

COUNCIL ASSESSMENT REPORT

Panel Reference	2017SWC085
DA Number	DA 20/2018/JP
LGA	THE HILLS SHIRE COUNCIL
Proposed Development	PLACE OF PUBLIC WORSHIP
Street Address	LOT 1 DP 709237, 20-22 ANNANGROVE ROAD, KENTHURST
Applicant	Parish of St Madeleine Sophie Barat c/- DFP Planning Pty Ltd
Date of DA lodgement	06 July 2017
Number of Submissions	One
Recommendation	Approval subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Private infrastructure and Community Facilities exceeding \$5 million
List of all relevant S. 4.15(1)(a) matters	Section 4.15 (EP and A Act, 1979) SEPP Infrastructure 2007 SEPP 55 Remediation of Land SREP 20 – Hawkesbury Nepean River LEP 2012 DCP Part B Section 1 - Rural DCP Part C Section 1 - Parking
List all documents submitted with this report for the Panel's consideration	One submission
Report prepared by	KRISTINE MCKENZIE PRINCIPAL EXECUTIVE PLANNER
Report date	21 June 2018

Summary of S. 4.15 matters Have all recommendations in relation to relevant S 4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
Legislative clauses requiring consent authority satisfaction Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	Yes
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S 7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	N/A
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	Yes

EXECUTIVE SUMMARY

The proposal is for a place of worship with a maximum capacity of 300 persons.

The proposal includes a variation to the LEP 2012 height limit. The subject site has a 10 metre height limit under LEP 2012. The proposed maximum height of the building is 19.57 metres which is to part of the roof and is considered to be an architectural feature. This is a variation of 95.7%. The proposed height is considered satisfactory given the central location of the place of worship within the site. The application was accompanied by a Clause 4.6 variation request. The proposal will result in a better planning outcome as the proposal allows for a purpose built facility which will serve the needs of the immediate and broader community.

The proposal also includes a variation to DCP requirements regarding site coverage, screen landscape works and parking. The proposed variations are considered satisfactory and will not unreasonably impact on adjoining properties. The church will be centrally located on the site and will result in an appropriate built form outcome. There will be no unreasonable impact on rural character and adequate parking is provided on site to cater for parking. It is also noted that the church use has been undertaken on the site for over 30 years within the primary school hall and the site coverage controls were inserted into the DCP in 2008.

The proposal was notified to adjoining property owners on two occasions with one submission being received during the first notification period. The concern raised within the submission relates to height. The proposed height is considered satisfactory given the central location of the proposed works.

During the assessment of the application, a Notice of Motion was considered by Council on 24 October 2017 to add additional objectives to the LEP for the RU6 Transition zone, remove cemeteries and places of public worship as permitted uses from the RU6 Transition zone and to add site coverage controls for the RU6 Transition zone. On 11 May 2018 a letter was received from the Department which requested additional information to support the Planning Proposal. In this regard the Development Application was lodged prior to the Notice of Motion and the Department has advised that Planning Proposal will need to include a savings provision (See further comments in Section 3).

The Development Application is recommended for approval subject to conditions.

BACKGROUND

MANDATORY REQUIREMENTS

Owner:	The Trustees of the Roman Catholic Church	1.	<u>LEP 2012</u> - Satisfactory, variation to LEP height limit proposed.
Zoning:	RU6 Transition	2.	<u>SEPP Infrastructure 2007</u> - Satisfactory.
Area:	Lot 1 - 2.011 hectares Lot 2 - 8.094 hectares (combined site 10.105 hectares)	3.	<u>SEPP 55 Remediation of Land</u> - Satisfactory.
Existing Development:	Madeline Sophie Barat Parish Church, Marian College and St Madeline's Primary School, St and Associated Works	4.	<u>SREP 20 - Hawkesbury Nepean River</u> - Satisfactory.
		5.	<u>Section 4.15 (EP&A Act)</u> - Satisfactory.
		6.	<u>DCP Part B Section 1 Rural</u> - Variations required, see report.
		7.	<u>DCP Part C Section 1 - Parking</u> - Variation required, see report.
		8.	<u>Section 7.12 Contribution</u> - Yes, \$55,741.30

SUBMISSIONS

REASONS FOR REFERRAL TO SCCPP

1. Exhibition:	Not required.	1.	Private infrastructure and Community Facilities which exceeds \$5 million.
2. Notice Adj Owners:	Yes, 14 days on two occasions.		
3. Number Advised:	26.		
4. Submissions Received:	First notification - one. Second notification - nil.		

