

JRPP No. 2012SYW102

Proposal: Demolition of the existing dwelling house and associated outbuildings and construction of a place of worship (Buddhist Temple)

Location: 47 -51 Edensor Road, Part Lot 137, DP 16877, CABRAMATTA WEST

Owner: The Australian Chinese Teo Chew Association

Proponent: V T Architects – Peter Mak

Capital Investment Value: \$6,712,000

File No: DA 807.1/2012

Author: Karl Berzins, Consultant Planner
Fairfield City Council

RECOMMENDATION

That the application proposing the demolition of the existing dwelling house and associated outbuildings and the construction place of worship be approved subject to conditions as outlined in Attachment I of this report.

SUPPORTING DOCUMENTS

AT-A	Architectural Plans	Pages 6
AT-B	Statement of Environmental Effects	Pages 27
AT-C	Operational Plan of Management	Pages 40
AT-D	Height and Overshadowing of Proposed Development	Pages 1
AT-E	Acoustic Report e-mail advice	Pages 23
AT-F	Traffic and Parking Assessment Including Supplementary Report	Pages 27
AT-G	Letter from NSW Office of Water	Pages 5
AT-H	Letters of Objections	Pages 9
AT-I	Draft Conditions of Consent	Pages 22

EXECUTIVE SUMMARY

Pursuant to Schedule 4A of the Environmental Planning & Assessment Act 1979 the proposal has been referred to the JRPP because the proposed development falls within the category of *private Infrastructure and community facilities over \$5 million*.

The proposed place of worship development consists of the following components:

- Demolition of the existing dwelling house and associated outbuildings including workshop building,
- Erection of a place of worship consisting of 4 main building elements erected above a podium level. The buildings compromise:
 - two single storey temples,

- a two storey main hall building containing on the lower level an office, dining hall for 90 patrons and a caretakers residence and on the upper level the main worship hall,
- a two storey columbarium.
- A two storey lift tower and a stair tower above the podium level which provide access from the ground level car park.
- Incinerator for the burning of ceremonial money
- Car parking at ground level for 108 vehicles.

The manner in which the place of worship is proposed to operate is detailed within a Plan of Management (Revision D dated 19 July 2013). In terms of operating hours the following is proposed

- Daily operation – Monday to Sunday- 9am to 5pm
- Chinese New Year's Eve – 9am to midnight

Special events nominated as Buddha's Birthday and Ullambana (Parents Day) as well as New Years Day activities are also proposed to be restricted to the 9am to 5pm time period. This is also the case for 1st and 15th lunar month celebrations.

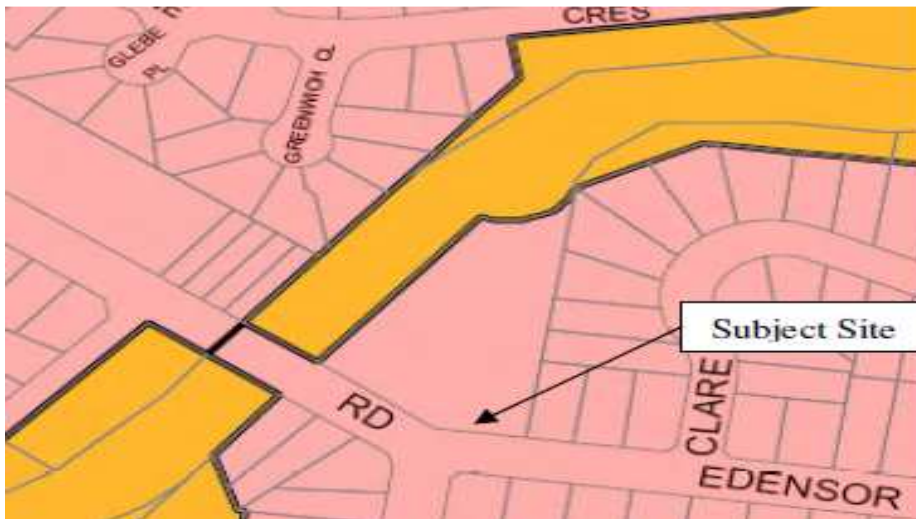
The site is accessed via a combined entry exit driveway from Edensor Road. At grade ground level car parking for 108 vehicles is proposed to be provided. Twenty seven (27) of these spaces are located behind the development and 81 car parking spaces are located below the building complex. Further overflow car parking (for approximately 50 cars) is available during special religious events within Meadows Road and Crosio Place at a distance between 80 – 140 metres from the site. Also a mini bus is also proposed to operate between the site and Cabramatta Railway Station on special event days.

Fairfield LEP 2013 (FLEP2013) was gazetted on 17 May 2013 and became effective on 31 May 2013. The site is zoned as *R2- Low Density Residential* under the provisions of FLEP2013, see Figure 1 below. Notwithstanding this and having regard to the fact that the development application was submitted on 30 October 2012, the applicable planning instrument is Fairfield LEP 1994 (FLEP1994) pursuant to clause 1.8A *Savings provisions relating to pending development approvals* of FLEP2013.

FLEP1994 zones the site as part *Residential A* and part 6(a) - *Existing and Proposed Recreation*.

The proposed development is characterised as either a place of worship (FLEP1994) or a place of public worship (FLEP2013) and is considered to be permitted with consent in the applicable zones.

Figure 1 – Extract from Fairfield LEP2013



The site was zoned partly *Residential A* and partly *6(a) - Existing and Proposed Recreation* under Fairfield Local Environmental Plan 1994. The proposal is defined as a place of worship and is a permissible use within the *Residential A* zone. In respect to the land zoned *6(a) - Existing and Proposed Recreation* the development is permitted with consent as a consequence of Clause 28(3) of the LEP. Figure 2 below is an extract from Fairfield LEP 1994.

Figure 2– Extract from Fairfield LEP 1994



The development application was advertised in accordance with the notification provisions contained within Fairfield City-Wide DCP 2006. In response seven (7) letters objecting to the development were received. The grounds of objection may be summarised as objections relating to noise, traffic, parking, privacy and flood impacts, storage of human remains on site, out of context development, smell of money burning, dangerous location- traffic, and concerns relating to property values.

This report considers the key issues and impacts associated with this development application. The application is assessed in accordance with the Environmental Planning and Assessment Act 1979, FLEP 1994 and FLEP 2013 and Fairfield City Wide Development Control Plan 2006.

The site is located within 40 metres of the creek bank and the applicant has nominated the development as integrated development under the provisions of s91A of the Environmental Planning and Assessment Act 1979. The General Terms of Approval for a controlled activity approval, under the Water Management Act 2000, have been obtained from the Office of Water.

The major assessment issues of concern relate to stormwater flooding impacts, parking provision for special events, noise control and the consideration of matters raised by the objectors.

It is considered that the proposed development is appropriate for the site and for the locality and will not have a significant adverse impact on the surrounding environment if carried out in accordance with the undertakings contained in the Plan of Management. Based on an assessment of the application, it is recommended that the application be approved subject to conditions.

SITE DESCRIPTION AND LOCALITY

The subject site is of irregular shape and is located on the northern side of Edensor Road opposite Meadows Road at Cabramatta West. The site which is known as part Lot 137, DP 16877, has a frontage of approximately 80.72 metres to Edensor Road, a maximum depth along its eastern boundary of 121. 92 metres, and a rear boundary width totalling approximately 39 metres. The area of the site is approximately 5310 square metres.

The site is largely devoid of any significant vegetation apart from a stand of 3 Eucalyptus and a small cluster of Casuarina trees located in the far north eastern corner. All of these trees will be required to be retained as part of this development proposal.

The site is shown by the red outline on the extract from an aerial photograph which forms Figure 3 to this report.

Figure 3 Site Location



The land falls gently from Edensor Road to its rear boundary. The slope is less than 1% or approximately 1 metre over a length of 122 metres. Council owned open space land is located along the sites western and northern most boundaries. The open space provides a buffer to Green Valley Creek.

DEVELOPMENT HISTORY

The site contains a dwelling house and associated outbuildings as well as a larger building at the rear which was approved as a garage in 1976. The rear of the site has a sporadic history of unauthorised usage related to diverse uses such as storage of formwork and as a transport depot.

Development consent DA1277.1/2008 was granted on 12 December 2008 for an 8 lot residential subdivision, dedication of the open space land to Council and the construction of a new roadway.

On 9 March 2011 the applicant attended a Development Advisory meeting to discuss the proposed place of worship. Written advice provided to the applicant at that time indicated that the applicant was advised to:

- i. Support the application with a detailed Statement of Environmental Effects, Plan of Management, Acoustic, Traffic and Parking Reports. Issues to be considered included normal and special event impacts, shadowing, noise and parking impacts.

- ii. Redesign the blank rectangular facades to the car park and temple above so as to introduce articulation so as to reduce visual impact and provide visual interest.
- iii. Increase the front (Edensor Road) setback in line with adjoining and surrounding development.
- iv. Not locate car parking in the front landscape setback area.

The subsequently submitted development application plans complied with the advice provided.

PROPOSAL

General Description – Floor Areas, Heights and Setbacks

The application provides for the construction of a temple complex (Place of worship) for the Australian Teo Chew Association Inc. Architectural details including the site plan are shown in Attachment A. The Statement of Environmental Effects is included as Attachment B.

The temple complex incorporates a grand stairway and gateway structure which comprises the main entry way from Edensor Road. The stairway rises approximately 2.85 metres from the ground floor level (also approximates Natural Ground Level (NGL)) to the podium level. The gateway structure has a height of approximately 11.39 metres above NGL. Also located on the ground level is car parking for 108 vehicles consisting of 81 undercover spaces.

The stairway is setback between 10 and 11.5 metres from Edensor Road whereas the gateway structure, which has an approximate length of 21 metres, is setback between 5.5 and 12 metres from Edensor Road.

Figure 4 below is an elevation diagram which shows the stairway and gateway structure as well as the front elevation of two temples located on the podium and an outline of the main hall above.

