

ITEM NO: 12

SUBJECT: DEVELOPMENT APPLICATION NO. X/508/2007 FOR THE ESTABLISHMENT OF A CAR SERVICING DEPARTMENT TO OPERATE IN CONJUNCTION WITH THE EXISTING MOTOR SHOWROOM ON LOT 2 DP 208478, 435-437 GREAT WESTERN HIGHWAY, FAULCONBRIDGE

FILE NO: X/508/2007

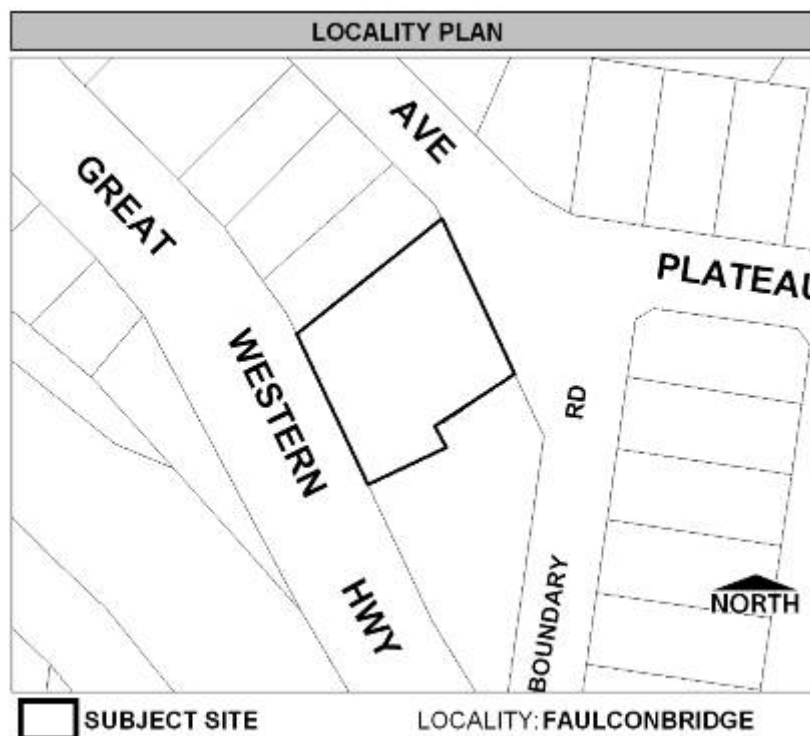
Recommendation/s:

That the Development Application No. X/508/2007 for the expansion of the existing motor showroom and inclusion of a car servicing department on L 2 DP 208478, 435-437 Great Western Highway, Faulconbridge be determined pursuant to S.80 of the Environmental Planning and Assessment Act 1979 by refusing consent to the application, for the following reasons:-

- 1. The development is not permissible in the zone.*
 - 2. The development is not permissible under the existing use provisions of the Environmental Planning and Assessment Regulation, by reason that:-*
 - a) The post sales services and general mechanical repairs conducted by the proposed car servicing department are not ancillary to the use of the premises as a motor showroom;*
 - b) The car servicing department does not fall within the definition of a 'commercial premises' as defined by cl.41(3) of the EPA Regulation and therefore the change of use to incorporate the car servicing department is not permitted within the terms of cl.41(1)(e) which permits a change of use from one commercial premises to another commercial premises;*
 - c) The inclusion of the car servicing department involves a significant intensification of use contrary to cl.41(2)(d); and*
 - d) The development application relates to a premises that has a floor space of 1000 square metres or more, contrary to cl.41(2)(e).*
 - 3. Car parking provisions are inadequate and are likely to generate adverse offsite impacts in relation to parking and related traffic movement.*
 - 4. The workshop use would generate unacceptable conflict with vehicular and pedestrian traffic in the Right-of-way which currently applies across the rear of the site for the purpose of providing for future public access to the commercial premises and the public car park to the north west of the subject site.*
 - 5. The development is incompatible with adjacent residential premises as the inclusion of the car servicing function will lead to the over-intensification of use on the site, which is likely to impact unreasonably on amenity of these adjacent premises by reason of generation of offsite noise, traffic and parking conflicts.*
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Report by Group Manager, Environmental and Customer Services:

Reason for report Requested by two Councillors.
Applicant PGH Environmental Planning
Owner Mr S Penna and Ms R F Fitzpatrick
Application lodged 28-May-2007
Property address 435-437 Great Western Highway, Faulconbridge



Site description The subject land is located at Lot 2 DP 208478, 435-437 Great Western Highway Faulconbridge within the commercial precinct known as “Coomassie”. The land comprises one allotment having a total area of 1998 m² that has dual street frontages of 43.5 metres to the Great Western Highway and 43.5 metres to Plateau Road, and a depth of approximately 46 metres.