BACKGROUND

The site is currently formed by two lots (Lots 1 and 2) which contain the subject use, St Madeline Sophie Barat Parish Church, and St Madeline's Catholic Primary School (established in 1987) and Marian Catholic College (high school) (established in 1988) which are both educational establishments. The church currently operates from within the primary school hall and has done so for over 30 years.

The application was lodged on 6 July 2017 and was referred to the Rural Fire Service (RFS) as integrated development. Advice was received from the RFS on 6 September 2017 raising concern with the proposal and requesting further information. Subsequently, the site was inspected by the RFS and the applicant's fire consultant on 18 January 2018. A further bushfire report was submitted including amended plans which relocated the church building to the east by 14.6 metres. The RFS issued a Bush Fire Safety Authority on 3 May 2018.

PROPOSAL

The proposal is for the construction of a place of worship. The place of worship will be single storey in nature and will be located fronting Annangrove Road. The church will have a maximum capacity of 300 persons. The proposal includes a car parking area for 137 vehicles, which will be used also by the schools.

The proposed church will comprise the following:

- Church including a sanctuary, adoration chapel, baptistry, nave, chapels, sacristy, reconciliation room, piety room and store room, with capacity for 300 parishioners;
- Multi-purpose room including meeting room, kitchen (being used for general food preparation and serving only) and storeroom;
- Office facilities including offices, meeting rooms, kitchen, toilet facilities, and store room;
- General use toilet facilities (including accessible toilet) and store room.

The church currently operates from a hall within the St Madeline's Primary School and has done so for over 30 years.

The proposal includes the consolidation of Lot 1 DP 709237 (the subject site, No. 20-22 Annangrove Road) and 2 DP 709237 (No. 24-28 Annangrove Road) associated with both the proposed place of worship and the existing schools.

The typical hours of operation of the church are proposed to be 8am to 10pm seven days per week, although it is acknowledged that some special events such as the Christmas Eve midnight service may extend outside of these typical hours. The applicant has advised that events will be timed to minimise conflict with peak school periods.

The following schedule of use has been submitted:

TIME	ACTIVITY NAME	NATURE OF ACTIVITY	ROOM	ESTIMATED NUMBERS
MONDAY				
9:15am –	Weekday Mass	Morning	Church	20

10:30am		worship service		
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
TUESDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20 + Students
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
WEDNESDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	8-10
THURSDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20 + Students
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
FRIDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20
10:30am – 11:30am	Prayer Group	Mid-morning prayer group	Meeting Room	15
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
SATURDAY				
5:30pm – 7pm	Saturday Vigil	Evening vigil service	Church	140
SUNDAY				
8am – 9:30am	Sunday Morning Mass	Morning worship service	Church	130
10am – 11:30am	Sunday Morning Mass	Morning worship service	Church	170
5:30pm – 7:30pm	Sunday Evening Mass	Evening worship service	Church	100
OTHER ACTIVITIES				
7pm-8pm	Stations of the Cross – Fridays of Lent	Prayer service and discussion group	Church	20-30
7pm	Maundy Thursday evening Mass	Evening vigil service	Church	200
9am	Good Friday morning Service	Morning worship service	Church	300
3pm	Good Friday afternoon Service	Afternoon worship service	Church	300
7:30pm	Evening Reconciliation Service (twice a year prior to Easter and Christmas)	Evening vigil service	Church	150
Midnight	Christmas Midnight Mass	Midnight worship service	Church	200

