

JRPP No	2011SYW047
DA Number	306.1 / 2011
Local Government Area	Fairfield
Proposed Development	<p>Alterations and additions to existing commercial / retail complex, including reconfiguration of retail ground floor and provision of a 24 room medical centre, minor alterations and refurbishment to existing office tower, and construction of podium level car park and two residential towers containing a total of 119 residential home units.</p> <p>Capital Investment Value \$35,555,000</p>
Street Address	No's 49-61 Spencer Street, Fairfield, (Lot 1, DP730010)
Applicant/Owner	<p>Applicant: Urbis Pty Ltd</p> <p>Owner: The Fairfield Chase Centre Pty Ltd</p>
Number of Submissions	Three (3)
Recommendation	Approval subject to Conditions
Report by	Julio Assuncao, Town Planner and Klaus Kerzinger, Senior Strategic Planner

Assessment Report and Recommendation

Executive Summary

The development application proposes major alterations and additions to an existing retail and commercial development. Currently erected upon the subject site is a single level ground floor retail complex with first floor podium level car park and a four (4) level commercial building erected above the podium car park. The development application provides for the substantial retention of the existing ground floor retail area, including 24 room medical centre, first floor podium car park and four level commercial building. It is proposed to incorporate an additional 2 levels of podium car parking and two residential tower buildings onto the existing development.

The proposed tower buildings have a height of 12 to 16 storeys above the four storey podium level and contain a total of 119 residential units. Incorporated into the application is the relocation of vehicular access from Smart Street to Council Lane, provision of pedestrian access along the southern most section of Council Lane, expanded loading dock facilities as well as various design changes to the ground floor retail area. Off street car parking for 265 spaces is proposed to be provided.

The subject site is zoned Sub- Regional Business Centre 3(a) under the provisions of Fairfield LEP 1994. The proposed development is consistent with the applicable zone objectives and is permitted with consent in this zone.

Fairfield Town Centre is subject to Fairfield Town Centre Development Control Plan 2006 (FTCDP) which makes provision for certain large and consolidated sites to follow a planning process leading to the development of a draft Site Specific DCP (SSDCP). The applicants approached Council in 2010 to initiate the SSDCP process. On the 8 February 2011, Council's Outcomes Committee resolved to exhibit an amendment to the FTCDP to include the draft SSDCP for the redevelopment of the Fairfield Chase site. The draft SSDCP subsequently prepared and exhibited was consistent with preliminary development plans submitted by the applicant and now the subject of the development application.

The FTCDP in respect to the Fairfield Chase site originally nominated a maximum building height of 42 metres or 14 storeys. This was higher than the remainder of the Ware Street precinct in which the Chase Site is located. The height which is applicable to the remainder of the precinct is 39 metres above Natural Ground Level (NGL), or 10 storeys above a 2 storey podium. The proposed northern tower building, having a height of 65.5 metres above NGL and the southern tower building having a height of 53.5 metres above NGL, exceeded the height limit contained within FTCDP 2006 but were consistent with the height permitted in the draft SSDCP.

The development application and draft SSDCP were publicly exhibited from 25 May to 24 June 2011. During this period Council received three (3) submissions. In summary the submissions received related to the following issues:

- Flooding
- Built Form (height, above ground car parking and overshadowing)
- Shortfall of car parking
- Implementation of the development (i.e. Staging)
- Waste Management
- Appropriateness of Child Care Centre
- Medical Centre consent compliance and lease concerns
- Access to adjoining lots via Council Lane during the construction phase

Council at its Outcomes Committee meeting held on 12 July 2011 considered a report relating to the exhibition of the draft SSDCP and subsequently resolved to incorporate the SSDCP into Appendix 4 of the FTCDCP. The amendment came into force on 3 August 2011.

An assessment of the development application under the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, has concluded that the application complies with applicable planning controls and is generally consistent with the requirements of the Fairfield Town Centre DCP as now varied by the SSDCP. The assessment has also concluded that significant public benefit is being obtained as a result of the relocation of the vehicle access driveway, currently on the corner of Smart Street and Council Lane to Council Lane, as well as the provision of a pedestrian access way along the southern section of Council Lane.

The development has a capital investment value of \$35,555,000 and hence the application is required to be determined by the Joint Regional Planning Panel.

The recommendation of this report is that the proposal be approved subject to conditions as detailed in **Attachment A** to this report.

Proposal

Existing Development

Currently erected upon the subject site is a 2 storey building which contains ground floor shops and medical centre and podium level car parking for 155 spaces, as well as a 4 level commercial building above the podium car park. The ground floor retail / medical uses are dissected by two distinct pedestrian arcades which link the development with pedestrian arcades on adjoining sites, separated by a lane.

In terms of floor space the existing development consists of approximately 2088m² of retail floor space, 4660m² of commercial floor space, a 24 room medical centre having

an additional floor space of 1343 m² and car parking for 155 vehicles. It should be noted that the existing floor space estimates are based on estimates provided by the applicant. The Floor Space Ratio (FSR) of the existing development is approximately 1.43:1.

Proposed Development

The application provides for the partial demolition of the existing building structure, excluding the office building component, to enable the provision of pedestrian access along the southern section of Council Lane, the relocation of the vehicular access point to Council Lane from Smart Street, enlargement of the loading dock as well as substantial internal alterations to the ground floor retail level.

The proposed development provides for 1970m² of ground floor retail floor space, retention of the 4660m² of commercial floor space, a 24 room medical centre and two residential tower buildings containing a total of 119 units. The building design provides for a 4 storey podium structure above which the residential towers will be erected.

The northern residential tower is proposed to have a maximum height of 65.5 metres above NGL (76.635mAHD) and contains 16 residential storeys. The southern residential tower is proposed to have a maximum height of 53.5 metres above NGL (64.635m AHD) and contains 12 residential storeys. In total the towers contain 119 residential units consisting of 94 units with a floor area of less than 110m² (1 and 2 bedroom units) and 25 units with a floor space greater than 110m² (3 bedroom units). Many of the units contain small rooms which have been designated as half bedrooms. These rooms could also be used as studies or to provide storage space. Car parking provision is however based on the floor area of units as opposed to being assessed on the number of bedrooms contained within each unit.

The FSR for the proposed development including existing office component is in the range of 3.68:1, (Council estimate), to 3.73:1 (Applicant's estimate). This is below the 4:1 FSR permitted for the Fairfield Chase site in the SSDCP.

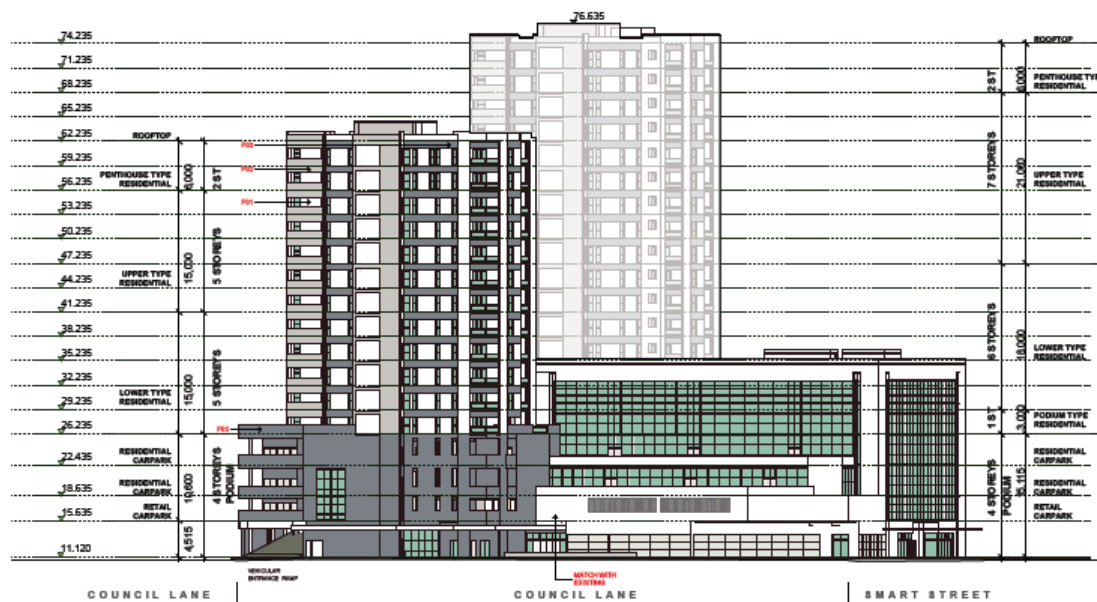
The development application as originally submitted also proposed to provide a 20 place child care centre on the first floor within an area otherwise utilized for car parking. The applicant has subsequently amended the development application with plans lodged on 17 June 2011, and deleted the child care centre from the proposal. The space previously occupied by the child care centre is now proposed to be used as office space for centre management staff. Additional amendments related to deficiencies previously identified by Council staff and included matters such as:

- Amended car parking arrangement,
- Amended storage areas, waste rooms, bicycle storage and shower facilities,
- Amended landscape concept plan,
- Amended podium level open space design.