Figure 4 – Part southern elevation facing Edensor Road

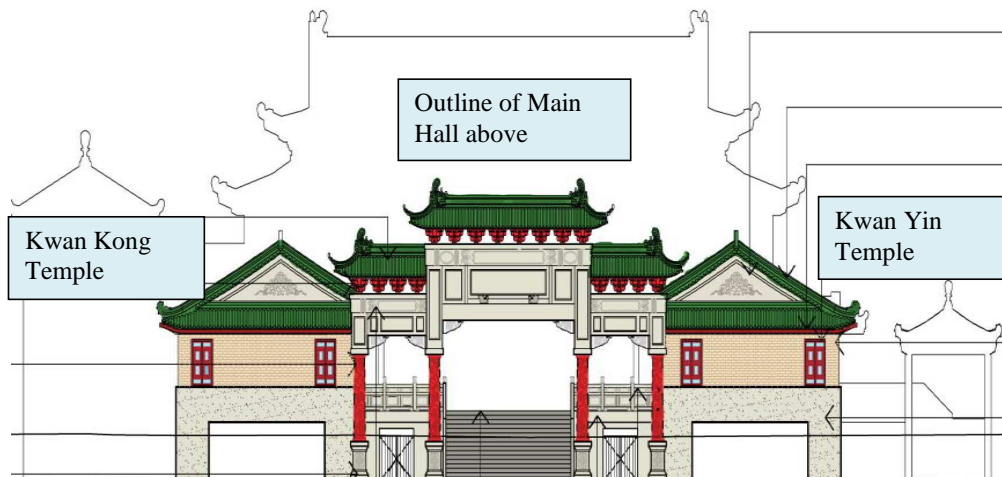
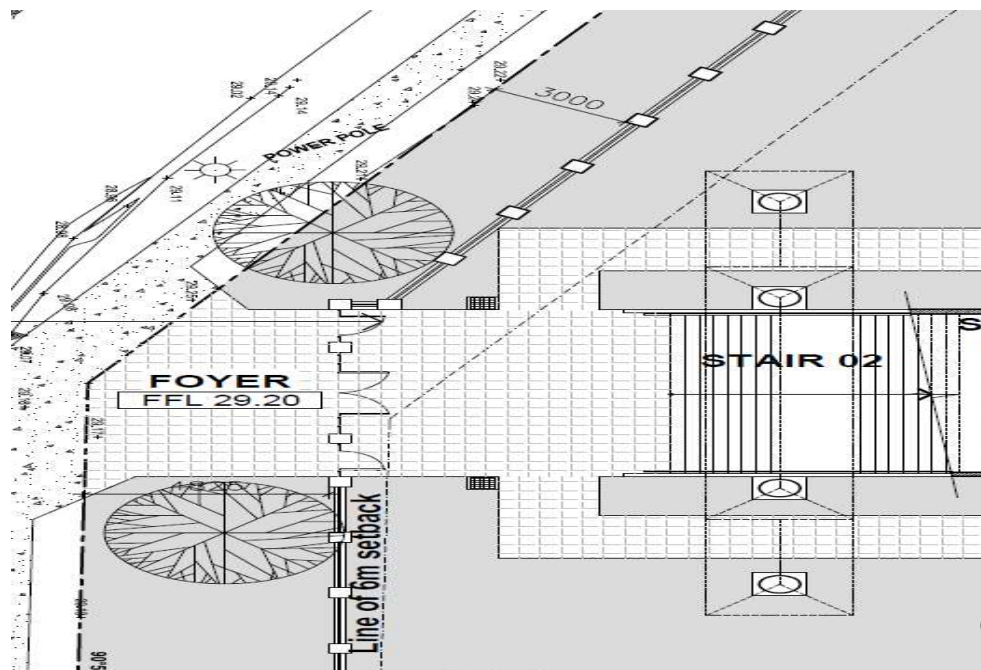


Figure 5 below is an extract from the ground floor plan which shows setbacks applicable to the front fence (3 metres minimum) and the 6 metre building line, the entry stairs and the location of the entry archway.

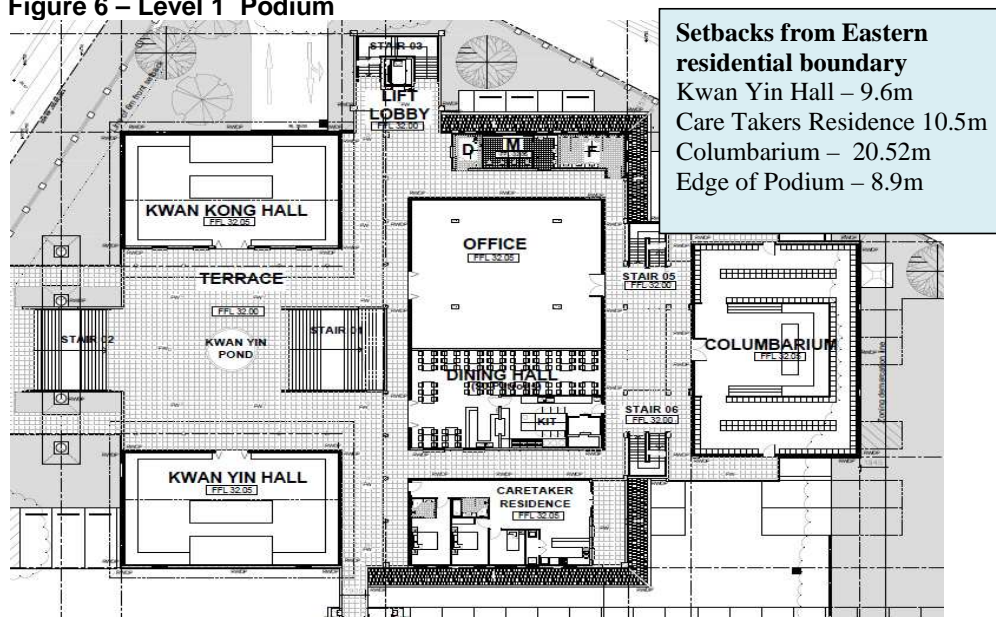
Figure 5 – setbacks of stairs and gateway to Edensor Road



The level 1 podium consists in part of two temples facing each other on the eastern and western sides of the podium. The Kwan Kong and the Kwan Yin temples each have a gross leasable area of approximately 169m² and a worship area of 101m². These temples face each other across an open courtyard containing a pond. Within the pond is a 7 metre high statue of Kwan Yin (Goddess).

Also located on the level 1 podium to the north of the two temples is the ground level of the main hall which contains amenities, office (GLA 200m²), dining hall and kitchen for 90 persons (GLA 132m²), and care takers residence (GLA 106m²). Further towards the north behind the main hall is the first level of the columbarium (GLA 241m²).

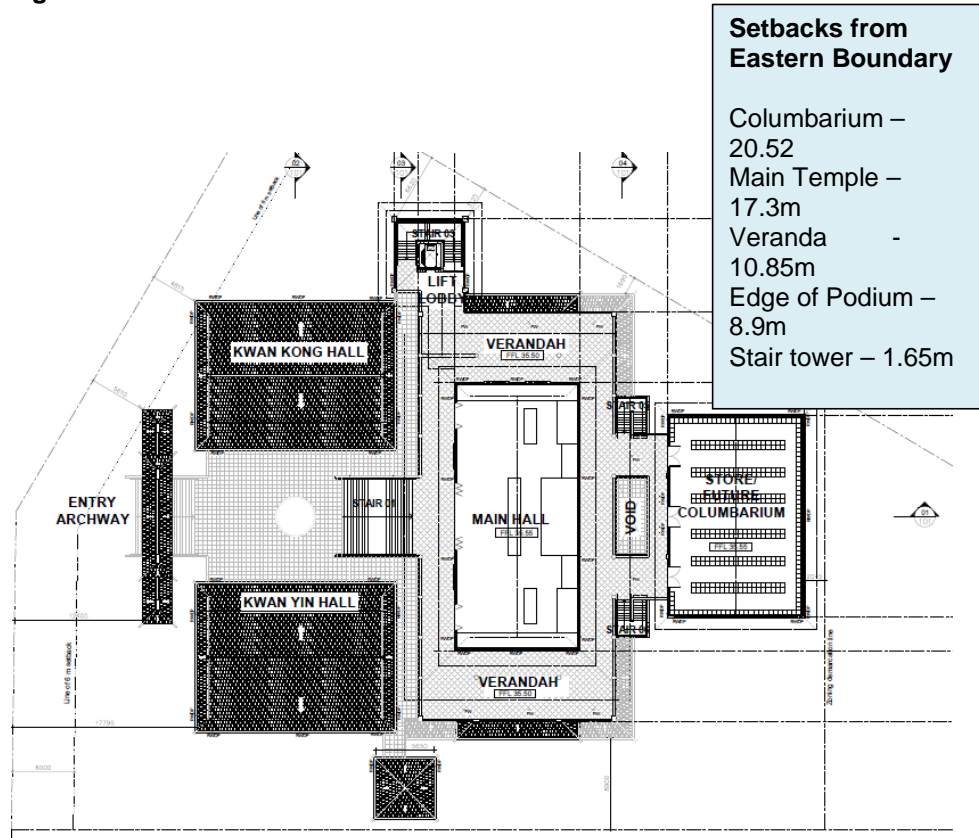
Figure 6 – Level 1 Podium



The level 1 podium provides access via stairs from the central terrace between the two temples to a level 2 podium. The second podium level has a height of approximately 6.35 metres above NGL and contains the main temple (GLA 297m²) which faces towards Edensor Road (south). At the rear of the main temple is located the second level of the columbarium (GLA 240m²). Verandas having an approximate width of 7 metres at the eastern and western end of the main temple form a part of the level 2 podium area.

The main temple has a height of approximately 17.92 metres to the top of the ridge above NGL. This temple is setback approximately 17.3 metres from the eastern residential boundary. The edge of the level 2 podium is setback 8.9 metres from the eastern residential boundary with the veranda having a setback of 10.85 metres from such boundary. However a 2 metre landscaped planter box has been proposed by the applicant to be constructed along the eastern side of the veranda this then effectively increases the separation between the person accessible section of the veranda and the eastern property boundary to 12.85 metres.

Figure 7 – Second Podium Level Plan



Elevation Views

Eastern Boundary

Various elevation views are provided below which provide an indication of the architecture and building proportions proposed.

