

JOINT REGIONAL PLANNING PANEL (Sydney West)

JRPP No	2013SYW105
DA Number	DA 664.1/2013
Local Government Area	Fairfield City
Proposed Development	Demolition of an existing at-grade car park and toilet block facilities, subdivision of land and construction of a three (3) storey building comprising ground level retail outlets (30 tenancies with a total 2,995m ² lettable floor area), first level car parking and commercial floor space (4 tenancies with a total 505m ² lettable floor area), third level car parking, and associated road works.
Street Address	Dutton Lane, Cabramatta.
Applicant/Owner	Fairfield City Council (Applicant & Owner)
Number of Submissions	1,085 submissions plus a petition including over 5,000 signatories.
Regional Development Criteria (Schedule 4A of the Act)	Fairfield City Council is the land-owner and the applicant, and the proposed development has a capital investment value of more than \$5 million (\$16.3 million). (Clause 4 of Schedule 4A of the Act).
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> SEPP (Infrastructure) 2007 and Fairfield Local Environmental Plan 2013 (FLEP) (s79C(1)(a)(i)) Fairfield City Wide Development Control Plan 2013 (FDCP) and Cabramatta Town Centre DCP No.5/2000 (s79C(1)(a)(iii))
List all documents submitted with this report for the panel's consideration	<p>AT-A Statement of Environmental Effects prepared by Elton Consulting dated September 2013</p> <p>AT-B Architectural Plans prepared by Antoniades Architects, as amended.</p> <p>AT-C Response to DA submissions prepared by Elton Consulting dated 24 March 2014</p> <p>AT-D Proposed subdivision superimposed on existing lot layout</p> <p>AT-E Submission by the Roads and Maritime Service (RMS) dated 14 November 2013</p> <p>AT-F Height Variation Plan</p> <p>AT-G Summary table assessing DCP controls</p> <p>AT-H Extract from Council's section 94 Plan identifying the location of the proposed public car park.</p> <p>AT-I Redesign of Hughes Street showing existing and proposed arrangements, including seagull treatment.</p> <p>AT-J Proposed Conditions of Consent</p>
Recommendation	Consent be granted subject to conditions.
Report by	Paul Grech, Consultant Planner (GLN Planning)

RECOMMENDATION

That the application proposing the demolition of existing car park and structures, subdivision of land, construction of a three (3) storey retail, office and car parking building and associated roadworks be granted consent subject to conditions as outlined in **Attachment J** of this report.

EXECUTIVE SUMMARY

Pursuant to Schedule 4A of the Environmental Planning & Assessment Act 1979 the proposal has been referred to the JRPP because Fairfield City Council is the land-owner and the applicant, and the proposed development has a capital investment value of more than \$5 million.

The subject site is within the Dutton Lane Precinct of the Cabramatta Town Centre which includes a parcel of lots comprising an existing at grade car park, a multi storey car park and trafficable laneway (ie Dutton Lane). . The site on which the proposed building will be located is owned by Council in fee simple and is classified as Operational land for the purposes of the Local Government Act 1993. The periphery of the site is constructed as a roadway. It is not dedicated public road except a small area of Dutton Lane at the eastern end of the site.

The proposed development comprises the demolition of an existing at-grade car park and toilet block facilities and construction of a three (3) storey building comprising ground level retail outlets (30 tenancies with a total 2,995m² lettable floor area), first level car parking and commercial floor space (4 tenancies with a total 505m² lettable floor area) and third level car parking. The proposed development will include connections to the existing adjoining multi storey car park.

A total of 275 car parking spaces will be provided, including the replacement of 166 existing parking spaces (157 spaces on site plus 9 spaces displaced from Hughes Street). In accordance with the applicable DCP controls, the proposal generates a requirement for 40 spaces to be provided on site and payment of a Section 94 monetary contribution for a further 55 spaces (discounted from a base requirement of 93 spaces). In lieu of paying the full monetary contribution the applicant proposes the provision of an additional 69 spaces and a S94 monetary contribution for 14 spaces will be required.

There are numerous loading bays which service the rear of premises around the perimeter of the site. Although governed by sign posted restrictions, these activities are often the cause of conflict with pedestrian and vehicles using the Dutton Lane precinct. To remedy this, the proposal includes the re-organisation of loading facilities, separation of vehicle and pedestrian areas and improvement of traffic management in the precinct, including re-locating five (5) truck and one (1) van loading bays to Hughes Street and removing 90 degree service vehicle parking within the precinct so as to increase the efficiency of traffic flow. Within Dutton Lane, roadways and pedestrian areas will be clearly distinguished so as

to reduce conflict and a new 500m² public open space area will be provided to complement and connect with Freedom Plaza.

Subdivision of thirteen (13) land parcels in the subject site is proposed to rationalise existing lot boundaries. The proposal provides for a more orderly subdivision of land by ensuring that lot boundaries are located so as to separate constructed roadways from developable land parcels. A separate lot is also proposed for the open space at the eastern end of the site. While this is an improvement on the current ad hoc subdivision pattern it retains a situation where there is no legal right of access to the principal lot that will contain the proposed building. Accordingly, a condition is proposed to require an amended subdivision plan or consolidation.

The development application was advertised in accordance with the Fairfield City-Wide DCP 2013. A total of 1,085 submissions were made in respect of this application as well as a petition including over 5,000 signatories.

Broadly speaking the submissions indicated a preference for more car-parking and more Western-style large format stores rather than smaller Asian style stores. The submissions also referred to a conflict of interest for Council as it is both the developer and the assessing authority.

Car parking issues have been assessed in detail and a legal opinion was obtained to confirm the manner in which the car parking provisions of the DCP should be interpreted. The style of shops proposed is not inconsistent with the relevant planning controls and there is no planning basis to reject the development due to the proposed size of tenancies and the overall architectural theme.

To address the perceived conflict of interest, the application was assessed by an independent town planning consultant and will be determined by the JRPP. The assessment of the application was conducted in accordance with the provisions of the EP&A Act. The Council's statutory planning framework, including the relevant LEP, DCP and other controls were taken into consideration as would be required of any development application, irrespective of the proponent.

The application has been referred to the RMS and Council technical officers. A number of issues were initially raised requiring the submission of amended plans and further information. The amendments did not alter the external effects of the proposal and the application was not re-notified. The majority of remaining issues have been addressed with additional information or are capable of being dealt with by conditions of consent.

SITE DESCRIPTION AND LOCALITY

The subject site is located in Cabramatta Town Centre, to the north of Cabramatta Road and to the west of Cabramatta railway station as illustrated in **Figure 1**.



Figure 1 Locality

The subject site is bound on four sides by Dutton Lane, which is a one-way ring roadway accessed via Hughes Street to the north. The land on which the roadway known as Dutton Lane is located is also part of the subject site.

The subject site is located within the city block bound by Hughes Street to the north, Park Road to the east, John Street to the south and Hill Street to the west.

Figure 2 identifies the subject site in red, and in blue the existing multi-deck car park, which is proposed to remain unchanged.