The land adjoins a motel to the south-east, an office building to the north-west, residential development to the north-east, and the highway and railway corridors to the south-west.

Existing The site contains a two storey commercial building occupied by the Blue Mountains Motor Group dealership. The highway frontage of the site is used for the display of new vehicles and for customer access and parking. The upper level of the

building fronts the Great Western Highway and contains a vehicle showroom and sales and administration offices.

An upper loft floor contains an additional office and staff amenities. The lower level of the building is built to the boundary of Coomassie Avenue/Plateau Road and contains a garage for staff parking and new vehicle storage, and has a service driveway off Plateau Road. That driveway for service access is burdened with an easement in favour of the Council for the purpose of providing public access across the site the balance of the Coomassie shopping village, which is designed to operate when the linking elements of the access road are operational.

The site operates in conjunction with the Blue Mountains Motor Group's other site at 16 Ferguson Road Springwood. The Springwood site receives bulk deliveries of new vehicles, prepares them for sale and stores them prior to delivery to the Falconbridge site. Car servicing is also carried out in its workshops. No vehicle servicing is carried out at the Falconbridge site.

Proposal

It is proposed to transfer the car servicing activities of the Springwood site to 435-437 Great Western Highway Falconbridge to enable the dealership and servicing department to operate jointly from the one site.

The applicant argues that the proposal is a simultaneous expansion of existing use and change of that use. The expansion of use involves the establishment of an ancillary component to the motor showroom comprising pre-sale vehicle inspections and modifications, and then change of this use to another commercial use comprising post sale servicing and general mechanical car repairs. The applicant contends this is permissible under recent changes to existing use provisions in the Environmental Planning and Assessment Act and Regulation.

The proposal involves the following changes to the present development:-

- Introduction of a car repair workshop within the garage for the purpose of vehicle inspections and modifications prior to sale, together with post sale vehicle servicing and general mechanical repairs of other vehicles
- Use of part of the upper level floor space as an administration and sales area for the service department.
- Deletion of the new vehicle storage area from the garage and the site
- Relocation of staff car parking spaces from the garage to

- the front of the building
- Reduction of the outdoor vehicle display area from 45 cars to 35 cars
- Reconfiguration of the visitor car parking area and outdoor display areas at the front of the building to include staff parking.
- Hours of operation 7.30 am to 5.30 pm Monday to Friday, 8.00am to 12.30 pm Saturday and closed Sundays and public holidays (car servicing department only).

No additions or structural alterations to the building are proposed.

Copies of the plans, showing the proposed development, are provided in Attachment 1 to this Report.

Background

The current development is the result of a development application that was the subject of an appeal to the Land and Environment Court in May 2000, although it was ultimately approved by the Council on the basis of amended plans. The amendments aimed to address the original concerns that the proposal was an overdevelopment of the site, insufficient car parking, and conflicts with the public access requirements across the rear of the site and lack of facilities for receipt of new vehicles.

Relevant local environmental planning instruments

Zoning – Village Neighbourhood Centre under Local Environmental Plan 2005.

Development Control Plan – Better Living DCP.

Notification

The application was advertised for a period of 14 days from 20 June 2007 to 4 July 2007 in the Blue Mountains Gazette, as well as written notification to adjoining and nearby properties.

One combined submission was received from the owners of two residential properties in Plateau Road located opposite the site. The submission is very detailed and raises concerns that the development is not operating in accordance with the current consent, in regard to the use of Plateau Road for the delivery of vehicles by trucks, and overflow parking beyond the boundaries of the site, which are prohibited by the existing consent.

Photographs have been provided with the submission, which show a large delivery truck obstructing the westbound lane of Plateau Road while unloading new vehicles and cars parked in the road behind the premises.

The objectors are concerned that the site is currently operating

above capacity and that any increase in intensity of use on the site will further impact on residential amenity. Noise, privacy and traffic safety concerns are raised.

The issues raised in the submission are discussed in the body of the report.

Issues

Assessment issues: -

Whilst Environmental Planning and Assessment Act 1979 (EPA Act) s79(C) heads of consideration apply, provisions of a planning instrument that detract from the operation of clauses 41-46 in the Environment Planning and Assessment Regulation 2000 (the Regulations) (which provisions enable consent to be granted for the expansion, intensification, alteration, rebuilding existing uses), do not apply.

