

Proposal: S96(2) Application which proposes to modify DA No. 533.2/2012, amendments to the approved building elevations and internal layout, provision of a supermarket by replacing the existing Franklins and previously proposed 'mini major' store located alongside Franklins, amendments to the approved carpark layout and extension to the construction hours at Stocklands Shopping Centre.

Location: Lot 102 DP 1034345 and Lot 1 DP 867772, No. 561-583 Polding Street, Prairiewood

Owner: Stockland Trust Management Limited

Proponent: Julia Cain - Stockland Trust Management Limited

Capital Investment Value: \$31,488,253.00 (Original Development Application)

File No: MA 533.2/2012

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Fairfield City Council

RECOMMENDATION

That the S96(2) Application to modify Development Consent No. 533.2/2012, proposing amendments to the approved building elevations and internal layout, provision of a supermarket by replacing the existing Franklins and previously proposed 'mini major' store located alongside Franklins, amendments to the approved carpark layout and extension to the construction hours at Stocklands Shopping Centre be approved subject to conditions as outlined in Attachment I of this report.

SUPPORTING DOCUMENTS

AT-A	Architectural Plans	Pages 14
AT-B	Statement of Environmental Effects	Pages 19
AT-C	Acoustic Statement	Pages 2
AT-D	Economic Reports	Pages 27
AT-E	Accessibility Statement	Pages 3
AT-F	Building Code of Australia Statement	Pages 2
AT-G	Development Consent No. 533.1/2012	Pages 21
AT-H	Submissions	Pages 3
AT-I	Draft Conditions of Consent	Pages 4

EXECUTIVE SUMMARY

The application proposes amendments to Development Consent No. 533.1/2012 by modifying building elevations and the internal layout of the building, replacement of the existing Franklins store and adjoining mini-major store with a supermarket, changes to the carpark layout and proposed extension to the building construction hours. As this

matter was previously considered by the Sydney West Joint Regional Planning Panel (JRPP) and in accordance with clause 21 of State Environmental Planning Policy (State and Regional Development) 2011, the S96(2) Application has therefore been referred to the Joint Regional Planning Panel for determination.

On 13 December 2012, the Sydney West Joint Regional Planning Panel (JRPP) resolved to approve Development Application No. 533.1/2012 (the application that is sought to be modified) for alterations and additions to the Stockland shopping centre an expansion comprising 5,664m² of additional gross leasable floor area (GLFA) located at ground level and three (3) levels of deck car parking above and associated works. This approval is identified as Stage 2 of the Stockland redevelopment.

Further to the above, the rest of the Stocklands Shopping Centre is currently being redeveloped under Development Application No. 1253.1/2010 which is identified as Stage 1. Stage 1 was resolved to be approved by the Sydney West JRPP on 24 October 2011 for alterations and additions to Stockland Wetherill Park Shopping Centre comprising an additional 11,955sq.m of gross leaseable floor area (GLFA) which incorporates 58 additional retail shops, new gymnasium, relocation of existing medical centre, refurbishment of cinema foyer, and associated basement level, grade level and deck car parking. Development Consent No. 1253.1/2010 (Stage 1) was subsequently modified with Council issuing approvals on 26 September 2012, 18 June and 22 October 2013 for minor internal and external alterations including the reconfiguration of the internal floor layout resulting in a reduction in GLFA of 956sq.m to 11,039sq.m, extension of construction hours and a redesign of the car park adjacent to KFC to retain an existing vehicle crossing and reduce the amount of car parking spaces by nine (9).

The subject modification application which is the subject of this report proposes to modify Development Consent No. 533.1/2012 in order to facilitate internal and external changes to the approved Stage 2 redevelopment of Stockland Shopping Centre including the following:

- Provision of a supermarket (4,300m²) replacing the existing Franklins (3,200m²) and previously approved 'mini – major' store (1,100m²);
- Demolition of the existing carwash and the construction of a new carwash facility;
- Minor internal reconfiguration of the ground floor retail level within the approved building envelope to cater for the new supermarket, reconfiguration of amenities and food court;
- Redesign of car parking layout in order to facilitate the design changes and new proposed carwash;
- Reconfiguration of stairs and lifts access;
- Extension of plant room above proposed supermarket;
- Revisions to roofs and awnings; and
- Extension to the hours of construction.

The submitted documentation states that the proposal will not increase the approved gross leaseable floor area (GLFA) of 63,198m² at the shopping centre (Stages 1 and 2 combined with existing).

The subject site is expansive with an overall area of 12.2 hectares, and is bounded by Polding Street to the north, Restwell Road to the south, the Liverpool to Parramatta Transitway to the west and Prairiewood High School to the east.

The subject site is zoned B4 Mixed Use under Fairfield LEP 2013. The proposed modification of the expansion to the existing shopping centre is considered to be permissible within the zone and is consistent with the objectives of the zone.