The development application plans considered for the purpose of this assessment report form **Attachment B** to this report.

The plan below shows the proposed southern elevation of the development when viewed from Council Lane.

SOUTHERN ELEVATION PLAN OF PROPOSED DEVELOPMENT



Subject Site and Locality

The subject site is an “L” shaped site located in the block formed by Spencer and Smart Streets, Fairfield and bounded by Council Lane. It occupies all but 2 lots within this block. The site is known as 49 to 61 Spencer Street, Fairfield.

The site has an area of 5662.4 square metres. The site has frontages to Spencer Street (43 metres approx.) and Smart Street (37 metres approx) as well being bounded at the rear and side by Council Lane.

The site is located within the central Ware Street Precinct of the Fairfield CBD, as defined by the Fairfield Town Centre DCP 2006.

of consent on 1 April 1998 for the conversion of existing retail area fronting Spencer Street to a 24 hour Medical and Dental Centre and Chemist Shop.

Of particular relevance to the current development application is the historical provisions made for car parking relating to the site. The Council, as part of the sale documents prepared in 1985, required the purchaser to enter into a Deed of Agreement relating to the provision of car parking for this development. Condition 2 of the proposed Deed, required the purchaser, in addition to the purchase price, to pay to council an amount of \$1,245,000. This amount being equivalent to the anticipated car parking contribution generated by a development having an FSR of 2:1. Condition 3 of the proposed Deed required these funds to be deposited into a specifically designated trust fund and for council to deal with these funds in the same way as a contribution paid in accordance with Section 94(3) of the Environmental Planning and Assessment Act, 1979.

The policy of Council at that time was to discourage significant on site car parking upon sites located within the central CBD area. Instead it embarked on a policy which resulted in the construction of multi storey car parks located around the perimeter of the CBD. To ensure the success of this policy, at least as far as the sale of its own site was concerned, it required the payment of a parking contribution at the time of property purchase.

The development application assessment reports considered by council in 1986 made reference to the payment of a contribution for the provision of 249 off street car parking spaces. Reference to these spaces was also made in the assessment report for the 1987 application which was determined under delegated authority. It was this contribution that off-set the requirement for subsequent development applications to provide the full complement of car parking on site.

Records cannot be found as to where the contribution was spent however it is known that the contribution was paid and allocated for car parking. Available evidence would suggest that the monies were allocated towards the construction of a multi storey car park near Barbara Street, Fairfield. A multi storey car park is today located off Downey Lane which runs off Barbara Street.

Legal advice has been obtained relating to whether the contribution previously paid should be credited to the current applicant to offset any car parking deficit for that application. That advice was based on a draft unexecuted copy of the 1985 Deed and to that extent may be required to be reviewed if a properly executed final version of the Deed, in similar terms to the draft Deed cannot be located. The advice in summary is as follows:

1. The development contemplated by the Deed was a retail and commercial development. Council is not obligated to take the Deed into consideration in respect to the residential component of the development.
2. It is arguable that it would be both reasonable and appropriate for the Council to take into account the car parking contribution made under the Deed if the Applicant seeks to satisfy any shortfall in car parking for retail and / or

- commercial components of the proposed redevelopment by the payment of a monetary contribution, provided that it is established that the rights and obligations of the original purchaser of the site under the Deed have transferred to the current owner/applicant.
3. It is relevant to consider Section 94(6) of the Act and the Department of Infrastructure, Planning and Natural Resources, 2005, publication “Development contributions, Practice Notes” relating to credits for past contributions.

The issue of past contributions and the draft Deed were discussed with the applicant and owner who were invited to research this issue and make a case to Council supported by legal advice. The applicant has subsequently advised that they would not be pursuing previous history relating to the car parking credits but instead have advised that they would be seeking to address the shortfall by way of a monetary contribution. The monetary contribution is proposed to be facilitated by a Voluntary Planning Agreement (VPA) which has been proposed by solicitors acting on behalf of the owner, the developer. The issue of the VPA is discussed in more detail later in this report.

Site Specific DCP

The site is subject to the provisions of FTCDCP. That DCP makes provisions for the block bounded by Spencer Street, Smart Street and Council Lane to be the subject of a Site Specific DCP which would, if approved, provide for greater development potential than otherwise achievable by FTCDCP.

Council’s Outcomes Committee at its meeting on 8 February 2011 resolved to prepare a site specific DCP. The draft site specific DCP was subsequently advertised concurrently with the development application from 25 May 2011 to 24 June 2011. The report considered by Council’s Outcomes Committee on 8 February 2011 forms **Attachment C** to this report.

Council’s Outcomes Committee at its meeting held on 12 July 2011 considered a report on the site specific DCP following its exhibition. Council resolved to adopt the site specific controls as advertised and incorporate these within Appendix 4 of the FTCDCP. These controls came into force on 3 August 2011, upon the publishing of public notice of their adoption within the Fairfield Champion Newspaper.

The report considered by Council’s Outcomes Committee at its meeting on 12 July 2011 forms **Attachment D** to this report.

Car Parking Assessment Policy Fairfield Town Centre

Council at its meeting on 22 February 2011 resolved to exhibit amendments to its Section 94 Car Parking Contributions Plan and adopted an interim policy relating to car parking assessment within the Fairfield CBD. The interim policy provides as follows:

While Council is in the process of reviewing its Development Controls Plans and repealing the part of the Section 94 Contributions Plan that applies to Car parking in Fairfield Town Centre any application lodged will be assessed according to the following policy:-

Council will:

Not impose Section 94 controls requiring a contribution for car parking not provided on site;

Require all car parking to be provided on site in accordance with the principles and parking rates resolved by Council following consideration of the report titled "Fairfield Town Centre Parking Issues – DCP Issues" by the Outcomes Committee in February 2011;

Should there be any shortfall in parking on site, the applicant be advised that Council is willing to consider a VPA but until Council has finalised a VPA policy, Council will as its initial negotiating position, request payment of funds equivalent to those required under Council's current Contributions Plan (per car parking space) to be utilised to:

Provide additional parking.

Upgrade existing parking facilities.

Improve access arrangements to existing parking to improve its accessibility.

Council will not enter into any voluntary planning agreement in relation to parking of residential development which must be provided on site.

The principles and parking rates resolved by Council in February 2011, in so far as they relate to the Chase site, require the following:

1. All car parking for residential development must be provided on site.
2. Existing rates ie 1 per 25m² of retail floor space and 1 per 40m² of commercial floor space for larger Site Specific DCP sites be retained.

Council also resolved for sites not the subject of site specific DCP's, but which achieved the amalgamation requirements set out in Council's FTCDP, to allow the construction

of tower developments, to allow all retail and commercial floor space to be assessed at 1 per 100m² not just additional floor space.

On 8 March 2011 Council's Outcomes Committee considered a further report, on the consequential amendments required to the Fairfield Town Centre and City Wide DCPs as well as to the Section 94 Plan 1999 to give effect to its car parking interim policy position. Following public exhibition of the amendments, Council's Outcomes Committee at its meeting on 14 June 2011, resolved to adopt the amendments which came into effect on 6 July 2011 after publishing of a public notice. It should be noted that no submissions were received during the notification period.

The report considered at Council's Outcomes Committee 14 June 2011 relating to the DCP and Section 94 parking issues forms **Attachment O** to this report.

Voluntary Planning Agreement

The applicant had proposed to pay a car parking contribution pursuant to a Section 94 Contributions Plan in documentation that accompanied the development application. Subsequent to the above detailed amendments to the FTCDCP and Council's Section 94 plan a request has been received which proposes that a Voluntary Planning Agreement (VPA) be entered into to address the parking shortfall associated with the commercial component of the development via a monetary contribution.