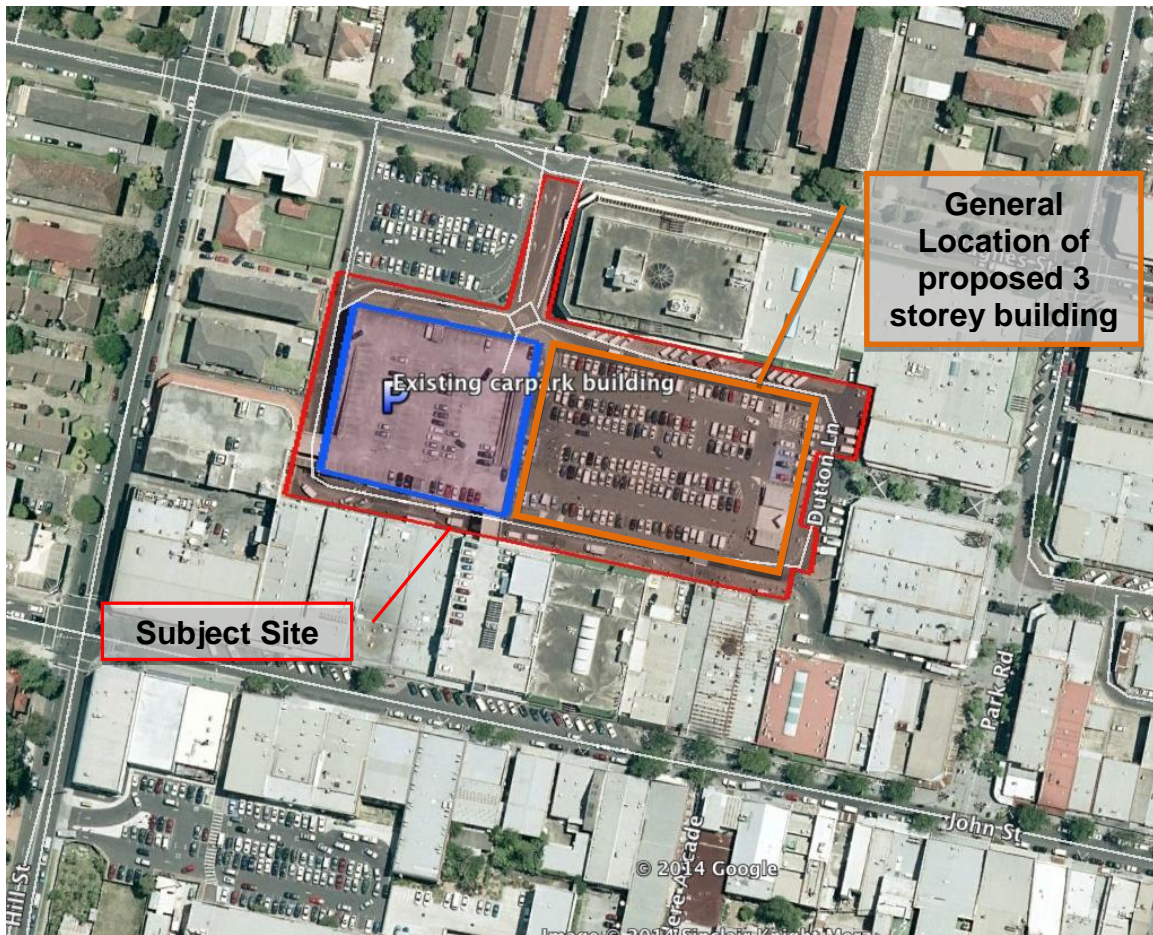


Figure 2 Subject Site

The subject site is comprised of eighteen (18) lots, thirteen (13) of which are the subject of the proposed subdivision. These lots are described as Lot 6 and Lot 4 DP236708, Lot 2 DP215976, Lot 3 DP540495, Lot 3 DP216870, Lot 3 DP 217606, Lot 8 DP238484, Lot 2 DP534197, Lot 1 and Lot 2 DP539611, Lot 1 and Lot 2 DP570243, Lot 2 DP548450, Lot 2 DP549499, Lot 2 509053, Lot 2 DP510936, Lot 2 DP504815, Lot 2 DP219389. Works are also proposed on that part of Dutton Lane that is dedicated public road, adjacent the eastern edge of the site.

Attachment D shows the proposed subdivision superimposed on the existing lot layout. **Figure 3** shows this same subdivision plan and identifies, in green, the lots outside the subdivision but subject to this application. Highlighted in blue are the lots that are subject to the subdivision but not part of the building or road works.

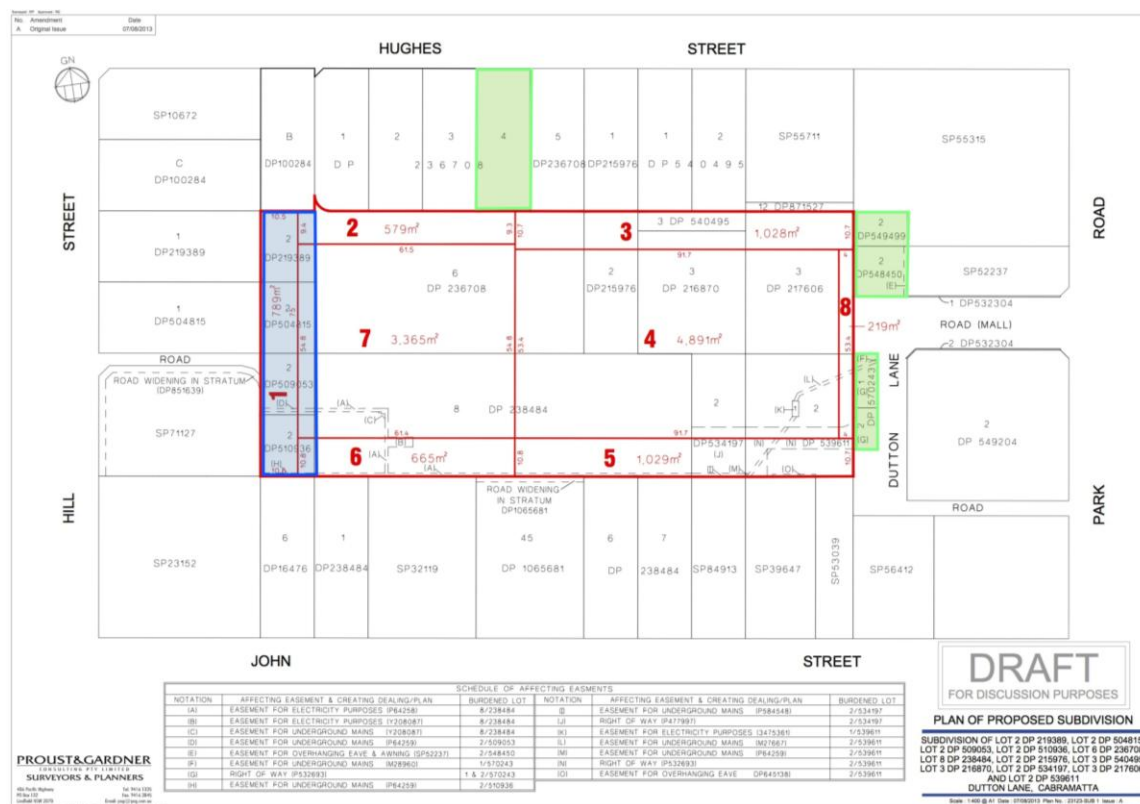


Figure 3 Existing Lots & Proposed Subdivision

All lots within the subject site are owned by Fairfield City Council and all are classified as Operational Land under the relevant provisions of the Local Government Act 1993. The roadway within the subject site that is generally known as Dutton Lane is not a dedicated public road, except a small part of Dutton Lane at the eastern end of the site that connects with Freedom Plaza. The edge of this part of Dutton Lane is to be developed as part of the public open space area within the site.