8am	Christmas Day Mass	Morning worship service	Church	200
10am	Christmas Day Mass	Morning worship service	Church	200
10am (generally)	Funerals (general)	Morning funeral service	Church	250
10am or 2pm (generally)	Weddings	Morning or afternoon wedding service	Church + Meeting	250
MEETING PURPOSE	TIME	FREQUENCY	LOCATION	ESTIMATED NUMBERS
Finance Committee	7:30pm – 9pm	4 times a year	Meeting Room	5-10
Parish Council	7:30pm – 9pm	5 times a year	Meeting Room	5-10
Liturgy Committee	7:30pm – 9pm	4 times a year	Meeting Room	5-10
Seniors Group	7:30pm – 9pm	2 times a year	Meeting Room	5-10
Seniors Mass & Luncheon	11:30am – 2pm	Once a year	Meeting Room	70-80
Women's Breakfast	8am-10am	3 times a year	Meeting Room	40-50
Men's Gathering	7pm-9pm	3 times a year	Meeting Room	20-30
Thanksgiving meeting for volunteers	7pm-9pm	Once a year	Meeting room	70-80

Note: Where students are invited to weekday Mass, two streams of students typically join.

ISSUES FOR CONSIDERATION

1. SEPP State and Regional Development 2011

Clause 20 of SEPP (State and Regional Development) 2011 and the Schedule 4A of the Environmental Planning and Assessment Act, 1979 provides the following referral requirements to a Planning Panel:-

6 Private infrastructure and community facilities over \$5 million

Development that has a capital investment value of more than \$5 million for any of the following purposes:

(a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,

(b) affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.

The proposed development has a Capital Investment Value of \$5,574,130 thereby requiring referral to, and determination by, a Planning Panel. In accordance with this requirement the application is referred to the SCCPP for determination.

2. SEPP 55 Remediation of Land

Clause 7 (Contamination and remediation to be considered in determining development application) of SEPP 55 – Remediation of Land states:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The applicant has advised that the site has been used for the purpose of a school and church for over 30 years and prior to that was undeveloped.

Council's Environmental Health Officer has raised no objection to the proposal.

The proposal is considered satisfactory in regard to the requirements of SEPP 55.

3. Compliance with LEP 2012

a. Permissibility and Objectives of the Zone

The site is zoned RU6 Transition. The proposed use is defined as a place of worship as follows:

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 proposed use is permissible within the RU6 Transition zone.

The objectives of the RU6 Transition zone are:

- *To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage innovative and sustainable tourist development, sustainable agriculture and the provision of farm produce directly to the public.*

The proposed church is considered satisfactory in regard to the objectives of the zone in that the use is a transition between rural residential development and other land uses, the use complements the current uses of the site as a primary and high school, and the proposal does not result in any conflict between land uses.

Further to this, the RU6 Transition zone allows a variety of 'support' uses which service and allow for the provision of additional facilities for the local community and broader area.

The site does not have environmental constraints that would unreasonably impact on or limit the development of the site for a place of worship. In this regard the area of the site the subject of the works is reasonably level and does not contain any threatened flora. The site is bushfire prone, however the RFS have issued a bush fire safety authority (See further comments in Section 6 below).

It is also noted that the existing church use has been carried out in a hall within the St Madeline's Primary School for over 30 years. The church use has been integrated with the community for a long period of time and the current application seeks only to provide a purpose built facility for the use.

The proposal is considered satisfactory in regard to the provisions of LEP 2012.

b. Draft Planning Proposal

On 24 October 2017 a Notice of Motion was considered at Council's Ordinary Meeting. The Notice of Motion sought to add two additional objectives to the RU6 Transition zone, remove cemeteries and places of public worship from permitted uses in the RU6 Transition zone and to add site coverage requirements into the RU6 Transition zone. At the Ordinary Meeting Council resolved as follows:

1. *Include two additional local objectives within the RU6 Transition zone of The Hills Local Environmental Plan 2012:*
 - *To maintain the rural and scenic character of the land*
 - *To provide for a range of land uses compatible with the rural residential character*
2. *Remove the following land uses as permitted within the RU6 Transition zone of The Hills Local Environmental Plan 2012:*
 - *Cemeteries*
 - *Places of public worship*
3. *Introduce a local clause to reflect the DCP site coverage controls into our Local Environmental Plan.*

Following feedback from the Department, on 13 February 2018 Council resolved to forward a revised planning proposal to the Department of Planning and Environment that removed the prohibition of cemeteries in the RU6 Transition zone. The revised planning proposal was submitted to the Department on 21 February with a request for Gateway Determination.

On 16 April 2018 a letter was signed and sent by the Mayor to The Hon. Anthony Roberts Minister for Planning requesting that the Gateway Determination be issued urgently to allow Council to proceed to public exhibition and continue to manage local issues. This letter outlined the objectives of the proposal and raised concerns that the Gateway approval is taking a long period of time.

On 11 May 2018 a letter was received from the Department which requested additional information to support the Planning Proposal. The Department advised in part as follows:

Before the Department can finalise its assessment of the planning proposal further information is required on:

- *why the proposed objectives are suitable for the RU6 zone given that the RU6 zone is to provide a transition between suburban areas and rural and scenic areas of the Shire;*

- *how the proposal may impact on the current and future needs of the community for places of public worship;*
- *why site coverage controls currently located in Council's Development Control Plan (DCP) should be duplicated into the LEP but this LEP control would apply only to the RU6 zone and not other zones where the DCP provisions apply; and*
- *why places of public worship should be prohibited in the RU6 zone, while they remain permissible in adjoining zones and while other uses in the RU6 zone that would have comparable impacts to places of public workshop should not also be prohibited in the zone.*

Consistent with the Government's practice the proposal will need to include saving provisions so that the new local plan would not be applied retrospectively to development applications already lodged with Council.

On 2 Ma 2018 a letter was sent to the Department addressing the matters raised above and on 31 May 2018, a further letter was sent to the Department advising that the Planning Proposal had been amended and now includes site coverage controls for the RU1, RU2 and RU6 zones, consistent with the application of such controls currently in The Hills Development Control Plan 2012. To date a response has not been received from the Department.

c. Height

The subject site has a 10 metre height limit under LEP 2012. The proposed maximum height of the building is 19.57 metres. This is a variation of 95.7%.

The applicant has provided a detailed Clause 4.6 variation request (See Attachment 9) and has advised in part as follows:

Strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as the proposal achieves the relevant objectives of the development standard which are to ensure that the height of buildings is compatible with that of adjoining development and the overall streetscape, and to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

Furthermore, strict compliance would limit the opportunity for architectural expression typical of a Church which enhances the internal amenity of the building and positive contribution of the building to the Annangrove Road streetscape as a way-finding symbol within the locality. To this end, the Statement of Environmental Effects supporting this application provides further discussion in regard to the architectural roof feature under Clause 5.6 of The Hills LEP. Permitting flexibility in the application of the building height development standard will result in a better planning outcome for the site and locality than if the development standard was strictly applied.

Comment:

The objectives of Clause 4.3 are as follows:

- to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape.*
- to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.*

The objectives of Clause 4.6 of LEP 2012 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.*

The objectives of the RU6 Transition zone are:

- To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.*
- To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- To encourage innovative and sustainable tourist development, sustainable agriculture and the provision of farm produce directly to the public.*

The proposed height variation is to part of the roof and is considered to be an architectural feature. Attachments 8 and 9 show the proposed elevations.

The proposed height of the building is considered satisfactory given that the proposed church is centrally located within the site. The building is set back 118 metres from the eastern (side) boundary and 76 metres from the western (side) boundary. As such the development is separated from adjoining sites in terms of its location. The shadow impact from the development is considered reasonable given the form of the development and will not result in impacts off-site. The separation to adjoining development will reduce the potential for overlooking and privacy impacts.