Therefore, where existing use rights are preserved the planning objectives and standards that limit the size of a proposal have no application. The standards within an instrument may provide an indication of potential impacts arising from the proposal, the significance of which must be considered under s79(C) EPA Act.

Whether or not existing use rights have been preserved in relation to the existing site, and whether the new proposal complies with the provisions in the Regulations that control changes to an existing use, are fundamental matters that must be determined in the first instance before moving to consider the merit of the proposal.

1. Permissibility and Existing Use Provisions
2. Parking
3. Traffic management

Resident issues –

1. Parking and traffic management
2. Intensity of use
3. Privacy
4. General compatibility

Discussion of Issues

1. Permissibility and Existing Use provisions

This application proposes the expansion of the existing motor showroom use to include a motor vehicle servicing department, the components of which remain vague despite requests for clarification. From analysis of all material provided it appears that the proposed operation includes inspection of new vehicles, installation of modifications and accessories, and all

motor vehicle servicing for the dealership, including general mechanical repairs to vehicles which have not been sold through the showroom. This part of the business is currently conducted on a separate site in Ferguson Road at Springwood.

This proposal falls at least in part within the definition of a car repair station, which is a prohibited use the relevant Village – Neighbourhood Centre zone. Car repair stations are relevantly defined thus:

car repair station means a building or place used for the purpose of carrying out repairs to motor vehicles, including the fitting, repair or replacement of tyres to motor vehicles ...

Given that car repair stations are not permissible in the zone, the application relies upon existing use right provisions in clause 41 of the Environmental Planning and Assessment Regulation 2000 (the Regulations) for its permissibility.

The applicant argues that the inclusion of the motor vehicle servicing department is permissible because it is ancillary to the existing motor showroom and therefore constitutes an expansion of that existing use. The existing motor showroom has ‘existing use rights’ under Division 10 (Existing Use) of Part 4 of the Environmental Planning and Assessment Act, as it is not a permissible use in the Village – Neighbourhood Centre zone. It is authorised to continue to operate under Development Consent X99/1957.

The following elements of clause 41 of the Regulations are particularly crucial to the determination of the matter before the Council:

Cl.41(1) An existing use may, subject to this Division:

(a) be enlarged, expanded or intensified, or

..

(d)...

(e) if it is a commercial use- be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or

(f) if it is a light industrial use - be changed to another light industrial use or a commercial use (including a commercial use or a light industrial use that would otherwise be prohibited under the Act)

Cl.41(3) defines the terms ‘commercial use’ and ‘light industrial use’ using references to definitions that in turn are found in the Standard Instrument (LEPs) Order 2006. Relevantly for the purpose of this report, a ‘business premises’ means a building or place at which an occupation, profession or trade (other than an industry) is carried on for the provision of services direct to members of the public on a regular basis.”

In brief, the applicant contends that the current development is either ancillary to the existing motor showroom and the development is therefore permissible under clause 41(1)(a) of the Regulations, which permits expansion of the existing motor showroom use, or if that is not agreed in its entirety, that that part of the development relating to post sale servicing and general mechanical car repairs is a change of one commercial use to another commercial use, in accordance with cl.41(1)(e).

However, the applicant’s arguments are not agreed. Firstly, the scale and nature of the motor vehicle servicing, particularly as it relates to the servicing of cars whether or not those cars

were sold through the dealership, is considered to be an independent use and not ancillary to the motor showroom.

Secondly, the argument that the operation is otherwise a change of one commercial premises to another commercial premises is also not agreed, as the business premises element of the commercial premises definition upon which this proposal relies, specifically excludes a trade that is also an industry. Car repair services are considered to be an industry within the terms of the definitions applicable to this part of the Regulation and the change of use to a car repair station is therefore not authorised under the existing use provisions of the Regulation.

Furthermore, cl.41(2) of the Regulations also places limits upon changes to existing use as follows:

- 41(2) However, an existing use must not be changed under subclause (1) (e) or (f) unless that change:*
- (a) ..., and*
 - (d) does not involve a significant intensification of that existing use, and*
 - (e) relates only to premises that have a floor space of less than 1,000 square metres.”*

The applicant argues that a reduction in outdoor display area from 45 to 35 vehicles offsets the additional use and there is no net intensification of use. The applicant also contends that the building has a floor space of less than 1,000 square metres, and cl.41(2)(e) is satisfied.