An economic analysis was submitted with the application given the proposal included the provision of the new supermarket (4,300m²) replacing the existing Franklins (3,200m²) and previously approved 'mini – major' store (1,100m²). Specialist economic advice was sought from an independent economic consultant with respect to the proposed modification. In summary, the advice indicates that the conclusions reached within the submitted Economic Impact Assessment should be accepted by Council. It is considered that the additional impact associated with the proposed modification to the Stage 2 expansion would not be significant. This is also the case in terms of the cumulative impact associated with Stages 1 and 2 combined.

The proposed redesign of the car park layout will result in a reduction of two (2) car parking spaces out of the approved 2637 spaces. Please note, Council approved MA No. 1253.2/2010 which reduced the approved GLA by 956m², however the same amount of car parking spaces were provided. In this regard, there was a surplus of thirty – seven (37) car parking spaces (1 space per 25m² GLA) within the shopping centre. The surplus was reduced by nine (9) spaces under Development Consent No. 1253.4/2010 which approved the redesign of the carpark located adjacent to KFC. Hence there is a surplus of twenty – eight (28) car parking spaces onsite. The loss of a further two (2) car parking spaces out of the 2637 previously approved is considered minimal and acceptable in the circumstances given that sufficient parking is provided in accordance with Council's controls.

Section 96(2) requires that the application be notified in accordance with the regulation if so required, or the applicable development control plan (DCP). Fairfield City Wide DCP – Appendix B – Notification Policy at clause 1.5.1 specifies that modification application 96(2) of the Act will be notified in the same manner as the original application. The application was notified to surrounding neighbours and an advertisement place in the newspaper for a period of twenty - one (21) days as per the original application. Three (3) submissions were received during the notification period. The submissions received related to traffic circulation, parking arrangements and deserted trolleys. It appears that the objections related to the existing shopping centre and the approved stages of redevelopment. It is considered that the subject modification would not noticeably alter traffic generation and parking availability.

This report summarises the key issues associated with the modification application and provides an assessment of the relevant matters of consideration in accordance with the Environmental Planning and Assessment Act 1979, the Fairfield Local Environmental Plan 2013 and the Fairfield City-Wide Development Control Plan 2013.

The proposed modified development is considered to be satisfactory with regard to car parking, traffic generation, traffic safety, acoustic noise, potential economic impacts, loading and unloading, and site landscaping. It is considered that the proposed development is appropriate for the site and for the locality and is unlikely to cause any additional significant impacts to the surrounding environment. In this regard, the proposed modified development is recommended for approval, subject to conditions.

SITE DESCRIPTION AND LOCALITY

The subject site is located within the Prairiewood Town Centre and is bounded by Polding Street in the north, Restwell Road in the south and the Transitway in the west, as shown in Figure 1.



Figure 1 Site Location

The land is described as Lot 102 in DP 1034345 and Lot 1 in DP 867772, No. 561-583 Polding Street, Prairiewood. The subject site has a frontage to Polding Street of 305 metres, a frontage to Restwell Road of 280 metres and a frontage to the Transitway of 415 metres. The site has an overall area of 12.2 hectares.

The site consists predominantly of a large shopping centre constructed in a 'C' shape building configuration around a large at-grade car park. The shopping centre currently consists of 2 supermarkets, 2 discount department stores, approximately 140 specialty stores, cinema and medical centre. A north-south spine road provides a vehicular link through the centre between Polding Street and Restwell Road.

Surrounding the main shopping centre complex is a McDonalds Restaurant and sports store located in the north-western corner of the site, a service station located adjacent to Polding Street in the north, an Italian Restaurant in the north-eastern corner, community facilities in the eastern part of the site, and a tyre-repair outlet in the south-eastern corner of the site.

The total gross leaseable floor area of the site, including all abovementioned buildings is 46,495sq.m.

The majority of on-site car parking is contained within the at-grade car park on the eastern side of the shopping centre and within the basement / undercroft car park located underneath the southern part of the shopping centre. However, there are also parking spaces located at the rear, or western side, of the shopping centre adjacent to

the centre's main loading facilities, which are accessed via Restwell Road. In total there are 1,941 parking spaces located on the site.

The shopping centre was opened in 1983 and in 2000 underwent a refurbishment comprising an increase in gross leaseable floor area of 6,785m².

The immediate locality consists of single and two-storey residential development to the north, single and two-storey residential development to the north-east (small public housing estate), Prairiewood High School to the east, recreational and community facilities to the south and south-east, and the Liverpool to Parramatta Transitway to the west. Further to the east, beyond the high school, is Fairfield Hospital and further to the west, beyond the Transitway, are single and two-storey residential developments.