Solicitors for the property owner – the developer, on whose behalf the development application was submitted, have made a formal offer to enter into a VPA with Council on 22 June 2011. The terms of the draft VPA were outlined in a report that was considered by Council at its Outcomes Committee meeting held on 12 July 2011, and Council at its ordinary meeting on 26 July 2011. At this meeting Council resolved to place the terms of the draft VPA on public exhibition. At the time of finalizing this report the draft VPA had not yet proceeded to public exhibition.

The report considered at Council's Outcomes Committee 12 July 2011 and Council on 26 July 2011, relating to the VPA forms **Attachment E** to this report.

A condition has been incorporated in the draft consent conditions that requires that the developer enter into a VPA in accordance with the terms made in their offer. The incorporation of a consent condition requiring that a VPA be entered into is authorised by section 93I (3) of the Environmental Planning and Assessment Act, 1979. Legal advice on this issue has been obtained and is reproduced below:

"93I(3) of the Environmental Planning and Assessment Act 1979 provides:

"(3) However, a consent authority can require a planning agreement to be entered into as a condition of a development consent, but only if it requires a

planning agreement that is in the terms of an offer made by the developer in connection with:

(a) the development application, or

(b) a change to an environmental planning instrument sought by the developer for the purposes of making the development application,

or that is in the terms of a commitment made by the proponent in a statement of commitments made under Part 3A.”

This section authorises a consent authority to impose a condition on a development consent requiring a planning agreement to be entered into if the developer has offered to enter into such an agreement in connection with the development application (or in connection with a change to an environmental planning instrument sought by the developer for the purposes of making the development application). However, the condition can only require a planning agreement to be entered into that is in the terms of the offer made by the developer.

Section 93G(1) of the EP&A Act precludes a planning agreement from being entered into, amended or revoked unless public notice is given of the proposed agreement, amendment or revocation. The timing of the public notice is dealt with in clause 25D of the Environmental Planning and Assessment Regulation 2000. If practicable, notice of the proposed agreement is to be given as part of and contemporaneously with, and in the same manner as, any notice of the development application. If it is not practicable for notice of the proposed agreement to be given at the same time that notice of the DA is given, it must be given as soon as possible after any notice of the development application has been given.

Given the nature of planning agreements and requirements for their public notification and consideration in determining applications best practice suggests that planning agreements should be negotiated between planning authorities and developers before applications are made so that applications may be accompanied by copies of draft agreements. However, this does not preclude the preparation of a draft planning agreement and the making of an offer by a developer to enter into an agreement in the terms set out in the draft agreement after a DA has already been notified.”

External Referrals

The application was referred to the following Authorities:

Roads and Traffic Authority (RTA)
AirServices Australia
Endeavour Energy
NSW Police Force

RTA Comments

In accordance with Clause 104 of the Infrastructure SEPP (ISEPP) the application was referred to the RTA for comment as the development contained more than 200 parking spaces. Clause 104 of the ISEPP requires that before determining an application the consent authority must take into consideration any submission made by the RTA as well the following matters:

(ii) the accessibility of the site concerned, including:

(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

(iii) any potential traffic safety, road congestion or parking implications of the development.

The above matters are considered in more detail in the Section 79C assessment section of this report.

The RTA's Sydney Region Development Advisory Committee (SRDAC) at its meeting on 4 May 2011, considered the traffic impact of the development. Correspondence dated 13 May 2011 from SRDAC forms **Attachment F** to this report.

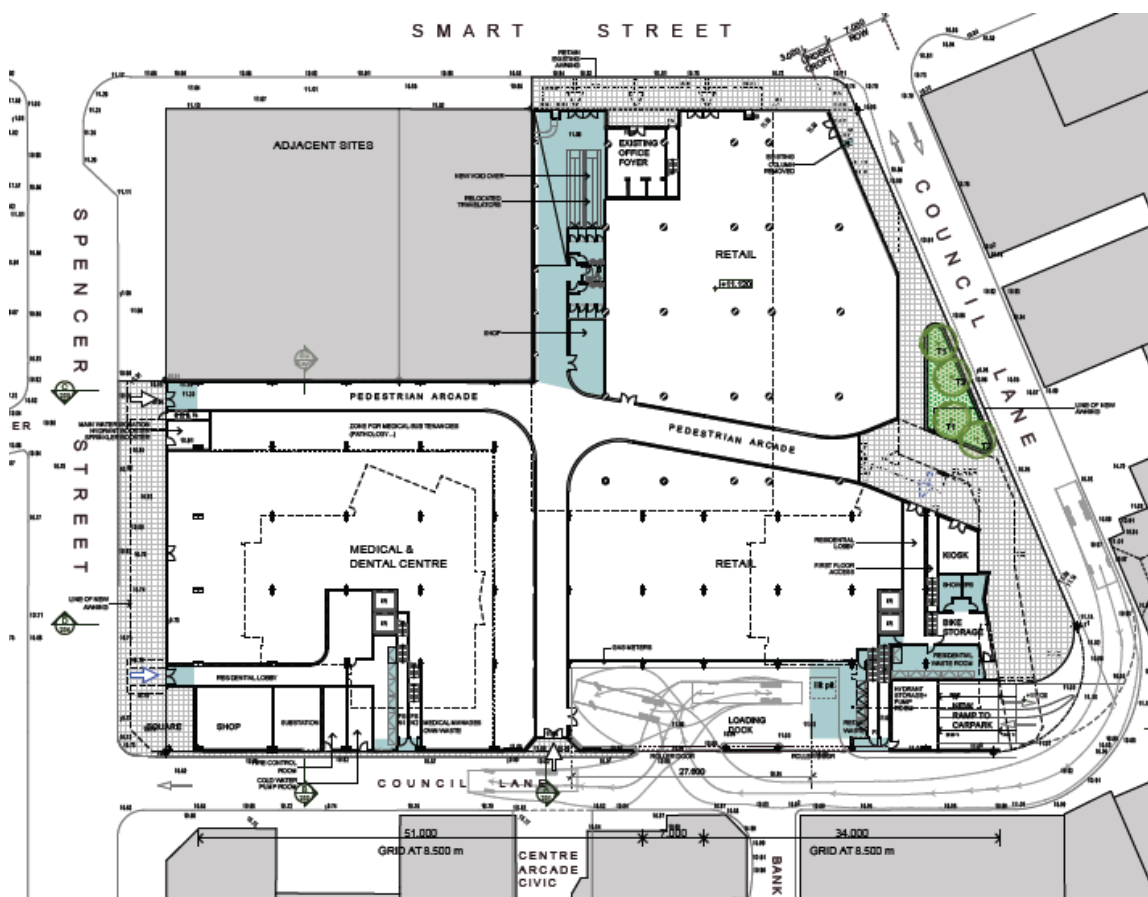
The comments of the SRDAC included recommendations for a Loading Dock Management Plan (LDMP), provision of off street parking, bicycle storage and loading facilities to Council satisfaction including provision of car share space, compliance with Australian Standards AS2890.1 – 2004 and AS2890 – 2002 for car parking areas, driveways and docks, and preparation of a Demolition and Construction Management Plan. These matters have been incorporated into the recommended conditions of consent.

The SRDAC also suggested that consideration be given to reversing the direction of flow in Council Lane where one way flow is proposed to be retained. This would require one way flow from Spencer Street (north bound) to link with the two way flow section near the main Council Lane vehicle entrance to the centre. At this stage no direction change

for this section of the lane is proposed as it would create additional driver confusion for what may prove to be of limited benefits. The situation can however be reviewed after centre opening.

An additional suggestion was that pedestrian access points to the centre be realigned to compliment changes to the pedestrian crossing in The Crescent which are under consideration. In respect to this suggestion it is advised that the SSDCP requires retention of existing pedestrian linkages which are aligned to adjacent arcades. No further realignment is considered necessary. It should be noted that alterations to the pedestrian crossing location at The Crescent have not yet been finally determined nor has the REF for the redevelopment of Fairfield Railway Station been exhibited. The plan below shows the internal proposed ground floor layout and pedestrian access points:

PLAN SHOWING GROUND FLOOR LAYOUT AND PEDESTRIAN ACCESS POINTS



Airservices Australia Comments:

The application was referred to Airservices Australia for comment having regard to the height of the proposed development and the sites proximity to Bankstown Airport. The application was referred to ensure that the development did not penetrate prescribed air space surrounding Bankstown Airport, protected under the Airports (Protection of Airspace) Regulations 1996.