Figure 8 – Rear Northern elevation facing creek

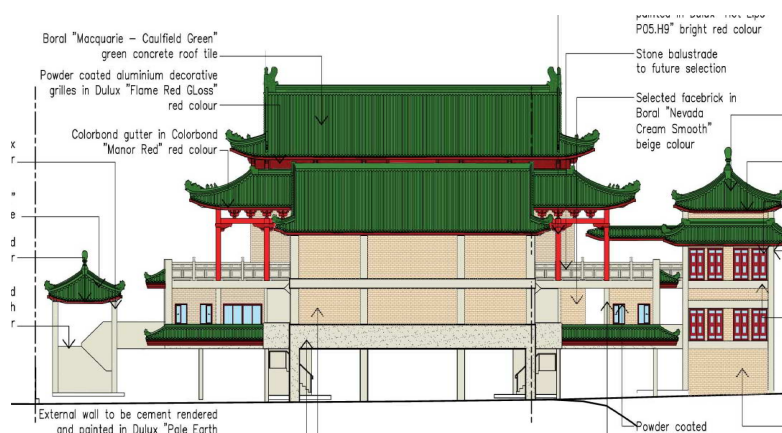


Figure 9 – Side Eastern elevation facing nearest houses

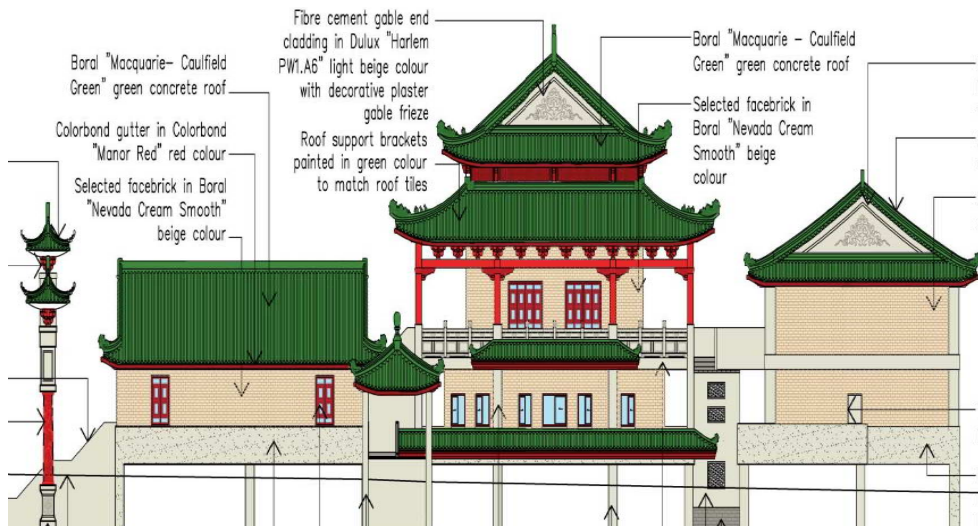
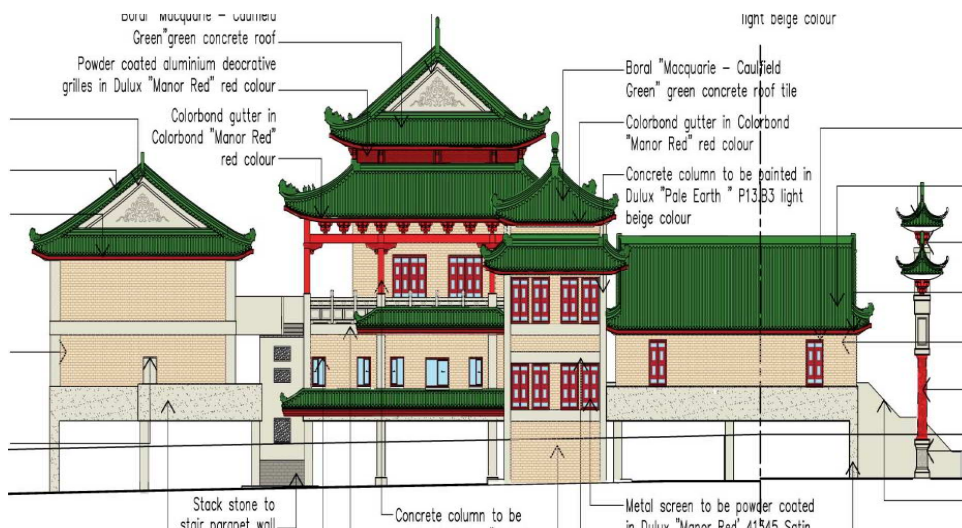


Figure 10 – Side Western elevation facing creek



The applicant was required to address potential overlooking and loss of privacy issues along the eastern elevation which adjoins residential premises. This has been proposed to be addressed in the following manner:

First Floor

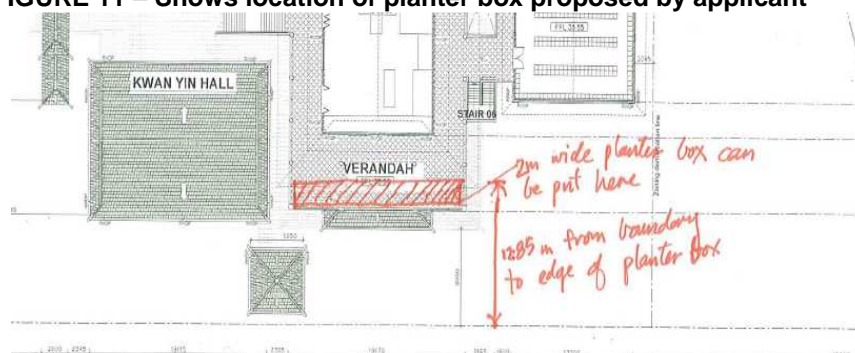
- Incorporation of metal motif screens into the northern, eastern and southern elevations of the stair tower. Frosted glass will be provided behind the metal motif

- Installation of 1.5 metre high solid balustrade between the northern most stairs and the eastern entry to the columbarium.

Second Floor

- Planter box 2 metres wide along the eastern edge of the veranda to the east of the main hall. The location of this planter box will provide an effective separation distance of 12.85 metres between the eastern boundary and the level 2 veranda. Refer diagram below:

FIGURE 11 – Shows location of planter box proposed by applicant



It is considered that the above proposed design modifications will adequately protect the privacy of adjoining residents and prevent direct overlooking of rear yard areas.

Usage Details

Details of proposed site usage as contained in the Operational Plan of Management (Attachment C) are contained in the Table 1 below:

Table 1 – Site Usage Details

SITE USAGE TABLE	
ACTIVITY	DETAILS
Normal Operations	
Daily Temple Operation	9:00am to 5:00pm Monday to Sunday 20 persons at any one time up to 50 during day. Maximum of 3 administrative staff
1 st and 15 th of the Lunar Month	1 st and 15 th of each lunar month Prayer sessions at 10am to 12pm, and 2pm to 4pm. Maximum of 50 people at each session Vegetarian Lunch 11am to 12pm – 90 person at one time Maximum of 3 administrative staff.

SITE USAGE TABLE	
ACTIVITY	DETAILS
Special Events	
Chinese New Year	The 1 st day of the lunar year and on the eve of the lunar new year. 9:00am to midnight – New Year's Eve 9pm to 9:45 pm New Years Eve - Lion dance show. Up to 200 persons on terrace. 9:00am to 5:00pm – New Years Day 450 persons expected during course of the day 11am to 2pm Vegetarian lunch max 90 persons at a time.
Buddha's Birthday (April)	The 8 th day of the 4 th lunar month. 9:00am to 5:00pm 250 – 300 persons during course of the day 11am to 2pm - vegetarian lunch – 90 persons at any one time
Ullambana / Parents Day (July – August) (Relatives of the deceased whose ashes are kept in the columbarium attend the temple to remember the departed.)	The 9 th to 15 th day of the 7 th lunar month 9:00am to 5:00pm 180 persons maximum attendance on first Sunday during the 7 day event 11am to 2pm - vegetarian lunch – 90 persons at any one time.

STATUTORY REQUIREMENTS APPLICABLE TO THE SITE

- State Environmental Planning Policy No 55 (Remediation of Land)**
Clause 7 of SEPP 55 provides as follows:

Comment [k1]: This needs to be reworked once amended comments from EMB are received.

Contamination and remediation to be considered in determining development application

(1) A consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

2) Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subclause (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

The applicant has not specifically addressed the contamination issue. However information is available on Council's file related to the 2008 approved 8 lot residential subdivision. At that time a Phase 1 Contamination Assessment was undertaken. That assessment found that hydrocarbon contamination was present in the area of the

workshop and in the vicinity of an above ground fuel storage tank. Asbestos contamination in this area was also identified. The report found that the area of concern was limited to the areas around the workshop and was identified in the top soil layer. Remediation was recommended in this area by scraping the top layer of soil and disposing of it at an appropriate facility. Development consent was subsequently granted subject to the following condition:

1. The following conditions have been imposed by Council's Environmental Management Branch: -

a) Prior to the release of the Subdivision Certificate a Validation Report, prepared by a Suitably Qualified person, shall be submitted to Council demonstrating that all contaminants identified in the Phase 2 Contamination Assessment prepared by Brink & Associates, dated 26 October 2006, Report No. S06083-A have been removed;

The Validation Report shall include a statement that demonstrates the site is suitable for intended use.

Council's Environmental Management Branch have reviewed their previous comments and have recommended that consent be granted on a deferred commencement basis so as to ensure that the site is remediated to Council's satisfaction. It is however considered that a deferred commencement approach is not required and an operational consent incorporating conditions requiring the remediation and validation of the site prior to the issue of a construction certificate is appropriate in the circumstances. The reasons for this are as follows:

- i) Development consent for the 8 lot subdivision is still active until 8 December 2013 and was not issued on a deferred commencement basis.
- ii) The nature of the contamination is known and localised to a small area of the site.
- iii) The method of remediation – off- site disposal has been previously documented and will result in the site being free of contamination.
- iv) The residential subdivision was a far more sensitive land use than currently proposed.

The alternative approach outlined above was discussed with the officer responsible for the EMS comments who has agreed that an operational consent is appropriate.

2. Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (Deemed SEPP)

The REP requires consideration of a number of planning principles when a consent authority determines a development application. These principles together with comments thereto are discussed in the table below:

Georges River Catchment REP Planning Principles

General Planning Principle	Comment
The aims, objectives and planning principles of this plan	These have been considered and the proposed development is not considered to be inconsistent with these.
The likely effect of the proposed plan, development or activity on adjacent or downstream local	The development incorporates On Site Detention which will ensure that post development discharge

government areas,	levels do not exceed pre development discharge levels. In addition there will be no displacement of flood waters as a consequence of adopted ground floor levels, fencing designed to enable flood waters to enter and leave the site and no site filling. Having regard to these features the impact of the development on adjoining local government areas have been adequately considered.
The cumulative impact of the proposed development or activity on the Georges River or its tributaries,	Having regard to the developments design, incorporation of OSD there is unlikely to be any adverse cumulative impact on the Georges River or its tributaries as a consequence of the proposed development.
Any relevant plans of management	There are no relevant Plans of Management requiring consideration under this part.
The Georges River Catchment Regional Planning Strategy	This does not raise issues that directly impact on the proposed development.
All relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	The Flood Plain Development Manual has been considered and the proposed development is consistent with the principles that it contains of relevance to the proposed development.
Whether there are any feasible alternatives to the development or other proposal concerned.	The proposed development has a neutral impact on water quality and discharge levels to Green Valley Creek. To that extent there is no need to consider alternatives under this consideration.

In addition to the above planning principles the REP specifies certain development types and lists specific matters for consideration in respect to that development. Places of worship are not a nominated development category. The relevant provisions of the REP have been considered and do not present an impediment to consent being granted.

3. Fairfield Local Environmental Plan 2013 (FLEP2013) and Fairfield Local Environmental Plan 1994 (FLEP1994)

Savings Provision

Fairfield LEP 2013 (FLEP2013) was gazetted on 17 May 2013 and became effective on 31 May 2013. Clause 1.8A of FLEP2013 provides as follows:

1.8A Savings provisions relating to pending development approvals (local)
If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan has been exhibited but had not commenced.

In accordance with clause 1.8A the development application must therefore be considered under the provisions of both FLEP1994 and FLEP 2013.

Characterisation under FLEP1994

The subject site is zoned part *Residential A* and part 6(a) - *Existing and Proposed Recreation* under FLEP1994. The proposed development is characterised as a place of worship and is a use permissible with consent in the applicable zones. The place of worship buildings are located on that part of the site zoned as *Residential A* with the proposed overflow car park being located on the 6(a) - *Existing and Proposed*

Recreation zoned land. Given that the overflow car parking use is associated with the place of worship it has not been separately characterised.

A place of worship is defined in the dictionary to FLEP1994 as:

Place of worship means a building or place used predominantly for the purpose of religious worship, whether or not the building or place is also used for counselling, social events or religious training by a congregation or religious group.

It is considered that the principle use of the proposed development is for the purpose of religious worship. The office, dining hall, columbarium and car parking areas are all ancillary to the main function of the site which provides a place for religious worship. The characterisation of the development is therefore as a place of worship.

A columbarium is a building built to house the ashes of the dead. Its interior walls are lined with niches which are used to store ashes or personal remains of the departed. A columbarium forms a traditional part of temple complexes such as that proposed.

Zone Objectives

Clause 8 of FLEP1994 provides as follows:

8 Zone objectives and development control table

(1) Subject to the other parts of this plan, the following development control table states for each zone:

- (a) the objectives of the zone,
 - (b) the purposes for which development may be carried out without development consent,
 - (c) the purposes for which development may be carried out only with development consent, and
 - (d) the purposes for which development is prohibited.
- (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.

The objectives of the Residential A zone are:

- (a) to set aside land primarily for the purposes of housing and associated facilities,
- (b) to provide for the orderly development of detached housing, essentially domestic in scale and character,
- (c) to achieve attractive high quality residential development,
- (d) to allow people to carry out a reasonable range of business activities from their homes, where such activities are not likely to adversely affect the living environment of neighbours, and
- (e) to allow a range of non-residential uses that:
 - (i) are capable of integration with the immediate locality,
 - (ii) serve the demands of the surrounding population, and
 - (iii) do not place demands on services beyond the level reasonably required for residential use.

The proposed development is considered to meet objective (d) in so far as the proposed place of worship is capable of integration with the immediate locality, serves

the demands of the surrounding population and does not place demands on services beyond the level reasonably required for residential use.

The objectives of the 6(a) - *Existing and Proposed Recreation zone* are:

- a) to provide public open space to meet the existing and future recreation and leisure needs of residents,*
- (b) to provide opportunities to enhance the environmental quality of the City of Fairfield, and*
- (c) to identify land that is required for future open space purposes.*

The proposed development is not consistent with the above objectives and is not a permitted use within the 6(a) zone pursuant to the provisions of clause 8 of FLEP 1994.

Clause 28 – FLEP 1994

Notwithstanding the fact that the zoning table to the 6(a) zone does not permit a place of worship and that such use is inconsistent with the zone objectives, the development is however permitted with consent pursuant to provisions contained in Clause 28 which is reproduced below with the relevant sections in bold:

28. What requirements are there for the acquisition and development of land in the 5 (a) and 5 (c) zones and the 6 (a) and 6 (c) zones?

(1) *The owner of any land within Zone 5 (a), 5 (c), 6 (a) or 6 (c) may, by notice in writing, require:*

- (a) in the case of land within Zone 5 (a) and lettered on the map "College", the Technical and Further Education Commission,*
- (b) in the case of land within Zone 5 (a) and lettered on the map "Water Board", the Water Board,*
- (c) in the case of land within Zone 5 (a) and lettered on the map "Railway", the State Rail Authority of New South Wales,*
- (d) in the case of land within Zone 5 (a) and lettered on the map "Sub-Station" or "Electricity", "Prospect Electricity",*
- (e) in the case of land within Zone 5 (a) and lettered on the map "Public Transport Corridor", the Corporation,*
- (f) in the case of land within Zone 5 (a) and lettered on the map "Hospital", the Health Administration Corporation,*
- (g) in the case of other land within Zone 5 (a), and land within Zone 5 (c) and 6 (a), not already in the ownership of a public authority and held for the purpose which it is reserved, the Council,***
- (h) in the case of land within Zone 6 (c), the Corporation,*
as the public authority having responsibility for acquisition of the land, to acquire the land.

(2) *On receipt of a notice referred to in subclause (1), the public authority concerned must acquire the land.*

(3) Until the land referred to in subclause (1) is acquired by the public authority concerned, development may be carried out for any purpose on that land with the consent of the Council.

(4) The Council must not grant consent to the carrying out of development on land to be acquired by a public authority, unless it has taken the following into consideration:

- (a) the effect of the proposed development on acquisition costs,*
- (b) the imminence of acquisition,*
- (c) the cost of reinstating the land for the purposes for which the land is reserved.*

(5), (6) (Repealed)

(7) The Council must not grant consent for any development on land within Zone 6 (c) unless:

- (a) it has considered the impact of the proposed development on:*
 - (i) the visual quality of the Horsley Park Corridor, and*
 - (ii) the existing and likely future use of nearby land in the Horsley Park Corridor, and*
- (b) it imposes conditions that will in its opinion mitigate any adverse impact of the proposed development.*

(8) The Council must not consent to the carrying out of development on land within Zone 6 (a) unless it has considered:

- (a) the impact of the proposed development on the existing or likely future use of the land,***
- (b) the need for the proposed development on the land, and***
- (c) the need to retain the land for its existing and likely future use.***

Legal advice in respect to Clause 28 of FLEP1994

Council has previously obtained legal advice, in respect to its power to approve development on land not acquired in zone 6(a), in respect to a different site. A relevant extract from that advice is reproduced below:

If the Council has not acquired land within zone 6(a) it is empowered pursuant to Clause 28(3) to grant development consent "for any purpose" on that part of the land within 6(a) provided that it considers the matters set out in clause 28(8) namely:

- "(a) the impact of the proposed development on the existing or likely future use of the land,*
- (b) the need for the proposed development on the land, and*
- (c) the need to retain the land for its existing and likely future use."*

~~Council would need to give "proper, genuine and realistic consideration" to the matters in clause 28(8). Mere advertence to those matters would not be sufficient to enliven the power under clause 28(3) to grant consent to development "for any purpose".~~

Consideration of matters specified in clause 28 of FLEP1994.

Consideration of the matters required to be considered by Clause 28(8) of FLEP1994 is provided below:

a) the impact of the proposed development on the existing or likely future use of the land.

Comment:

The development of the land as a place of worship as proposed precludes its long term use for open space purposes. Council has however made the decision not to acquire the subject open space land and has now rezoned it to R2 – Low Density Residential under the provisions of FLEP2013.

(b) the need for the proposed development on the land

The City of Fairfield has a large and diverse ethnic population many of which are of the Buddhist faith. The Statement of Environmental Effects indicates that the place of worship provides a worship place to followers in surrounding suburbs and Sydney in general.

In 2011 the census indicated that 43,230 (23%) of the 196,622 residents of the City were of the Buddhist faith. Buddhism was the second most common religion specified. In terms of comparison with the greater Sydney area only 4.1% of its population specified Buddhism as their religion.

In the period 2006 to 2011 the number of persons that have specified Buddhism as their religion in the City increased by 3,418 persons. This was the largest increase of any religious denomination.

There is clearly a need for temple facilities to support the Buddhist faith within the City of Fairfield as the number of followers increases. Large sites that would support temples are limited which has lead to undesirable impacts associated with smaller sites where traffic, parking and noise issues have not been able to be adequately resolved. In the subject case it is considered that there is a need for the development upon the proposed land as it places a new temple facility within an area accessible to a large and increasing Buddhist community.

(c) the need to retain the land for its existing and likely future use.

The subject site is now zoned *R2- Low Density Residential*. Council made the decision to rezone the site as *R2* following a review of its open space requirements. Council's Outcomes Committee on 13 October 2009, Item 160, resolved to exclude a number of properties, including the subject site, from its acquisition program as such land was considered to be surplus to the needs of the community. A consequence of that decision was the designation of the land as *R2- Low Density Residential* within FLEP2013.