BACKGROUND

The various parcels that form the subject site have been purchased over many years by Fairfield City Council. As part of pre-lodgment discussions, the proponent was requested to research the basis for the funding and original intention of the acquisitions. The proponent subsequently advised that Council records were not capable of providing a definitive response to this question in respect of all lots. Notwithstanding, there is an acceptance of the need to replace the existing car parking spaces and toilet facilities located on the site as part of the redevelopment proposal.

The western part of the site has been developed with a four-level (user pays) public car parking facility. This car park is linked by a raised pedestrian connection to retail premises to the south of the site.

The eastern part of the site, on which the proposed building is to be erected, is currently used as an at-grade car park. This area also includes a small toilet facility and office booth, which are proposed to be demolished.

Entry to multi-level car park and to the at-grade car park on which the new building is proposed, is from the street network via Hughes Street to the north.

Existing activity on the subject site also includes numerous loading bays, which service the rear of premises around the perimeter of the site. Although governed by sign posted restrictions, these activities are observed to be the cause of conflict with pedestrian and vehicles using the Dutton Lane precinct. As a result, important components of this proposal include the re-organisation of loading facilities, separation of vehicle and pedestrian areas, improvement of traffic management and creation of a public open space area to complement and connect with Freedom Plaza.

PROPOSAL

The proposed development includes the following components:

1. Demolition of the existing public toilet facility and ancillary structures.
2. Removal of existing at-grade car park and associated facilities.
3. Subdivision of the Council-owned lots on the subject site to create eight (8) new lots.
4. Construction of a three (3) storey commercial/ retail development and car park comprising:
 - a. Ground level retail outlets (30 tenancies ranging in size from 55m² to 164m²) with internal north-south and east-west arcades providing a total lettable floor area of 2,995m²;
 - b. First floor providing 505m² of lettable commercial floor space (4 tenancies ranging in size from 106m² to 141m²) and also car parking; and
 - c. Second level car parking.
5. Replacement, within the proposed building, of the existing 157 car spaces from the at-grade car park.
6. Replacement within the proposed building a further nine (9) street car spaces lost as a result of the modification of street parking in Hughes Street.
7. Provide connections between the proposed car park area and the car park located in the adjoining building.
8. Provision of an additional 109 car spaces to serve the proposed development.
9. Carry out roadway improvements and traffic management related works on and around the subject site, including separation of vehicle and pedestrian areas.
10. Re-organise loading/ servicing facilities.
11. Create a public open space area to complement and connect with Freedom Plaza.

The proposed development provides for the reinstatement of a public car park

while at the same time rationalising existing traffic and parking arrangements, creating a public open space (outdoor public domain) area and introducing a retail/commercial development consistent with the planning intent for the site. The architecture of the building complements the cultural identity of the centre through its design and application of materials and colours. The upper levels, although containing car parking, maintain a high quality architectural appearance. The following photomontages included with the application depict the proposal.



The Architects Statement, submitted with the application provides the following description of the proposed materials, elevations, and façade treatments.

Materiality

The colours and materials have been carefully selected to complement both the architectural expression as well as its surroundings. The colours chosen are shades of natural palettes, that being an earthy red and grey, as well as the use of natural off form concrete, which provide a soft yet bold identity to the building, allowing it to act as a landmark within its context.

The overall concept provides a contemporary and strong architectural expression, which reflects and sits well within its context and surrounds. The development also fits well to the proposed scale and desired character of the precinct.

Elevation Treatment

The composition of the proposed facade is primarily made up of Aluminium panels and off form concrete walls. The Aluminium panels are perforated with a regulated pattern to create a visual interest across the facade. The materials have been selected for their robustness and durability which are desirable characteristic for a public building of this nature.

The proposed colours to be used in the facade are in tones of earthy Red to provide a softer and natural nuance to the carpark, whilst the concrete will remain in its natural colour with a honed finish.

Facade Design Detail

The facade system contains two key elements - off form concrete walls and perforated aluminium panelling fixed to steel framing. This system has been designed so that most prefabrication are done off-site to reduce on-site welding and fabrication which would improve construction efficiency significantly.

The façade has also been designed to comply with the specific requirements of the BCA of providing fall protection as well as eliminating any foot-hold so that it cannot be climbed.

The aluminium panel have patterned perforation to provide right amount of balance of screening to the car park as well as visual permeability to provide security, almost acting like a veil to the building. The perforated panels are deconstructed around the commercial space to enhance visual interest as well as allowing stronger transparency and visual connection from the commercial tenancy. Entrances to the retail on ground level are signified by expressing the screen further in a way such that the screen becomes deeper in profile. This design of panels folding at entrances also provides opportunity for additional lighting to penetrate through from the car park.

SECTION 79C ASSESSMENT – Relevant Planning Instruments

SEPP (Infrastructure) 2007

General

The application is subject to the provisions of the Infrastructure SEPP because it is classified as a traffic-generating development under clause 104 of that SEPP. In Schedule 3 of the Infrastructure SEPP, development that proposes to include an area for the parking of more than 200 vehicles and development that proposes more than 2,000m² of shops, is deemed to be traffic-generating development.

As a result, the Consent Authority must, pursuant to clause 104(3):

- (a) *give written notice to the RTA ...*
- (b) *take into consideration:*
 - (i) *any submission that the RTA provides...*
 - (ii) *the accessibility of the site concerned, including:*
 - (A) *the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
 - (B) *the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*
 - (iii) *any potential traffic safety, road congestion or parking implications of the development.*

Referral to RMS and Traffic Management

The application was referred to the Roads and Maritime Service (RMS) and a submission was received on 14 November 2013 (**Attachment E**). The submission has been considered in this assessment.

The principal issues raised by RMS are consistent with other matters required to be assessed under the SEPP, including:

1. Efficiency of movement of people to and from the site;
2. Traffic safety and road congestion; and
3. Parking implications of the development.

These are addressed in detail in the 'Traffic' and 'Parking' sections of this report.

The RMS submission included comments to the effect that:

- parking be provided to relevant Australian Standards;
- the amount of parking should be to Council's satisfaction;
- a Construction Management Plan should be required as a condition of consent; and
- any road works be at no cost to the RMS.