This argument is not agreed. A reduction of 10 display vehicles is not equivalent to the proposed additional inclusion of three workbays and associated administration and sales, and its corresponding car parking demand, additional traffic generation and additional impacts on adjoining residential premises.

The floor space of the building also exceeds the allowable 1,000 square metres threshold in Clause 41(2)(e). “Floor space” includes the floor area of the whole building, not its gross floor area. The gross floor area upon which the applicant relies as “floor space” is approximately 810 square metres, but the total floor area or floor space is approximately 1711 square metres, as illustrated in Table 1 and the following discussion in relation to the gross floor area and car parking.

LEP and DCP development standards and likely impacts of the development

As discussed above, where existing use rights are preserved the planning objectives and standards that limit the size of a proposal have no application. The relevant standards within an instrument, however, may provide an indication of potential impacts arising from the proposal, the significance of which must be considered under s79(C) EPA Act

It is noted that in the locality management provisions of the Village - Neighbourhood Centre zone in Schedule 1 Part 13 of LEP 2005, the floor space ratio provision provides for a maximum development density of 0.5:1 (in subclause 2(3) in Division 1 of Part 13). The floor areas, gross floor areas and floor space ratios of the existing and proposed uses are shown in the table below. In this instance, a consideration of these criteria provides some assistance in understanding the potential intensification of this use and its consequent impact on the surrounds.

While no physical alterations are proposed to the building, the proposal increases the gross floor area and floor space ratio as defined in Schedule 8 of the LEP, due to the change in use in part of the building. The gross floor area definition in LEP 2005 excludes garaging required to meet the requirements of the Council for car parking, internal access to the garage and storage areas. The change of use of the garage consequently increases the gross floor area and floor space ratio of the building as set out in Table 1.

The applicant has excluded parking spaces numbered 20 to 30 in the workshop from their calculation of gross floor area. It is considered however that parking of vehicles in this location would impede the proper functioning of the workshop and the parking spaces are not likely or practical for use for the stated purpose. This area is considered to be an active part of the workshop area and should be included in the gross floor area calculation.

The following Table illustrates the impact of these assumptions. The proposed development would significantly exceed the maximum floor space ratio permitted in the Village - Neighbourhood Centre zone, which indicates an intensification of use and the impacts that may arise from that intensification.

Table 1

	<i>Existing (as approved in DA X99/1957)</i>	<i>Proposed (With Car Servicing Department, in DA X/508/2007)</i>
Land area	1998 m ²	1998 m ²
Floor Area of Existing Building	1711.62 m ²	1711.62 m ²
Gross Floor Area Existing Building <i>(as defined in LEP 2005)</i>	810.84 m ²	1225.12 m ²
Floor space ratio <i>(maximum permitted 0.5:1)</i>	0.4:1	0.61:1

Concluding statement on permissibility

The applicant has given to the Council a copy of its legal advice on the permissibility issue. The Council has also received advice on that issue. This proposal has been considered in accordance with the relevant provisions of the Environmental Planning and Assessment Regulation 2000, including clause 41, upon which the applicant must rely to establish that the Council has power to approve the proposed introduction of a car servicing department to the site.

Having regard to all the information that is currently available, it is considered that clause 41 of the Regulation does not permit the change of use that the applicant seeks, with the result that the application cannot be approved.

2. Parking

The existing development provides 12 staff parking spaces in the garage and 9 customer spaces at the front of the building, as approved in Development Application X99/1957. At the time of consideration of that original application, the Council recognised that the site had limited capacity for on site parking, and stacked parking for 12 staff cars in the garage was accepted in view of those limitations.

With the introduction of the car servicing workshop, and reduction in vehicle display area, the number of parking spaces required in D9.9 of the Better Living DCP increases to 33, as shown in the table below.

Table 2

Gross floor areas	Better Living DCP (Table 3 in Part D9)	Spaces required
Office/sales 403.63 m ²	1 space/40 m ²	10
Motor showroom display 743 m ² (indoor and outdoor)	1 space per 150 m ²	5
	Plus 6 spaces per work bay	18
		TOTAL 33

The 33 parking spaces proposed by the application are located over the site as follows:-

- 14 spaces for staff and customers in a three tier stacked arrangement at the front of the building (spaces 1 to 14),
- 5 spaces for customers, including a space for disabled persons, adjacent to the vehicle display area (spaces 15 to 19), and
- 14 spaces in a stacked arrangement for the car workshop (spaces 20 to 31).