By email dated 4 May 2011 Airservices advised as follows:

This proposed development will not impact the performance of Precision/Non-Precision Nav Aids, HF/VHF Comms, A-SMGCS, Radar, PRM or Satellite/Links.

At a maximum height of 76.635m (252ft) and 64.635m (213ft) AHD, the proposed property developments (North Tower and South Tower) will not affect any sector or circling altitude, nor any approach or departure at Bankstown aerodrome.

If applicable to the airports, no assessment was conducted in relation to procedures designed by external Part 173 providers.

Endeavour Energy Comments:

The development application was required to be referred to the electricity supply authority – Endeavour Energy in accordance with clause 45 of the ISEPP. Referral was required due to the development involving the relocation of an electricity substation and the developments proximity to under ground electricity mains. By letter dated 28 June 2011.

The advice from Endeavour Energy included the following:

We would like to confirm that there are existing High and Low Voltage underground cables running across the lot from Council Lane to Spencer Street. At this stage, we cannot confirm if the proposed work will affect the current location of the electrical assets. A survey and consultation with Dial-Before-You-Dig is necessary to identify the exact locations.

As of this writing, there is no overhead electrical structure that would be affected by the development.

Attachment G is a copy of the letter from Endeavour Energy which provides a full list of their requirements and which have been incorporated as recommended conditions of consent.

NSW Police Force

The CPTED assessment which accompanied the development application was referred to the NSW Police Force – Fairfield Command, for comment. Police have advised that they have no concerns regarding the redevelopment of Fairfield Chase Shopping Centre. In addition they recommend that necessary measures should be taken in order to maintain the same level of community safety and traffic control during the development. Police have requested to be informed of any incidents of concern during construction and have offered to assist with traffic matters when necessary.

Attachment H is a copy of the letter from the NSW Police Force.

Internal Referrals

The application was referred to the following internal branches of Council:

1. Development Planning – SEPP 65 Compliance Issues
2. Development Engineering – Traffic, Drainage
3. Building Control - BCA Compliance
4. Traffic Engineering – Traffic
5. Environmental Health- Acoustic Issues
6. Waste Management – Waste Management Plan, and
7. City Outcomes – Determination of Council Position

Attachment I contains copies of all referral comments received. All internal Council Departments were generally supportive of the development and have provided recommended conditions of consent. These have been incorporated in the Schedule of Recommended Consent Conditions. In respect to Council's position with respect to this development proposal this issue was canvassed in the report to Council's Outcomes Committee on 12 July, 2011, **Attachment D**. In this respect Council did not resolve to make a submission to the JRPP.

The SEPP 65 Compliance Assessment undertaken by Council's Senior Development Planner is of particular relevance and its key conclusions are summarized below:

SEPP 65 Compliance Assessment

Council's Senior Development Planner has concluded as follows:

“The proposed development represents a scheme that is consistent with the setbacks, building envelopes and building height parameters established by the Draft Site Specific DCP for the site as endorsed by Council. Furthermore, it is considered that the proposal represents a reasonably well conceived scheme that positively responds to the orientation of the site. The scheme incorporates appropriate measures to ensure that the development is unlikely to result in unsatisfactory impacts upon the amenity of surrounding properties in terms of

visual/acoustic privacy and overshadowing should they be re-developed in accordance with the building envelopes identified by the Fairfield Town Centre DCP. Moreover, the building is considered an efficient building that provides a relatively good residential amenity to its occupants.”

The assessment also found that:

“A 30 metres spatial separation is provided between the 2 proposed towers, which exceeds the recommended spatial separation between buildings over nine storeys in height.

The separation distances from adjoining sites are generally consistent with the Code and those established in the Draft Site Specific DCP for the site. The positions of the towers and the organization of the apartments would ensure that there would be minimal direct visual/acoustic privacy issues with adjoining sites should they be re-developed in accordance with the building envelopes outlined in the Fairfield Town Centre DCP.”

The assessment undertaken on the development plans as originally submitted however found areas of concern which have now been addressed in subsequent plan amendments. The areas of concern previously identified are detailed below together with comments relating to the manner in which these matters have been addressed.

- i) **The proposed three levels of above ground car parking is not considered a good outcome. Further details of the proposed metal screens and green vertical walls or a better alternative treatment for the vertical walls should be provided.**

Response

The applicant has agreed to provide an urban art screen to Spencer Street wrapping around the corner of Council Lane, and above the main southern entrance off Council Lane. **Attachment J** provides an indication of how these elevations are envisaged to be treated. Proposed consent conditions address this issue and require design details to be approved prior to the issue of a Construction Certificate. It is considered that this concern has been satisfactorily addressed.

- ii) **Landscape plan lacks detail and is not considered to be highly functional.**

Response

The applicant has provided an amended Landscaping Design Concept Plan

which is considered satisfactory and will be required to form the basis of a detailed landscape plan.

- iii) **Communal open space provision calculated at 22.9% falls short of the 25 – 30% recommended.**

Response

The applicant has provided amended plans that show areas marked as communal open space equating to approximately 33% of site area which exceeds the minimum requirement of 25-30%. It should be noted that in this case the site area is the whole of the site including that part of the site occupied by the commercial building.

- iv) **Private open space of podium level units do not meet 25m2 minimum.**

Response

This concern issue relates to a “Rule of Thumb” under the provisions of the Residential Flat Design Code. The minimum private open space proposed for the 8 podium level units is approximately 20m2. Having regard to the location of this open space and its proximity to communal open space areas the 20m2 provided is considered satisfactory.

- v) **Appropriate and sensitive treatment of the car parking podium elevations to Spencer and Smart Street required.**

Response

The retention of the existing commercial development results in the car parking being provided above the ground floor retail / medical space over 3 levels. The assessment specifies that there should be treatments applied to these levels to Spencer and Smart Streets. As mentioned above the façade of these levels along Spencer Street will be screened by a public art screen. Recommended consent conditions require the screen to wrap around into Council Lane for a minimum distance of 15 metres.

The applicant is not proposing to make significant changes to the façade along the southern elevation, It should be noted that only one level of car parking (existing) extends onto Smart Street and that this is sleeved by the existing commercial tower and hence will not be obviously visible from Smart Street.

- vi) **Balconies on south western corner of each tower should be increased in size to meet minimum dimensions required by FTCDCP2006.**

Response

The applicant has advised that they would accept this issue as a condition of consent, nevertheless the applicant has indicated that the rear secondary balconies have had their horizontal widths increased to provide a minimum of 2m from external wall to internal side of handrail. Where a unit has been provided with 2 balconies it is considered acceptable that the combined area of balconies meet the minimum requirement provided each has the required minimum horizontal dimension (2 or 2.4 m). In the subject cases when the area of both balconies are combined the minimum area requirements are achieved.

vii) **Applicant to provide details of minimum required storage area for each unit.**

Response

The FTCDP requires that storage space be provided for each unit at the rate of 8 cubic metres for a 1 bedroom unit, 10 cubic metres for a 2 bedroom unit and 12 cubic metres for a 3 or more bedroom unit. It could not be determined from the development plans if compliance with these requirements was achieved.

The applicant has advised that they would accept compliance with these requirements as a condition of consent. Nevertheless the applicant has provided additional information in regards to the storage arrangement for the proposal which are as follows:

- *69 of the 119 (58%) of the apartments contain an additional room for storage/study that is in excess of the requirements (all 1.5br, 2.5br and 3br except type 3E)*
- *For the remaining 50 apartments:*

59 storage areas are provided on carpark level 3 (including bicycle storage). The 1br apartments have 2 dedicated storage cupboards totalling 4m³ (50%) + linen etc. The 2br apartments have 8m³ of combined linen and built in wardrobes (80%). The 3br apartments have 2 dedicated storage cupboards totalling 6.5m³ (55%) + linen etc.

A recommended condition of consent sets minimum storage area requirements per unit.