The building form is considered to be appropriate for the area and the development of this nature. The proposal incorporates a variety of finishes and colours and will result in an appropriate rural outcome. The built form will also allow the structure to be easily identified by persons attending the site. The proposed building is set back 10 metres from the front boundary which is consistent with the DCP requirements.

The site is currently used by the church and has been for a long period of time. The proposed church is suitably located within the site and will be a purpose built facility. The church will also be located close to the existing Catholic primary and high school and is considered to be a complementary use.

Clause 4.6(3) of LEP 2012 states:

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*

Comment: The height limit currently applied under LEP 2012 is considered to be unreasonable and unnecessary as outlined above. The proposal has been appropriately designed and has responded to the existing rural character of the area. The proposed

built form outcome is considered to respond appropriately to the character of the area and will form an interface between rural and complementary land uses.

- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

Comment: There are sufficient planning grounds to justify the proposed height. These planning grounds include the proposal to provide a purpose built facility on the site, the complementary nature of the existing and proposed uses on the site in relation to the local context and the relationship to adjoining rural uses.

Clause 4.6 (4) of LEP 2012 states:

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*

Comment: The applicant has adequately addressed the matters required to be addressed by subclause (3).

- (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*

Comment: As detailed above, the proposal is an appropriate outcome in regard to public interest and is consistent with the objectives of the RU6 Transition zone.

- (b) the concurrence of the Director-General has been obtained.

Comment: Council has assumed concurrence under the provisions of Circular PS 08-003 issued by the Department of Planning and Environment.

Specifically in relation to recent judgments of the Land and Environment Court, for the reasons identified above it is considered that:

- The applicant's request is well founded;
- The proposed variation results in a development that is consistent with the objectives of Clause 4.3 Height of Building and the RU6 Transition zone objectives;
- Compliance with the standard is unnecessary or unreasonable in this instance; and
- The proposal results in a better planning outcome.

Accordingly, the proposed height is considered satisfactory and can be supported in this instance.

4. Compliance with DCP Part B Section 1 – Rural

The following table addresses the relevant provisions of the DCP:

New Development			
DCP Provision	DCP Requirement	Provided	Complies
Site Coverage	For lots greater than 10 hectares in size, 25% of the land area or 5000m ² , whichever is the lesser.	The consolidated site has an area of 10.105 hectares and as such the 5000m ² criteria is applicable. The proposed site coverage is 37,925m ² .	No – see comments below.
Setbacks	Front Setback: 10 metres	The proposed church is set back a minimum of 10m from the front boundary.	Yes
	Side and Rear Setback associated with various uses, including a place of worship: 5 metres for parking or manoeuvring areas (excluding any existing kerb crossings or driveways to be retained) 15m for any structure or area (including storage, display or loading areas)	The side and rear setback exceed 5 metres.	Yes
Front Fences	Front fences are to be a maximum 1.8m in height and be open style.	A new front fence is proposed which will have a height of 1.8m and be an open style palisade fence.	Yes
Cut and Fill	Cut shall not exceed 1m and fill shall not exceed 600mm.	The proposal does not include cut or fill which exceeds these requirements.	Yes
Stormwater Management	Stormwater management arrangements are to demonstrate there are no impacts to adjoining lots, watercourses or existing native bushland.	A stormwater concept plan has been submitted which is satisfactory.	Yes
Salinity	Development proposed in areas where there is a known salinity hazard must incorporate appropriate management responses.	The area is not mapped as one where there is a known salinity hazard.	NA
Wastewater and Effluent Disposal Areas	Proposals must demonstrate sufficient area is available for systems and disposal.	The existing system is a pump-to-sewer system which is adequate for the proposal.	Yes
Lighting	Any lighting must not cause a detrimental impact on the amenity of adjoining properties and shall comply with AS 4282 - Control of the obtrusive effects of outdoor lighting.	A condition has been recommended requiring compliance with the Australian Standard.	Yes
Community Facilities, Recreation Facilities and Places of Public Worship			
Acoustic/Noise Impacts	Proposals must demonstrate they will not give rise to	An acoustic assessment has been submitted. The	Yes