The parking arrangements for customers and staff are not supported for the following reasons:-

1. Several spaces are not usable. For example, space 4 contains a pole supporting the roof of the existing undercover display, spaces 31, 32 and 33 cannot double as workshop hoists, and spaces 23, 25, 28 and 30 cannot be manoeuvred into.
2. The three tier stacked arrangement for staff and customers (Spaces 1 to 14) is impractical in terms of car shuffling and conflict with the traffic flow entering from the highway and within the driveway.
3. Spaces 20 to 22 depend on spaces 23 to 25 being unoccupied or car shuffled.
4. Spaces 23 to 33 would impede the proper operation of the workshop, and are unlikely to be used for their intended purpose.
5. The parking arrangement is not designed to AS2890 *Parking facilities – off street parking*, which the Better Living DCP specifies as the minimum design standard.
6. The number of stacked parking spaces exceeds the number approved in D99/1957.
7. Inadequate on site parking is likely to result in overflow parking into the street.

The stacked parking arrangement at the front of the site is not supported in the advice received from the Roads and Traffic Authority, because of the conflict between customer and staff traffic movement.

With the introduction of the proposed additional use into the garage, the site has a capacity for a maximum of 12-15 car parking spaces only, designed to AS2890. The proposed reconfiguration of the parking arrangement is not workable, and is therefore not supported.

3. Traffic Management

The approved traffic management plan for the motor showroom is as follows:-

- Condition 23(b) of Development Consent D99/1957 prohibits the unloading of vehicles on the site or in the street (to comply with this condition, new vehicles are delivered to the Ferguson Road site and prepared for sale, then driven individually to the Faulconbridge site).
- Condition 22 prohibits all vehicles associated with the site from parking outside the site boundaries.
- Customer access is from the Great Western Highway to the parking area located at the front of the premises. Staff parking is in the garage having access from Plateau Road. Traffic egress from the motor showroom to the highway occurs over a Right-of-carriageway at the front of the land of the adjoining motel site at 429 Great Western Highway.

The traffic management plan for the car servicing department is proposed as follows:-

- Customers leave and collect their vehicles from the parking area fronting the Great Western Highway, as there is no direct vehicle access on the site between the Great Western Highway and Plateau Road frontages. Vehicles are driven to and from the service workshop by service staff via the local roads. Eighteen to 25 vehicle trips per day are estimated for this purpose.

The remote location of the customer parking area from the car servicing department, the stacked car parking arrangement, and dependence upon the local road system for movement between the areas is not a sustainable method of management. This is likely to result in the parking of vehicles in the streets adjoining the site. There is already a history of overflow parking off the site for the motor showroom.

In Development Application X99/1957, the Ferguson Road site was identified as the bulk delivery point for new vehicles, which are prepared for sale and then driven individually to the Faulconbridge site. The current development application does not state what the alternative arrangements would be if the car servicing department relocates to Faulconbridge and the Springwood site closes.

Conflict with Right-of-Way Access

The rear of the land contains an easement in DP 1035779 which provides a 6.5 metre wide (two way) Right-of-Way linking with future Rights-of-Way or dedicated road on adjoining properties to provide through access to the public carpark at the rear of the commercial premises to the north west of the site.

The ROW is located parallel to and inside the rear boundary and the garage is built to the easement boundary, with the garage doors opening directly onto the easement. The shuffling of cars on and off hoists and the movement of cars shown to be parked in front of those hoists will require regular movement of cars within the easement which will work against the safe and effective use of the easement for primary access to other sites.

The existing ROW was implemented in response to the requirement for public access across this and other Coomassie Village sites contained in LEP 4 and DCP 15. These requirements have been applied to other sites governed by those provisions. Council is presently pursuing finalisation of outstanding action to secure the remaining links in the rights-of-way/road dedication, which will ultimately provide public access across the rear of all of the commercial lots in the Coomassie shopping centre.

This proposal would intensify the activity adjoining and across the ROW, generating additional undesirable conflict with vehicles and pedestrians. This is an issue that was specifically considered by the Council prior to the granting of consent to the current arrangement. The applicant had responded to concerns about potential conflict with ROW that were raised in relation to the original application, by advising that action to locate only staff car parking in the basement adjoining the ROW would manage and reduce any potential conflict to acceptable levels. The Council approved the application on that basis.

