

## JOINT REGIONAL PLANNING PANEL (Sydney West)

JRPP No	2014SYW112
DA Number	DA0289/14
Local Government Area	Ku-ring-gai
Proposed Development	Demolish existing & construct new church hall & rectory
Street Address	3A Hill Street Roseville and 1 Bancroft Avenue, Roseville
Lot & DP	Lots 2, 3 and 4 in DP 1046733
Applicant	St Andrews Anglican Church Roseville
Owner	Anglican Church Property Trust Diocese of Sydney
Number of Submissions	Original proposal: 20 in support, 5 objections Amended proposal: 3 in support, 2 objections
Regional Development Criteria (Schedule 4A of the Act)	The proposed place of public worship has a CIV of over \$5 million and falls into the category of 'private infrastructure and community facility'
List of All Relevant s79C(1)(a) Matters	SEPP 55 – Remediation of Land SEPP (Sydney Harbour Catchment) 2005 SEPP (Infrastructure) 2007 Ku-ring-gai LEP (Local Centres) 2012 Local Centres DCP Development Contributions Plan 2010
List all documents submitted with this report for the panel's consideration	Attachment A – Pre DA Report Attachment B – Letter to applicant Attachment C – Heritage Consultant comments Attachment D – Clause 4.6 variation Attachment E – Plans and elevations Attachment F – Sydney Trains letter
Recommendation	Refusal
Report By	Jonathan Goodwill – Executive Assessment Officer

### Assessment Report and Recommendation Cover Sheet

#### Legislative requirements

<b>Zoning</b>	R2 Low Density Residential under Ku-ring-gai LEP (Local Centres) 2012
<b>Permissible Under</b>	Ku-ring-gai LEP (Local Centres) 2012
<b>Relevant legislation</b>	Environmental Planning and Assessment Act 1979 SEPP 55 – Remediation of land SEPP (Sydney Harbour Catchment) 2005 SEPP (Infrastructure) 2007

**Integrated Development**      No

## **BACKGROUND**

The JRPP considered an assessment report which recommended refusal of the application on 8 July 2015. The resolution of the JRPP was:

*The decision of the Panel is to defer determining the application until a response has been received from Sydney Trains and will take its own legal advice in relation to FSR issues. The resolution today does not imply one way or the other that there will be an approval or refusal. Once the responses have been received the matter will be considered again by the Panel at a public meeting.*

Sydney Trains provided their concurrence to the application on 21 October 2015. The assessment report has been updated in response to this information.

## **PURPOSE FOR REPORT**

To determine Development Application No. 0289/13 for the demolition of the existing church hall and dwelling house and construction of a place of public worship at 3A Hill Street and 1 Bancroft Avenue, Roseville.

The Joint Regional Planning Panel (JRPP) is the consent authority as the proposed place of public worship is captured by the development category 'private infrastructure and community facilities' pursuant of Schedule 4A Clause 6 of the Environmental Planning and Assessment Act, 1979 and as the CIV for this development exceeds \$5 million (\$9.81 million).

## **HISTORY**

### **Pre DA Meeting**

On 9 October 2013, a Pre DA consultation to discuss a proposal for 'demolition of church hall and dwelling house, construction of new church hall, basement car park and two dwellings' was held. The following concerns were identified by Council officers:

- permissibility
- non-compliant and excessive floor space ratio
- non-compliant and excessive building height
- inadequate setbacks
- inadequate landscaping
- privacy impacts
- heritage impacts
- inadequate car parking

The applicant was advised that the proposal needed to be redesigned to address these issues.

The Pre DA report is **Attachment A**.

## Current Development Application

1 August 2014	Development application lodged
15 August 2014	Notification commences
29 September 2014	Applicant is sent a request for information from Sydney Trains
14 November 2014	Applicant is sent a copy of the Heritage Assessment prepared by Council's Heritage Consultant
20 November 2014	<p>Applicant is sent a letter advising that the application is unsatisfactory and that the following issues are required to be addressed:</p> <ul style="list-style-type: none"> <li>• permissibility</li> <li>• floor space ratio</li> <li>• gross floor area calculation</li> <li>• building capacity</li> <li>• privacy</li> <li>• setbacks</li> <li>• landscaping</li> <li>• engineering</li> <li>• heritage</li> </ul> <p>The applicant is invited to submit amended plans within 21 days or withdraw the application. Council's letter to the applicant is <b>Attachment B</b>.</p>
15 December 2014	Meeting with applicant to discuss issues identified in assessment letter. Applicant advises that amended DA would be submitted by January 2015.
4 February 2015	Applicant is requested to provide an update on the status of the amended DA. The applicant advises that the plans would be ready by 11 February 2015.
6 February 2015	JRPP briefing takes place
10 February 2015	Applicant requests a meeting with Council staff on 20 February 2015. The Applicant is advised that a meeting can be arranged but the plans must be submitted before the meeting to allow for informed feedback. Applicant states that they would prefer to provide the plans at the meeting. Applicant is advised that plans must be submitted before the meeting.
19 February 2015	Applicant is requested to provide an update on the status of the amended DA.
20 February 2015	Applicant e-mails amended plans and requests a meeting with Council staff.
4 March 2015	Applicant meets with Council staff to discuss the amended plans.
5 March 2015	Applicant is reminded that information requested by Sydney Trains and sent to the applicant on 29 September 2014 is still outstanding.
6 March 2015	Applicant confirms that they are aiming to submit the amended DA by 18 March 2015.
13 March 2015	Applicant advises that the amended DA will be submitted shortly after 18 March 2015
30 March 2015	Applicant submits amended DA

20 April 2015	Amended DA notified for 14 days
10 June 2015	Additional information requested by Sydney Trains is submitted
10 August 2015	Sydney Trains is asked for an update on their review of the additional information
31 August 2015	Sydney Trains is asked for an update on their review of the additional information
3 September 2015	Sydney Trains is asked for an update on their review of the additional information
3 September 2015	Sydney Trains advises that the assessment of the information has been delayed for various reasons
9 September 2015	Sydney Trains advises that a deferred commencement concurrence will be issued by 13 September 2015
30 September 2015	Sydney Trains is asked for an update on their review of the additional information
1 October 2015	Sydney Trains advises that the concurrence letter has been prepared and is waiting to be signed off
21 October 2015	Sydney Trains provides their concurrence in accordance with SEPP (Infrastructure) 2007

## THE SITE

Zoning:	R2 Low Density Residential
Height:	1 Bancroft Avenue – 9.5m 3A Hill Street – 11.5m
Floor space ratio:	1 Bancroft Avenue – 0.34:1 3A Hill Street – 0.85:1
Site area:	3287m <sup>2</sup>
Easements/rights of way:	the site is located above the Chatswood to Epping rail tunnel
Heritage Item:	No
Heritage conservation area:	Yes: Lord Street/Bancroft Avenue Heritage Conservation Area
In the vicinity of a heritage item:	Yes: 3 Bancroft Avenue
Bush fire prone land:	No
Endangered species:	No
Urban bushland:	No
Contaminated land:	No
Biodiversity land:	No
Riparian land:	No

## THE SITE AND SURROUNDING AREA

No. 3A Hill Street is comprised of two allotments situated on the south-west corner of Hill Street and Bancroft Avenue. The site has a frontage of 34.24m to Bancroft Avenue, corner splay of 6.79m and frontage to Hill Street of 44.785m. The site area is 2080m<sup>2</sup>. The site contains a church and a church hall. The church was constructed in 1935 in the Interwar Gothic Style. The exterior walls of the church are red face brick with a sandstone base. The church is located in the northern part of the site and extends across the site frontage to Bancroft Avenue. The church has a steeply pitched tiled roof. The church has three levels, a basement, ground floor level and a gallery level. The church has a height of 12.13 metres. The church hall was constructed in c. 1958. The church hall is located behind the church and has a height of 11.23 metres. The setback of the church from the southern boundary is

approximately 1 metre. The site is zoned R2 Low Density Residential and subject to a maximum height limit of 11.5 metres and a maximum floor space ratio of 0.85:1.

No. 1 Bancroft Avenue is a rectangular allotment with a frontage of 22.86m, eastern boundary of 53.58m and western boundary of 52.42m. The site area is 1207m<sup>2</sup>. The site contains a two storey dwelling house (rectory). The site is zoned R2 Low Density Residential and subject to a maximum height limit of 9.5 metres and a maximum floor space ratio of 0.34:1. The site contains a c.1980s two storey dwelling house. The dwelling has medium coloured brick walls and a hipped roof with terracotta tiles. The garage of the dwelling house appears to have been converted into habitable rooms. The front setback area of the dwelling is landscaped, however it is currently used as an informal parking area. As a result of the sloping topography of the site, the northern elevation of the building has a height of two storeys and the southern elevation has a height of one storey. The dwelling has setbacks of 9.5 metres from the front boundary, 21.5 metres from the rear boundary, 2.2 metres from the eastern side boundary and 4.5 metres from the western side boundary. Consistent with the character of the other dwelling houses in the Lord Street/Bancroft Avenue Heritage Conservation Area, the backyard of the dwelling contains lawn and canopy trees. The survey plan identifies 4 x trees with a height of 6-9 metres and 5 x trees with a height of 11-15 metres.