The submission also requested that the following matters be reviewed by Council's Local Traffic Committee:

- The proposed seagull intersection upgrade at Dutton Lane and Hughes Street shall be designed and constructed to Council's satisfaction and approved by Council's Local Traffic Committee;
- Formal traffic and pedestrian counts supporting the upgrade of existing thresholds to pedestrian crossings shall be provided to Council's Local Traffic Committee for review and approval to ensure the warrants for installation of such facilities are met.

The matter has not yet been referred to the Local Traffic Committee. The submission from RMS does not object to the works proposed in principle but advises that the design of these road works be approved by the Traffic Committee. As advised by Council's Traffic Engineer, such further approvals can be appropriately obtained at the detailed construction certificate stage. This can be ensured by a condition of development consent.

Minimising Travel by Car

The Infrastructure SEPP also requires that Council consider the potential to minimise the need to travel by car.

To minimise the overall need to travel by car necessitates that feasible alternatives be provided. Such alternatives include public transport and walking. To optimise the viability and efficiency of public transport requires that the usage of existing infrastructure, such as rail and bus services, be maximised.

Locating new development within the Fairfield City LGA and the Cabramatta Town Centre can improve the viability of existing public transport services. The subject site is located approximately 280 metres from the entrance to the Cabramatta railway station and the centre is also serviced by numerous bus routes.

The availability of car parking at a destination may also influence the amount of travel by car. Provided there is a feasible alternative, restricting the availability of parking spaces may encourage travel by other modes such as public transport and walking. The DCP controls requiring a monetary contribution to partially satisfy parking requirements within a centralised facility, at a discounted rate, contributes to satisfying this objective.

Fairfield Local Environmental Plan 2013 (FLEP)

Zone

The subject site is zoned B4 Mixed Use under the provisions of Fairfield Local Environmental Plan 2013 (FLEP).

Zone objectives

It is considered that the proposal satisfies the objectives of the zone as indicated below:

- *To provide a mixture of compatible uses.*

The proposal includes retail and office premises as well as car parking.

- *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.*

The proposal is located in an accessible location that will encourage patronage of existing public transport facilities and services. It provides a new open space and pedestrian arcade links that integrate with the surrounding precinct and encourage walking.

- *To support the development of Prairiewood, Fairfield and **Cabramatta** as the principal locations for specialist cultural, retail, business, tourist and entertainment facilities and services. [**Bold** is our emphasis].*

The proposal includes up to 30 retail tenancies and 4 first floor commercial tenancies, which can provide for additional specialist retail, business, cultural and tourist facilities and services. The proposal also provides open space areas, including a “history wall to encapsulate the rich history of Cabramatta”¹. This will connect to, and expand, the Freedom Plaza area, thus adding to the cultural significance of the precinct.

Permissibility

The proposed retail and office premises are listed as ‘permitted with consent’ within zone B4 - Mixed Use.

The car parking is in part a component of the proposed retail and office premises. The remainder of the car parking is defined as “car park” by FLEP and would fall under the category “Any other development not specified in item 2 or 4”. This means that both components of the car parking are ‘permitted with consent’.

Assessment of Subdivision

Attachment D shows the existing and proposed subdivision lot layout. Proposed Lots 1, 2, 3, 5 and 6 are intended to encapsulate the Dutton Laneway. The proposed building works will be constructed on Lot 4 and the associated open space area that connects through to Freedom Plaza will be partly on Lot 8. The existing multi-storey car park will be located on Lot 7.

Clause 2.6 of the Fairfield LEP 2013 provides that any land may be subdivided but only with development consent.

In response to a request for clarification, the proponent provided a subdivision plan that was intended to provide for the orderly subdivision of land by ensuring that lot boundaries are located so as to separate roadways from developable land parcels. A separate lot is also proposed for the open space at the eastern end of the site.

By letter dated 24 March 2014, the applicant has advised that:

The amended plan creates an additional lot [ie. additional to the original proposal] identified as Lot 8 containing the portion of outdoor area adjoining the proposed building. The remaining outdoor area is within

¹ Statement of Environmental Effects, *Elton Consulting*, p.26

existing lots owned by Council and public road. The newly created lots will be held in fee simple under Council's ownership and as Operational land. An easement for over-hang will be created over proposed Lot 8 in favour of proposed Lot 4 to protect the awning structure associated with the building. The possible dedication of this area to Community land and proposed Lots 1, 2, 3, 5 and 6 as public road is not part of this DA. This may take place in the future.

The proposed lot layout is intended to enable roadways, developable parcels and open space to be managed differently by Council. The application does not, however, relate to the opening of a road or dedication of land as a public road. The proposal intends simply to allow the continued use of Dutton Lane, which is land owned in fee simple, as a roadway.

While the proposal is a rationalisation of the existing situation, it recreates a number of separate allotments that are required to provide vehicular and pedestrian access to a proposed retail/commercial development and car park, that are neither intended to be dedicated as public road or burdened with a legal right of way or easement for access. Given the Operational status of the land, it is considered appropriate that the subject site be either consolidated into one lot that connects with Hughes Street or appropriate easements for access and services be created in conjunction with the proposed subdivision. This is a matter that can be dealt with by a condition of consent.

Height of Buildings

Clause 4.3 refers to the Height of Building Map, which identifies this site as partly having a limit of 10 metres and partly a limit of 16 metres. That part on which the proposed building is to be erected has a height limit of 16 metres.

Clause 7.3 of the LEP also applies. This clause identifies the subject site as "Cabramatta - Area D" on the Town Centre Precinct Map and limits the height to 10 metres "unless at least 50% of the site area will be landscape open space." Clause 7.3 has effect despite clause 4.3 and so is intended to provide an alternative built form. Given that the proposal does not elect to include the proportion of open space specified by clause 7.3, the applicable height limit is 10 metres.

The topmost proposed floor level is approximately 7.2 metres above ground level and as this level is unroofed, the majority of the building structure is below the height limit.

Three of the four stair shafts do exceed the height limit and the applicant has sought a variation to this standard in accordance with clause 4.6 of the FLEP 2013. A 'Height Variation Plan' (refer **Attachment F**), has been provided identifying the areas where the limit is exceeded and the amount of exceedence relative to the ground level in each location. The variation is between 0.1m to 1.145m.

Clause 5.6 of the FLEP 2013 (Architectural Roof Features) also provides some assistance in that it allows for equipment servicing the building (plant, lift motor

rooms, fire stairs and the like) to be approved provided they are fully integrated into the design.

While there is a non-compliance with the development standard, it is considered reasonable to accept this non-compliance because the elements that exceed the height limit are relatively small in area, they service the building and are integrated into the design. The proposed building is also lower in height than the adjoining existing car park.

Floor Space Ratio

Clause 4.4 refers to the Floor Space Ratio Map, which identifies that part of the site on which the building is to be constructed as having a maximum floor space ratio of 2.5:1.

The applicant has calculated the proposed FSR of the building as 0.94:1, which would comply with the requirement. In the Statement of Environmental Effects the applicant further states: "This FSR has been calculated taking into account 4,130sqm of GFA on the Ground Floor and 660sqm of GFA on the First Floor. As shown on the Plan of proposed subdivision...the site area of the proposed development site (building footprint) is 5,110sqm" being the combined area of proposed Lots 4 and 8.