- viii) **Plans do not show waste storage area for the retail / commercial uses.**

Response

The applicant has advised that the uses on the ground floor would manage their own waste which would be detailed as part of the usual fit out Development Application. It was also advised that the retention of the existing fruit shop is not currently envisaged.

The submitted plans do not show the manner in which the ground floor medical and dental centre, and the two larger designated retail areas are proposed to be divided through fitout or into smaller tenancies. The division of the designated retail areas will be required to be the subject of separate development applications. Such applications will then need to give consideration to the waste disposal and storage requirements of such uses. At this stage however the loading dock area has incorporated within it an area for the storage of retail generated waste.

The medical centre waste storage areas will require resolution when the centre design is finalized. This will be a matter for the tenants and building owners to resolve as separate development consent is not proposed to be required for the fitout. Consent conditions will however limit the number of professional rooms that this centre contains to a maximum of 24. This being consistent with the assessment of car parking demand made for this centre as part of the assessment for the subject development application.

Section 79C Assessment

The application has been assessed in accordance with the requirements of Section 79C of the Environmental Planning and Assessment Act 1979 and the following comments are made with respect to that assessment:

a) The provisions of any environmental planning instrument, (S79C(1)(a)(i))

Comments:

Fairfield Local Environmental Plan (LEP) 1994 is the principal planning instrument regulating developments within the Fairfield Local Government area (LGA) including the subject site. The site is zoned Sub- Regional Business Centre 3(a) under the provisions of the LEP.

Clause 8 of the LEP specifies the following objectives for the 3 (a) zone:

- a) to provide for and encourage the development of business activities which will contribute to economic and employment growth within the City of Fairfield,*

- (b) to encourage comprehensive development and growth which will reinforce the role of the Fairfield Town Centre as a sub-regional centre and the dominant business centre in the City of Fairfield, and*
- (c) to provide for residential development to support business activity in the centre.*

Clause 8(2) of the LEP provides as follows:

- 2) The Council must not grant consent to development on land within a zone unless it is of the opinion that the carrying out of the development would be consistent with one or more of the objectives of that zone.*

It is considered that the proposed development is consistent with objectives (a), (b) and (c).

Shops, business premises, medical centres, and residential flat buildings are not prohibited within the 3(a) zone and are therefore permitted with development consent.

The following table provides an analysis of the application against the relevant provisions of the LEP.

STATUTORY MATTERS FAIRFIELD LEP 1994 COMPLIANCE TABLE

Applicable Clauses in Fairfield LEP 1994	Compliance	Comment
Clause 8(2) Objectives of the Zone	Yes	Complies with objectives
Clause 8 - Permissibility	Yes	Permissible with consent
Clause 9 - Agreements, Covenants and Similar Instruments	Yes	Suspends agreements, covenants or similar instruments that may prohibit development.
Clause 10 – Tree Preservation Order	Yes	No trees upon the site
Clause 11 – Flood Liable Land	Yes	Requires consideration of Council's Flood Management Policy which has been considered by Council's Development Engineer. Part of the site is affected by Medium to Low risk overland flow flooding. The engineering conditions proposed will ensure compliance with Council's Flood Management Policy.
Clause 15 – Water, sewerage, drainage and electricity services	Yes	The site is serviced by all required utilities.
Clause 27A – Acid Sulfate Soil Planning Maps	Yes	The subject site is not affected by the 500 metre buffer zone to Class 1 to 4

		land as shown on the acid sulfate zone planning map.
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The development is also subject to the provisions of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) as well SEPP 65 – Design Quality of Residential Flat Development. Consideration of these SEPP's is provided in the table below:-

STATUTORY MATTERS SEPP COMPLIANCE TABLE

Applicable Clauses in SEPP	Compliance	Comment
Infrastructure SEPP		
Clause 45 – DA Determination – Other Development	Yes	Referred to Endeavour Energy. Their requirements incorporated as consent conditions
Clause 104 – Traffic generating Development (i) any submission that the RTA provides	Yes	The comments made by the RTA have been previously considered and where appropriate incorporated as consent conditions
(ii) the accessibility of the site concerned, including: (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and	Yes	The existing loading dock and car access arrangements have been redesigned and significantly improved to increase their efficiency.
(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and	Yes	This consideration has limited relevance however restricting the number of on site car parking spaces encourages accessing facilities by transport modes other than by car.
(iii) any potential traffic safety, road congestion or parking implications of the development.	Yes	Traffic safety has been considered and improved having regard to the relocated vehicle access ramp. In terms of the loading dock traffic safety will be further considered in the Loading Dock Management Plan which is proposed to be required by consent conditions.
SEPP 65 and Residential Flat Design Code	Yes	Application generally complies with the design objectives and rules of thumb contained within the Residential Flat Design Code. Refer separate section

		dealing with Internal referrals and the comments made by Council's Senior Development Assessment Planner.
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The above compliance tables have demonstrated that the application complies with the provisions of applicable planning instruments.

- b) The provisions of any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)(S79C(1)(a)(ii))**

Comments:

Draft Fairfield LEP 2011 has not yet reached the public consultation stage and is not required to be considered under this section. It is noted however that on 15 July 2011, the Director General of Planning and Infrastructure, issued a Section 65 Certificate which authorises the draft LEP to proceed to public exhibition.

The draft LEP proposes to zone the site Business B4- Mixed Uses. The proposed development components are all uses proposed to be permitted with consent within this zone

The Floor Space Ratio map which forms a part of the draft LEP, indicates that the site is proposed to have a maximum FSR of 4:1 and the Building Height Map nominates a maximum height of 39 metres above NGL for the subject site and the block in which it is contained.

Whilst these proposed controls have little weight at this stage it should be noted that the site specific DCP is now inconsistent with the height controls contained within the draft LEP. In this regard Council's Outcomes Committee at its meeting on 12 July 2011, when considering the issue of the DSSDCP also resolved the following:

That Council write to the Department of Planning and Infrastructure to amend the draft Comprehensive Local Environmental Plan to reflect the relevant controls contained in the Site Specific Development Control Plan applying to the Fairfield Chase site.

Having regard to the fact that a S65 Certificate has already been issued prior to this resolution, Council will be requested to consider seeking a new Section 65 Certificate for an amended draft plan which will incorporate the building height variations for the Chase site as well as a number of other matters, prior to the draft plans exhibition.

c) The provisions of any development control plan, (S79C(1)(a)(iii))

The site is subject to Fairfield Town Centre DCP 2006 (FTCDGP). Section 4 of FTCDGP identified a number of sites within the CBD as Site Specific DCP sites. The Site Specific DCP process was included in the FTCDGP to:

- Allow council the flexibility to consider other, possibly more suitable options within a structure that allows Council to set the policy objectives; and
- To permit owners greater design flexibility for larger sites where a site specific response is likely to generate an outcome better suited to both the owner and the community.

Pursuant to a request from the applicant to develop a Site Specific DCP, Council's Outcomes Committee at its meeting on 8 February 2011 resolved that a Site Specific DCP be exhibited. The exhibition of the Site Specific DCP occurred concurrently with the exhibition of the Development Application. Council's Outcomes Committee at its meeting on 12 July 2011 considered the results of the draft Site Specific DCP exhibition process and resolved to incorporate the site specific controls into Appendix 4 of the FTCDGP. The amendments came into force on 3 August 2011.

Attachments K and L to this report provide a detailed assessment of the development application against the relevant provisions of the Fairfield Town Centre DCP 2006 and the Site Specific DCP. Whilst substantial compliance with both the Town Centre DCP and the Site Specific DCP are achieved the following matters require further discussion and consideration:-

Clause 5.1.3 of FTCDGP - Compliance with Car Parking requirements

The table below shows that the proposed development generates a requirement for 432 spaces of which 265 are proposed to be provided on site. This results in a shortfall of 167 spaces. When a credit for the current shortfall i.e. that generated by the existing development, being the difference between what the DCP requires and what has been provided on site ($273-155 = 118$ spaces) is applied, it reduces the shortfall, as a consequence of the proposed development, to 49 spaces. However this shortfall is further reduced to 30 spaces where it is proposed to make provision for such spaces by way of a monetary contribution to car parking. This is due to different parking rates applying when a contribution is proposed i.e. 1 space per 66m² of Gross Leaseable Area (GLA) instead of 1 space per 40m² of GLA for Office and Business Premises. The following table provides a detailed analysis of the car parking requirements of the existing and proposed development.