The combined area of the two allotments is 3287m<sup>2</sup>. The site is located in the Lord Street/Bancroft Avenue Heritage Conservation Area. The Conservation Area is characterised by intact streetscapes of Federation Queen Anne style housing. The majority of the allotments in Bancroft Avenue are zoned R2 Low Density Residential. Roseville College is located 220 metres to the east of the site, Roseville College is zoned SP2 Infrastructure. Roseville College is not located inside the Lord Street/Bancroft Avenue Heritage Conservation Area.

The adjacent dwelling to the north-east, 3 Bancroft Avenue, is a single storey double brick dwelling designed in the Queen Anne (Federation) style and identified as a heritage item in Ku-ring-gai LEP (Local Centres) 2012. The adjacent building to the south, 3 Hill Street, is a two storey residential flat building. The building has a setback of 7 metres from the northern boundary shared with 3A Hill Street and 1 Bancroft Avenue.

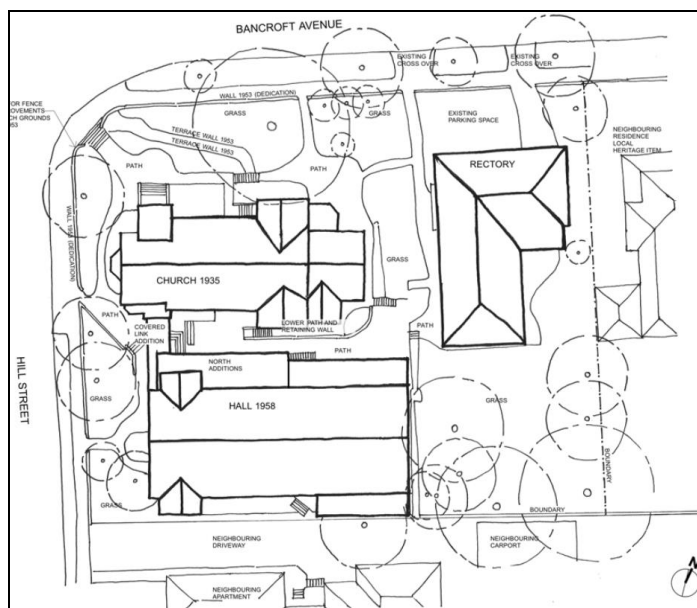


Figure 1 - Existing site plan (source: heritage impact statement)

## **THE PROPOSAL (AS AMENDED)**

- demolition of the existing church hall at the rear of 3A Hill Street
- demolition of the rectory (dwelling house) at 1 Bancroft Avenue
- removal of 14 trees
- excavation and construction of a basement car park comprising 38 spaces with access from Bancroft Avenue;
- alterations and additions to the church including construction of a new interconnected church and hall, incorporating:
  - worship space and multipurpose hall with a seating capacity for 500 people (increased capacity of 226 people over existing);
  - lobby / reception area;
  - meeting rooms;
  - offices;
  - Sunday school spaces;
  - counselling rooms;
  - residential apartment (for ministry staff); and
  - kitchen and bathroom facilities.
- construction of an elevated courtyard area;
- construction of a new two storey rectory building; and
- associated landscaping works.

## **COMMUNITY CONSULTATION**

In accordance with the requirements of the Local Centres DCP, owners of surrounding properties were given notice of the application from 15 August 2014 to 15 September 2014. In response to the notification, 20 submissions in support of the proposal and 5 submissions objecting to the proposal were received.

The submissions in support of the proposal were from:

1. Mr G W Grimes and B M Grimes, 83 Boundary Street Roseville NSW 2069
2. Dr A Eyland, 57 Abingdon Road Roseville NSW 2069
3. Mr N & Mrs D A Woodforde, 30 Shirley Road Roseville NSW 2069
4. Mr P G Hill, 99 Shirley Road Roseville NSW 2069
5. Ms A Robinson, PO Box 20 North Sydney NSW 2059
6. Mr A N Lamb, 43 Abingdon Road Roseville NSW 2069
7. Ms J Dinan, 99 Shirley Road Roseville NSW 2069
8. Mr G N Evans, 14 Lord Street Roseville NSW 2069
9. Mr N T Kallukaran, 46 Moore Street Roseville NSW 2069
10. Mrs B Y Ching, 30 Bancroft Avenue Roseville NSW 2069
11. Mr Neel Thomas, 1/19 21 Pacific Highway Roseville NSW 2069
12. Mr A Wong-Too-Yue, 153 Ashely Street Roseville NSW 2069
13. Ms J Rixon, 11 The Grove Roseville NSW 2069
14. Ms M Hatcher, no address provided
15. Ms D Wong, no address provided
16. Mr C Ling, no address provided
17. Ms M Moulton, no address provided
18. Dr D Moore, no address provided
19. Mr D & Mrs S Lim, no address provided
20. Ms F Taylor, no address provided

The objections to the proposal were from:

1. Mr S Ross and Ms A Hargreaves, 3 Bancroft Avenue, Roseville 2069
2. Mr B F Meppem, 9 Bancroft Avenue Roseville NSW 2069
3. Mr N J Douglas-Morris, 4/3 Hill Street Roseville NSW 2069
4. The Archbold Estate, Roseville Inc., PO Box 537 Roseville NSW 2069
5. Dr M Ashwell, 159A Archer Street, Roseville NSW 2069

The issues identified in the submissions included:

***The traffic survey is not valid as it was carried out on the same day as the City to Surf***

If the City to Surf did have an impact on the survey it is likely that the impact would have been a reduced availability of on-street parking.

***The specific uses for the worship space and hall are unclear***

The configuration of the building allows for the worship space and hall to be used as one space or two separate spaces. The specific uses proposed for the site are detailed in the usage schedule attached to the acoustic report. The proposed uses are consistent with those likely to occur at a place of public worship.

***Whether the use of the two dwelling houses can be restricted to only ministers permanently residing and working at the church***

Dwelling houses are a permissible use in the zone and there is no requirement for their use to be restricted to persons/households associated with the church.

***The total capacity of the worship space and hall is unclear***

The application documentation states that the capacity of the worship space and hall is 500 people.

***The hall does not have any external windows or emergency escape doors***

The number and design of emergency exits is not an issue relevant to the assessment of a Development Application. These issues are addressed at construction certificate stage in accordance with the requirements of the National Construction Code.

***The application documentation should not include comparisons with the Pre DA scheme as this information is not available for public viewing***

The content of the application documentation is a matter for the applicant to determine.

***The access to the basement carpark is akin to a large scale commercial premises and it not compatible with the heritage conservation area***

The amended proposal incorporates a sliding solid screen across the entry of the basement carpark. The screen prevents the entry from reading as an entry to a commercial carpark.

***The excavation for the basement carpark has the potential to damage a retaining wall on the boundary of 3 Hill Street***

If approval of the application were recommended, a condition requiring the preparation of a dilapidation report for adjacent properties would be required.

***The car parking assessment should be based on the total capacity of the premises rather than the increase in capacity***

The proposed development is for the redevelopment of the site and an expansion of the existing use, accordingly the parking assessment is based on the increased capacity of the premises.

***The 59m southern elevation has the appearance of a warehouse and will have an unacceptable impact on the adjacent apartment building at 3 Hill Street, including a loss of existing landscape views***

The amended plans have reduced the length of the southern elevation to approximately 53m. The southern elevation has been articulated by a 1.5m deep indentation at the first floor level (southern wall of meeting room 01). Concern remains that the extension of the building into the backyard of 1 Bancroft Avenue and the subsequent loss of landscaped open space will have an unacceptable impact on the Heritage Conservation Area and the landscaped outlook currently available to the apartments at 3 Hill Street.

***The setback of the southern elevation is less than existing setback and this will result in increased overshadowing of the apartments at 3 Hill Street***

The windows on the northern elevation of 3 Hill Street have a north north-west orientation. The shadow diagrams show that the development will not reduce solar access to the apartments at 3 Hill Street to less than 3 hours of the winter solstice.

***Excessive tree removal***

The arborist report identified 35 trees, 15 located outside the site, 12 located at 1 Bancroft Avenue, 8 trees at 3A Hill Street. The proposal seeks to remove 1 street tree located outside the site, 10 trees at 1 Bancroft Avenue and 3 trees at 3A Hill Street. Of the 20 trees located on the site 13 are proposed to be removed. The tree removal is considered to be excessive as the proposal provides minimal opportunity for replacement planting, particularly at the rear of 1 Bancroft Avenue.

***Bulk and scale***

The bulk and scale of any development on the site is subject to development standards for building height and floor space ratio in Ku-ring-gai LEP (Local Centres) 2012. The floor space ratio of the development on 1 Bancroft Avenue is 0.57:1 which does not comply with the development standard of 0.34:1. The variation to the maximum floor space ratio development standard is in the order of 67%. The applicant's request to vary the development standard has been assessed and is not supported as it does not satisfy the requirement of clause 4.6 'Exceptions to development standards'.

***Privacy***

The original proposal included office windows facing towards the dwelling at 3

Bancroft Avenue. These windows have been deleted from the plans. Overlooking and noise impacts from the elevated courtyard between the rectory and the offices is to be reduced through the installation of a screen on the western end of the courtyard. The acoustic report submitted by the applicant includes an assessment of the likely impacts of operational noise. For the purposes of this assessment, the acoustic consultant has modelled the impact of 55 people with a raised voice level using the courtyard at one time. The acoustic report finds that the predicted noise level will exceed the noise criterion for the evening period by 1dB but states that this is acceptable as the Industrial Noise Policy accepts compliance for noise sources that are less than 2dB below the statutory noise limit.