DEVELOPMENT HISTORY

The Shopping Centre is currently undergoing an expansion which is being carried out in two (2) stages outlined below:

Stage 1

- On 24 October 2011, the Sydney West Joint Regional Planning Panel (JRPP) resolved to approve Development Application No. 1253.1/2010 for alterations and additions to Stockland Wetherill Park Shopping Centre comprising an additional 11,955sq.m of gross leaseable floor area (GLFA) which incorporates 58 additional retail shops, new gymnasium, relocation of existing medical centre, refurbishment of cinema foyer, and associated basement level, grade level and deck car parking. This approval is now known as Stage 1. This development has commenced construction.
- Development Consent No. 1253.1/2010 was subsequently modified with Council, pursuant to s96(1A) of the Environmental Planning and Assessment Act 1979, for the following applications:
 - On 26 September 2012, Council granted consent for 1253.2/2010 for minor internal and external alterations including the reconfiguration of the internal floor layout resulting in a reduction in GLFA of 956sq.m to 11,039sq.m.
 - On 18 June 2013, Council granted consent for 1253.3/2010 to increase the hours of construction (which is the same as sought under the subject application).
 - On 22 October 2013, Council granted consent for 1253.4/2010 and 1253.5/2010 to facilitate minor internal and external changes to the approved alterations and additions to Stockland Shopping Centre including the provision of a new travelator, redesign of part of the car park, the reconfiguration of internal roofs and awnings and retention of driveway onto Polding Street. The car park immediately adjoining the KFC was redesigned which resulted in a reduction of nine (9) car parking spaces.

Stage 2

- On 13 December 2012, Stockland lodged Development Application No.533.1/2012. The Sydney West Joint Regional Planning Panel (JRPP) resolved to approve Development Application No. 533.1/2012 for alterations and additions to the Stockland shopping centre with an expansion comprising 5,664m² of additional gross leaseable floor area (GLFA) located at ground level and three (3) levels of deck carparking above and associated works. This approval is identified as Stage 2 of the Stocklands redevelopment. The approval of Stage 2 resulted in a Floor Space Ratio (FSR) of 0.61:1 on the site.

PROPOSAL

This application proposes to modify Development Consent No.533.1/2012 in order to amend the approved building elevations and internal layout, replace the existing Franklins supermarket and adjoining 'mini major' store with a supermarket, amendments to the approved carpark layout and extension to the building construction hours at Stocklands Shopping Centre.

The following alterations/amendments, as detailed by the Applicant is detailed below;.

General Changes

- Provision of a supermarket (4,300m²) replacing the existing Franklins (3,200m²) and previously approved 'mini – major' store (1,100m²);
- Demolition existing carwash and the construction of a new carwash facility;
- Minor internal reconfiguration of the ground floor retail level within the approved building envelope to cater for the new supermarket, reconfiguration of amenities and food court;
- Redesign of car parking layout in order to facilitate the design changes and new proposed carwash;
- Reconfiguration of stairs and lifts access;
- Extension of plant room above proposed supermarket;
- Revisions to roof and awnings; and
- Extension to the hours of construction.

Floor area

- The proposal will maintain the same gross leaseable floor area previously approved (5,664m²).

Car Parking

- The redesign of the car parking layout will reduce the number of car parking spaces onsite by two (2) spaces and therefore a total of 2637 car parking spaces will be provided onsite. It is important to note that there is a surplus of twenty – eight (28) car spaces onsite.

Building Height

- The proposal includes extending the plant room above the proposed supermarket. The proposed plant room will maintain the existing height of the building and therefore the building height will remain unchanged. The proposal also seeks to install a condenser deck which is 1.65m below the ridge of the roofline. It is important to note that the height of the plant room roof is RL46.1m and the existing ground level is RL36m. Thus the height of the plant room building is approximately 10.1 metres which is below the maximum of 18m required under Fairfield LEP 2013.

Landscaping

- The Landscape Plan for the development has been updated to reflect the proposed modified floor plan. There is no proposed changes to the number and species that were required to be planted in accordance with the original landscape plan.

A detailed description of the proposed changes, on a drawing-by-drawing basis is provided below:

Drawing DA000-C – Location Plan and Drawing List

- Revised list of Drawings has been modified to reflect new plans.

Drawing DA002-C – Demolition - Basement Floor Plan

- Existing ramp proposed to be deleted and the plant and stairs layout has been revised.

Drawing DA003-C – Demolition – Ground Floor Plan

- The existing car wash is proposed to be demolished;
- Existing amenities adjacent to Woolworths proposed to be demolished; and
- Extent of demolition increase in order to incorporate extension of adjacent to existing supermarket.

Drawing DA004-C – Demolition – Level 1 Plan

- Extent of roof to be demolished.

Drawing DA005-C – Demolition – Level 2 Plan

- Extent of roof to be demolished.

Drawing DA201-F – Proposed Basement Floor Plan

- Travelator and associated parking arrangement modified;
- General revision of car parking spaces within the basement due to the removal of an existing travelator. Importantly, access to the car park is maintained in the

same location as approved and none of the above changes to the car parking layout are visible aboveground.