CAR PARKING ASSESSMENT TABLE

Development Component	Parking rate	Development Components	Parking Requirement
Medical Centre	3 spaces per room	24 rooms	72
Retail	1/25 on site	1978m2	79
Commercial	1/40 on site	4768m2	119
Sub Total 1			270
Residential 1 & 2 bed unit < 110m2	1 space / unit	94 units	94
Residential 3 bed unit or > 110m2	1.5 space / unit	25 units	38
Visitors	0.25 space per unit	119 units	30
Sub Total 2		(161 Residential Spaces allocated)	162
TOTAL REQUIRED			432

Proposed number of spaces to be provided on site			265
Shortfall			167
Existing Development			
Medical	3 spaces per room	24 rooms	72
Retail	1/25m2	2088m2	84
Commercial	1/40m2	4660m2	117
Total required for Existing			273
Total provided for existing development			155
Existing Shortfall			118 spaces
Discount shortfall by Existing Shortfall			(167- 118) = 49 spaces

VPA Option			
1. Assume shortfall for Commercial floor space			
2. Assume 1960m2 Commercial floor area to be offset			49 Spaces x 40m2 = 1960
3. Divide 1960 m2 by rate of 1/66 to obtain shortage			1960/66 = 30
VPA offer	Rate of 1/66 if contribution at the cost of \$13600 per space		30 Space shortfall for VPA resolution at \$13600 / space VPA offer = \$408,000

Proposed consent conditions will require all residential spaces generated by this development to be provided on site. This is readily able to be achieved. In respect to the shortfall of 30 commercial spaces the developer has made a formal offer to enter into a VPA agreement to resolve the shortfall by way of a monetary contribution. This issue is covered by a recommended consent condition which will require the VPA to be entered into in the terms proposed on behalf of the developer, and the monies paid to Council prior to the release of the Construction Certificate.

In respect to the current on site shortfall of 118 off street car parking spaces and crediting such shortfall to the proposed site redevelopment this represents Council's current policy position. Council was advised of this issue, in the report to the Outcomes Committee to

the meeting on 12 July 2011, which considered the developers VPA offer. This policy position is also reflected in Fairfield City Wide DCP Chapter 12 – Car Parking, Vehicle and Access Management. Section 12.6.6 relates to parking “Credits”, and states:

“ a parking credit is available when you are developing a site already occupied by a building. Provided your development retains the structure of the existing building you will be exempted from the parking requirements for the existing floor area.

For example if you wish to develop an existing 300m² shop building into a 600m² shop building, the parking requirement would only be for the additional 300m², even if the existing building has no parking whatsoever.

The issue of credits for existing development is also discussed in the Department of Planning’s 2009 consultation *Draft Local Development Contributions Guidelines* which replaced the 2005, *Development Contribution Practice Notes*. These guidelines are a reference tool that guide the preparation of Section 94 Contribution Plans produced by local councils. The extract below has been reproduced from Section 7.9.3 *Credits and Offsets*:

Credits for existing development

In assessing a direct contribution, the demand for infrastructure that existing development on a site is deemed to generate must be taken into consideration.

Examples:

- *where an existing detached dwelling is located on a site, the credit would equate to the demand generated by a single dwelling;*
- *where a residential allotment is vacant, the credit would equate to the demand generated by a standard residential allotment;*
- *where a residential flat building is located on a site, the demand credit would be based on the floor space or unit mix (i.e. 1, 2 and 3 bedroom units) on the site;*
- *where a contribution has been paid on a site and the development application has been superseded by another application/contribution; and*
- *where a contribution has been paid on a site and the development consent has lapsed (although this is rare).*

For commercial and industrial development, credits are more complicated, as the same development may have differing implications such as higher (or lower) levels of traffic generation. Councils should assess these on a case by case basis. The criteria the council uses to undertake this assessment should be outlined in its contributions plan.

Whilst the above comments relate to guidelines for the preparation of contribution plans they are nevertheless relevant to the consideration of giving past credits for the existing development components on the subject site. The circumstances of relevance are that the traffic and parking generated by the ground floor commercial and medical uses remain substantially unchanged, apart from that caused by a minor reduction in the retail floor area of approximately 110m². The commercial tower also remains unchanged in terms traffic and parking generation as its floor area also remains unchanged. Therefore the traffic and parking generation of the existing retained development remains the same in the new development as in the existing development. In these circumstances a credit for

the existing shortfall of on site off street parking is considered fair and reasonable and in accordance with Councils policy position as previously discussed.

Clause 5.2.5 of FTCDP – Basement level Car Parking, Car parking within 10 metres of a Primary Street Frontage and Clause 1.8.3 of the Site Specific DCP

Basement Level Car Parking

Clause 5.2.5 requires at least one level of on site car parking to be provided below existing natural ground level in a basement arrangement unless:

- The water table below the subject site is at a level that will impact upon the construction of the basement,
- Acid sulphate soil assessment identified the provision of basement as inappropriate, or
- The applicant can demonstrate that the provision of a basement is not feasible because of size and dimensions of the development site.

The applicant has indicated that the proposed car parking is above existing ground level due to the flood levels of the locality, and the requirement to retain the existing commercial building on the site. The reasons advanced by the applicant do not conform with those specified by the FTCDP as reasons permitting a variation to the basement car park requirement.

The issue of non compliance with this requirement was considered in the report to Council's Outcomes Committee on 8 February 2011 and 12 July 2011, in which it was clearly stated that the SSDCP does not propose to provide 1 level of car parking below ground. This was for reasons relating to the retention of the existing building structure. Whilst the reports considered this issue the advertised SSDCP did not contain provisions which removed the relevant basement car parking requirements from Clause 5.2.5 of FTCDP. In the circumstances applicable compliance with the basement level parking requirement is not proposed to be pursued.

Car parking within 10 metres of a Primary Street Frontage, Clause 5.2.5 (c)

This clause has relevance to car parking provided above ground and within 10 metres of a primary street frontage. The proposed development provides car parking within 10 metres of Spencer and Smart Streets which are primary streets. Clause 5.2.5 (c) of FTCDP sought to prohibit car parking within 10 metres of a primary street frontage and require that this area be used for retail or commercial functions.

The existing Chase development however already provides car parking within 10 metres of Spencer and Smart Streets on the first floor podium level. This fact resulted in an amended clause 5.2.5 (c1) within the SSDCP which required any car parking within 10 metres of a primary street or open space to be screened, and a zone extending 10 metres

from the primary street to be used for active retail or commercial functions or designed with sufficient height to be so used in the future.

In the subject case it is proposed to screen the podium level car park facing Spencer Street with a public art façade. A contribution to public art, equivalent to 1 per cent of the development cost is required by Appendix 6 of FTCDP. The façade screen will offset this requirement. No screening along the Smart Street elevation is required as this elevation does not contain an open car park structure.

In respect to future adaptability the floor to ceiling height proposed for the level 1 podium car park will be approximately 2.7 metres allowing for a slab of 300mm. Car parking levels 2 and 3 will have a floor to ceiling height of approx. 3.5 metres. The reduced floor to ceiling heights on level 1 relate to the limitations posed by the existing office structure and the car parking already associated with such structure. Having regard to the public art screening and the compliance with levels 2 and 3 with future adaptability requirements it is considered that Clause 5.2.5 (c1) has been substantially complied with.

Clause 1.5.2 of SSDCP – Shadow Impact

Attachment M to this report contains the shadow diagrams for the proposed development. The shadow impact of the development was previously considered when Council's Outcomes Committee considered the draft SSDCP at its meeting on 8 February 2011. The relevant section of that report is reproduced below:

Overshadowing

By allowing an increased height the issue of shadow impact needs to be considered. The applicant has provided Council Officers with analysis on the shadows generated from the proposed tower built forms in the form of a comparative study which demonstrates the difference between a shadows generated by a built form that is within Council's height controls and shadows generated by the build forms as proposed in the draft SSDCP.

The applicants shadow analysis shows that a tower that is designed within Council's height controls already encroaches on the public domain along The Crescent. The analysis shows that the additional shadows generated by the increased height will cast longer shadows but the impact on the public domain is substantially the same.

It should be noted that the shadows generated by slender tower forms pass more quickly when compared to those generated from squat building forms.

The impact generated from the extra height does not significantly add to the shadows generated if the site was developed within Council's height controls.