### ***Overshadowing diagrams are inaccurate***

For dwelling house development the Local Centres DCP states that development must not reduce solar access to habitable rooms or private open space to less than 4 hours on the winter solstice. The shadow diagrams show that the development will have no impact on solar access to 3 Bancroft Avenue and minor impacts to 3 Hill Street. It is agreed that the shadow diagrams understate the shadows cast by the development, in particular the shadow cast by the offices over the rear of 3 Hill Street. The eaves of the southern elevation have an RL of 109.20 and the survey plan identifies a ground level of RL 103.42 at the south-western corner of the garage at the rear of 3 Hill Street. At 3pm the southern elevation should cast a shadow with a length of 17.2 metres. Measurements taken from the shadow diagrams show a maximum shadow length of 14.3 metres. However, the shadow cast by the existing garage building is also considered to be inaccurate, the garage, which has a wall height of 2.3m, should cast a shadow of 6.9m, the shadow on the 3pm plan has a length of 5.6m. The consequence of these discrepancies is that the additional shadow from the new development should fall within the existing shadow cast by the garage. The reduction in solar access to the concrete driveway at the rear of 3 Hill Street will not result in a non-compliance with any solar access controls.

### ***The proposal to demolish the south-east wall of the church will have an unacceptable impact on the heritage significance of the church***

The site is located in a heritage conservation area. Council's Heritage Consultant assessed the proposal and found that the demolition of the rear wall of the church would have an acceptable impact on the heritage significance of the Heritage Conservation Area.

### ***Increased traffic***

The increased traffic resulting from the development has been considered by Council's Development Engineer who concluded that it will not have a significant impact on the operation of the local road network.

### ***Inadequate car parking***

The only parking currently available on the site is informal parking within the front setback of 1 Bancroft Avenue. The proposal is to combine the church and church hall into a single building and increase the capacity from 274 seats to 500 seats, (226 additional seats). It is noted that 443 seats are shown on the floor plans, however the area to the rear of the seats increases the capacity of the building to 500 people. The proposal seeks to provide 35 car spaces for the church and 3 car spaces for the residential component. The Local Centres DCP specifies a minimum of 1 car space per 6 seats. The provision of 35 car spaces for 226 additional seats does not comply

with the car parking requirements of the DCP, however the peak demand for parking is on Sundays and sufficient on street parking is available at this time. The number of car spaces is considered acceptable.

***The additional gross floor area sits over the carpark and results in a very bulky building that is not in the best interest of the neighbouring area***

The floor space ratio of the development at 1 Bancroft Avenue is 0.57:1 and the maximum floor space ratio permitted is 0.34:1. The applicant's request to vary the development standard has been assessed and is not supported as it does not satisfy the requirements of clause 4.6 'Exceptions to development standards'.

***To reduce overlooking from the proposed dwelling at 1 Bancroft Avenue additional landscape screening will be required***

The proposal includes a 6m high hedge adjacent to the terrace of the dwelling. The combination of screening vegetation and setbacks will minimise impacts on the privacy of 3 Bancroft Avenue.

***Details of the screens on the eastern edge of the building have not been provided***

The height and location of the screens are shown on the elevations and sections. The performance requirements for the screens are specified in the acoustic report.

***The central courtyard is adjacent to the backyard of 3 Bancroft Avenue and will have significant impact on visual and acoustic privacy***

Visual and acoustic privacy impacts can be ameliorated through construction detailing and management procedures, however the site is located in a heritage conservation area and the proposed site layout is not consistent with the characteristics of the area as the proposed 2 storey building is located in the rear setback zone. Having regard to the zoning of the site and the variation to the floor space ratio development standard, the visual impact of this structure on the backyard of 3 Bancroft Avenue is considered to be unreasonable.

***Hours of operation have not been specified***

The proposed usage schedule was attached to the acoustic report. The hours of operation are 8.30am to 9.30pm Monday to Friday and 8.30am to 9.00pm on weekends. Subject to the implementation of appropriate acoustic management techniques, the proposed hours are considered acceptable.

**AMENDED PLANS**

The amended plans were notified for 14 days from 21 April 2015 to 5 May 2015. In response to the notification 3 submissions in support of the proposal and 2 submissions objecting to the proposal were received.

The submissions in support of the proposal were from:

1. Mr P Hill, 99 Shirley Road Roseville NSW 2069
2. Mr G N Evans, 14 Lord Street Roseville NSW 2069
3. Mr A N Lamb, 43 Abingdon Road Roseville NSW 2069

The objections to the proposal were from:

1. Mr S Ross and Ms A Hargreaves, 3 Bancroft Avenue, Roseville 2069
2. The Archbold Estate, Roseville Inc., PO Box 537 Roseville NSW 2069

The submissions raised the following additional issues:

***Retained trees have not been shown coloured on the basement plans and may accidentally be removed***

If approval of the application were recommended this issue could be resolved by a condition which specified which trees were to be removed/retained.

***The high roof over the entry stair adds to the height of the development and is not sympathetic in design***

If approval of the application were recommended this issue could be addressed through a condition which required a reduction in the height of the roof or integration with the main roof of the rectory.

***The cement rendered façade to Hill Street has no resonance with the surrounding streets of the Heritage Conservation Area***

The new building on the Hill Street elevation is an infill development. The grey cement render to the façade will have minimal visual impact on the streetscape and will retain the visual prominence of the church.

***The changes to the Bancroft Avenue elevation are less sympathetic to the Heritage Conservation Area than the original design***

The original plans referenced Federation elements such as the return verandah, gabled wing and sandstone base but did not present them in a contextually meaningful manner that would add a positive layer to the historic record of the Heritage Conservation Area. Requiring church activities to be contained within a Federation-styled or strongly referenced building would confuse the historic and aesthetic qualities of the built environment of Bancroft Avenue and the HCA. The design controls in the Local Centres DCP promote the use of a contemporary aesthetic for infill development.

## **EXTERNAL REFERRALS**

### **Sydney Trains**

As the site is located above a rail tunnel, the application was referred to Sydney Trains in accordance with clause 86 of SEPP (Infrastructure) 2007. Sydney Trains requested additional information via correspondence dated 24 September 2014. The request for additional information was forwarded to the applicant on 29 September 2014. The information submitted on 10 June 2015 was forwarded to Sydney Trains on 12 June 2015. Sydney Trains provided their concurrence on 21 October 2015.

## INTERNAL REFERRALS

### Heritage

Council's Heritage Consultant reviewed the application and provided the following summary of issues.

- The inclusion of 1 Bancroft Avenue within an amalgamated site will disrupt the lot boundary patterning and streetscape rhythms of Bancroft Avenue as the development of the open space at the rear of the existing rectory introduces commercially-scaled patterns of site coverage and development into the residential precinct.
- The spatial qualities of the existing rectory site are consistent with the traditional pattern of development throughout the Heritage Conservation Area and contribute to the heritage significance of the Heritage Conservation Area. The scale of the development at the rear of 1 Bancroft Avenue is not consistent with the garden setting of the Heritage Conservation Area and has adverse impacts on the setting of the heritage item at 3 Bancroft Avenue.
- The variation to the maximum floor space ratio development standard contributes to the unacceptable impacts on the significance of the Heritage Conservation Area and the heritage item at 3 Bancroft Avenue.

The complete Heritage Comments can be found at **Attachment C** to this report.

### Landscaping

Council's Landscape Assessment Officer commented on the amended proposal as follows:

#### ***Tree impacts***

*The proposed development will result in the removal of numerous trees located on site and one within the Bancroft Avenue nature strip. The most prominent trees associated with the site, T29 Eucalyptus elata (River Peppermint) & T30 Lophostemon confertus (Brush Box) are proposed to be retained. A detailed arboricultural impact assessment report and addendum by Tree IQ and a root mapping report by Glochidion Arboriculture has been submitted with the application.*

*T3 Pistacia chinensis (Chinese Pistacia) located within the Bancroft Avenue nature strip. The tree spatially conflicts with the proposed vehicular entry. The tree is part of an established alternating avenue planting of Pistacia and Gordonia. The tree is outwardly in good health and condition, typical for the species. The tree has been previously trimmed for overhead wires. Its removal is unfortunate, but it is not of such broader landscape significance to require a design change. A replacement planting will be required further west within the nature strip.*

#### *Trees at rear of 1 Bancroft Avenue*

*Numerous trees are proposed to be removed at the rear of the existing rectory. The trees provide landscape amenity and residential landscape character to this part of the site and neighbouring properties including the adjacent heritage item. They also form part of the treed horizon line/backdrop planting when viewed from Bancroft*

*Avenue. Tree 15 is the most prominent. The trees spatially conflicts with the development proposal. The location of the neighbouring unit block detached garages is noted, providing visual privacy at ground level. The nominated tree removal is inconsistent with the KLCDP Vol C 1.3 Objectives and Controls to conserve landscape settings for heritage items.*