Drawing DA202-N – Proposed Ground Floor Plan

- New Carwash to replace existing carwash;
- Reconfigure approved stairs and lift along internal spine road;
- Reconfiguration of food court, approved retail shops including mini – major, back of house and amenities within the approved building envelope;
- Amenities removed and shop revised; and
- Provision of new supermarket replacing the existing Franklins and approved Mini – Major store including minor reconfiguration of adjoining shops.

Drawing DA203-G – Proposed Level 1 Plan

- Reconfigure approved stairs and lift; and
- Extension of plant above proposed supermarket.

Drawing DA204-F – Proposed Level 2 Plan

- Reconfigure approved stairs and lift.

Drawing DA205-F – Proposed Level 3 Plan

- Plan revised as per revisions to lower levels.

Drawing DA206-C – Proposed Roof Plan

- Roof plan and awnings revised as per revisions to lower levels.

Drawing DA301-D – Elevations/Sections Sheet 1

- Elevation updated to show additional awnings added.

Drawing DA302-E – Elevations/Sections Sheet 2

- Elevation updated to show additional awnings added.

Drawing DA501-B – Landscape Plan

- Drawing updated to reflect floor plan layout, there is no proposed change to the number and species that were required to be planted in accordance with the original landscape plan.

The proposal also seeks to modify Condition No. 25 '**During Construction or Demolition**' in order to extend the construction hours from Monday to Friday 7:00am – 6:00pm and Saturday 8:00am – 1:00pm to Monday to Friday 7:00am – 6:00pm and Saturday 8:00am – **3:00pm**. In addition, they seek to construct on the site 24 hours seven (7) days a week where the works would not cause an offensive noise to the surrounding residential dwellings.

STATUTORY REQUIREMENTS APPLICABLE TO THE SITE

1. Draft West Central Subregional Strategy 2007

The Draft West Central Subregional Strategy forms part of the Sydney Regional Strategy “City of Cities: A Plan for Sydney’s Future”. The Draft West Central Subregional Strategy provides direction to Councils for public and private investment in existing and emerging centres for the creation of employment and housing. Local Councils are directed to plan for employment generating and residential development in the preparation of strategic planning policies.

The draft strategy places existing commercial and industrial centres into various categories where employment growth and redevelopment is planned to occur. The Prairiewood Town Centre is identified as a ‘Potential Major Centre’, alongside the Town Centres of Cabramatta and Fairfield. The draft strategy provides a strategic basis for the development of the Prairiewood Masterplan, adopted by Fairfield Council in December 2005. The Masterplan provides urban design principles and planning controls for development within the Prairiewood Town Centre.

The modification application has been considered against the above document and found to be acceptable.

2. Fairfield Local Environmental Plan 2013

The subject site is zoned B4 - Mixed Use under Fairfield LEP 2013. The proposed modification is associated with the approved development which was characterised as commercial and retail premises. The proposed modification is therefore permissible within the zone subject to Council consent.

The objectives of the zone are as follows:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To support the development of Prairiewood, Fairfield and Cabramatta as the principal location for specialist, cultural, retail, business, tourist and entertainment facilities and services.*

It is considered that the proposed development as modified would be consistent with the above objectives of the B4 Mixed Use zone.

Clause 4.3(2) of Fairfield LEP 2013, entitled ‘Height of buildings,’ states that the height of the building on any land is not to exceed the maximum height shown for the land on the ‘Height of Buildings Map’. In this case, the maximum height designated for this site is 18 metres. The proposal will extend an existing plant room above the proposed supermarket. The proposed plant room will maintain the existing height of the building and therefore the building height will remain unchanged. It is important to note that the height of the plant room roof is RL46.1m and the existing ground level is RL36m. Thus the height of the plant room building is approximately 10.1 metres which is below the maximum 18m control.

Clause 4.4(2) of Fairfield LEP 2013, entitled 'Floor space ratio,' states that the floor space ratio of any building is not to exceed the floor space ratio shown for the land on the 'Floor Space Ratio Map'. In this case, the maximum FSR designated for this site is 0.57:1 (to reflect the increase in gross floor area recently approved as part of the Stage 1 expansion). It is important to note that under Development Consent No. 533.2/2012 the Stage 2 expansion approved the overall FSR of the subject site to 0.61:1. It was the assessing officer's view that whilst the proposed FSR is higher than the 0.57:1 prescribed within the LEP 2013 (it was a draft instrument at the time of assessment), it was considered to be a minor non-compliance, particularly when viewed in the context of the overall size of the centre.

As indicated from the documentation submitted, the modified development does not seek to increase the approved floor area of the development pursuant to Development Consent No. 533.1/2012 and therefore is considered satisfactory. Furthermore, as indicated within the submitted addendum to the Statement of Environmental Effects the following comment is provided:

"An objection pursuant to clause 4.6 of the LEP would not be required because the application is for the modification of a consent not the granting of a consent. In North Sydney Council v Michael Standley & Associates Pty Ltd (1998) the Court of Appeal held that s.96 is "a free-standing provision" such that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard".

