounding is 75m<sup>2</sup>. Therefore this is a technical non-compliance only as when rounding is applied, the two apartments are 75m<sup>2</sup> in area and comply.</p> |
|---|--|

|  |  |
|--|--|
| <p><b>Objective 4D-3</b></p> <p><i>Apartment layouts are designed to accommodate a variety of household activities and needs</i></p> | <p><b>Master bedrooms</b></p> <p>The variation across the three buildings relates to 11 units out of 66. In other words, 55 apartments have master bedrooms which meet the development standard, confirming that this is a minor departure from the development standard. When rounding is applied to 9 of the apartments, they achieve compliance with the 10m<sup>2</sup> requirement, noting that they are 9.7m<sup>2</sup> (six apartments) and 9.8m<sup>2</sup> (3 apartments), which is not a noticeable difference.</p> <p>Apartment A701 has been setback from the northern boundary to provide articulation and landscaping along this façade. This has resulted in a minor variation in the width of the bedroom, noting that all other aspects of the apartment comply with the minimum dimension and that a study room is included which provides flexibility in terms of how the apartment can be used, along with ensuring there is appropriate space for the occupant of the one bedroom apartment. Given the apartment is 12.05m<sup>2</sup> oversized, the minor reduction in bedroom size is not noticeable given the overall layout and spaces provided for the resident.</p> <p>In Building D along the northern boundary a 6m setback has been applied to facilitate separation between the northern site, along with providing landscaped area. This has resulted in a minor reduction in size of the bedroom in D-902 which is a single bedroom unit. The apartment has an area of 52.51m<sup>2</sup> which is above the minimum of 50m<sup>2</sup> for a single bedroom apartment. Therefore, despite the minor non-compliance, the bedroom as</p> |
|--|--|



demonstrated on the plans can accommodate necessary furniture comfortable, with the living areas generous apportioned to facilitate different layouts and use by the resident. Given the apartment is 2.51m<sup>2</sup> oversized, the minor reduction in the bedroom area is not noticeable, with appropriate floor area and storage for comfortable living and use by the resident.

#### **Living room width – 2 bedroom unit**

All 2 bedroom units delivered as part of the amending DA have a living room width above 4m, other than 3 in Building A and 3 in Building B.

**In Building A**, units 240, 256 and 270 have two living areas, with one living area compliant at above 4m, and the second living area less than 3m in width. Given that the apartments have two living areas and one that complies, the proposal is considered to satisfy the objective by providing a diversity of spaces within the apartments that can be used at different times and ways.

**In Building B**, units C-1208, C-1308 and C-1408 have a maximum width of 4m, but due to the angled façade of the approved envelope, this narrows to slightly less than 4m. However, it is noted that the space remains usable in terms of layout as demonstrated on the architectural plans and the minor area less than 4m is not noticeable.

The proposal therefore complies with the intent of this objective.

#### **Cross over and cross through apartments**

Three apartments (240, 256 and 270) in Building A have areas that are less than 4m in width, with these being circulation areas and one living area.

The width of these apartments are set by the approved building envelope, with the layout providing an efficient use of the space, with areas less than 4m minimised.

Therefore, the apartments retain a layout that can accommodate a variety of household activities and needs both now and into the future.

As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable.

### **Sufficient Environmental Planning Grounds & Design Response**

In Initial Action, Preston CJ observed that in order for there to be “sufficient” environmental planning grounds to justify a written request under clause 4.6 to contravene a development standard, the focus must be on the aspect or element of the development that contravenes the development standard, not on the development as a whole.

The following points demonstrate that sufficient environmental planning grounds exist to justify contravening the landscaped area development standard and further demonstrates that the landscaped area departure does not give rise to any environmental impacts. Council can be satisfied that the proposal is an appropriate design response for the subject site for the following reasons:

- The non-compliances are minor and not distinguishable from the area of compliant apartments, being largely created through the approved building envelope.
- The departure is largely a result of an existing building under construction on the site and is consistent relevant objectives of the ADG and design guidance as described in pages 10-14.
- The two one bedroom apartments, with bedrooms at 9.1m<sup>2</sup> and 9.3m<sup>2</sup>, it is noted are both oversized overall, ensuring that there is comfortable spaces and possibilities for various layouts within the apartments. This ensures that the proposal achieve the intent of the objective of apartment layouts within D4 of the Apartment Design Guideline and is therefore consistent.
- When rounding is applied to 9 of the apartments with undersized main bedrooms, they achieve compliance with the 10m<sup>2</sup> requirement, noting that they are 9.7m<sup>2</sup> (six apartments) and 9.8m<sup>2</sup> (3 apartments), which is not a noticeable difference. The proposal is therefore consistent with the intent of the objective of apartment layouts within D4 of the Apartment Design Guideline.
- The architectural plans demonstrate that layouts of apartments are functional and provide a high level of amenity for apartments that comply with solar access and natural ventilation requirements, meeting relevant objectives of the ADG.
- The architectural plans demonstrate that the layouts have been designed to accommodate the needs of residents and any minor variation not noticeable.

- The non-compliance with the development standard will not result in any adverse environmental impacts to surrounding developments, or the amenity that they currently have, or their future development potential.
- There is no specific objective for internal apartment area under the Housing SEPP 2021, however, as shown in this application, the proposal does not represent an overdevelopment of the site when considered against other planning controls.
- The proposal is consistent with the intent of the In-fill Affordable Housing provisions of the housing SEPP by providing 15% of the GFA as affordable housing.
- The proposal is consistent with the provision of affordable housing in accessible areas which is a key principle of the Housing SEPP 2021:
  - a) enabling the development of diverse housing types, including purpose-built rental housing,*
  - b) encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
  - d) promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

As 63 of the 66 units are used for affordable housing for a period of 15 years, the proposal is compliant with the above relevant principles.

- The proposal is consistent with the provision of affordable housing with reasonable amenity and also minimising climate and environmental impacts:
  - c) ensuring new housing development provides residents with a reasonable level of amenity,*
  - e) minimising adverse climate and environmental impacts of new housing development,*

As the proposal provides housing that satisfies objectives of the ADG for solar access, natural ventilation, communal open space, landscaped area and deep soil, future residents will have a good level of amenity within a development that minimises climate and environmental impacts.

Therefore it can be seen that the variation to the internal apartment area standard has sufficient environmental planning grounds because the variation to the standard enables the site to develop for a higher density residential development form and to

deliver affordable housing. This furthers the Objects of the Environmental Planning and Assessment Act 1979 set out in Section 1.3:

- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*
- (g) *to promote good design and amenity of the built environment,*

Therefore, the current proposal is a preferred outcome from an environmental planning perspective and demonstrates that there is merit in varying the landscaped area standard to deliver affordable rental housing and achieve a better design response on the site which demonstrates sufficient environmental planning grounds to support the departure.

## CONCLUSION

Strict compliance with the internal apartment area requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal will not have any adverse effect on the surrounding area and is consistent with the future character envisioned for the Fairfield town centre. The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The objection is well founded and considering the absence of adverse environmental, social or economic impacts, it is requested that Council support the development proposal.