	offensive noise as defined in the Protection of the Environment Operations Act and shall comply with the NSW Industrial Noise.	report indicates that offensive noise will not result from the proposal.	
Waste	Development shall comply with the objectives and controls of Clause 2.22 Waste Management – Storage and Facilities in Part B Section 6 - Business of this DCP.	A waste management plans has been submitted. The plan is satisfactory.	Yes
Landscaping Screening to Boundaries	Dense landscape screening with a minimum depth of 3 metres must be incorporated into side and rear setbacks to effectively screen the development from adjoining property.	A 3 metre wide landscape strip has not been provided along the side boundaries.	No – see comment below.
Hours of operation	Proponents must provide detailed information with respect to the proposed hours of operation. This should include every day activities as well as the frequency of special events including any proposed bell ringing and maximum number of people attending these events.	The proposal includes a schedule of use and hours of operation. The proposed use of the site is considered satisfactory.	Yes

a. Site Coverage

The DCP requires that for lots greater than 10 hectares in size, site coverage is limited to 25% of the land area or 5000m², whichever is the lesser. The site has an area of 10.105 hectares (consolidated site) and as such the 5000m² criteria is applicable. The proposed site coverage is 37, 925m².

The site has been used for school and church purposes since the mid- 1980s and the site coverage controls were introduced in 2008. As such the use of the site for a church pre-dates the site coverage controls.

As outlined above, the proposal includes the consolidation of Lot 1 DP 709237 (the subject site, No. 20-22 Annangrove Road) and 2 DP 709237 (No. 24-28 Annangrove Road) associated with both the proposed place of worship and the existing schools. As such the site coverage has been calculated over both lots when consolidated.

The existing site coverage for Lot 1 (the subject site) is 2870m² and the existing site coverage for Lot 2 is 29,995m² (this includes the approved but not yet constructed additional school building approved by the SCCPP on 19 October 2017. The total existing site coverage is 32,865m².

The proposed site coverage is for Lot 1 is 7930m², with a combined site coverage for Lots 1 and 2 of 37,925m².

The applicant has provided the following justification to support the variation:

The combined site of Lots 1 and 2 has a total area of 10.2ha. The DCP requires a maximum site coverage of 25% of the land area, or 5,000m², whichever is the lesser. In this case, the 5,000m² control applies.

Lot 1 has a proposed 'site coverage' of 7,930m² (including the new car parking spaces, the new driveway works and sheltered pick on Lot 2, and accounting for the dwelling which is not being demolished under this DA), and Lot 2 has a 'site coverage' of 29,995m² (including driveway/car park circulation areas, playing fields and general pedestrian circulation areas). Therefore the combined sites will have a total 'site coverage' of 37,925m².

The DCP provides the following Statement of Outcomes for new development in Rural zones:

- The scale, siting and visual appearance of new development maintains the open rural feel of the landscape and preserves scenic and environmental qualities of the area.*
- The location of new rural/ residential development is to have regard to the potential impacts arising from existing adjacent rural business activities.*

The nature of both the new place of public worship and the new school building will maintain the open rural feel of the landscape and Annangrove Road streetscape, as the site has an established character of a combined education and place of worship precinct within a bushland setting. The proposal will not alter the existing character and will provide an improved streetscape presentation to Annangrove Road.

The location of the new buildings has given regard to the potential impacts arising from adjacent activities, which are primarily residential in nature. The proposed works will not result in additional adverse impacts from the site beyond those already considered acceptable from the current site operations (Church and School included), inclusive of the additional site coverage resulting from the amended plans.

On these grounds, the variation to the maximum site coverage control is considered to be justified.

Comment:

The DCP contains the following Statement of Outcomes:

- The scale, siting and visual appearance of new development maintains the open rural feel of the landscape and preserves scenic and environmental qualities of the area.*
- The location of new rural/ residential development is to have regard to the potential impacts arising from existing adjacent rural business activities.*

The site coverage requirements include all structures and hard paved areas on site including parking and driveway areas.