3. Draft State Environmental Planning Policy (Competition) 2010

The modification application amongst other things seeks to replace the existing Franklins store (3,200m²) and adjoining mini-major store (1,100m²) with a new supermarket (4,300m²). Whilst there is no increase to the overall gross leasable area as has been approved under Development Consent No. 533.1/2012, an assessment of the potential economic impact to nearby centres with respect to the proposed altered use of the approved floor area is discussed further in the following sections.

The draft policy aims to promote economic growth by removing any anti-competitive barriers to commercial development, particularly barriers within the planning system that could restrict or prohibit commercial growth.

Clause 9(1) of the draft SEPP states that the likely impacts of a proposed commercial development to the viability of competing commercial centres is not a matter for consideration when determining an application. However, Clause 9(2) indicates that any such impact shall be taken into consideration if the proposed commercial development is likely to have an overall adverse impact on the extent and adequacy of facilities and services available to the local community.

The public exhibition period for submissions on the draft SEPP concluded quite some time ago, and it is unclear if or when gazettal of the policy will occur.

Essentially, the applicability of the draft SEPP in the current circumstances is somewhat irrelevant, as the development controls and policies implemented by Fairfield City Council currently do not restrict the growth of commercial centres. Council's position is consistent with the aims and intent of the draft SEPP, in that competition between competing centres is not a planning consideration, but that the level of impact on the

range and services provided in other centres, particularly in this case other sub-regional centres, is not unacceptable.

This position is identified in the Fairfield Retail and Commercial Centres/Activities Policy No.1-203, which is discussed below.

4. Fairfield Retail and Commercial Centres/Activities Policy No.1-203

Council's Centres Policy was adopted in July 2006 and therefore predates the Draft West Central Subregional Strategy (which identifies Prairiewood as a potential Major Centre). The Centres Policy establishes a hierarchy of retail centres within the City of Fairfield and sets out a framework for assessment of commercial development within these existing centres.

Fairfield City currently has four sub-regional centres (Fairfield, Cabramatta, Bonnyrigg and Prairiewood). Sub-regional centres within the City of Fairfield are characterised by the following:

- *the provision of retail and commercial services to a sub-regional within Fairfield LGA (usually about 50,000 persons)*
- *the presence of one (or more) Discount Department Store (DDS) and one (or more) full-line supermarket*
- *their location on major public transport networks*
- *generally containing between 20-80,000 sq.m of retail floor space together with a wide range of non-retail services including cinemas, community services and office space*
- *providing for higher order and comparison goods shopping as well as the provision of specialist, professional and personal services serving the sub-region.*

The following evaluation criteria apply to proposed commercial development within the sub-regional centres:

- *that the development proposal will not result in an unacceptable level of impact on the range and services provided in other existing sub-regional centres in Fairfield*
- *that the development proposal will not result in a reduction in the range of services provided in nearby local centres*
- *whether the development proposal will introduce types of retail services likely to reduce escape spending from Fairfield*
- *whether the proposal will improve the viability of the sub-regional centre by strengthening key retail functions – for example, the provision of or upgrading of discount department stores and supermarkets*
- *whether the development proposal demonstrates that a net community benefit will flow from the proposed expansion of retail floor space*

To determine whether the proposed development complies or is consistent with the above criteria, an economic impact analysis was commissioned by the applicant and undertaken by MacroPlanDimasi, dated August 2013. The report concludes that the

proposed amendment is estimated to result in a minor increase in centre sales (approximately 2.1million or 0.6%), which will result in minimal trading impacts across the surrounding centres network.

Specialist economic advice was sought from Norling Consulting with respect to the proposed modification. This advice is provided at Attachment D. In summary, the advice indicates that the conclusions reached within the submitted Economic Impact Assessment should be accepted by Council. The report notes the following:

- a) *The \$2.1m increase in annual turnover represents an increase of 7.6% to the estimated turnover of the approved Stage 2. That is, the 0.6% reported in the Economic Impact Assessment represents the increase in comparison to the turnover of the existing centre plus the approved Stage 1 plus the approved Stage 2; and*
- b) *The cumulative impacts of Stage 2 (including the amendment, not just the amendment) are estimated at -3.2% at Bonnyrigg Town Centre, -3.0% at Fairfield Town Centre, -2.3% at Wetherill Park and -2.0% at Greenfield Park, with all other centres likely to incur impacts of less than these quantum.*

With regard to economic impact as a result of the modification, in the context of the overall size and impact of the existing shopping centre combined with the already approved expansion, it is considered that the additional impact associated with the proposed modification to the Stage 2 expansion is unlikely to be significant. This is also the case in terms of the cumulative impact associated with Stages 1 and 2 combined.

Having regard to the economic analysis undertaken by MacroPlanDimasi, the projected cumulative impact to nearby centres due to the proposed modification to the expansion to the Stockland Wetherill Park Shopping Centre is not significant enough to warrant refusal of the application, and the benefits identified to occur as a result of the expansion significantly outweigh the impacts. As such, in terms of economic impact, the proposed expansion is considered to be satisfactory.