*Tree 15 Lophostemon confertus (Brush Box) located adjacent to the south-east site corner. The Project Arborist has identified that the amount of excavation required has the potential to reduce the trees SULE. As requested root mapping has been undertaken. No tree roots from Tree 15 were discovered to a depth of 600mm. Therefore the excavation for the proposed building will have minimal impact. The retention of Tree 15 helps conserve part of the landscape and treed setting associated with the heritage item. However, it is noted that a drainage line and stormwater pits are proposed within the root zone of the tree. To reduce potential impact, it is required that this drainage line be located immediately adjacent to the building/excavation line.*

*T24 Neighbouring tree – little or no impact despite significant encroachment within Tree Protection Zone due to existing retaining wall.*

*T34 Chamaecyparis obtusa (Hinoki Cypress) located within the Hill Street frontage. Previous concerns raised regarding the tree's removal have been satisfactorily addressed with design modifications to enable the retention of the tree.*

### ***Landscape plan/tree replenishment***

*The amended landscape plans are acceptable. The revised species are consistent with the traditional landscape setting of the HCA, and in general compliance with KLCDP 1.3.2.*

*There is an existing mature Murraya screening hedge located adjacent to the boundary with 3 Bancroft Ave. The hedge provides valuable screening and amenity to both properties. As the hedge is located outside of development works, it would be required that it be retained. This is consistent with the KLCDP Objectives and Controls Vol C 1.3.4.*

*No detailed plant schedule has been submitted with the application. To ensure landscape amenity is maintained the use of advanced specimens where appropriate could be conditioned.*

### ***Stormwater plan***

*The proposed drainage works for the site has not considered retained trees on site, particularly T15. This is inconsistent with KLCDP Vol C 1.3.7. The relocation of the drainage line to reduce tree impact could be conditioned.*

*The amended drainage plan proposes a 375mm diameter pipe and pit which spatially conflicts with the location of the proposed substation. This is not permitted. To overcome this issue it is recommended (subject to Development Engineer concurrence) that the proposed 375mm pipe be relocated to the road reserve on the western side of the kerb beneath the roadway. This will remove potential tree impacts and cost associated with thrust boring beneath T29. For certainty, an amended Stormwater Plan is required*

## **BASIX**

*The submitted BASIX certificate shows a common lawn area of 130sqm. The proposed landscape works for the site only includes a small lawn area immediately adjacent to the church which is <130sqm, and includes massed planted areas/garden beds that would exceed 130sqm. Therefore, the BASIX certificate and development proposal are inconsistent.*

## **Other issues and comments**

### *Substation*

*The proposed location for a sub-station within the main view shed of the existing church elevation from Hill Street and Bancroft Avenue is an undesirable landscape/streetscape outcome, as it downgrades the landscape setting and cannot be screened from the public domain.*

### *Fire hydrant/booster valve*

*Previous concerns have been satisfactorily addressed with the relocation of the fire hydrant/booster valve.*

### *Southern site boundary*

*Previous concerns have been satisfactorily resolved with the retention of existing levels.*

## **Conclusion**

*The application is unacceptable on landscape grounds due to:*

- *inconsistency with BASIX*
- *conflict between proposed stormwater drainage works and the proposed sub station*
- *the nominated tree removal is inconsistent with the KLCD CP Vol C 1.3 Objectives and Controls to conserve landscape settings for heritage items*

## **Engineering**

Council's Team Leader Engineering Assessment commented on the amended proposal as follows:

### **Conflict between stormwater plan and tree retention**

*The arborist's addendum letter does not refer to the stormwater management plan. There are two pits proposed near Tree 15 and due to the fall of the land, they would be at least 1 metre deep (no details are given on the plan). This needs to be considered by the arborist.*

*The BASIX commitments have been revised but neither the architectural nor the stormwater plans show the rainwater tanks to the extent required in the Schedule of BASIX commitments.*

## **Traffic and parking**

*The increased basement setback from Tree 15 has resulted in the loss of two parking spaces. As the peak demand for church parking falls outside the existing peak demand for on street commuter and school parking, the shortfall in the number of parking spaces is acceptable.*

## **Water management**

*The stormwater plan Wood & Grieve Drawing C-100 Revision F and Stormwater Management Plan Revision 2 do not demonstrate that the following objectives of the Ku-ring-gai Local Centres DCP will be achieved:*

- to ensure that development does not increase the impact of rainfall events*
- to consider the existing capacity of the public drainage system*

*The following issues have been identified:*

- i. The BASIX water commitments require a 5,000 litres rainwater tank for the new rectory and a common 5,000 litres rainwater tank. These tanks are not shown on any plans, as required under 1(a)(i)(h) and 3(b)(i)(b) in the Schedule of BASIX commitments. There are circles labelled "WT" on DA2101 Issue 10 but no sizes, configurations or connections are shown.*
- ii. No calculations for the on site detention tank have been provided to demonstrate that the proposed system will achieve the objectives. No information was provided to support the proposed volume or outlet configuration so that likely outflows are unknown.*
- iii. No orifice plate is shown so it is not demonstrated that flows will be attenuated by the tank.*
- iv. An apparently superfluous 225mm diameter outlet pipe is shown which could affect the functioning of the system.*
- v. The outlet pipe from the detention tank is incorrectly labelled IL97.65 on the Site Plan Drawing C-100 F (should be IL96.65).*
- vi. The Stormwater Management Plan still refers to Ku-ring-gai Municipal Council – Draft Drainage Code, a non-existent document. The correct reference is Ku-ring-gai Local Centres Development Control Plan.*
- vii. The arboricultural addendum does not reference the stormwater Layout Plan Drawing C-100 Revision F. Two pits which are inferred to be at least 1 metre deep are shown close to Tree 15 and the method of constructing these pits would need to be specified by the arborist.*
- viii. Two sections of 375mm diameter pipe are shown on the stormwater plans as being bored under Tree 29. This is not discussed in the arborist's letter either and this matter should be addressed by the arborist.*
- ix. The stormwater plan does not show the substation. A grated pit which could surcharge and direct water into the substation is not likely to be acceptable to Ausgrid.*
- x. Surface pits in the Hill Street setback appear to be unnecessary.*

## **STATUTORY PROVISIONS**

### **State Environmental Planning Policy (Infrastructure) 2007**

*As the development involves excavation to a depth of greater than 2m above a rail corridor, Clause 86 of the SEPP requires that the application be referred to Sydney*

Trains for comment. Clause 86(3) states that consent cannot be granted without the concurrence of the chief executive officer of the rail authority.

The application was referred to Sydney Trains on 11 August 2014. Sydney Trains requested additional information via correspondence dated 24 September 2014. The request for additional information was forwarded to the applicant on 29 September 2014. The additional information submitted on 10 June 2015 was forwarded to Sydney Trains on 12 June 2015.

Sydney Trains provided their concurrence on 21 October 2015. Sydney Trains have advised that the proposal will satisfy the requirements of SEPP (Infrastructure) 2007 subject to the imposition of the deferred commencement conditions specified in their correspondence.

### **State Environmental Planning Policy No. 55 - Remediation of Land**

The provisions of SEPP 55 require consideration of the potential for a site to be contaminated. The proposed site is currently used as a church, church hall and a dwelling. The subject sites do not have a history of uses that are likely to have resulted in soil contamination.

### **Sydney Regional Environmental Planning Policy (Sydney Harbour Catchment) 2005**

SREP 2005 applies to the site as the site is located in the Sydney Harbour Catchment. The Planning Principles in Part 2 of the SREP must be considered in the preparation of environmental planning instruments, development control plans, environmental studies and master plans. The proposal is not affected by the provisions of the SREP which relate to the assessment of development applications as the site is not located in the Foreshores and Waterways Area as defined by the Foreshores and Waterways Area Map.

### **Ku-ring-gai LEP (Local Centres) 2012**

#### **Zoning and permissibility:**

The site is zoned R2 Low Density Residential. The applicant states that the proposed development is defined as a place of public worship.

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

On 20 November 2014, the applicant was sent a letter which requested further information on why the proposal was defined as *place of public worship*:  
The applicant provided the following statement:

*The proposed use is a Place of Public Worship. Place of public worship means "a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training". The other uses contemplated on the site, such as youth group, church functions, counselling etc, are all ancillary functions of the place of public worship (as*

*specifically contemplated in the LEP definition) and would not occur on the site if the place of public worship was not operating.*

It is considered that the following elements of the proposed development fall within the scope of place of public worship:

- worship space
- hall
- Sunday school
- offices
- meeting rooms
- consultation rooms
- car park
- courtyard

The two dwelling houses are not considered to be ancillary or ordinarily incidental to the place of public worship, nevertheless, a dwelling house is a permissible use in the R2 zone.

#### **Residential zone objectives:**

Clause 2.3(2) states that the consent authority must have regard to the objectives for development in a zone when determining a development application. The objectives for the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide housing that is compatible with the existing environmental and built character of Ku-ring-gai.*

For the following reasons the proposal is considered to be incompatible with the first and third objectives:

- i. The floor space ratio of the development at 1 Bancroft Avenue represents an overdevelopment of the site that is inconsistent with a low density residential environment.
- ii. The built form of the development at 1 Bancroft Avenue, particularly the minimal landscaped area and the two storey building in the traditional rear setback area is not compatible with the character of Bancroft Avenue.