Other clauses of relevance FLEP1994

The table below provides details of the consideration of various other clauses of relevance to the development contained within FLEP1994.

FLEP1994 Clauses Considered	
Clause No.	Comment
11. Development of flood liable land	The site is located within a part medium and part low flood risk precinct. A detailed Flood Risk

	<p>Management Study has been submitted with the development application.</p> <p>Clause 11 requires consideration of the application in accordance with Council's Flood Management Policy. Council engineers have considered the application in accordance with the policy and have found that the application is compliant.</p> <p>Refer to additional comments below this table.</p>
12. Development in the vicinity of creeks and waterways	<p>This clause applies to the erection of structures within 20 metres of the top of a creek bank and is therefore relevant to the proposed development. Council must not consent to the development unless it has made an assessment of the developments impact on:</p> <ul style="list-style-type: none"> i) ecological systems ii) the stability of the banks iii) water quality and the needs of existing and potential users of water. <p>The proposed building work is located approximately 12 metres from the bank of Green Valley Creek.</p> <p>The creek as it currently exists is not in its natural state. The adjoining riparian zones contain no native vegetation communities. Therefore the development will have minimal impact on ecological systems associated with the creek.</p> <p>The development proposes to discharge stormwater to the creek via a headwall connection which will require approval by the Office of Water. The connecting pipe is specified as a 300mm pipe with an invert of RL 27.5. Subject to appropriate construction techniques being employed the proposed pipe will have no adverse impact on the stability of the creek bank.</p> <p>Water within Green Valley Creek is not harvested and therefore the needs of existing and potential water users is of limited relevance. The development does not provide water quality measures such as water sensitive urban design.</p>
27A Development on land identified on acid sulfate soil planning map	<p>The development site is not shown as being affected by acid sulfate soils.</p>

Development of Flood Liabile Land

Comment [k2]: Sent text below to Joe on 27 May and asked him to complete.

Council records show that the subject land is identified as flood liable land. Clause 11 of Fairfield LEP deals with the issue of flood liable land and more specifically clause 11(2) states as follows:

(2) The Council may refuse consent to an application to carry out any development which in its opinion will:

- (a) adversely affect flood behaviour, including the flood peak at any point upstream or downstream of the proposed development and the flow of floodwater on adjoining lands,*
- (b) increase the flood hazard or flood damage to property,*
- (c) cause erosion, siltation or destruction of riverbank vegetation in the locality,*
- (d) affect the water table on any adjoining land,*
- (e) affect riverbank stability,*
- (f) affect the safety of the proposed development in time of flood,*
- (g) restrict the capacity of the floodway,*
- (h) require the Council, the State Emergency Service or any other Government agency to increase its provision of emergency equipment, personnel, welfare facilities or other resources associated with an evacuation resulting from flooding, or*
- (i) increase the risk to life and personal safety of emergency services and rescue personnel.*

Council's Engineers have advised as follows:

A revised Flood Risk Management Study for No. 47-51 Edensor Road, Cabramatta, prepared by Kozarovski and Partners, dated 19 July 2013, has been submitted. Based on the initial flood information lodged with the DA and provided in the report by WMA Water, the Flood Risk Management Study categorises the flood risk for the site as Medium.

A Place of Public Worship is listed as a Commercial or Industrial land use in Schedule 2 of the Fairfield City Wide DCP.

Schedule 6 of the Fairfield City Wide DCP lists that commercial & Industrial land uses are permitted in the medium flood risk category. Schedule 6 requires the applicant to demonstrate that the proposed development complies with the relevant development controls stated in Schedule 6.

The revised Flood Risk Management Study for No. 47-51 Edensor Road, Cabramatta, prepared by Kozarovski and Partners, dated 19 July 2013, complies with the requirements of, and includes measures required to address the development controls in, Schedule 6, Chapter 11 of Fairfield DCP. Such measures include:

- The provision of bollards to prevent cars floating away during large flood events (above 100 year).*
- The proposed lift and all associated electrical and mechanical equipment shall be located a minimum of 0.5 m above the 100 year flood level. This will require ramping up to the lift from the ground floor car park level. The submitted plans have not addressed this matter.*

A Flood Evacuation Plan is required for the development. All of the above matters can be covered as a condition of development consent.

Amended concept stormwater plans Drawing No. 061211, Sheets 1, 2, 3, 4, 5, issue E, dated July 2013, prepared by Aztec Engineers Pty Ltd, have been submitted, incorporating the revised flood level information and the finished surface levels of the car park.

Connection from the site's stormwater system is proposed to the adjoining water course to the west of the site. The Office of Water has issued General Terms of Approval for the proposal which can be enforced as conditions of development consent.

In conclusion, the proposal complies with the heads of consideration in Clause 11(2) of Fairfield LEP 1994.

3. FLEP2013

Under the provisions of FLEP2013 the development is also considered to be characterised as a place of public worship which is defined in the Dictionary to FLEP2013 as:

***place of public worship** means a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.*

The table below provides details of the consideration of various clauses of relevance to the development contained within FLEP2013.

FLEP2013 Clauses Considered	
Clause No.	Comment
Clause 2.3 (2) Zone Objectives The consent authority must have regard to the objectives for development in a zone when determining a development application in respect to land within a zone.	The zone objectives for the R2 zone are: <ul style="list-style-type: none"> To provide for the housing needs of the community within a low density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. The proposed development is considered to be characterised as a place of public worship under the provisions of the LEP. The proposal is consistent with the second zone objective.
Clause 4.3 Height of buildings	This clause requires the height of the building not to exceed the height shown on the building height map. Building Height is defined but in this case would include the height of the building to the top of the roof ridge. The building height specified on the building height map for this site is 9 metres.

	<p>The height of the building at its highest point is approximately 17.92 metres above existing ground level.</p> <p>The proposed development does not comply with this clause. Refer to commentary in clause 5.6 Architectural roof features, below.</p>
Clause 4.4(2) Floor space ratio	<p>The floor space ratio of a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The Floor Space Ratio Map nominates a Floor Space Ratio of 0.45:1 for the subject site. The proposed Floor Space Ratio of 0.32:1 complies with the standard.</p>
Clause 4.5 Calculation of floor space ratio and site area	<p>The manner in which FSR has been calculated is consistent with the provisions of this clause. There are no area exclusions as identified within the clause that are applicable.</p>
Clause 5.6 Architectural roof features	<p>This clause provides a mechanism to consider variations to the maximum building height limit where the height is exceeded due to an architectural roof feature. In such cases the architectural roof feature must:</p> <ul style="list-style-type: none"> • Comprise a decorative element on the uppermost portion of a building, and • Not be an advertising structure, and • Cause minimal overshadowing. <p>The height of the proposed development is shown in Attachment D.</p> <p>The non-compliance with the height standard is principally due to the height of the decorative roof. The roof is an essential component of the development in that it forms part of the traditional design of Buddhist temples in China/Vietnam.</p> <p>The proposal does not overshadow adjoining development as shown in Attachment D.</p> <p>The proposal complies with Clause 5.6.</p>
6.1 Riparian land and Waterways	<p>The site is affected by the riparian land and waterways overlay which extends approximately 25 to 26 metres into the site from the site's western most boundary.</p> <p>The consent authority must take into consideration the following matters when assessing a development application on land affected by the overlay:</p> <ol style="list-style-type: none"> <i>water quality within the watercourse,</i> <i>aquatic and riparian habitats and ecosystems,</i> <i>stability of the bed, shore and banks of the</i>

	<p><i>watercourse, and</i></p> <p>iv. <i>free passage of fish and other aquatic organisms within and along the watercourse.</i></p> <p>Before granting consent the consent authority must be satisfied that:</p> <p>(a) <i>the development is sited, designed and managed to avoid potential adverse environmental impacts, or</i></p> <p>(b) <i>where impacts cannot be avoided, and having taken into consideration feasible alternatives, the proposed design, construction and operational management of the development will mitigate and minimise those impacts to a satisfactory extent.</i></p> <p>In respect to the matters for consideration the following comments are made:</p> <p>i) Water Quality – The development discharges water to the creek via a pipe linked to an onsite detention system. The proposal has been designed to have a neutral impact on the adjoining watercourse in terms of water quantity. The development is likely to have a neutral effect on water quality as the use is one that does not give rise to potential polluting discharges.</p> <p>ii) Aquatic and riparian habitats – The development's impact on these is limited to the discharge from the storm water pipe. This infrastructure will be subject to an approval from the Office of Water. It is considered that the development will have a neutral affect on aquatic and riparian habitats.</p> <p>iii) Free passage of fish etc. – The development will not impact the free passage of fish and other aquatic organisms.</p> <p>In terms of the matters in respect to which the consent authority must be satisfied it is advised that the design, construction and operational management of the temple is not such that it will impact the adjoining creek or creek system. There have been no creek related impacts identified beyond the proposal to discharge stormwater to the creek. The design of the pipe and headwall requires a Controlled Activity Approval from the Office of Water who have already provided their General Terms of Approval which will be incorporated into any consent granted.</p>
6.3 Flood Planning	<p>The development is subject to the provisions of clause 6.3 – Flood Planning which specifies that:</p>

	<p><i>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:</i></p> <p><i>(a) is compatible with the flood hazard of the land, and</i></p> <p><i>(b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and</i></p> <p><i>(c) incorporates appropriate measures to manage risk to life from flood, and</i></p> <p><i>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</i></p> <p><i>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</i></p> <p>In respect to the above matters, the revised Flood Risk Management Study for No. 47-51 Edensor Road, Cabramatta, prepared by Kozarovski and Partners, dated 19 July 2013 has provided advice that satisfies Council's engineers that the proposal can be conditioned to comply with the above requirements.</p>
6.9 Essential services	<p>The development is subject to clause 6.9 which provides that:</p> <p><i>Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the development are available or that adequate arrangements have been made to make them available when required:</i></p> <p><i>(a) the supply of water,</i></p> <p><i>(b) the supply of electricity,</i></p> <p><i>(c) the disposal and management of sewage,</i></p> <p><i>(d) stormwater drainage or on-site conservation,</i></p> <p><i>(e) suitable vehicular access.</i></p> <p>Comment:</p> <p>Water, electricity and sewerage services are available to service the proposed development. Adequate arrangements for stormwater drainage have been made and as far as the connection to Green Valley Creek is concerned the Office of Water have issued their General Terms of Approval.</p>

5. Fairfield City Wide Development Control Plan - Chapter 10 – Miscellaneous Development and Chapter 12 –Car parking, Vehicle access and management

The proposal has been assessed against the controls contained within Fairfield City Wide DCP, 2006: Chapter 10 – Miscellaneous Development and Chapter 12 Car Parking, Vehicle and Access Management. The table below provides a brief assessment summary against the relevant controls within the DCP.