Council's urban designer has recommended the repositioning of the towers within the site in order to improve the amenity of the public domain along The Crescent.

The previous analysis has demonstrated that the additional height associated with the proposed development, over the height otherwise achievable if developed in accordance with existing controls, will not have significant adverse consequences for any existing or proposed development in the vicinity of the site. The slender tower design has advantages over an alternative shorter but wider designed building in so far as it will allow shadows to pass over affected sites more quickly.

It should also be noted that the development complies with clause 1.5.2 of the SSDCP which is reproduced below:

1.5.2 Development should not involve the overshadowing of the public domain or adjoining properties between 9am and 3pm on 21 June any greater than expected if the site was developed under the controls set out in Section 4 of the FTCDP 2006. For the avoidance of doubt, a slender built form, locating a taller tower to the north of the site, and a shorter tower to the south of the site that complies with Section 1.6 (Building Envelopes) is taken to comply with this requirement.

Clause 1.5.4 of SSDCP – isolated Site Crn. Spencer and Smart Streets.

The development application and SSDCP relates only to 1 of the 3 lots contained within the block bounded by Spencer and Smart Streets and Council Lane. The most desirable outcome, from an orderly planning perspective, would have been for all 3 lots to be incorporated into the one development. This outcome however has not been achieved and therefore the SSDCP incorporates provisions that require the provision of rights of way over the subject site to serve as future access to any redevelopment of the sites currently isolated.

Clause 1.5.4 of the SSDCP is reproduced below:-

1.5.4 The sites on the corner of Spencer and Smart Street are excluded from this Site Specific DCP. These sites will be required to comply with the provisions of the FTCDP 2006 unless a separate site specific DCP process as identified in Appendix 4 of the FTCDP2006 to determine the appropriate building form is undertaken. Rights of Way should be provided on the subject site to enable future access to these sites.

Conditions have been drafted by Council's Solicitor which will require the rights of way required by Clause 1.5.4. as well as the removal of a wall to permit access to the adjoining properties known as 41 to 47 Spencer Street and 27 Smart Street, Fairfield. The ROW will commence at the base of the access ramp providing access to the car park from Council Lane and continue on to cover first floor podium level access driveways. The

wall, which separates the development site from the adjoining properties will be designed to allow its removal at a later time. A condition will require the wall to be removed by the owners of the development site, at their cost, within a period of 3 months from the date of notice to remove being received.

Conditions have been incorporated into the schedule of recommended consent conditions which address the ROW and wall removal issues.

d) The provisions of any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, (S79C(1)(a)(iiia))

COMMENT:

Conomos Legal, solicitors acting on behalf of the owner - developer, have offered to enter into VPA relating to an identified parking shortfall of 30 spaces and totalling \$408,000. Such amount proposed to be paid prior to the release of a construction certificate for the development. Council at its meeting on 26 July 2011 resolved unanimously as follows:

- 1. Council agree, in principle, to enter into the Voluntary Planning Agreement (VPA) proposed by the applicant in their correspondence dated 22 June 2011.*
- 2. Once the Draft VPA document and associated Explanatory Note is finalised in consultation with the applicant, the Executive Manager Environmental Standards be delegated the responsibility to place the Draft VPA on exhibition on behalf of Council.*
- 3. That the final draft VPA document and Explanatory Note be exhibited for 30 days and that the result of the exhibition be reported to Council to allow Council to determine whether it will finalise the agreement with the applicant.*
- 4. Council will utilise the contributions paid as part of the VPA for the following purpose*
 - *provide additional parking;*
 - *upgrade existing parking facilities;*
 - *improve access arrangements to existing parking to improve its accessibility;*

within 5 years of the issue of the construction certificate.

Legal advice relating to the issue of the VPA offer has previously been considered in this report. A condition has been incorporated into the recommended consent conditions that require the applicant to enter into a planning agreement in accordance with the terms of the offer made by the owner - developer's solicitor in a letter dated 22 June 2011. This is also in accordance with the resolution of Council on 26 July 2011.

- e) The provisions of any the regulations (to the extent that they prescribe matters for the purposes of this paragraph), (S79C(1)(a)(iv))**

COMMENT:

Clause 92 of the Environmental Planning and Assessment Regulation 2000 specifies the additional prescribed matters that must be taken into consideration. Of relevance to this application, as it involves the partial demolition of an existing building, is Australian Standard AS 2601—1991: *The Demolition of Structures*, published by Standards Australia, and as in force at 1 July 1993. In this regard the proposed conditions of consent require compliance with this standard.

- f) The provisions of any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates, (S79C(1)(a)(v))**

COMMENT:

This matter is not relevant to the subject application.

- g) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, (S79C(1)(b))**

COMMENT:

The impacts of the development may be summarized as follows:

Traffic – The traffic and parking report submitted with the development application indicates that there will be a net increase of 36 vehicles per hour in the peak period. This increase has been estimated as not affecting the level of service of the nearest intersections (Smart and Spencer Level B and Smart and Council Lane – Level A). It is considered that traffic impact is within acceptable limits.

Shadow – The shadow analysis has indicated that the 2 slender towers have a more beneficial impact than a squatter building complying with the height limits. Whilst the

length of shadow is larger having regard to the nature of properties affected and the duration of the effect it is considered that the shadow impact is within acceptable limits.

Visual Amenity Impacts – The proposed towers will be the tallest structures within the CBD. They are however located at a point where they serve as a peak in terms of heights and to that extent whilst their height is significant being located at the core of the CBD mitigates their impact.

Wind – A wind impact report was submitted with the development application. Compliance with the recommendations of the report will ensure that the proposed development produces no adverse local wind impacts.

Drainage – The application provides for on site detention of storm water and to that extent provides a betterment of drainage outcome as compared to the impacts associated with the existing development.

Social – The development provides much needed housing at a location with superior access to jobs and transport. The development is considered to have a net beneficial social impact.

Economic – The development has a capital investment value of \$35.55 million and will provide a significant boost to the local building industry and work during its construction phase. After the construction the development will provide an increase to the CBD resident population which will provide ongoing assistance to ensuring the viability of CBD business. The net economic impact is considered to positive.

Natural System Impacts – The adaptive reuse of an existing building supports ESD principles and to that extent the development has net positive impacts on natural systems. It should be noted that the site is currently fully developed and therefore natural system on site impacts are limited.

Traffic and Pedestrian Safety Impacts – Traffic safety will be improved via the relocation of the existing ramped access driveway from the corner of Smart Street and Council Lane to Council Lane. This will improve pedestrian safety in Smart Street by ensuring that a significant driveway which currently traverses the Smart Street footpath is removed. Pedestrian Safety will also be improved via the provision of a pedestrian walkway along the southern most section of Council Lane from Smart Street to the lane entrance point for the ground floor retail uses.

h) The suitability of the site for the development, (S79C(1)(c))

COMMENT:

The development proposes to retain a substantial portion of the existing retail and commercial development currently erected upon the site. Partial demolition is proposed to improve pedestrian and vehicular access as well as off street loading facilities. The

proposed additional podium levels and residential towers are integrated to a reasonable degree with the existing to be retained built development. The site is considered to be suitable for what is proposed having regard to the central CBD location and the nature of impacts already discussed in this assessment.

i) Any submissions made in accordance with this Act or the regulations, (S79C(1)(d))

The development application and draft SSDCP were advertised from 25 May to 24 June 2011. The notification process involved an advertisement in the display section of the Fairfield Champion Newspaper as well as individual letters to in excess of 900 property owners and occupiers within the Fairfield CBD area. A scale model depicting the proposal was also displayed at Fairfield Library during the exhibition period. In response three (3) submissions were received. The submissions received form **Attachment N** to this report.