#### **Development standards:**

##### **3A Hill Street**

<b>Development standard</b>	<b>Proposed</b>	<b>Complies</b>
<b>Building height:</b> 11.5m	11.29m	<b>YES</b>
<b>Floor space ratio:</b> 0.85:1 (1768m <sup>2</sup> )	0.76:1 (1580m <sup>2</sup> )	<b>YES</b>

## 1 Bancroft Avenue

Development standard	Proposed	Complies
Building height: 9.5m	9.25m	YES
Floor space ratio: 0.34:1 (410m <sup>2</sup> )	0.57:1 (688m <sup>2</sup> )	NO

### Gross floor area calculation

The floor space ratios of the development has been determined using the gross floor area calculation plans provided by the applicant, with the exception that the store rooms on the lower ground floor level have been included as gross floor area as the lower ground floor level cannot be defined as a basement as the storey above the store rooms has a floor that is more than 1m above the ground level.

In accordance with the LEP, void areas have been excluded from the gross floor area calculation. The void over the hall has a ceiling height of 6.8- 7.4m and an area of 167m<sup>2</sup>. The void over the lobby has a ceiling height of 6.3-7.7m and an area of 102m<sup>2</sup>. The void over the worship space has an area of 359m<sup>2</sup> and a maximum ceiling height of approximately 9.2m. If the voids were included as gross floor area, the floor space ratio of the development at 3A Hill Street would be 1.07:1 and the gross floor area would be 473m<sup>2</sup> greater than the maximum permitted.

### 4.6 Exceptions to development standards:

A development which does not comply with a development standard cannot be approved unless the consent authority is provided with a request to vary the development standard which satisfies the requirements of clause 4.6.

The applicant has acknowledged that when calculating floor space ratio for the purposes of the LEP the floor space ratio must be determined for area of the site that is subject to a different floor space ratio control. The applicant has submitted a request for a variation to the maximum floor space ratio (**Attachment D**).

The objectives of clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Subclause (3) states that development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

Subclause (4) states that development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:*

- (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The objectives of the floor space ratio clause are:

- (a) to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai,*
- (b) to enable development with a built form and density compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,*
- (c) to ensure that development density provides a balanced mix of uses in buildings in the business zones.*

The objectives of the R2 Low Density Residential zone are:

- *to provide for the housing needs of the community within a low density residential environment*
- *to enable other land uses that provide facilities or services to meet the day to day needs of residents*
- *to provide housing that is compatible with the existing environmental and built character of Ku-ring-gai*

The application of clause 4.6 was recently considered by Justice Pain in the decision of *Four2Five Pty Ltd v Ashfield Council*. Arising from this decision are the following principles:

- i. The statutory context for cl. 4.6 suggests that an indulgence is being sought for a variation of a development standard which would otherwise prohibit development not complying with it. The clause should be construed strictly and applying the usual meaning to its terms in the context of the clause as a whole.
- ii. The clause 4.6 variation must address sufficient environmental planning grounds to inform a consent authorities finding of satisfaction in cl. 4.6(4)(a)(i).
- iii. A finding that a development is in the public interest does not satisfy the requirements of cl. 4.6(3)(a). A development consent cannot be granted for development that contravenes a development standard unless it satisfies both subclauses (4)(a)(i) and (ii).

In response to objective (a), *to ensure that development density is appropriate for the scale of the different centres within Ku-ring-gai*, the applicant states:

*The proposed density equates to 327m<sup>2</sup> of additional GFA on the eastern portion of the site, which when balanced with the surplus of GFA potential on the western portion only equates to a variation of 150m<sup>2</sup> of GFA or (0.045:1) across the whole site.*

*Such a minor variation over a 3,293m<sup>2</sup> site means that the development will still result in a scale that reflects the desired density for the Roseville centre. Further consideration of the proposed scale and its impact on the adjoining properties is*

*provided in Section 3.2. It is noted that the proposed development complies with the maximum building height development standard.*

*It is also noted that the development will only result in two dwellings across the site, therefore not resulting in a greater residential density than would be achieved by a complying scheme.*

In response to objective (b), 'to enable development with a built form and density compatible with the size of the land to be developed, its environmental constraints and its contextual relationship', the applicant states:

*For the reasons detailed above, the proposed density is compatible with the size of the land.*

*The redistribution of GFA from the western portion of the site to the eastern portion is a direct response to environmental constraints and is the outcome of a detailed site analysis, which identified where the built form would have the minimum impact on the character of the area, which is at the rear of the eastern portion of the site. Further consideration of the proposed design and its response to the environmental constraints is provided in Section 3.2.*

*In terms of its contextual relationship, it is understood that the intent of the 0.3:1 control is to preserve the residential character along Bancroft Avenue. The proposed design achieves this by providing a dwelling with a density and built form that is consistent with the surrounding area and planning controls, noting that the proposed development complies with the maximum building height development standard. The additional density is then located in the form of the hall which is located behind the dwelling at the rear of the property along the southern boundary and complies with the maximum building height. Further consideration of the proposed scale and its impact on the adjoining properties is provided in Section 3.2.*

In response to the requirement to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard the applicant states:

*The proposed variation to the FSR control is largely the result of redistributing the development potential that could have otherwise been achieved within the western portion of the site into the eastern portion.*

*If made to comply, the GFA would need to be relocated from the eastern portion of the site back into the western portion where the FSR control allows for it. This would have the following more significant environmental impacts which justify contravening the development standard in this instance:*

- St Andrews would potentially be forced to reconsider if it could retain the historic church building in order to achieve its FSR potential. Demolition of the church building would have a far greater adverse impact on the streetscape and the heritage character of the area.*
- If the church building could be retained, the height and massing of the hall would need to significantly increase, having a much greater impact on the streetscape character, adjoining properties and curtilage of the church building*

*The size of the hall would need to be increased within the western portion of the site where it has an interface with the Hill Street residential apartments, rather than the eastern portion as proposed, where it has an interface with a carport. Compliance with the controls would therefore be likely to result in greater shadow, privacy and built form impacts on the adjoining apartment building.*

*The proposed development has been designed to ensure that from Bancroft Avenue the buildings read as a low scale two storey form consistent with the character of the street*

*Therefore the main environmental impact as a result of redistributing the floor space to the rear of the eastern portion is the loss of an area that would typically be backyard if the development was a traditional dwelling house. Development in this location has the potential to impact on 3 Hill Street and 3 Bancroft Avenue.*

### **3 Hill Street**

*As demonstrated above, locating the FSR within the western portion of the site will have a far greater impact on the solar access, privacy and outlook of the apartments in 3 Hill Street than the proposed scheme. The location of the GFA within the eastern portion of the site redistributes this GFA to a part of the site where the 3 Hill Street apartments currently have their garages and at-grade parking. It is also noted that the proposal will reduce the size of the existing church hall along the boundary with the 3 Hill Street apartments, improving their solar access and outlook. Therefore the proposed variation will have a positive environmental impact on the apartments at 3 Hill Street.*

### **3 Bancroft Avenue**

*Locating the FSR within the western portion will change the outlook from 3 Bancroft Avenue. In order to preserve as much of the landscaped outlook as possible the proposed building has been setback at the back corner of the site, specifically to allow for retention of the large existing tree. In addition, the landscape plans place a special emphasis on achieving a high quality landscape solution along the boundary.*

*The amended development will not have any privacy or heritage impacts or result in any additional overshadowing. Therefore the impact of the variation on 3 Bancroft Avenue is limited to the house's outlook only, which as discussed above the impacts of which have been mitigated as part of the amended design.*

*In light of the above there is considered to be sufficient environmental planning grounds to justify contravening the development standard in this instance.*

In response to the requirement in clause 4.6(5)(b) for the consent authority to consider the public benefit of maintaining the development standard the applicant states:

*As there is no adverse environmental impacts other than impacting the outlook of 3 Bancroft Avenue, and the proposed variation still achieves the objectives of the standard, there is no public benefit in maintaining it. Conversely the proposed development, which is a community funded development, for use by the community, will provide a number of significant public benefits which include but are not limited to:*

- *providing an improved and expanded centre for the community whereby a range of community orientated functions and services can be held;*

- *increasing the capacity for the community to attend and participate in local Sunday services;*
- *enabling a broader range of services provided by the Anglican Church to be run for the community through the expanded floor space, encouraging services such as counselling, mentoring programs and other community service programs to continue providing for the social and spiritual wellbeing of the broader Roseville community;*
- *enabling weddings and funerals to be carried out at the Church, enabling members of the congregation to participate in significant life events within their local community, and at their local Church;*
- *conserving the heritage streetscape character of Bancroft Avenue through a more sensitively designed and articulated built form and the removal of other built elements identified as being detracting; and*
- *increasing the office and consulting room space so that the ministry staff and other social-focused professionals can have a high amenity work space that can be offered as a benefit to the community members who utilise these services.*

*The proposed development will also support the growth of the Church so that it can continue to resource its innovative community service based program called the 'Community Project' whereby members of the Church provide a range of services for free to the community. These services include providing crisis accommodation, babysitting, running errands and grocery shopping for those less able, general maintenance tasks, a 'freezer' meals ministry, and legal and financial counselling services. To run the 'Community Project' the members draw from a wide range of resources provided by the Church buildings, using this space throughout the week to run these service tasks. The proposal to renovate and extend the Church's facilities would make an invaluable contribution to the effectiveness of this program and as such the proposal has the opportunity to directly contribute to the broader social and economic welfare of the Roseville community.*

*If Council is of the view that the Church cannot utilise the rectory site (as proposed) and it cannot redevelop the existing church site then it would have no opportunity to modernise its facilities. As a key element of the social fabric of Roseville and Ku-ring-gai more broadly, sterilising the site and preventing the redevelopment from occurring is not in the public interest and is contrary to objectives of the LEP.*

#### **Summary of clause 4.6 variation**

The clause 4.6 variation request is based on the following assertions:

1. despite the non-compliant floor space ratio the proposed building at 1 Bancroft Avenue has an appropriate contextual relationship with the dwellings in Bancroft Avenue
2. that achieving the maximum floor space ratio would require demolition of the church which would have a negative impact on the character of the Heritage Conservation Area **OR** retaining the church and relocating the 'surplus' gross floor area from 1 Bancroft Avenue to 3A Hill Street would require, a *larger church hall with significantly greater impact on streetscape character, adjoining properties and the curtilage of the church*
3. the proposed development will provide significant public benefits

Each of the above assertions are addressed below.