CRITERIA	PERMITTED/REQUIRED	PROPOSED	COMPLIANCE
10.1.1 Parking Provisions	All off-street parking and access and vehicle management should refer to Chapter 12 – Car Parking, Vehicle and Access Management.	See comments following table	See comments below table
10.1.6 Building Design	a) The height of the building is to be limited to two storeys above ground level in order to maintain the established character	A number of the proposed building elements are of 3 storey construction and have a height significantly higher than typical three storey construction due to roof design. The height of the main temple above NGL is 17.92 metres to the top of the roof ridge. Refer comments below relating to height.	No
	b) Any new building adjoining residential development should be designed: • To allow a daily minimum of 4 hours of direct sunlight to adjoining windows and open spaces at mid-winter	No adverse shadow impacts arise as a consequence of the proposed development having regard to the north south site orientation, and setbacks proposed to higher building elements. The requirement for 4 hours of sunlight will not be compromised by the development. This is confirmed by shadow diagrams submitted with the DA.	Yes
	• To protect adjoining windows and open spaces from overlooking and unreasonable transmissions of noise	Potential overlooking from the podium level verandas and the stair tower has been considered and appropriately conditioned through the use of metal screening, planter boxes and balustrades.	Yes

CRITERIA	PERMITTED/REQUIRED	PROPOSED	COMPLIANCE
		<p>The development contains 6 windows that face towards the eastern residential boundary and are all located within the caretaker's residence on the first podium level. Of these windows scope exists to require all east facing windows to have a minimum sill height of 1.5 metres or to delete several. Suitable conditions reflect these requirements and options.</p> <p>Noise impacts have been assessed and found to be satisfactory</p>	
10.1.7 Fencing and Screening	<p>a) Boundary fences to public roads are to be visually acceptable and in character with other development in the locality.</p> <p>d) Where there is the potential for a development to cause nuisance to adjoining residences such as by traffic movement, parking, headlight glare or security lighting, adequate protective screening must be provided, comprising screen fencing and/or landscaping to Council's satisfaction.</p> <p>g) The following criteria applies to front boundary fences: - Maximum height is 1.5 metres generally along front boundaries provided that they are a high quality design, and - Constructed from lightweight materials such as timber, lattice, metal pickets etc.</p>	<p>Fencing is 1.8 metre high powder coated metal paling fencing separated by decorative masonry columns. The fencing which is setback 3 and 5.2 metres from Edensor Road is visually acceptable and of a style that compliments the development.</p> <p>Proposed car parking separated from the eastern boundary by a landscaped strip having a width of 1- 1.65 metres and containing a screen of Lilly Pilly trees. Fencing along this boundary is 2.1 metre high colourbond with a 300mm louver insert at its base to permit stormwater movement.</p> <p>1.8 metre high fencing exceeds the specified criteria but is acceptable.</p>	<p>Considered satisfactory</p> <p>Yes.</p> <p>Considered satisfactory</p>

Comment [k3]: Condition re windows

CRITERIA	PERMITTED/REQUIRED	PROPOSED	COMPLIANCE
	<p>h) The following criteria applies for side and rear boundary fences:</p> <ul style="list-style-type: none"> - Maximum height is 2.0 metres generally. - Council may consider a height of up to 2.2 metres on sites where it can be demonstrated that a significant security risk exists. - An overall maximum height of 2.4 metres may be considered if the site is sloping and the fence incorporates a retaining wall. 	Maximum fence height of 2.1 metres along eastern boundary is acceptable. Its height is dictated by acoustic considerations.	Considered satisfactory
10.1.8 Landscaping	<p>a) To reduce the visual intrusiveness of non-residential development, the landscaping measures detailed will be required for any new development or for more intensive use of any existing operations/activities.</p> <p>b) As a general rule, non-residential development in residential zones will be considered on their merits and judged against the requirements of a comparable activity.</p>	<p>A detailed landscape plan has been submitted with the DA which has been assessed by Council staff and found to be satisfactory.</p>	Considered satisfactory

Carparking

In accordance with Chapter 12 of the Fairfield City-Wide Development Control Plan (DCP) 2006, car parking for a place of worship is required to be provided at the following rate:

"1 car space per 6 seats or 1 car space per 5m² gross leasable area (whichever is the greater). The appropriateness of this rate should be confirmed by way of a traffic study".

Gross Leasable Area (GLA) is defined in Appendix A – Definitions of the City Wide DCP as:

" Means the total floor area contained within the outer faces of the external walls of a building, excluding stairs, lifts, public arcades, public foyers, public toilets, plant rooms, loading areas and car parking."

The calculation of car parking requirements based on GLA, has generally been interpreted by Planning Assessment staff at Fairfield City Council, as referring to the GLA of that part of the building used for worship purposes as opposed to all areas of a

building that would otherwise fall within the definition, such as back of house areas to which the general public have no access.

In the subject case applying a strict interpretation of the DCP would result in total car parking of 156 spaces being required as opposed to 85 spaces as indicated in the table below. Council has however not applied its DCP provisions to the whole of the place of worship GLA in numerous other instances and to do so here is not considered to be fair and reasonable in the applicable circumstances.

Car Parking Assessment – Area used for Worship Purposes

Place of Worship Building Component	Total GLA (and car parking at 1/5m ²)	GLA of worship area only (and car parking at 1/5m ²)
Kwan Kong Hall	210m ² (42)	101m ² (20)
Kwan Yin Hall	210m ² (42)	101m ² (20)
Main Temple	317m ² (63)	178m ² (36)
Columbarium (<i>worship area only</i>)	43m ² (9)	43m ² (9)
TOTAL	780m ² (156 spaces)	423m ² (85 spaces)

In terms of other building elements that comprise the place of worship such as dining hall, office, care takers residence or columbarium storage areas these areas fall outside of the traditional places of worship car parking assessment criteria. Nevertheless they would contribute to overall parking demand and should therefore be included in the assessment. The table below provides the basis upon which these additional areas have been assessed:

Car Parking Assessment of Additional Building Elements

Place of Worship Ancillary Building Component	Parking Rate utilised	Total GLA (and car parking at 1/5m ²)
Office	1 per 40m ² of GLA	222m ² (6)
Dining Hall	1 per 40m ² of GLA	138m ² (3)
Care Takers Residence	2 spaces per residence	115m ² (2)
Columbarium	1 per 70m ²	473m ² (7)
TOTAL		948m ² (18)

The total car parking requirement for this development when assessed in accordance with the above criteria (GLA used for worship plus additional building elements) is therefore 103 spaces (85 plus 18). It is noted that 108 car parking spaces are proposed. Given the anticipated attendance levels are on a daily basis approximately 50 persons, and also allowing up to 90 persons at a time within the dining hall, the provision of 108 spaces is considered adequate for all put annual festivals as detailed in the Pan of Management.

The approach taken to the assessment of car parking with this application is consistent to the approach taken with other similar applications in the City of Fairfield.

INTERNAL REFERRALS

During the assessment process, comments were sought from a number of sections within Council, as detailed below:

Building Control Branch	No objection has been raised subject to conditions.
Traffic Engineering	No objection has been raised subject to conditions.
Development Engineering	No objection has been raised subject to conditions.
Environmental Management Branch (EMB)	Conditions of consent have been provided following extensive evaluation of noise impacts and consideration of site contamination and potential smoke nuisance issues. Additionally, the Operation Plan of Management (See Attachment E) has been amended so that it reflects commitments made in the Acoustic Report related to operating hours and specified activities such as the Lion Dance. In respect to the Lion Dance it is required to conclude by 9:45 pm on Chinese New Year's Eve. Fireworks associated with this event will be subject to separate Council approval processes. The initial position of the EMB to require a deferred commencement approach to site contamination has following discussion been agreed to be amended to permit the granting of an operational consent subject to the incorporation of specific conditions relating to site decontamination works.
Landscape Plans	The landscape plan has been examined and found to be satisfactory.
Catchment Management	Additional flood modelling was required to be undertaken which has revealed that the proposal is acceptable in terms of flood impact.

Comment [k4]: Need to resolve this and finish

EXTERNAL REFERRALS

The proposed place of worship is within 40 metres of Green Valley Creek and the applicant has nominated the development as Integrated Development pursuant to s91A of the Environmental Planning and Assessment Act 1979. The application was referred to the Office of Water who have issued their General Terms of Approval. A copy of the General terms of approval and letter from the Office of Water forms Annexure F to this report.

Pursuant to Clause 104 of State Environmental Planning Policy (Infrastructure) 2007 the proposal was not referred to the Roads and Maritime Services (RMS) as the development is not defined as traffic generating under the provisions of the SEPP. Nevertheless the applicant's traffic consultant emailed the RMS for predevelopment application advice. In a letter to the applicant's traffic consultant the RMS advised that Edensor Road was a non –classified regional road under the care and control of council. They further advised that they have reviewed the application and raised no objection on traffic grounds.

PUBLIC NOTIFICATION

In accordance with the Fairfield City-Wide Development Control Plan 2006, the application was notified to adjoining and surrounding owners and occupiers for a period of twenty one days and a notice was placed in the Fairfield Champion Newspaper. In response 7 letters of objection have been received. The following provides a summary of the grounds of objection together with comments thereto:

1. Traffic congestion particularly at the roundabout.

Comment:

Proposed access to the site is restricted to left in/left out only that is controlled by a central median to be constructed as part of the development extending from the existing splinter island at the roundabout to the existing pedestrian refuge located west of Green Valley Creek. These arrangements have been specified by Council and will minimise traffic disruption when vehicles enter and leave the site from Edensor Road.

A traffic survey of the roundabout operation provided a level of service "A" with average delay per vehicle less than 14 seconds and degree of saturation less than 0.4. This indicated that the roundabout had good reserve capacity in terms of operating efficiency.