5. Prairiewood Town Centre Masterplan 2005

As identified above, Stockland is located within the Prairiewood Town Centre. Development within the Town Centre needs to be consistent with the Prairiewood Town Centre Masterplan. The Masterplan provides strategic vision and guidelines to enable Prairiewood to develop as a vibrant, multi-use town centre. The proposal seeks internal and external changes to the approved Stage 2 redevelopment of Stocklands Shopping Centre. It is considered that the proposed amendments do not significantly alter the appearance and operation of the development. The proposal is considered to be consistent with the key aims, objectives and controls contained in the Masterplan and the application is worthy of support.

6. Section 96(2) Modifications – Environmental Planning Assessment Act, 1979.

The application has been made pursuant to section 96(2) of the Environmental Planning and Assessment Act. Section 96(2) provides as follows:

(2) Other modifications

A consent authority may, on application being made by the applicant or any other

person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

Also of relevance is Section 96(3) which provides:

3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.

The appropriate test to be applied when giving consideration to an application pursuant to s96(2) requires consideration of the following:

1. Is it substantially the same development;
2. Whether the applicant has consulted with external government authorities that required concurrence when the application was approved;
3. Any submissions submitted to Council regarding the proposed modification; and
4. Whether the development has sufficient merit when assessed in accordance with s79C of the Environmental Planning and Assessment Act.

Will proposed modification of the approved development potentially result in an adverse impact to the locality?

The assessment of the application must determine whether the modified development will have an adverse impact on the surrounding locality. An assessment of each proposed modification is provided below.

1. *Provision of a supermarket replacing the existing Franklins and previously approved 'mini – major' store;*

As discussed above, the applicant has submitted an Economic Impact Assessment in support of the application. Specialist economic advice was sought from Norling

Consulting with respect to the proposed modification. In summary, the advice indicates that the conclusions reached within the submitted Economic Impact Assessment should be accepted by Council. It is considered that the additional impact associated with the proposed modification to the Stage 2 expansion is unlikely to be significant. This is also the case in terms of the cumulative impact associated with Stages 1 and 2 combined.

2. Demolition existing carwash and the construction of a new carwash facility;

An existing carwash is located within the eastern carpark. The proposal seeks to demolish the dilapidated carwash and rebuild a new carwash of a similar size and in the same location. The building is internal to the site and would be of single storey construction. It is considered acceptable for approval to be given to this replacement facility in the location and footprint shown with the details of the design to be resolved at construction certificate stage. Any reasonable design and configuration of this facility at the location shown would be acceptable on environmental grounds.

3. Minor internal reconfiguration of the ground floor retail level within the approved building envelope to cater for the new supermarket, reconfiguration of amenities and food court;

The purpose of the proposed modification is to facilitate internal changes to the approved Stage 2 redevelopment of Stocklands Shopping Centre. The resulting amendments would unlikely result in a significant change to the development and given that the modifications are mainly internal would not result in any significant change to the appearance of the development. It is considered that the proposed amendments do not themselves give rise to any unreasonable or significant environmental impacts to the locality.

4. Redesign of car parking layout in order to facilitate the design changes and new proposed carwash;

It is noted that the redesign of the layout of the approved car park will result in the reduction of two (2) carparking spaces. An assessment of the adequacy of car parking spaces provided on site must be undertaken to ensure that the reduction in car parking spaces would not result in insufficient car parking being provided for the shopping centre.

Under Development Consent No. 1253.1/2010 the gross leasable area (GLA) of the shopping was increased by an additional 11,955m² and an additional 480 car parking spaces were provided. This brought the total number of off-street car parking spaces required to be provided (in accordance with Council's controls at a rate of 1 space per 25m²) to a total of 2421. Subsequently, Council approved Section 96(1A) No. 1253.2/2010 which reduced the approved Gross Leasable Area by 956m² to 11,039m², notwithstanding the same amount of car parking spaces was provided. In this regard, a surplus of thirty – seven (37) car parking spaces are provided within the premises.

Furthermore to the above, Development Consent No. 1253.4/2010 approved the redesign of the carpark located adjacent to KFC which resulted in a reduction of a total of nine (9) car parking spaces. In this regard, there is a surplus of twenty – eight (28) car parking spaces onsite.

The loss of a further two (2) car parking spaces out of the 2637 previously required is considered minimal and acceptable in the circumstance given that sufficient parking is provided in accordance with Council's controls.

5. Reconfiguration of stairs and lifts access;

This is a minor change and could be argued improves the circulation of the building and therefore the modification is considered acceptable.

6. Extension of plant room above proposed supermarket;

The proposal will extend an existing plant room above the proposed supermarket. The proposed plant room will maintain the existing height of the building and therefore the building height will remain unchanged. In addition, the proposal also seeks to install a condenser deck which is 1.65m below the ridge of the roofline. The additional plant located above the proposed supermarket is considered acceptable given that it complies with Council's maximum building height requirements and does not detract from the streetscape

7. Revisions to roofs and awnings;

This is a minor change and could be argued improves the appearance of the building and therefore the modification is considered acceptable.