### **Assertion 1 - the proposal is consistent with the context**

Clause 4.6(4)(a)(ii) states that consent cannot be granted unless the consent authority is satisfied that the development is consistent with the objectives of the development standard. The floor space ratio development has three objectives, objective (b) is the most relevant:

*(b) to enable development with a built form and density compatible with the size of the land to be developed, its environmental constraints and its contextual relationship,*

The 0.34:1 floor space ratio control that applies to 1 Bancroft Avenue seeks to limit the maximum gross floor area of development so that it is compatible with the size of the allotment, the environmental constraints and the contextual relationship. The applicant's assertion that the contextual relationship is appropriate because of compliance with the height control is not sufficient. A 'contextual' relationship relates to multiple aspects of the environment, including architectural character, land use type, setbacks, height, site coverage and landscaping. The layout of the development at 1 Bancroft Avenue is substantially different to the prevailing character of the Heritage Conservation Area. The proposal includes the construction of a two storey building at the rear of the site in an area which traditionally is used for gardens and ancillary structures such sheds and swimming pools. The parapet of the rear building is 4.2m higher than the ridge height of the adjacent heritage item at 3 Bancroft Avenue. The proportion of the site dedicated to landscaping is significantly less than adjoining sites, only one canopy tree in the backyard is retained and the remaining landscaped spaces are only suitable for screening vegetation.

In considering whether the development is compatible with the residential context of Bancroft Avenue it is useful to consider the proposal against the controls that apply to a dwelling house:

<b>Development Control</b>	<b>Proposal</b>	<b>Complies</b>
<b>Building setbacks</b>		
Front setback: 12m –minimum 14m – average	7.8m (min.)	<b>NO</b>
Side setbacks: Ground floor: 2.7m  First floor: 3.4m	2.5m (min.) (east) 0m (min.) (west) 2.8m (min.) (east) 0m (min.) (west)	<b>NO</b> <b>NO</b> <b>NO</b> <b>NO</b>
Rear setback: 13.4m	1.5m (min.)	<b>NO</b>
<b>Building height plane:</b> 45° from horizontal at any point 3m above boundary	The Sunday school/offices building projects outside BHP measured from eastern boundary	<b>NO</b>
<b>Canopy trees:</b> 7 (min.)	2	<b>NO</b>
<b>Built-upon area:</b> 50% (603.5m <sup>2</sup> ) (max)	80% (965m <sup>2</sup> )	<b>NO</b>

<b>Unrelieved wall length:</b> max 12m for walls less than 4m in height, 8m for walls more than 4m in height	12.7m (max.)	<b>NO</b>
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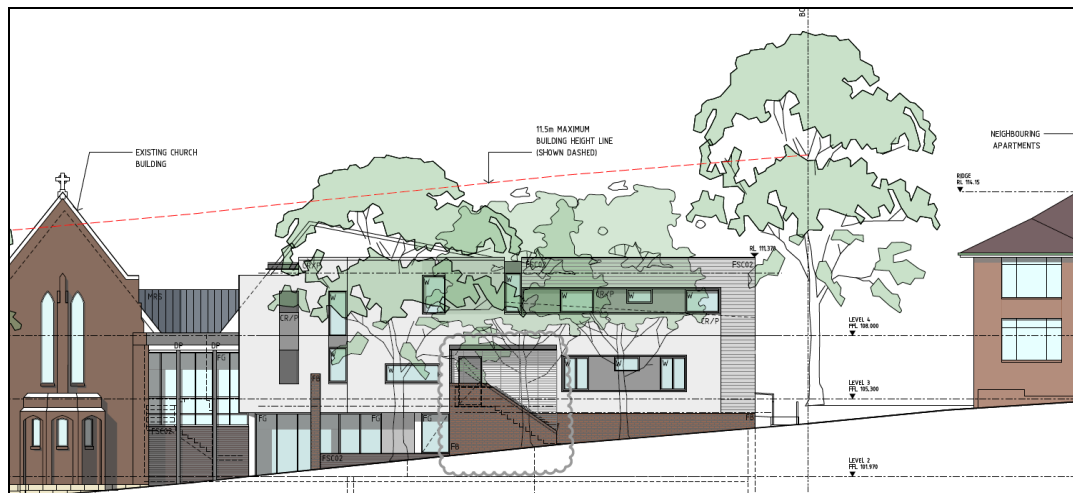
The above table demonstrates that the proposal exhibits substantial departures from the dwelling house controls, particularly with respect to built-upon area, side setbacks, rear setback and canopy trees. None of the information submitted by the applicant supports a finding that the Heritage Conservation Area is characterised by buildings that have a high-proportion of built upon area, minimal landscaping and minimal boundary setbacks. It is essential that development in a heritage conservation area respect and respond to the characteristics of the area. If the proposal were approved, it would set an undesirable precedent for future development in the Heritage Conservation Area.

**Assertion 2 – achieving the maximum FSR available would require demolition of the church or a larger church hall with unacceptable impacts**

The floor space ratio control is not a non-discretionary development standard, it is maximum that may only be achieved if the objectives of the planning controls are satisfied and the impacts of the development satisfy the assessment criteria in section 79C. The applicant's justification is based on an assumption that achievement of the maximum floor space ratio is an entitlement.

The applicant's suggestion that the church could be demolished in order to achieve the maximum floor space ratio is not consistent with the planning controls that apply to the project and the Land and Environment Court planning principles (*Helou v Strathfield*) that apply to the assessment of applications which seek to demolish contributory buildings in heritage conservation areas. The church is located in a heritage conservation area and demolition of the church would need to satisfy the objectives of clause 5.10 'Heritage conservation' of the LEP.

The applicant's argument that a development which retained the church and proposed a larger church hall would result in greater impacts on the apartment building at 3 Hill Street are overstated. The proposed building form envisaged by the applicant appears to be a 3 storey high structure built to the boundaries. The proposed floor space ratio is 0.76:1 and the maximum floor space ratio is 0.85:1. To achieve the maximum floor space ratio the gross floor area would only need to be increased by 188m<sup>2</sup>. In theory this increase could be achieved by filling in part of the void areas and making no changes to the building envelope. Alternatively, if changes to the building envelope were required it is unlikely that achieving an additional 188m<sup>2</sup> of floor area (an 11.8% increase in a 1580m<sup>2</sup> building) would require an additional storey with the same footprint as the storey below. If the height of the building at 3A Hill Street was increased the additional shadowing impact on the apartments at the north-western corner of the building would be offset by providing an open outlook to the apartments located in north-eastern corner of the building and the common area located at the rear of the residential flat building. If adequate setbacks from the southern boundary were provided it is likely that an additional storey on the Hill Street elevation would have minimal impact on solar access to the apartments at 3 Hill Street.