The Traffic Consultant has concluded that during the temples standard operations and special event occasions (1st and 15th of the month), during weekends, generated traffic will have a minimal impact on the adjoining road network. On other occasions and for the "one off" events the level of service at the Edensor Road/ Meadows Road roundabout, as well as the Edensor Road / Humphries Road roundabout, would not reduce to below level of service "B" which still provides a good operation with acceptable delays and spare capacity.

The applicant's Traffic Consultant has advised that most of the parking demand will occur outside of the peak hour commuter traffic flows and mainly on weekends.

Council's Traffic Engineer has reviewed the applicant's traffic report and has concluded that the traffic impact of the proposed development on the adjoining road network is considered to be negligible except during special events. On these occasions the Traffic Engineer required that the Plan of Management be required to specify how parking arrangements and traffic flow will be managed. The Traffic Engineer has subsequently reviewed an amended Plan of Management dated 5 March 2013 (attachment E) and has advised that he has no issues with the plan. Matters to be conditioned were identified by the Traffic Engineer in his memo dated 2 April 2013 which have all been addressed by conditions of consent.

Finally in terms of special event traffic related arrangements the Plan of Management specifies the following:

- 1st and 15th of every lunar month – majority of visitors arrive by bus utilising bus service, bus stop at front of site and also a shuttle bus service from Cabramatta Station which will run between 11 am and 2pm with 4 trips per hour.

- Three special event periods – Chinese New Year, Buddha's birthday and Ullambana – In addition to off street car parking for 108 spaces the applicants have identified on street car parking on the eastern side (adjoin reserve) of Crosio Place for 28 vehicles and on the eastern side of Meadows Road adjoining reserve) for 23 vehicles. Traffic Warden will be stationed at entrance to temple between the hours of 6 pm and midnight on Chinese New Year and 10 am and 2:00pm on other special event days, to direct drivers to designated off site car parks and ensure smooth in out traffic flow. An additional 4 officers will also be designated to control on site car parking as well as to patrol surrounding streets to ensure vehicles are legally parked and not parked in Clare Street.

It is considered that having regard to the capacity of the surrounding road system, the peak operating periods associated with temple worship and special events as well as the operational responses proposed by the applicants in the Plan of Management that traffic related issues have been adequately resolved. It is however unclear as to whether the shuttle bus will run during the nominated three (3) special event periods and this will be required by a condition of consent.

2. Accident history of roundabout.

Comment:

The roundabout at the intersection of Edensor and Meadows Road was completed in October 2009 and funded by the Federal Governments Black Spot program. There have been 5 reported accidents prior to the construction of the roundabout, according to information contained within the Traffic Consultants Report dated February 2013 and confirmed by Councils Traffic Engineer. There have been no recorded accidents after the construction of the roundabout. The applicant's traffic consultant has also advised that accidents may still occur at the roundabout but the severity of the accident should be minor due to lower induced speeds of traffic and the changed road alignment.

3. Parking facilities are inadequate.

Comment:

The applicant's Traffic Consultant has examined the Parking demands associated with the proposed use in accordance with the requirements contained within *Chapter 12 – Car Parking, Vehicle and Access Management of Fairfield City Wide DCP 2006*. The consultant did not undertake surveys of similar facilities to determine the validity of the parking rates nominated within the DCP.

The consultant has concluded that the proposed provision of 108 spaces being 81 constructed spaces and 27 over flow spaces located on a grassed area at the northern end of the site is adequate to meet the demands of the development except during the three (3) nominated festival periods (Chinese New Year, Buddha's Birthday and Ullambana). During these periods special arrangements for car parking and access will be required as detailed in the Plan of management which includes a shuttle bus service and the deployment of traffic wardens.

The issue of car parking has already been discussed in detail in the section dealing with DCP compliance issues. It is however relevant here to advise, the manner in which the temples will operate is such that worshippers will move from one temple to the other and there will therefore be no concurrent usage of all three temples and the worship facility located within the columbarium. Council's DCP has been applied to each temple

worship area and the resultant requirement for 85 spaces would represent an oversupply of parking for normal temple operational purposes apart from the three nominated festivals.

4. No standing and no parking restrictions should be applied to this section of Edensor Road.

Comment:

No stopping restrictions already exist in the vicinity of the site.

In respect to this issue Council's Traffic Engineer has advised that the existing "No Stopping" restrictions at the intersection of Edensor Road and Meadows Road were installed as part of the construction of the roundabout (statutory requirement). "No Stopping" restrictions on Edensor Road, closer to Crosio Place were associated with the installation of a cycle refuge on Edensor Road. "No Stopping" restrictions on Crosio Place were associated with the pedestrian refuge at this location. There was no need to restrict parking in front of 54 & 56 Edensor Road. If there is a request to install additional "No Stopping" restrictions, an assessment will be made at that time. As a matter of policy Council does not remove on-street parking spaces unless specifically warranted.

5. Noise problems

Comment:

The application was supported by a detailed Acoustic Report prepared by Day Design Pty Ltd. That report was subsequently found to require further evaluation of acoustic impacts and an amended report was submitted in March 2013. The amended report was upon assessment found to satisfactorily resolve previously identified issues. Section 7 of the amended Acoustic Report contains a series of noise control recommendations. Compliance with these recommendations will be required by consent conditions. Furthermore the Plan of Management has been required to be amended to incorporate specific acoustic recommendations relating to site operational issues such as the 9:45pm cessation of the lion dance.

A summary of the noise control recommendations made in the amended Day Design Acoustic Report is as follows:

- 2.1 metre high acoustic wall along the eastern property boundary. Wall may be colour bond or masonry and incorporate to a level of 300mm above ground levels louvers to meet flood requirements.
- Mechanical plant for temple air conditioning to have a maximum sound power level of 80dBA and only operate between 7am and 6pm. The condensers for the care takers air conditioning to have a maximum sound power level 70dBA.
- Public address system be restricted to special events prior to 10pm. The sound power level of the public address system to be restricted to 75dBA at 3 metres.
- Special requirements for the New Years eve lion dance performance including completion by 10pm, construction of a temporary 2 metre high noise barrier wall at the southern end of the terrace and confining the lion dance performance to the inside of the temple with the doors closed.

Comment [k5]: Insert comments here

- Provision of landscaping between the noise source and receptors so as to make noise intrusions less psychologically offensive.

It is considered that noise related impacts have been adequately addressed by the applicant Consulting Acoustic Engineers. Specific acoustic requirements have been reflected in the recommended conditions of consent.

6. Smell and lots of smoke

Comment:

The applicant's have incorporated a gas fired incinerator within the development following consideration of this issue. The incinerator will be used to dispose of up to 1 cubic metre of joss paper/paper money generated during the week long Ullambana celebration. It is only during this period that there is a need for the use of the incinerator. The incinerator is proposed to be located on the ground floor near the north western corner of the columbarium.

The design specifications for this high temperature gas incinerator have been considered by Council's Environmental Health Surveyor who has concluded that the incinerator would be a satisfactory means for the disposal of the paper money during the week long annual celebration. This aspect can be covered as a condition of development consent.

7. Storage of ashes of deceased is disturbing.

Comment:

The columbarium will be used for the storage of ashes of the deceased in porcelain urns which will be sealed in niches within the building with a granite or marble plaque. The building will also contain a prayer area. The second floor of the columbarium will initially be used for storage of temple related items until such time as demand for additional columbarium space exists. Columbarium's are an integral part of the Buddhist religion where relatives of the deceased may offer up prayers for their ancestors and where offerings and prayers may be made.

The nature of this objection is not a planning matter which is able to be resolved in the context of the application submitted.

8. Invasion of privacy

Comment:

The plans as originally submitted adversely impacted the privacy of the eastern adjoining properties by allowing overlooking from the eastern stairwell, the level 1 and 2 podium areas as well as from windows located within the caretaker's residence.

The applicant was requested to address the privacy implications of this development and this has now been satisfactorily resolved through the provision of metal screens to the eastern stair tower, 1.5 metre high balustrades and a planter box together with resultant reductions in veranda width.

The various design changes to address privacy concerns have been incorporated into Condition 2 of the recommended conditions of consent. It is considered that this objection whilst initially valid has now been satisfactorily resolved.

Comment [k6]: Draft Condition

9. Change of family and recreation environment

Comment:

This objection related to the concern that the residential and open space character of the surrounding area would be adversely affected by the proposed development. In particular concern was expressed that the recreational value of the walkway along Green Valley Creek may be compromised by the proposed development.

The proposed development has its only access point from Edensor Road. The walkway is located on the western side of Green Valley Creek on the opposite bank to the location of the temple. There is no aspect of the proposed temple development that is considered to compromise the recreational value of the walking track within the creek riparian area.

In terms of family environment, it is also considered that this will not be compromised by the proposed temple. The temple will attract visitors from outside the immediate neighbourhood but such visitors will access the site directly from Edensor Road and are unlikely to impact adversely on the amenity of the area due to the significant off street car parking being provided.

10. Increased risk of crime as a result of increased visitors to temple

Comment:

There is no evidence available that would substantiate this objection.

11. Busy environment not compatible with adjoining open space and walkway.

Comment:

This objection is based on similar grounds to the objection considered at point 9 above. The environment around the roundabout at the corner of Edensor and Meadows Road is already busy at certain parts of the day. The temple will enhance the vistas provided from the walkway and open space and to that extent provide a positive and interesting contribution to the local built environment.

12. Increased potential for insurance premium increase as a result of living next to a place of interest such as a temple.

Comment:

It is not known to what degree living next door to a place of worship will contribute to an increase in insurance premiums. In any case this is not a planning matter of relevance to the assessment of this application.

13. Not comfortable with the inclusion of the columbarium and superstitious about the lingering of the dead.

Comment:

This issue has been discussed in relation to the objection at point 7.

14. Depreciation of property values.

Comment:

There is no evidence available that would suggest that the proposed place of worship will result in a reduction in property values.