Whilst the site is significantly larger than the building footprint, clause 4.5 of FLEP requires the exclusion of public places from the site area. It is therefore considered reasonable to exclude the Dutton Lane areas from the calculation. Excluding the existing car park from the calculation is also considered reasonable and enables the use of the site area of the building footprint as the basis for FSR calculations is therefore considered appropriate.

The definition for FSR allows the exclusion of "(g) car parking **to meet any requirements of the consent authority** (including access to that car parking)". This would suggest that the following car spaces can be excluded:

- 166 spaces that are replacing existing spaces; and
- 40 spaces that are provided to satisfy Council's parking requirements under the DCP.

The remaining 69 spaces are surplus to Council requirements and could be included in the FSR calculation. The area of an average sized car parking space plus half aisle width contributes an additional 1,525m² of gross floor area. On this basis the total gross floor area of the development would be 6,315m² and the FSR would be 1.25:1. Therefore the proposal would comply.

SECTION 79C ASSESSMENT – Development Control Plans (DCPs)

Applicable DCPs

The DCPs applicable to the subject site are:

- a. Cabramatta Town Centre DCP No.5/2000 (as amended March 2014) (**CDCP**); and (in accordance with clause 74C(3) of the Act)
- b. Fairfield City Wide DCP 2013 (**FDCP**), Chapter 2, Chapter 3, Chapter 7, Chapter 8A and Chapter 8B, Chapter 10, Chapter 11, Chapter 12, Chapter 13 and Chapter 14, Appendices A, B, & C, D, E.

A table summarising the level of compliance for each of the relevant controls is included as **Attachment G**. This section addresses the key issues and matters of non-compliance.

Parking

Requirement

The car parking requirements for development at the subject site (within Precinct 2 as identified in CDCP) are determined in accordance with Table C (pg.30) of CDCP.

- **Car parking requirements** are as follows:
 - **Office and business Use**
1 space per 25 square metres of gross leasable ground floor area and 1 space per 40m² of gross leasable floor space above ground level.
 - **Retail, Restaurant, Cafes, Refreshment Rooms**
1 space per 25 square metres of gross leasable floor area.
- Note:** Where contributions are paid for centralised car park (in lieu of on-site parking) the above requirements may be reduced 40%. See also Clause 3.5 of the Plan.
- **Not more than 30% of required car parking shall be permitted on site.** A section 94 developer Contribution is to be paid for the parking not permitted on the site.

Clause 3.5 of CDCP contains various provisions, in particular the following (pg.90):

Any existing public car public spaces, if relocated, shall be re-established on the same side of the Town Centre as the existing location.

The total number of car parking spaces will not be reduced as a result of future development. Development of existing car parking sites will be required to provide car spaces in accordance with the requirements of this Plan.

Where an existing car park, whether publicly or privately owned, is redeveloped and the car spaces are not reinstated on site, no Section 94 contribution discount may be applied to those car spaces not replaced on site.

Replacement car parking for car spaces not reinstated on site must be provided before the existing car parking facility is removed.

Prospective developers should refer to the Cabramatta Car Park and Traffic Management Strategy or the Place Manager for Cabramatta for further information and requirements in relation to specific sites.

In order to assist in the interpretation of the DCP and the assessment of the proposal, a legal opinion was obtained from Council's lawyers, Marsdens and comments regarding the parking strategy and strategic planning direction for the centre were provided by Council's strategic planning section (as discussed later). The applicant and Council's traffic engineers also provided information regarding the usage of the overall Dutton Lane car park facilities.

Proposal

The development proposes to provide a total of **275 spaces** on site. These spaces can be considered as follows:

- **157 spaces** are provided as a direct replacement of the same number of existing spaces currently available within the at-grade car park;
- **9 spaces** are provided to replace the same number of spaces lost in the reconfiguration of Hughes Street to provide loading bays.
- **109 spaces** representing the net increase in spaces including providing for the demand generated by the proposed development.

The development proposes the following parking generating uses:

- 2,995 m² of gross leasable retail floor area on ground level; and
- 505 m² of gross leasable office areas on the first level.

Assessment

The parking required to replace existing car parking on site and displaced car parking in Hughes Street is 166 spaces (157+9). The additional parking required due to the proposed uses is:

- Retail: $2,995 \text{ m}^2 / 25 = 119.8$ spaces required.
- Offices: $505 \text{ m}^2 / 40 = 12.6$ spaces required.
- **Total required spaces** = 132.4 spaces

Only 30% of the total required spaces are permitted on site, therefore:

- $132.4 \times 30\% = 39.72$ (rounded to 40) spaces to be provided on site.

The remaining 70% of the total required spaces are not permitted on site.

Therefore:

- $132.4 - 40 = 92.4$ spaces may not be provided on site.

However, the DCP indicates that a section 94 contribution is to be paid for these spaces, in which case a discount may be applied. In accordance with the clause above, the number of spaces for which a development contribution should be paid may be reduced by 40%.

- $92.40 \text{ spaces} \times 40\% = 36.96$ spaces.
- $92.40 - 36.96 = 55.44$ spaces are required to be paid for by way of development contribution.

Therefore, the applicant is required to provide 206 (157 + 9 + 40) spaces on site and pay a development contribution for 55.44 spaces.

The applicant proposes to provide 275 spaces. This complies with the requirement to replace the existing 166 spaces and the requirement to provide at least 40 spaces to address the demand generated by the development.

As this represents a surplus of 69 spaces it does not comply with the requirement in the DCP that provides that “**no more than** 30% of the required spaces shall be permitted on site”.

Section 79C(3A)(b) of the EP&A Act provides that consent authorities must “be flexible in applying those [DCP] provisions and allow reasonable alternative solutions that achieve the objects of those standards...”

The object of this provision is to ensure that parking for the town centre is consolidated into a few locations rather than being scattered across numerous sites and often locked away for private use. Council’s S94 Development Contributions Plan identifies such a public car park. **Attachment H** is an extract from the S94 plan identifying the location of the proposed facility, which will likely continue to be accessed from Hill Street (and not from Cabramatta Road as well, as indicated in the extract). The object of the clause is to also obtain funds for the construction of this multi-deck public parking facility.

However, the subject site also currently operates as a public car park and will continue to provide this function should the development be approved. Expanding this facility may likely reduce the required scale of the Hill Street car park.

An appropriate alternative solution that achieves the objects of the development control is to allow the 69 spaces to be included as public car parking. This would mean that the additional spaces should offset the required development contributions, contribute an extra 14 spaces (69 – 55), and potentially reduce the scale of the car park required at Hill Street by 69 spaces.

The development therefore complies with the intent of the DCP on the basis that 40 spaces are assigned to the subject development and a total of 235 spaces (166 + 69) are allocated as public car parking.

An alternative to applying a performance based approach to assessing compliance with the DCP, would be for Council to accept the surplus on site car parking as a material public benefit in lieu of a S94 cash contribution pursuant to section 94(5) of the Act. Either approach is considered justifiable having regard to above considerations. This could generate a net S94 cash contribution payable for 14 spaces (rounded up from 13.6) calculated on the following basis:

- The S94 contribution payable by a compliant development would be 55 spaces (after discounting by 40%).
- 69 spaces to be provided on site discounted by 40% is equivalent to 41 spaces.
- Therefore the S94 contribution remaining payable is 14 spaces (55-41).