**Figure 2 - Hill Street elevation showing height of proposed building and existing residential flat building. The 11.5m height limit is shown as a dashed line.**

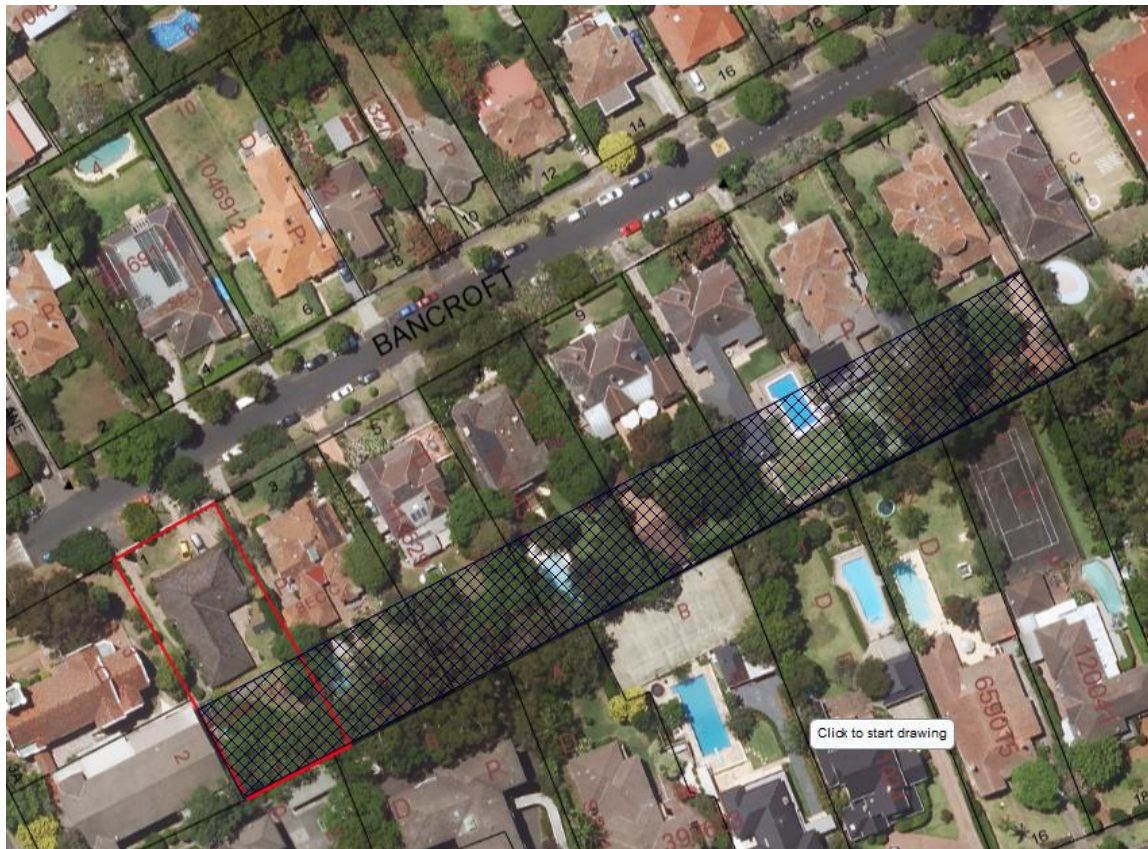
The applicant states that the proposal to develop the rear of the eastern portion in an area that would typically be a backyard if the development was a traditional dwelling house has the potential to impact on 3 Hill Street and 3 Bancroft Avenue but that these impacts are less than the impacts of developing the western portion. The applicant has highlighted the failure of the development to respond to the spatial characteristics of the Heritage Conservation Area. Backyards are an essential component of the character of the locality as they provide space for canopy trees. The backyards to Nos. 1 to 17 Bancroft Avenue form a landscape corridor which provides a backdrop of landscaping to the dwellings in Bancroft Avenue and open landscaped views for the residents of the dwellings at 3 Hill Street and Nos. 6-20 Victoria Street. In support of the claim that the development will read as a two storey form consistent with the character of the street the applicant has provided a photomontage which shows the rectory with a landscape backdrop.



**Figure 3 - Photomontage provided by applicant in support of their clause 4.6 variation**

The photomontage is not an accurate representation of the development as it shows tree canopies to the southern and eastern sides of proposed building. The development seeks to remove 7 of the 8 trees located in the backyard of 1 Bancroft

Avenue. The retention of a single Brushbox tree in the south-western corner of the site will not achieve the landscape setting described in the photomontage. Figure 4 shows the existing landscaped corridor at the rear of Nos. 1-17 Bancroft Avenue.



**Figure 4 - The existing landscape corridor at the rear of 1-17 Bancroft Avenue contains trees and ancillary structures**

### **Assertion 3 – the public benefits of the proposal warrant the variation of the development standard**

In response to the requirements in Clause 4.6(5)(b), the applicant has outlined the public benefits of the proposed development. The applicant's arguments are based on the premise that if the clause 4.6 variation is not supported the development will not proceed and the public benefits of the proposal would not be realised. The applicant has misdirected themselves as to the objective of the 'public benefit of maintaining the development standard' test. The Department of Planning publication 'Varying Development Standards' confirms that this test directs consent authorities to consider the cumulative effect of approvals which do not comply with a development standard, not whether the potential benefits of a proposal warrant a variation to a development standard. Nevertheless, the applicant has not argued that the stated benefits of the proposal cannot be achieved by a development which complies with the development standard and cl.4.6(4)(a)(i) does not invite a consent authority to consider public interest matters outside the zone objectives and the objectives of the standard.

It is considered that the impact of varying the development standard has the potential to erode the character of the Heritage Conservation Area as it would create a negative precedent. The question that must be asked is, if the approval of a development at 1 Bancroft Avenue which exceeds the floor space ratio control by 67% is acceptable why would it not be acceptable for other sites in Bancroft Avenue?

If the Clause 4.6 variation is not upheld, a development that will have an unacceptable impact on the Heritage Conservation Area will not proceed, accordingly there is a significant public benefit in upholding the development standard.

## Conclusion

The applicant has not demonstrated that:

- compliance with the development standard is unreasonable or unnecessary
- there are sufficient environmental planning grounds to justify contravening the development standard
- the development is consistent with the objectives of the floor space ratio development standard and the R2 Low Density Residential zone
- there is no public benefit in maintaining the development standard

As the variation to the development standard does not satisfy the requirements of clause 4.6, the Development Application may not be approved.

## 5.9 Preservation of trees or vegetation:

Clause 5.9 requires that a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree without the authority conferred by a development consent or permit. The proposal seeks approval for the removal of 15 trees. The tree removal has been assessed by Council's Landscape Officer.

## 5.10 Heritage conservation:

The proposal is subject to this clause as the site is located in a heritage conservation area and is adjacent to a heritage item. Clause 5.10 (4) requires the consent authority to consider the effect of the proposed development on the heritage significance of the item or area concerned before granting consent. The effect of the development on the heritage significance of the adjacent heritage item at 3 Bancroft Avenue and the Lord Street/Bancroft Avenue Heritage Conservation Area has been considered in the assessment prepared by Council's Heritage Consultant.

## POLICY PROVISIONS

COMPLIANCE TABLE		
Development control	Proposed	Complies
<b>Volume A</b>		
<b>Part 3 Land amalgamation and subdivision</b>		
Where development occurs across lot boundaries consolidation of sites will be required	Consolidation of sites is not recommended as this will result in the residential component of the development being classified as dual occupancy development which is prohibited in the R2 zone.	<b>YES</b>
<b>Volume B – Heritage and Conservation Areas</b>		
<b>7.3 Development in the vicinity of a heritage item</b>		

The minimum separation from a heritage item is 12m.	7.6m	<b>NO</b>
The façade height must not exceed 8m from existing ground level.	9.25m	<b>NO</b>
Any building mass above 8m from existing ground level must be stepped back an additional 6m from the heritage item.	12.4m	<b>YES</b>
Any new development must have a maximum 36m wall length to any boundary.	43.6m (eastern elevation)	<b>NO</b>
Screen planting on side and rear boundaries adjoining a heritage item site is to achieve a minimum mature height of 4m	Screen planting on eastern boundary can achieve 4m	<b>YES</b>
No metal panel fencing is to be constructed on any heritage item boundary.	no metal fencing proposed	<b>YES</b>
<b>Volume C - Car parking</b>		
Place of public worship: 1 space per 6 seats (38 spaces for 226 additional seats) 4 bedroom dwelling – 2 space 2 bedroom dwelling – 1 space	35 2 1	<b>NO</b> <b>YES</b> <b>YES</b>
<b>Volume C – Building Design and Sustainability</b>		
All new non-residential development must include Ecologically Sustainable Design measures	Ecologically Sustainable Design measures such as natural lighting and water re-use have been incorporated into the proposed development	<b>YES</b>
<b>Volume C – Site design</b>		
The development must respond to the site attributes as identified in the site analysis	The site planning of the development, particularly the removal of the majority of the vegetation at the rear of 3 Bancroft Avenue demonstrates a failure to respond to important attributes of the site and the Heritage Conservation Area.	<b>NO</b>
<b>Volume C – Earthworks and slope</b>		
Development must be accommodated within the natural slope of the land. Level changes across the site are to be primarily resolved within the building footprint.	The proposal does not include significant earthworks outside the building footprint.	<b>YES</b>
A minimum 0.6m width is required between retaining walls to provide adequate soil area and depth to ensure that they do not read as a single level change, and for the viability of landscaping.	The space between retaining walls is greater than 0.6m.	<b>YES</b>
Existing ground level is to be maintained for a distance of 2m from any boundary.	The basement has a 1.5m setback from the rear boundary.	<b>NO</b>
Grassed embankments are not to exceed a 1:6 slope. Vegetated embankments, planted with soil	Grass embankments have not been provided.	<b>YES</b>