Additional Issues

In addition to issues raised during the public notification period some additional issues have been raised during the assessment processes which are detailed below:

1. Need for a pedestrian crossing on Edensor Road to service the proposed temple.

This matter was raised by Councillors at a briefing and was referred to Councils Traffic Engineer for consideration. The advice received from the Traffic engineer was as follows:

The Roads and Maritime Services (RMS) have established warrants that need to be met before a marked foot crossing can be installed. The warrants are primarily based on volumes of vehicular and pedestrian traffic, types of pedestrians likely to use the crossing and existing land use. After the construction of the temple is completed and when it starts functioning, a pedestrian count will be undertaken to check whether the required warrants for the installation of pedestrian crossing is met. Based on the prevailing traffic conditions and pedestrian movements at this location, the location does not meet the required warrants for the installation of pedestrian crossing. At this stage, there is no need to impose a condition for the provision of pedestrian crossing.

Notwithstanding the advice from the Traffic Engineer a condition has been imposed on the consent which will require the applicants to fund the construction of a pedestrian crossing if within 5 years of the commencement of temple operations pedestrian count warrants indicate that a pedestrian crossing is required. It is considered reasonable that the temple fund such facilities if required rather than the broader Fairfield community.

Comment [k7]: Draft condition

2. Scale and Bulk of the development and developments compatibility with surrounding residential area.

The development is for a place of worship which traditionally have been designed in such a way that they become the focal point of the local community both in terms of an architectural as well as a spiritual and community sense. The proposed place of worship is of a bulk and scale that exceeds significantly the bulk and scale of surrounding mainly single storey residential dwelling houses. However having regard to the architectural uniqueness of what is proposed, the large nature of the site and the setbacks proposed from the eastern residential boundary as well as the lack of adverse shadow and overlooking impacts what is proposed is considered satisfactory.

It should also be noted that within Fairfield City there are numerous examples of religious architecture which present a bulk and scale significantly different to adjoining and nearby residential dwellings. Some of these buildings (14) have been afforded special status as heritage items under the provisions of FLEP1994. In the context of Fairfield City, the site and the design what is proposed is considered acceptable from a bulk and scale perspective.

3. Permissibility of the columbarium

Columbariums form a traditional part of Buddhist temple complexes. They are used for the storage of ashes of the deceased and also contain worship facilities. When forming a part of a temple complex they should not be separately characterised as they are not a separate use but ancillary to the functioning of the overall temple complex as a place of worship.

The Residential A zone under the provisions of FLEP1994 lists within the zoning table all of the prohibited uses. Columbariums are not listed as being prohibited. This is also the case for cemeteries which are not defined within the LEP. Therefore a columbarium would also be permitted within this residential zone on the basis that it was an in-nominate use. This would not be the case under the provisions of FLEP2013 where cemeteries are separately defined and in the event that a columbarium was proposed as a stand alone use, within the R2 Low Density Residential zone, then it would be prohibited as it would be characterised as a cemetery.

Fairfield Council adopted a Policy at its Regulatory Committee meeting on 4 April 2000 which states:

“Council will prohibit the erection or use of a building within a residential zone for the storage of cremated remains of deceased persons.

The reason for prohibition is that such buildings are not considered to be in character with the amenity of a residential area nor meet the objectives of the residential zones.”

In respect to this policy it should be noted that Councils DCP's currently do not contain any provisions that restrict such buildings within residential zones. In addition a columbarium was most recently approved in 2012 as part of the temple complex located on the corner of Cabramatta Road West and Humphries within a Residential A (R2 zone). Therefore it is considered that the subject policy has little weight and cannot be used as grounds to reject the proposed columbarium.

SECTION 79C CONSIDERATIONS

The proposed development has been assessed and considered having regard to the matters for consideration under Section 79C of the Environmental Planning and Assessment (EP&A) Act 1979 and no issues have arisen that would warrant the application being refused on planning grounds. The following is a brief assessment of the proposal with regard to Section 79C.

(1) **Matters for consideration—general**

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) *the provisions of:*

(i) *Any environmental planning instrument*

This report has demonstrated that the proposed development is permissible within the *Residential A* as well as the *6(a) - Existing and Proposed Recreation* zone applicable to the site under the provisions of FLEP1994 this being the principle applicable planning instrument.

The development is also considered to be permissible within the R2 – Low Density Residential zone applicable under the provisions of FLEP2013.

Consideration of the development under the provisions of SEPP 55 – Remediation of Land and the Georges River REP (Deemed SEPP) and been found to be satisfactory.

(ii) *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), and*

There is currently no draft environmental planning instrument of relevance that affects this site.

(iii) *any development control plan*

The proposed development complies with the manner in which car parking has been assessed for places of worship under the provisions of Fairfield City Wide Development Control Plan 2006 - Chapter 12 – Car parking, Vehicle access and Management.

The development is justifiably inconsistent with the two (2) storey height limit for non residential development in residential zones contained with Chapter 10 – Miscellaneous Development of the City Wide DCP.

(iiia) *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, and*

Not applicable

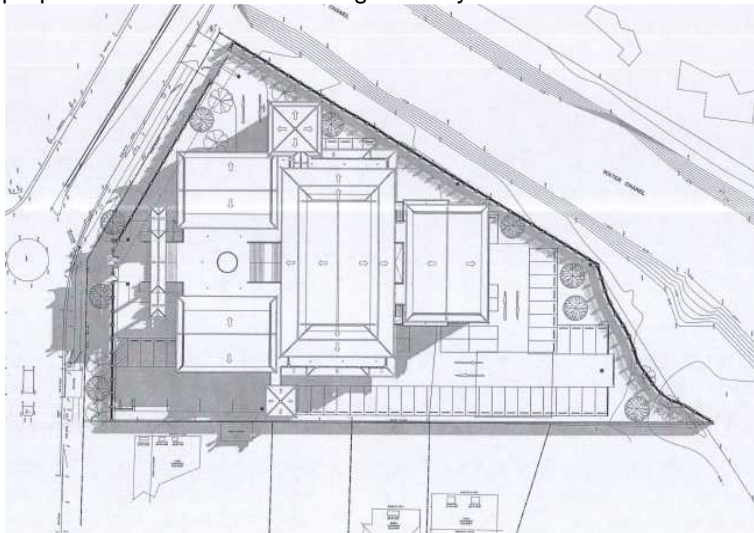
(iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

There are no matters prescribed by the Regulations that apply to this development.

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

Shadow Impacts

The site is oriented in a north-south direction and the nearest adjoining development is located to the east of the development. This results in the morning shadow at 9am falling primarily over the south western section of the site as well as onto Edensor Road. It is not until approximately 2 pm that the shadows begin to fall onto residential properties on the sites eastern most boundary. All these adjoining properties will receive more than 4 hours of direct sunlight in midwinter for their rear yard areas and north facing windows. The majority of properties will in fact receive significantly more than the 4 hours.



Shadow diagram showing impact at 2:00pm mid-winter

Traffic

The applicant's traffic consultant has advised that the proposed development (incorporating managed parking facilities during special religious observances) will not adversely impact upon the traffic conditions in the locality especially during peak commuter times. Council's traffic engineer supports this conclusion.

The proposal involves the provision of a traffic island in Edensor Road restricting patrons turning across oncoming traffic to enter the site. Council's engineer raises no objection to the traffic island in principal however the length of the island needs to be reduced so that access to residential properties at Nos. 54 & 56 Edensor Road is not restricted. This aspect can be covered as a condition of development consent.

At this stage a pedestrian crossing in the locality is not warranted however a condition can be imposed that requires the applicant to undertake a review by

a traffic consultant within 5 years of the commencement of temple operations. If the review finds that a pedestrian crossing is required then the applicant will be required to fund such a facility.

Noise

Day Design Pty Ltd have prepared an Acoustic Assessment report (see Attachment F) which assesses potential impacts of the proposal on nearby sensitive uses. Recommendations have been made as follows:

- Construction of a 2.1 metre high noise barrier wall on the eastern boundary to attenuate noise at the nearest residential property (No. 45 Edensor Road).
- Restriction on noise emissions from the public address system on the site.
- Restriction on noise emissions from mechanical plant on the site.
- Restriction and control of activities on the site during Chinese New Year celebrations.

Council's Environmental Management Branch has reviewed this report and have recommended approval subject to a number of conditions. In summary, conditions of consent can be imposed to control noise pollution.

Amenity

The proposed development is separated from other land uses and will not result in overshadowing, loss of privacy to neighbours or have an adverse impact on the streetscape.

Social and Economic Impacts

The social outcomes of the proposal are positive. The proposed temple will provide a social benefit to a significant percentage of the City's residents.

(c) the suitability of the site for the development

The site is considered suitable for the proposed development. There are no known constraints which would render the site unsuitable for the proposed development.

(d) any submissions made

Submissions made to the development by way of objection have been considered and do not raise issues of such magnitude as would warrant the refusal of this development proposal.

(e) the public interest

Having regard to this assessment the proposed development is considered to be in the public interest and warrants approval.

SECTION 94 AND SECTION 94A

The proposed development has an estimated construction cost of \$6,101,991. In accordance with Fairfield City Councils adopted s94A contribution plan this requires payment of a development contribution of \$61,012. A condition of development consent has been imposed which specifies this amount is payable.

CONCLUSION

The proposed development has been designed as a place of worship of the Buddhist faith based on a traditional Chinese temple design. It incorporates buildings and architectural features which result in a very distinctive Chinese architectural treatment. The proportions of the development are large on a relatively flat site which enables the building to make significant architectural statement.

The major impacts of the development relate to noise, privacy, traffic and parking as well as potential smoke nuisance. These impacts have been resolved either through design or via appropriate conditions of consent which limit operating hours and specify the manner in which the development should operate. An Operational Plan of Management has been developed with the applicant and it now addresses various issues of concern in a comprehensive and acceptable manner. One of the conditions of development consent require the applicant to comply with the Operational Plan of Management has been

The development application when publically notified resulted in 7 submissions objecting to the development. The various objections raised have been considered and where they relate to a planning matter have been resolved.

This assessment has considered all relevant requirements of Section 79C of the Act and finds that there will be no significant adverse or unreasonable impacts associated with the development.

The application is recommended for approval.

RECOMMENDATION

1. That development application No. 807.1/2012 for demolition of the existing dwelling house and associated outbuildings and construction of a place of worship (Buddhist Temple) be approved subject to conditions as outlined in Attachment I of this report.