In summary, the proposed car parking provision complies with the requirements subject to the following:

- 40 spaces to be provided on-site to address the demands generated by the development;
- 166 spaces to be provided as replacement to existing spaces;
- 69 spaces to be allocated toward the expansion of the on-site public car parking facility servicing the town centre.
- 14 spaces to be paid for by way of a S94 cash contribution.

Loading/ Servicing

Requirements for proposed development

The DCP provides that “1 loading bay with dimensions 3.5 x 11 metres” is required for the following uses: “Butcher, Fruit Store, Furniture Store/ Showroom.”

The office area, at 505m² is below the 4,000m² threshold that would require loading arrangements.

The DCP also requires one (1) van space for restaurants with 100 seat capacity. The applicant has not included any van spaces for such restaurants so it would be appropriate to include a condition of consent limiting the scale of any restaurant or like tenancy to under 100 seats.

On this basis, only one additional bay is required and should have dimensions 3.5 x 11 metres.

Section 4.5.1 of the applicant’s Traffic Impact Assessment (**TIA**) states that the geometrical configuration of Dutton Lane would limit truck sizes to Medium Rigid Vehicles (MRVs). This would reduce the size of the required bays to 3.5 x 9.0 metres.

The DCP allows loading bays to be reduced to 3 x 6 metres for premises smaller than 200 m². The TIA argues that this concession could be applied as “the maximum retail tenancy size is proposed to be 110 m²... significantly less than the ... maximum of 200m².” Despite this, the TIA concludes that the development should provide a facility for one (1) MRV (ie. 3.5 x 9.0 m).

Re-organisation of existing servicing arrangements

One of the important aspects of this proposal involves the re-organisation of loading arrangements throughout the precinct. Currently, there is significant conflict between the servicing arrangements for commercial premises and the pedestrians and vehicles using the Dutton Lane precinct.

The loading arrangements are proposed to be re-organised as follows:

- Relocate five (5) truck and one (1) van bays to the southern side of Hughes Street. (This will result in the loss of nine (9) car spaces that are to be provided within the new building); **(+5 trucks, +1 van)**
- On the southern side of Dutton Lane, six (6) existing parallel bays will be converted to five (5) parallel bays, reduction of 6m to accommodate pedestrian crossing; **(-1 van)**
- On the southern side again, three (3) existing parallel bays will be converted to five (5) parallel van bays; **(+2 vans)**
- On the eastern side, six (6) existing 90 degree truck bays to be converted

- to three (3) x 9 metre parallel truck bays. **(-3 trucks)**
- On the eastern side, northern corner, three existing 90 degree truck bays to be converted to two (2) x 9 metre parallel truck bays; **(-1 truck)**
- At the north-eastern corner of the site, eight (8) x 6 metre van spaces, currently 90 degree arrangements, are to be removed to accommodate open space. **(-8 vans)**
- At the north-eastern corner of the proposed building, a 3.5 x 18 metre bay is proposed to accommodate 3 van spaces; **(+3 vans)**
- At the south-eastern corner of the proposed building, a 3.5 x 18 metre bay is proposed to accommodate 3 van spaces; **(+3 vans)**

The net result of these arrangements is the provision of one (1) extra truck space.

It is therefore considered that the number of proposed bays is acceptable.

An issue was identified by Council's development engineers as to whether the width of Hughes Street can adequately accommodate loading bays. The applicant has addressed this by submitting plans indicating how Hughes Street may be redesigned to accommodate a 3.1m wide parallel-parking loading bay width, while still maintaining adequate traffic movement within the laneway.

These plans, showing the existing and proposed arrangements, are included in **Attachment I**.

These arrangements are considered acceptable in principle for the purposes of this application. Approval will also need to be obtained from the Local Traffic Committee prior to being implemented.

SECTION 79C ASSESSMENT – Other Statutory Provisions

Planning Agreements

No planning agreements have been entered into, nor has the developer offered to enter into an agreement.

The Regulations

No additional matters arising from the Regulations are relevant in this instance.

Coastal Zone Management Plan

Not applicable.

SECTION 79C ASSESSMENT – The Likely Impacts

Environmental Impacts on the Natural environment

The development is located in an established urban environment and is not in an ecologically sensitive area. The ground is currently sealed throughout the site and there is no natural landscaping or other natural elements.

Council engineers reviewed an amended stormwater plan and advised that the proposal generally satisfies Council's Stormwater Drainage Policy but further details should be submitted with the stormwater plan at the construction certificate stage. This can be addressed by conditions of consent.

The building itself does not generate significant emissions or other air pollutants. The business activity generated by the new uses will, of course, generate emissions due to vehicle movements but this activity is within that which would have been anticipated by Council's strategic framework and development controls.

Traffic and other Impacts on the Built environment

General

The proposed building is within a town centre and broadly matches the scale of and integrates with the surrounding development.

The proposal also intends to improve the management of vehicular and pedestrian traffic, as well as adding some open space area and integrating this with existing plaza spaces. A detailed discussion of the traffic impacts is provided below.

Internal arcades align with pedestrian paths in the surrounding buildings and so add to the walkability and permeability of the precinct.

Visual interest is also created by the façade treatment, which screens the car parking areas.

Traffic

The TIA submitted with the application concludes that:

It is recommended that the existing traffic management arrangement at the junction of Hughes Street and Dutton Lane East be altered to provide a formalised seagull type junction, thereby assisting right turn egress movements from the precinct;

The traffic volumes and efficiency at this proposed intersection arrangement were assessed by Council's development engineers who concluded:

The proposed development will be linked to the multi-storey car park and result in improving circulation of traffic circulation. With provision for an alternative exit, the impact of the proposed development on the adjoining intersection and road network is considered acceptable.

Otherwise, the TIA indicates that the surrounding road network can adequately absorb the additional traffic generated by the development because "the ancillary pedestrian, traffic and servicing management measures associated with the

development are envisaged to improve the general accessibility, safety and efficiency of the overall precinct.”

As a result, it is considered that the proposal is acceptable in regard to traffic considerations.

Social Impacts

The proposed development provides open space areas for informal meeting and gathering, enhances the Freedom Plaza precinct and also proposes a history wall that enhances the significant sense of place already existing in Cabramatta.

It is therefore considered that the proposed development would have a positive social impact.

Economic Impacts

The applicant has provided an Economic Impact Assessment (EIA), prepared by HillPDA (September 2013).

The report concludes:

The proposal would generate an estimated 129 permanent jobs post-construction across the range of retail store types (full and part-time jobs). The Subject Site would service the residents of the surrounding area and passing traffic. The Subject Site will increase shopper convenience through its central location and by providing additional car parking spaces.