The current development application steps away from that earlier commitment to manage the potential for conflict with ROW use. The resultant increase in conflict with vehicles and pedestrians is considered to be unacceptable. Furthermore, given the restriction that has been placed upon other sites in the Coomassie Village centre in relation to the provision of public access and the public interest in retaining that arrangement, removal of ROW is not considered to be an appropriate option.

The size and layout of the site is constrained in terms of achieving a workable traffic management plan and the application cannot therefore be supported.

Submissions- Resident Issues

1. Parking and Traffic Management

The objector submissions raise concerns about the history of overflow parking into Plateau Road and Boundary Lane, and the regular unloading of vehicles in Plateau Road in front of residential premises and close to a bend in the road, contrary to the motor showroom consent. This activity causes problems with access for residents and visitors to these properties.

Council's Development Monitoring Officers have in the past and on more recent occasions taken action in response to complaints about overflow parking to the rear of the site, use of the designated parking areas for the display of new vehicles both at the front of the site and under the building, and unauthorised unloading of delivery trucks in Plateau Road, in contravention of the Consent. Unauthorised parking has also occurred on the adjoining motel site in the right-of-carriageway intended for traffic egress from the motor showroom to the highway.

As discussed above, the existing parking arrangement for the motor showroom does not comply with AS2890, and it is not surprising that overflow parking is occurring outside the site boundaries. Any intensification of use on the site is likely to exacerbate the problem.

The increase in traffic movement from the workshop is also likely to impact on the amenity of the residential area.

2. Over Intensification of Use

The objector submission raises concern that intensification of use on the site will introduce additional non-residential traffic movement and off site parking into a residential area.

As discussed above, inadequate on site parking is likely to result in overflow into the surrounding streets. The applicant proposes to offset the intensification of use by reducing the outdoor display area from 45 vehicles to 35 vehicles, however this is not considered to be a directly proportionate reduction given the additional floor space use and increased parking demand. The introduction of an additional use with no equivalent reduction in capacity of the existing is not supported.

3. Privacy

The submission raises concern that the car service workshop would affect privacy and depreciate property values. While the presence of the workshop may seem intrusive to adjacent residential premises by nature of its non-residential use, its location does not directly overlook the private open space or living areas of nearby dwellings. It is considered that the development would not significantly impact on the privacy of adjoining premises.

4. General Compatibility

The submission raises concerns that the increase in traffic and the operational noise from the car repair workshop will cause a noise nuisance to residential premises due to its close proximity.

The proposed workshop is located approximately 35 metres from the nearest residential property boundary, and immediately adjacent to the accommodation component of the motel at 429 Great Western Highway. Motor showroom and car repair stations are not compatible uses with residential uses, and are limited to the Employment General zone in LEP 2005. There is a definite potential for noise nuisance from electrical equipment and other activities on the residents. Noise and traffic impacts on residential premises have not been adequately addressed in the application. The applicant declined to provide additional information to address this matter.

Conclusion

The proposed additional use is not permissible in the zone and it is not considered that it falls within the provisions in the Regulations which enable changes of use in certain circumstances. Therefore the development application cannot be recommended for the granting of consent.

Notwithstanding the issue of permissibility, the site is not considered to be suitable for the intensification of development that would occur as the result of the implementation of the

proposal. The existing motor showroom is currently operating at or beyond the capacity of the site. The site does not have the capacity to accommodate a car servicing workshop, despite a small reduction in motor showroom space, due to the higher parking demand for this type of use, the unworkable car parking arrangements that have been proposed and the increased traffic conflicts that will be generated between the use of the workshop and the future use of the existing ROW, and between the use of the parking at the front of the site and vehicles entering from the Great Western Highway.

The removal of the current ROW that operates in favour of the Council is not considered to be an option. That ROW was a condition of the original development application and requirement of the LEP and DCP. It was imposed to provide for the proper functioning of the Coomassie village and it provides an essential access for the development of the adjoining land, particularly if that development proceeds ahead of the finalisation of legal and practical access arrangements over land to the north west.

Accordingly, it is recommended the application be refused for the reasons set out in the recommendation.

There is also the issue as to how delivery of new vehicles will be arranged, if as has been suggested, the aim is ultimately to close the 16 Ferguson Road Springwood. The applicant has declined to provide advice regarding this matter. The motor showroom site does not have capacity to accommodate large delivery vehicles, hence the current and ongoing need for the Ferguson Road site until other suitable arrangements are made and consent obtained for those arrangements as necessary.

* * * * *

Attachments: Plans – 3 pages