stabilising species, may be to a maximum of 1:3.		
Retaining walls, excavated and filled areas shall be located and constructed to have no adverse impact on: <ul style="list-style-type: none"> <li>• structures to be retained on the site;</li> <li>• structures on adjacent public or private land;</li> <li>• trees to be retained on site or on adjoining sites.</li> </ul>	Retaining walls and the basement achieve these objectives.	<b>YES</b>
<b>Volume C – Landscape Design</b>		
All developments must: <ul style="list-style-type: none"> <li>i. be designed to conserve indigenous vegetation, habitat and existing natural features on the site as part of the site planning and the site layout process;</li> <li>ii. retain the most significant, intact and sustainable areas of vegetation;</li> <li>iii. retain trees that contribute to the neighbourhood character;</li> <li>iv. be located to retain views of public reserves and the street;</li> <li>v. be designed to retain habitat within and adjacent to the site (where it is safe to do so) including: <ul style="list-style-type: none"> <li>• drainage features and damp areas;</li> <li>• trees with hollows;</li> <li>• old or dead trees and hollow logs;</li> <li>• leaf litter and fallen branches;</li> <li>• bushrock and rock outcrops. If bushrock cannot be retained in place, it is to be relocated within the site;</li> <li>• be designed to consider subsurface/groundwater flows near bushland and other significant vegetation or habitats.</li> </ul> </li> </ul>	The site does not retain trees at the rear of 1 Bancroft Avenue. The trees provide a landscape outlook to the apartments at 3 Hill Street and the dwelling house at 3 Bancroft Avenue. The trees contribute to the neighbourhood character. The construction of a building at the rear of 1 Bancroft Avenue provides no opportunities for new tree planting in this area.	<b>NO</b>
Landscaping that contributes to the heritage value of a place is to be retained.	The proposal seeks to remove 7 of the 8 trees located at the rear of 1 Bancroft Avenue. The trees contribute to the character of the Heritage Conservation Area and the setting of the adjacent heritage item at 3 Bancroft Avenue.	<b>NO</b>
The retention of existing appropriate screen planting is encouraged.	The retention of screen planting adjacent to the eastern boundary could be achieved through conditions	<b>YES</b>

Planting beds for screen planting must be of adequate width to allow the plants to flourish.	Planter beds are of adequate width for the proposed planting	<b>YES</b>
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## Heritage

The proposal does not comply with the following controls which apply to development in the vicinity of a heritage item:

- separation distance
- façade height
- building elevation length

Council's Heritage Consultant has assessed the proposal and found that the impact of the development on adjacent heritage items is unacceptable for reasons of inadequate setbacks, separation distance and landscaping. The full comments of Council's Heritage Consultant are **Attachment C**.

## Car parking

The variation to the car parking requirements that apply to the place of public worship has been considered in the assessment prepared by Council's Development Engineer. The parking survey prepared by the applicant identified a high availability of on street parking at peak demand times for the church, i.e. Sundays. The car parking shortfall is considered acceptable as the peak demand for church parking falls outside the peak demand for on street parking which occurs during weekdays and is generated by commuters and Roseville College.

## Ku-ring-gai Contributions Plan 2010

The new church and church hall would not generate a Section 94 contribution as part 1.26 of the Contributions Plan provides an exemption for facilities that provide a community benefit on a not-for-profit basis. The proposed two bedroom apartment at 3A Hill Street is not for the purposes of providing a community service and would increase demand for services provided by the Section 94 contribution plan. If approval of the application were recommended, Section 94 contributions for the apartment would be payable.

## LIKELY IMPACTS

The likely impacts of the development have been considered within this report and it is considered that the proposal is unacceptable in its current form and that significant amendments are required before consent can be granted.

## SUITABILITY OF THE SITE

The site is zoned R2 Low Density Residential and the proposal is permissible under the provisions of the Ku-ring-gai LEP (Local Centres) 2012. The development proposes a substantial variation to the floor space ratio development standard that applies to 1 Bancroft Avenue. The floor space variation results in an overdevelopment of the site that is inconsistent with the residential context of Bancroft Avenue and incompatible with the character of the Heritage Conservation Area.

## **ANY SUBMISSIONS**

The submissions have been considered in the above assessment.

## **PUBLIC INTEREST**

The public interest is best served by the consistent application of the requirements of the relevant planning controls and by Council ensuring that any adverse effects on the surrounding area and the environment are minimised. The proposal has been assessed against the provisions of the relevant planning controls and is deemed to be unacceptable. On this basis, the proposal is not considered to be in the public interest.

## **OTHER RELEVANT MATTERS**

There are no other matters for consideration.

## **CONCLUSION**

This application has been assessed under the heads of consideration of Section 79C of the *Environmental Planning and Assessment Act* 1979 and all relevant instruments and policies. The proposal does not achieve compliance with the requirements of the relevant instruments and policies and refusal is recommended.

## **RECOMMENDATION**

### **PURSUANT TO SECTION 80(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

THAT the Sydney West Joint Regional Planning Panel, as the consent authority, refuse development consent to Development Application No. 0289/14 for the following reasons:

**1. The clause 4.6 variation to the development standard for floor space ratio is not well founded.**

*Particulars*

- i. Clause 4.4 of Ku-ring-gai LEP (Local Centres) 2012 limits the maximum floor space ratio of development at 1 Bancroft Avenue to 0.34:1 (410m<sup>2</sup>). The floor space ratio of the development at 1 Bancroft Avenue is 0.57:1 (688<sup>2</sup>).
- ii. The proposed development at 1 Bancroft Avenue exceeds the maximum gross floor area by 278m<sup>2</sup> (67%).
- iii. It has not been demonstrated that compliance with the development standard is unreasonable or unnecessary.
- iv. It has not been demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.
- v. The variation to the development standard is not consistent with the first and third objectives of the R2 Low Density Residential zone as the proposal is not consistent with the characteristics of a low density residential environment or compatible with the character of Bancroft Avenue.

- vi. The variation to the development standard is not consistent with objective (b) of clause 4.4 Floor space ratio as the built form and density of the proposal is not compatible with the context.

**2. Unsatisfactory impacts on adjacent heritage item and the Lord Street/Bancroft Avenue Heritage Conservation Area**

*Particulars*

- i. The site is located in the Lord Street/Bancroft Avenue Heritage Conservation Area under the provisions of Ku-ring-gai LEP (Local Centres) 2012.
- ii. The site is adjacent to 3 Bancroft Avenue which is identified as a heritage item by Ku-ring-gai LEP (Local Centres) 2012.
- iii. The inclusion of 1 Bancroft Avenue within an amalgamated site will disrupt the lot boundary patterning and streetscape rhythms of Bancroft Avenue as the development of the open space at the rear of the existing rectory introduces commercially-scaled patterns of site coverage and development into the residential precinct.
- iv. The spatial qualities of the existing rectory site are consistent with the traditional pattern of development throughout the Heritage Conservation Area and contribute to the heritage significance of the Heritage Conservation Area. The scale of the development at the rear of 1 Bancroft Avenue is not consistent with the garden setting of the Heritage Conservation Area and has adverse impacts on the setting of the heritage item at 3 Bancroft Avenue.
- v. The variation to the maximum floor space ratio development standard contributes to the unacceptable impacts on the significance of the Heritage Conservation Area and the heritage item at 3 Bancroft Avenue.
- vi. For the reasons identified above, the proposal is not consistent with objectives (a) and (b) of clause 5.10 'Heritage conservation' or Ku-ring-gai LEP (Local Centres) 2012.

**3. The design of the stormwater system does not comply with the requirements of Volume C, Part 4, Water Management Controls of the Local Centres DCP.**

*Particulars*

- i. No calculations for the on site detention tank have been provided to demonstrate that the proposed system will achieve the objectives. No information was provided to support the proposed volume or outlet configuration so that likely outflows are unknown.
- ii. No orifice plate is shown so it is not demonstrated that flows will be attenuated by the tank.
- iii. An apparently superfluous 225mm diameter outlet pipe is shown which could affect the functioning of the system.
- iv. The outlet pipe from the detention tank is incorrectly labelled IL97.65 on the Site Plan Drawing C-100 F (should be IL96.65).
- v. The Stormwater Management Plan still refers to Ku-ring-gai Municipal Council – Draft Drainage Code, a non-existent document. The correct reference is Ku-ring-gai Local Centres Development Control Plan.
- vi. The arboricultural addendum does not reference the stormwater Layout Plan Drawing C-100 Revision F. Two pits which are inferred to be at least 1 metre

- deep are shown close to Tree 15 and the method of constructing these pits would need to be specified by the arborist.
- vii. Two sections of 375mm diameter pipe are shown on the stormwater plans as being bored under Tree 29. This is not discussed in the arborist's letter either and this matter should be addressed by the arborist.
  - viii. The stormwater plan does not show the substation. A grated pit which could surcharge and direct water into the substation is not likely to be acceptable to Ausgrid.
  - ix. Surface pits in the Hill Street setback appear to be unnecessary.

#### **4. The proposal does not satisfy the requirements of SEPP (BASIX) 2004**

##### *Particulars*

- i. The BASIX water commitments require a 5,000 litres rainwater tank for the new rectory and a common 5,000 litres rainwater tank. These tanks are not shown on any plans, as required under 1(a)(i)(h) and 3(b)(i)(b) in the Schedule of BASIX commitments. There are circles labelled "WT" on DA2101 Issue 10 but no sizes, configurations or connections are shown.
- ii. There is a discrepancy between the lawn area shown on the BASIX certificate (130m<sup>2</sup>) and the plans (<130m<sup>2</sup>).

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ATTACHMENTS		
A	Pre DA Report	TRIM: 2015/160676
B	Letter to applicant	TRIM: 2015/160679
C	Heritage Consultant comments	TRIM: 2015/160680
D	Clause 4.6 variation	TRIM: 2015/160681
E	Plans and elevations	TRIM: 2015/160684
F	Sydney Trains letter	TRIM: 2015/290294