Norling Consulting Pty Ltd was engaged to undertake an independent assessment of the submitted EIA to advise whether it can be relied upon. The Norling report advised that the EIA adopts appropriate methodology and addresses the key items required in an EIA. The assessment concludes as follows:

The proposal appears consistent with the ... planning intent for the subject site and for the Cabramatta Town Centre. Cabramatta has transformed to become a successful hub of activity; not only to the locals, but also to a much wider range of Sydney shoppers who want to embrace the local culture, cuisine, fashion, etc. It appears that the proposal would complement and contribute further to the current offering, with the proposed development likely to comprise a similar range of shops – an overall Asian theme with small businesses operated by proprietors from Indo-Chinese and other Asian origins. Given the nature of the proposal and its location within the Cabramatta Town Centre, we expect there to be minimal impacts upon other centres, particularly given Cabramatta’s unique role and function. We are therefore supportive of the proposal, providing that it is designed in such a fashion as to complement existing surrounding facilities (which it does appear to).

It is our view that this Economic Impact Assessment can be relied upon by the assessing authority.

It is therefore considered that the proposal would not have an unacceptable economic impact.

SECTION 79C ASSESSMENT – Suitability of the Site

Assessment of Suitability

The proposed development is suitable for the subject site for the following reasons:

- The site is used as a car park and will continue to provide this facility with additional public car spaces;
- The site is located within the town centre and so the proposed uses complement and are compatible with existing uses in the area;
- The proposed development provides pedestrian pathways, arcades and open space areas that integrate well with the surrounding network;
- The proposed development provides for small scale operations that are consistent with the fabric of the surrounding area.

It is therefore considered that the subject site is suitable for the proposed development.

SECTION 79C ASSESSMENT – Submissions Made

Overview of submissions

A total of 1,085 submissions were made in respect of this application as well as a petition including over 5,000 signatories. Copies of these submissions have been made available on Council's website. Given the significant quantity of these submissions they have not been attached to this report, but can be made available on request.

The wording of the petition sets out the key issues raised in the other submissions, stating as follows:

We, the residents and shoppers, the business/ property owners in Cabramatta CBD, sign this petition:

- 1. We object to Fairfield City Council's Dutton Lane At-Ground Car Park Redevelopment project, as we will end up with more shortage of parking spaces for shoppers – not 74 additional extra parking spaces as – it will worsen the longstanding parking problem in Cabramatta.*
- 2. We consider that by developing about 3,000 square metres of extra retail shops and 500 square metres of office space to fund the project, Fairfield Council has effectively converted publicly beneficial land, turned itself into becoming a landlord of the prime location land for businesses to compete with the existing business and has engaged in conduct of conflict of interest and mismanagement.*

3. *We do not need extra Asian retail shops and extra office space, instead we need large western department stores such as Kmart, BigW, large supermarkets such as Aldi, Coles, large electronic stores to supplement shopping need. We consider FCC's plan to build extra retail shops and offices to fund the project is inappropriate.*
4. *We consider the project will adversely affect the Cabramatta community.*
5. *We request Cabramatta Business Association to represent us to work with Fairfield City Council to plan for appropriate extra car parking, traffic management and town centre improvement.*

These themes were also the most common in the individual submissions.

Of the 1,085 individual submissions, 1,028 included comments to the effect that Cabramatta already had a deficiency of car spaces and that Council needed to address this shortage. A large number of these simply stated that “at least 500+ new car spaces”² were required. Some referred to the fact that they have “asked for years for Council to supply more car parks for the community” and that Council should “do the right thing for once. Help the community and shoppers here in Cabramatta”³. The tone of many submissions was quite strong and many suggested that Council was deliberately worsening the parking situation so as to extract more parking fines.

Forty-one (41) submissions referred to the preference for Western style stores as well as department or supermarket outlets, or alternatively that more Asian shops were a risk to existing businesses.

Two (2) submissions expressed explicit concern about Council’s role and conduct, particularly in relation to its role as a future landlord and the reclassification of the site in 2003 from Community to Operational.

Four (4) submissions raised issues in relation to the management of traffic during construction, while a further nine (9) were concerned about traffic in Cabramatta more generally.

One submission from a local association included detailed reports from a planning and traffic consultant.

The applicant has provided a detailed response to the issues raised in the submissions and this is included as **Attachment C**.

Assessment of Issues

The issues raised in the submissions, including those referred to above, have been addressed, and comments are provided as follows:

Number of Car Spaces

An assessment of the number of car spaces provided as compared to the number required by the applicable DCP has been addressed earlier in this report.

² Submission 2 – name withheld

³ Submission 5 – name withheld

The applicant proposes to satisfy the DCP requirements by providing a total of 166 spaces to replace existing spaces and forty (40) spaces to address the demands generated by the development. Rather than providing a monetary contribution equivalent to the cost of 55 spaces, the applicant will provide a further 69 spaces on site and will be required to pay a monetary contribution for 14 spaces.

This means that 235 spaces on site will be allocated as public car parking, while the further forty (40) spaces will also be publicly available but principally provided to serve the additional demand. This exceeds the parking required to be provided on site under the CDCP, but is considered justifiable for the reasons outlined above, and to some extent responds to the concerns raised in submissions.

Provision of parking instead of more retail

This raises a broader strategic planning issue relating to how the land should be developed rather than the adequacy of the proposal as it stands.

For the purposes of assessing this application the relevant provisions are included in section 79C of the EP&A Act and these should be applied to the assessment of the development application. The proposal is generally consistent with the planning framework for the site and locality. The site is not identified within this framework for the provision of additional public car parking which is planned to occur in other locations within the Centre.

Council's strategic planners confirm that Council's current Development Contributions Plan provides for the construction of a multi-deck car park between Cabramatta Road and John Street, with access from Hill Street. The Plan indicates that access will also be available from Cabramatta Road but this is now unlikely. Nevertheless Council's strategic planners advise:

It is still feasible to construct a multi-deck carpark over the at-grade carpark. With ingress/egress restricted to Hill Street, consideration would need to be given to traffic management arrangements which have not been determined but may include a one-way arrangement or intersection works. A multi-deck design would also need to take account of service access to the rear of the John Street properties that adjoin the existing carpark.

These considerations will be further addressed as part of the Parking Strategy that is in development by Council.

There are currently no funds available for this work and it is not included in Council's current Delivery Program for 2013-2017

Section 94 processes not best to solve parking issues

The applicant proposes to provide 69 spaces on site rather than making a monetary contribution towards the provision of 55.44 spaces elsewhere in the town centre and will be required to pay \$94 contributions for 14 spaces. This effectively provides for the delivery of more car parking spaces within the centre compared to a development proposal that complied fully with the applicable DCP. Further the provision of additional car parking on site as part of the development

will lessen any potential short term impacts on parking supply pending the construction of the multi-deck car park in Hill Street as proposed by the S94 Plan.