8. Extension to the building construction hours;

The proposal also seeks to modify Condition No. 25 '**During Construction or Demolition**' in order to extend the construction hours from Monday to Friday 7:00am – 6:00pm and Saturday 8:00am – 1:00pm to Monday to Friday 7:00am – 6:00pm and Saturday 8:00am – **3:00pm**. In addition, they seek to construct on the site 24 hours seven (7) days a week where the works would not cause an offensive noise to the surrounding residential dwellings.

It is important to note that under Development Consent No. 1253.3/2010 Council granted consent to extend the construction hours for Stage 1 given that it would unlikely impact the surrounding locality. In this regard, it is considered that there would be no impediment to approving the extending hours for construction given that it is consistent with other approvals onsite. It is considered that the proposed modification is acceptable.

Is the S96(2) Application substantially the same development?

The assessment of the application must determine whether the modified development is substantially the same as the development for which consent was originally granted. The proposal seeks amendments to building elevations and internal layout, provision of a supermarket replacing the existing Franklins and previously proposed 'mini major' store, amendments to the approved carpark layout and extension to the construction hours at Stocklands Shopping Centre. The proposed modification does not seek any additional gross leasable area and both the internal and external building alterations are considered minor. The resulting amendments would therefore unlikely result in a significant change to the intensity or appearance of the development. Given the above, the proposed modified development is considered to be substantially the same

development when both qualitative and quantitative factors are taken into consideration. Accordingly, the proposed modification is able to be considered pursuant to s96(2) of the Act.

Does the proposed modification relate to conditions imposed by an external government authority that required concurrence when the application was approved?

The original application was not required to consult with the relevant Minister, public authority or approval body (within the meaning of Division 5 of EPA Act 1979) as part of the assessment of the original application.

Notification of the Modification Application

Section 96(2) requires that the application be notified in accordance with the regulation if so required, or the applicable development control plan (DCP). Fairfield City Wide DCP – Appendix B – Notification Policy at clause 1.5.1 specifies that modification application 96(2) of the Act will be notified in the same manner as the original application. The application was notified to surrounding neighbours and an advertisement placed in the newspaper for a period of twenty - one (21) days as per the original application. Three (3) submissions were received during the notification period. The submissions received related to traffic circulation, parking arrangements and deserted trolleys. It appears that the objections relate to the existing operational matters of the shopping centre and the previously approved stages of redevelopment. It is considered that the subject modification would not alter traffic generation and parking availability. Further discussion regarding the submissions received are provided in further detail below.

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.
Development Engineering	No objection has been raised.
Environmental Management Branch (EMB)	EMB is satisfied with the information submitted and holds no objections to the proposal. The EMS considers conditions 53 (Unreasonable Noise and Vibration) and 57 (Acoustic Report) of DA 533.1/2012 to be sufficient in ensuring that the development complies with noise criteria.
Tree Preservation Officer	The landscape plan has been examined and found to be satisfactory.
Place Manager	No objection has been raised.
Traffic Engineering Branch	Despite the loss of two (2) parking spaces on the site from the proposed amendments, there is still a surplus of twenty – six (26) car parking spaces. Traffic Engineering Branch has therefore raised no objection

	to the proposed changes. Changes to internal traffic circulation as detailed in drawing DA201-F were also found to be satisfactory.
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EXTERNAL REFERRALS

The original application was referred to Roads and Maritime Services (RMS) pursuant to State Environmental Planning Policy (Infrastructure) 2007 as shops with a floor area of greater than 2000sq.m (Column 2 of Schedule 3 – Traffic Generating Developments). Given that the proposed modification does not seek to significantly change the intensity or appearance of the development or alter access to the site or significantly change parking availability and traffic generation, it was not considered necessary in this circumstance to refer the modification to RMS for comment.

PUBLIC NOTIFICATION

Section 96(2) requires that the application be notified in accordance with the regulation if so required, or the applicable development control plan (DCP). Fairfield City Wide DCP – Appendix B – Notification Policy at clause 1.5.1 specifies that modification application 96(2) of the Act will be notified in the same manner as the original application. The application was notified to surrounding neighbours and an advertisement place in the newspaper for a period of twenty - one (21) days as per the original application. Three (3) submissions were received during the notification period.