The table below summarises the main issues raised in submissions and provides comments thereto:

ISSUES RAISED IN SUBMISSION TO REDEVELOPMENT AND DRAFT SSDCP	COMMENTS
<p>Built Form (height and overshadowing). 57% increase above standard in FTCDCP is considered inconsistent with accepted planning practice. Inconsistent with S79C (1) (b) and (e). Concern with reduction of solar access enjoyed in public domain.</p>	<p>The issue of height was discussed in detail as part of the SSDCP process which was outlined earlier in this report. Following the adoption of the SSDCP the proposed height is now consistent with the applicable SSDCP height controls.</p> <p>The shadow impact of the development is considered acceptable and was considered in detail by council during the SSDCP process. The shadow impact of the proposed development on the public domain, primarily the Fairfield railway pedestrian areas is considered acceptable. The proposed development will cast longer shadows but these will be faster moving than a development of a lower height but larger footprint. Essentially the issue of shadow impact on the public domain, when examined during the course of preparation of the draft DCP, and reported to Council's Outcomes Committee on 8 February 2011, concluded that the impact generated from the extra height does not significantly add to the</p>

	<p>shadows generated if the site was developed within Council's then current height controls.</p>
<p>Building Design does not comply with requirement for 1 level of parking to be provided in a basement structure.</p>	<p>Refer previous comments relating to this issue.</p>
<p>Concern of flooding related issues that affect the site. Concern over appropriateness of a child care centre on this site</p>	<p>Council's Development Engineer has advised as follows:</p> <p><i>"The site is located within a partly medium, low and no flood risk precincts affected by overland flooding and within a low flood risk precinct affected by mainstream flooding, as described in the Flood Information Sheet issued by Council on 24 March 2011 to Wallis & Spratt Consulting Engineers. The 100 year overland flow affects a very small area at the north western corner of the site, at the intersection of Spencer Street and Council Lane, (refer plan showing overland flow flood extent attached to a copy of the Flood Information Sheet). The 100 year overland flood level at this corner is RL 11.0 m AHD. In this regard, the floor level of the shop and medical centre proposed at this corner will need to be set a minimum of 500mm above the 100 year ARI flood level.</i></p> <p><i>The development needs to comply with the development controls contained in Chapter 11 in Fairfield City Wide DCP 2006, "Flood Risk Management" and in particular with "Schedule 6" of Chapter 11. Council's "Flood Risk Management" policy has been considered in the assessment of the Fairfield Chase Redevelopment and conditions requiring the applicant to comply with this policy are included in the recommended conditions below. Given that the flooding affectations of the site are predominantly limited to "low flood risk precincts" (with the exception of a very small area affected by "medium flood precinct - overland flow" at the north western corner of the site) and provided that no "Critical Uses & Facilities" are proposed, nor "Sensitive Uses & Facilities" are proposed on the ground floor, the</i></p>

	<p><i>applicant can address the matters required in Chapter 11 of Council's DCP prior to issue of the Construction Certificate, as per the conditions below."</i></p> <p>Conditions of consent address the matters raised in the comments by the Development Engineer.</p> <p>A child care centre is no longer proposed on this site.</p>
Shortfall of car parking	<p>Proposed consent conditions will require all residential spaces generated by this development to be provided on site. This is readily able to be achieved. In respect to the shortfall of 30 commercial spaces the applicant has made a formal offer to enter into a VPA agreement to resolve the shortfall by way of a monetary contribution. At the time of writing Council was in the process of finalizing the details of the VPA for public exhibition in accordance with Section 93L of the Environmental Planning and Assessment Act 1979.</p>
Implementation of the development (i.e. Staging). Concern relates to the availability of car parking should the development proceed in stages.	<p>The applicant has advised that retail tenancies including the medical centre will cease or be relocated prior to commencement of major construction works and there will be no staging.</p> <p>It is also noted that the office building may remain operational throughout the construction period. This is considered acceptable from a parking aspect as parking provided on site was only sufficient for the ground floor uses. Therefore no adverse parking consequences are envisaged to result.</p>
<p>Waste Management associated with the medical centre.</p> <p>The submission author indicated that the tenant was not consulted by the applicant as part of the development application process and that this should have been taken into account so as to avoid any issues at a later stage when determining the waste arrangements associated with the use.</p>	<p>Adequate areas are available on site to enable resolution of the waste requirements for the medical centre with the site owners.</p> <p>The SSDCP at Clause 1.8.4 states as follows: <i>"However, any medical use may manage its own waste (due to the special requirements of medical waste), provided that it has its own access to Council Lane."</i></p> <p>The medical use component of the development does have direct access to Council Lane and therefore complies with</p>

	this requirement.
Concern that a further approval for the medical use may raise issues relating to car parking adequacy.	No further approval for the use of part of the ground floor is proposed to be required for a medical dental centre containing a maximum of 24 professional rooms. This issue was previously discussed in this report.
Issue of potential breach of Development Consent 134/98 relating to the medical and dental centre if development proceeds.	Development Consent 134/98 has been examined and of relevance are Conditions 3 and 7 which requires 24 hour access to be maintained to the roof top car park and availability of car parking for customers, Ensuring no breach of DC 134/98 results. Given that it is proposed to cease ground floor occupation when major construction work commences and the project works are not proposed to be staged there will be no breach of these conditions.
Medical centre has a lease until August 2018 and lease does not contain a demolition clause.	The resolution of lease conditions and the negotiation of an appropriate commercial solution is a matter for the building owner and the tenant. It is not a planning matter relevant to this assessment.
Submission questions whether access from Council Lane to lane adjoining properties will be available during the construction period.	Access to the adjoining properties via the Council lane will be required to be maintained during the construction phase of the development. This will be dealt with via consent conditions.

j) The public interest. (S79C(1)(e))

COMMENT:-

The development is considered to be in the public interest. Council has given detailed consideration to the applicable development standards and has specified these in a Site Specific DCP. The development upon assessment has been found to achieve substantial compliance with all applicable development standards. In addition the range of identified impacts are all considered to be within acceptable limits.

When publicly exhibited the DA attracted a limited number of submissions notwithstanding the fact that in excess of 900 letters were sent to adjoining and nearby property owners and occupiers.

Summary and Conclusion

Having regard to the assessment of the application the following is concluded:

1. The proposed development is consistent with zone objectives and is permitted upon the site with consent.
2. The subject site has been identified as a site specific DCP site under the FTCDP and is generally consistent with the Site Specific DCP controls that now apply. Council specifically amended the FTCDP to permit the proposed development to proceed.
3. The application makes satisfactory provision for car parking having regard to the history of car parking relating to this site, the amount of car parking proposed to be provided on site and the terms of a VPA offered to be entered into by the applicant. The applicant's VPA offer relates to the identified deficit of car parking for 30 spaces being satisfied by payment of a monetary contribution of \$408,000. The preparation and advertising of the VPA will progress via a separate process. Recommended consent conditions however require that the VPA be entered into in terms of the offer made and the monetary payment be made prior to the release of the construction certificate.
4. Satisfactory provision has been made to facilitate the future redevelopment of two otherwise isolated properties within the block bounded by Smart and Spencer Streets and Council Lane, and not part of this development. These properties will enjoy the benefit of a right of way to enable them to gain access to their first floor level through the development site. This also provides a public benefit by removing the need for car park access from Smart Street thereby improving long term public amenity.
5. Significant public benefit is obtained through the removal and relocation of the existing ramped entrance driveway located on the corner of Smart Street and Council Lane, and the provision of pedestrian access along a portion of Council Lane to the southern entrance to the ground floor retail area.
6. The proposed development has generally demonstrated satisfactory compliance with respect to the principles of State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development.
7. The extensive public exhibition process has resulted in 3 submissions with 1 being an objection. This indicates broad public support for the proposed development. Such support also being evident in Council's adoption of the Site Specific DCP.

Recommendation

It is recommended as follows:

1. The development application be approved subject to the conditions contained within **Attachment A** to this report.
2. The persons who made submissions be advised of this decision.

INDEX OF DOCUMENTS ATTACHED	DESCRIPTION	PAGES
AT - A	Schedule of Recommended Consent Conditions	
AT - B	Proposed Development Plans	
AT - C	Outcomes Committee Report, 8/2/2011 re SSDCP	
AT - D	Outcomes Committee Report, 12/7/2011 re SSDCP	
AT - E	Outcomes Committee Report, 12/7/2011 and Council of 26 July 2011 re VPA	
AT - F	RTA's SRDAC Letter	
AT - G	Endeavour Energy Letter	
AT - H	Police Letter	
AT - I	Copies of Internal Referral Responses	
AT - J	Urban Art Screening Concept	
AT - K	FTCDP 2006 Compliance Assessment	
AT - L	SSDCP Compliance Assessment	
AT - M	Shadow Diagrams	
AT - N	Copies of Submissions received	
AT - O	Outcomes Committee Report of 14 June 2011	

