

Our ref: GC

**ATTACHMENT**  
30 June, 2010

Tony Polvere  
economia pds  
Suite 811,  
185 Elizabeth Street,  
Sydney, NSW 2000

Dear Tony

**RE: DEVELOPMENT OF RESIDENTIAL FLAT BUILDINGS, MEDICAL CENTRE  
AND OFFICES AT 80-82 TASMAN PARADE, AND 368 HAMILTON ROAD,  
FAIRFIELD WEST**

You have requested advice in regard to the proposed development of residential flat buildings, medical centre and offices at the above address ('**proposed development**').

Attachment

- Ground floor site plan for proposed development.

Background

1. The proposed development is located within two zones; the majority is located in the 3 (c) Local Business Centre Zone and the remainder is located in a smaller portion of 2(a) Residential Zoned land: see attached ground floor plan.
2. Within the Residential 2(a) portion, Building G proposes the use of a residential flat building (and associated parking and access driveway), medical centre and offices, all of which are prohibited uses in this zone (subject to clause 20C of Fairfield LEP: see below).
3. Clause 20C of Fairfield LEP provides as follows:

**20C Development near zone boundaries**

*(1) Where it is intended to carry out development on a site that is divided by a zone boundary and the proposed development is prohibited within one of the zones, the Council may grant consent to the development if the development does not extend more than 20 metres into the zone where the development is prohibited.*

*(2) This clause does not apply in respect of a site that is wholly or partly within any of the following zones:*

- (a) Zone 5 (a) (Special Uses),

(b) Zone 5 (b) (Special Uses—Arterial Road and Arterial Road Widening),

(c) Zone 5 (c) (Special Uses—Sub Arterial Road and Sub Arterial Road Widening),

(d) Zone 6 (a) (Existing and Proposed Recreation),

(e) Zone 6 (c) (Recreation—Corridor).

4. Clause 20C has 4 main elements:

- a. It must be intended to carry out development 'on a site';
- b. The site must be divided by a zone boundary;
- c. The proposed development must be prohibited within one of the zones applying to the site;
- d. Where items a, b & c are satisfied, then it must be established that [1] the 'development' [2] will not 'extend' more than 20 metres into the zone where the development is prohibited.

5. In the writers view:

- a. The 'site' referred to in clause 20C is the site covered by the development application lodged with Council i.e, it includes both the 3(c) Local Business Zoned land and the 2(a) Residential zoned land;
- b. That site is divided by a zone boundary whereby part of the site is zoned 3 (c) Local Business Centre Zone and the remainder 2(a) Residential Zone;
- c. Within the Residential 2(a) portion, Building G proposes the use of residential flat buildings (and associated parking), a medical centre and offices, all of which are prohibited uses in this zone subject to clause 20C;
- d. The issue is therefore whether the proposed development of residential flat buildings, (and associated parking and access way), medical centre and offices *extend* more than 20 metres into the Residential 2(a) zone.

Extent of extension of development into the Residential 2(a) zone

6. The attached ground floor plan illustrates what is proposed within the Residential 2(a) zone; it shows that the residential flat building (and associated parking and access way), medical centre and offices extend 20 metres **or less** into the area of the Residential 2a zone within the area shown hatched red on the plan. There are some minor elements which extend beyond 20 metres from the zone boundary and which comprise minor landscaping (eg trees, lawn etc) and a paved pedestrian pathway providing direct level access to Building G from Tasman Parade. These elements are not covered by clause 20C in the writers view.

Generally

The DA proposes that, with the exception of minor landscaping elements and a pedestrian walkway, Building G and its associated uses of residential flat building, including parking and access way, medical centre, and offices extend 20 metres or less into the Residential 2(a) zone and are authorized for approval under clause 20C of Fairfield LEP.

The minor landscaping elements, and pedestrian walkway should be excluded from the subject DA as they are not covered by clause 20C in the writers view. This can be done by adding a note to the plan to the following effect

*This DA does not authorize works in that part of the site zoned 2(a) Residential which are located more than 20 metres from the boundary between the 2(a) Residential zone and the 3 (c) Local Business Centre zone'.*

Please call if you have any questions.

**G P CUMMINS**