The issues of concern and a response to these concerns can be summarised as follows:

1. ***Traffic - a concern with the increased flow not only along Polding Street but also Conrad Street where we live, during the construction phase of the development. We hope that Council along with Stockland Management and the RTA will implement procedures to even the flow of traffic and look at the installation of Red Light Cameras at the intersection of Polding and Conrad Streets. Perhaps there is a possible need for blisters to be placed in Conrad Street to slow the speed of drivers as they race the lights to avoid stopping and accidents. If this is not possible due to costing could a revision of the speed limit be introduced at least until the development is completed.***
2. ***Parking - although staff parking has been introduced to the centre we have noticed increased numbers of staff parking in our street. We believe this will worsen during construction as not only will centre staff be parking in Conrad Street but possibly construction workers as it is in close proximity. This will lead to further congestion with cars, trucks and school buses which access the street on a daily basis. In addition to staff and construction workers there will be the increase to general customer parking, due to loss of spaces during construction phase.***

With reference to points 1 and 2, it appears that this issue relates to the approved development rather than the proposed modification subject to this application. It is considered that the modification does not significantly change parking availability or alter expected traffic generation. It should be noted that a Construction

Management Plan is required to be prepared which considers measures to address these issues.

3. ***Shopping Trolleys - left scattered along Conrad Street by shoppers who do not use the parking areas and not only leave the trolleys for pick up but also leave general rubbish in them which the trolley collectors then dump in the street when the trolleys are retrieved. It should not be up to the residents of Conrad Street to clean up other peoples rubbish and place in their bins but if we don't our street would look very untidy. Stockland Management could take this matter up with their retail tenants perhaps implementation of paid trolleys may be answer to this growing problem.***

The applicant has stated that Stocklands management hold regular discussions with tenants and they will endeavor to discuss ways of managing shopping trolleys with new tenants to the development.

4. ***Internal traffic flow should be considered when considering the expansion development proposal of the Stockland Shopping Centre. At the moment the traffic flow is very congested with tight turning circles at the end of each parking bay. This would be perfect opportunity to ease the traffic congestion by making one road either Polding St or Restwell Rd as the entry only and the other as exit only. Considering the expansion proposal with increased shops and therefore shoppers, most who come in cars, this would seem a simple and effective traffic flow solution.***
5. ***There appears to be no improvements to the traffic flow in Polding Street and Restwell Road. More parking places must attract more shoppers and cars. Therefore more traffic in these two streets. The current situation can be bedlam now in peak periods, I can only imagine what it will be like if nothing changes. I also raise this for the original proposal. I suggested maybe entry only from one street and exit only from the other.***

With reference to Point 4 and 5 as discussed above it appears that the concerns relate to the original approval. It is considered that the subject modification would not alter the expected traffic generation and parking availability of the site.

SECTION 79C CONSIDERATIONS

In accordance with s96(3) Council must give consideration to such of the matters referred to in s79C (1) as are of relevance to the development the subject of the application.

The section below provides details of the relevant matters for consideration.

1. The provisions of any environmental planning instrument.

Comment:

The subject site is zoned B4 Mixed Use under Fairfield LEP 2013. The proposed modification is associated with the approved development which is characterised as commercial and retail premises. The proposed modification is therefore permissible within the zone.

2. 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).

Comment:

The proposed modified development is considered to be consistent with the Draft West Central Subregional Strategy and Draft SEPP (Competition) 2010.

3. The provisions of any development control plan.

The proposed modified development has demonstrated general compliance with the requirements of the Prairiewood Town Centre Masterplan, and is considered to be satisfactory.

4. The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

Comment:

The proposed modified development has been assessed in accordance with the relevant statutory requirements, particularly the potential impacts such as economic, acoustic noise, traffic generation and traffic safety, and the adequacy of parking.

As identified throughout this report, the above issues have been assessed as being satisfactory. In this regard, it is considered that the proposed modifications are unlikely to result in any adverse impact upon the amenity of the locality.

5. The suitability of the site for the development,

Comment:

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

6. Any submissions made in accordance with this Act or the regulations,

Comment:

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.

7. The public interest.

Comment:

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 approved development had an estimated construction cost of \$31,488,253. In accordance with Fairfield City Councils adopted s94A contribution plan the payment of a development contribution of \$314,880.00. A condition of development consent was imposed and it is considered that the proposed modifications would unlikely significantly alter this amount.

CONCLUSION

The subject site is zoned B4 Mixed Use under Fairfield LEP 2013. The proposed modification is associated with the approved development which was characterised as commercial and retail premises. The proposed modification is therefore permissible within the zone.

The assessment of the application has considered all relevant requirements of s 96(2) and s79C of the Act and finds that there will be no significant adverse or unreasonable impacts associated with the modified development. .

Residents' concerns are acknowledged however they relate to the existing shopping centre and original application and therefore there are no issues that would warrant refusal of the application.

Accordingly, it is recommended that the application be approved subject to conditions outlined in Attachment I of this report.

RECOMMENDATION

That the S96(2) Application to modify DA No. 533.2/2012, proposing amendments to the approved building elevations and internal layout, provision of a supermarket by replacing the existing Franklins and previously proposed 'mini major' store located alongside Franklins, amendments to the approved carpark layout and extension to the construction hours at Stocklands Shopping Centre be approved subject to conditions as outlined in Attachment I of this report.