Improper Council processes

This issue is not unique to this application as the Local Government Act and Environmental Planning & Assessment Act confer a number of functions to Councils, which sometimes come into conflict with each other. Relevantly for this case, Council's functions include:

- Regulatory functions such as the issuing of approvals;
- Environmental Planning functions, including strategic planning and assessment of applications under the EP&A Act; and
- Corporate functions, which, as a statutory corporation, means that Council "may, for the purpose of enabling it to exercise its functions, purchase, exchange, take on lease, hold, dispose or otherwise deal with property"⁴

Despite comments made in the submissions, Council is able to deal in property, provide that this enables it to exercise its other functions. In this instance, the project has been designed to address significant traffic management issues, particularly those caused by the present loading and servicing arrangements. The re-organisation of servicing arrangements, improvement to Dutton Laneway, upgrade of its intersection with Hughes Street and expansion of the existing public car parking facilities, all relate to the exercise of Council functions.

Council has also ensured that all aspects of this development, including its preparation and assessment of the development application have been kept separate in accordance with a Probity Plan prepared specifically for the project.

The application was prepared by Council's Property Department with the assistance of external consultants. The application was assessed by separate external planning consultants.

Reference was also made to the improper reclassification of the land from Community to Operational. Land reclassification processes are reviewed by NSW Planning & Infrastructure and signed off by the Minister. Each step is reviewed to ensure proper processes have been followed. The reclassification occurred in 2003. One submission indicated that the Community was not adequately consulted in respect of the proposal to reclassify. That public exhibition period, in accordance with the provisions of the EP&A Act, was from 23 July to 22 August 2003. A further exhibition followed between 23 August and 22 September 2003. A public hearing was held on 30 October 2003. An independent assessor determined that the reclassification process had been completed in accordance with the legislation.

Provision of more Western stores

The associated concern that more Asian stores will affect the viability of existing stores is not a relevant consideration under s79C of the EP&A Act.

⁴ Refer s22 of the Local Government Act 1993, which refers to the Interpretation Act 1987 for identification of the functions of statutory corporations.

Building Height

The submission indicates that the proposal exceeds the maximum building height and so should be required to provide 50% of the site as landscaped space.

The assessment of height has been addressed earlier in the report. The variation is considered minor and acceptable in the circumstances.

Suitability of DCP Controls for parking

This is not a matter for consideration. The application should be assessed against the controls that apply at the time.

The parking assessment should rely on parking survey data

The application was supported by a comprehensive TIA, which included a review of the character of the surrounding road network, traffic conditions, traffic controls, car parking, servicing arrangements and pedestrian paths. Additional information in response to these submissions was provided by the applicant, through their consultant⁵, on 24 March 2014.

Ticketing data was obtained from the car park operators, which indicated that Saturday, Sunday and Friday were the peak car park usage periods. This justified the above surveys being carried out on those days. Two traffic volume surveys were undertaken on Friday 23 and Saturday 24 May 2013. The peak occupation of the car park was found to be 94% of total capacity, occurring at midday on the Friday surveyed.

Council's Traffic Engineer also undertook a parking survey on 15 March 2014, between 11.30am and 12.30pm. During this time it was observed that all parking spaces were utilised except between 2 to 14 spaces within the top level of the multi-storey car park. Council's engineer also observed a number of cars circulating and waiting for a space.

Having regard to the above analysis, and the previous conclusion that parking greater than that permitted by the DCP should be allowed on site, this concern is considered to be adequately addressed.

New ramp increases traffic in Dutton Lane

The new ramp provides an alternate exit onto Dutton Lane, which may generate some increased traffic therein. However, the internal design of the car park also directs traffic into the adjoining existing car park and out from the existing exit, which does not require entry into the loop road.

As such the new ramp should be viewed as a secondary, or alternate exit.

Internal design should use B99 not B85 Design car

The applicant has indicated that the B85 Design Car is appropriate but has provided compliant swept path plans using the B99 Design Car.

⁵ Elton Consulting, *Dutton Lane Submissions Report*, 24 March 2014

Loading arrangements unsatisfactory

Concern was expressed about relocating some loading facilities onto Hughes Street.

The applicant responds to this as follows:

The proposed relocation of a portion of the existing loading activities to the periphery of the precinct (Hughes Street) is envisaged to significantly reduce the potential for undesirable and unsafe interaction between these activities and concentrated pedestrian activity within the Dutton Lane precinct.

This response is considered reasonable in that it would be beneficial to split the servicing activities and provide some on Hughes Street.

Seagull traffic arrangements unsatisfactory

The submission argued that the proposed traffic management system on Hughes Street would (a) limit access to private driveways, (b) make pedestrian crossing more difficult, and (c) the length of the merge lane was unlikely to comply with Austroads guidelines. The proposed road access arrangements were reviewed by Council engineers and found to be acceptable subject to conditions.

SECTION 79C ASSESSMENT – Public Interest

This application seeks to improve traffic, servicing, car parking, pedestrian amenity and open space, which is considered to be in the public interest.

The application therefore will improve public assets as well as improving access to and efficiency of private assets.

The creation of the open space in particular will significantly increase opportunities for interaction and meeting and so serves the public interest in a non-material way.

It is therefore considered that the application is in the public interest.

INTERNAL REFERRALS

The application was referred to the:

- Community Health Section
- Traffic Engineers
- Development Engineers
- Building Control Branch
- Landscape/Tree Preservation Officer
- Heritage Advisor

- Environmental Management Coordinator

Responses generally indicated that there were no issues or there were no objections subject to conditions. Council development engineers advised that they considered the proposed car park vehicular ramp grade and clearances did not satisfy the relevant Australian standard but subsequent discussion with Council's Traffic Engineers confirmed that a redesign of the longitudinal grades could occur with no increase in the overall length of the ramps. Accordingly, this issue can also be dealt with by a condition of consent.

DEVELOPMENT CONTRIBUTIONS

Direct (Section 94) Development Contributions Plan 2011

The only development contributions applicable to the subject development relate to car parking in the Cabramatta town centre.

As discussed in the section on car parking above, the development will not pay a development contribution for a discounted proportion of 70% of required car parking (55 spaces). The applicant proposes the provision of a proportion of spaces on site leaving a balance of 14 spaces to be paid as a development contribution.

CONCLUSION

The proposed development, including the demolition of existing car park and associated structures, subdivision of land, construction of a three (3) storey retail, office and car parking building and associated roadworks and open space has been assessed as follows:

- The application was submitted by Fairfield City Council but was assessed by an independent town planning consultant.
- While the site forms part of an existing public car park precinct, relevant planning directions for the site expressed in the LEP, DCP and S94 Contributions Plan identify the site for commercial and retail development. Additional public car parking is identified for an alternate site.
- All activities are permissible in the zone.
- The proposal complies with the statutory planning provisions, does not create unacceptable impacts on the surrounding area and is suitable for the subject site. Variations to the DCP controls are proposed but these have been assessed and are considered justifiable.
- The design and scale of the proposed building is considered to be appropriate for the site and the development will also provide improvements to traffic and pedestrian movement within this part of the centre, and incorporates a new area of public open space that will

- augment the functions of the adjoining Freedom Plaza.
- The proposal was notified to the public in accordance with Council provisions and over 1,000 submissions and a petition with over 5,000 signatories were received. All the issues relevant to the assessment of the application were reviewed and it was determined that none of these issues warrant refusal of the proposal.

Accordingly, the application is recommended for approval, subject to conditions.