As the two lots are proposed to be consolidated, the site coverage includes large areas of paving associated with the schools such as pathways, covered and uncovered outdoor areas, sealed play areas and similar.

In addition, as parking has been provided to cater for both schools and the church, a large area of the consolidated site is used for parking and for driveway access, included pick up/drop off areas.

The proposed church building is located forward of the existing buildings on the site adjoining Annangrove Road however it will not unreasonably impact on the rural feel of the area. The proposed building is in keeping with the existing buildings on site in terms of design, although it is acknowledged that the building will be of a more modern external design.

The proposal includes landscape works which will assist in screening the development from views from external to site. In this regard the proposal will not unreasonably impact on the rural character of the area.

The proposed site coverage is considered to be satisfactory.

b. Landscape Strip

The DCP requires that dense landscape screening with a minimum depth of 3 metres must be incorporated into side and rear setbacks to effectively screen the development from adjoining property where a place of worship is proposed. Landscape works are proposed on the site however a dense landscape screen has not been provided along the side boundaries.

The applicant has submitted the following as justification:

Part B Section 1 Chapter 9 of The Hills DCP (Development Controls for Community Facilities, Recreation Facilities and Places of Public Worship) sets out that landscaping screening to side and rear boundaries is required to a minimum depth of 3m to effectively screen the development from adjoining property boundaries. The proposed place of public worship has been located in a logical position on the site, where level difference and impacts on vegetation are minimised, but where separation from adjoining residential development is maximised. Plan DA01 shows that the proposed church building will have a setback of 76m from the western-most (side) boundary, a setback of 118.14m to the eastern (side) boundary, and a setback of 363.625m to the southern (rear) boundary.

In regard to the western side boundary, the site provides in excess of 3m of landscaping at the boundary, excluding a small section where the existing driveway is located so as to accommodate a separate entry/exit arrangement. The land between the boundary and the proposed church building comprises multiple trees (with managed understorey), as well as the existing presbytery. Taking into consideration the proposed 76m setback, the existing landscaping along the boundary and the other landscaping and structures located between the proposed church building and the residence to the west, it is reasonable to consider that a landscaped side setback is not warranted in these circumstances.

In regard to the eastern side boundary, the site does not provide dedicated landscaping along the common boundary, however the land between the boundary and the proposed church building comprises multiple trees (with managed understorey), as well as an existing residence (not proposed to be demolished as part of this application). Taking into consideration the substantial proposed setback of 118.14m and the other landscaping and structures located between the proposed church building and the residence to the east, it is reasonable to consider that a landscaped side setback is not warranted in these circumstances.

In regard to the southern rear boundary, the site already maintains in excess of 3m of landscaped land at the rear boundary of the site, and the proposed church building is separated from this boundary by a substantial setback, as well as the built form of both the St Madeleine's Catholic Primary School and Marian College. Therefore it is reasonable to consider that additional rear landscaped area is not required in order to satisfy the requirements of the DCP.

In conclusion, it is proposed that the development does not require additional landscaping treatment to the side or rear boundaries as the proposal would not impact on the amenity of surrounding development, or the character of the rural area (consistent with the statement of outcomes) and would not provide any noticeable benefit if additional landscaping were required to be provided by Council.

Comment:

The DCP contains the following Statement of Outcomes:

Community facilities, recreation facilities and places of public worship do not impact on the amenity of surrounding development or character of the rural area.

The proposed church is centrally located on the site. There are a number of existing trees which will be retained on site, and in addition replacement tree planting and landscape works are proposed. The location of the works and design of the church will be in keeping with the established rural character of the area.

The external finishes of the building are predominantly earthy colours which will blend with other larger complementary buildings in the rural zone.

The proposed landscape works on site are considered reasonable and no objection is raised to the DCP variation.

5. Parking

The proposal has been amended to increase the parking for the church from 116 to 137 spaces, which is an increase of 21 spaces. Overall,

The DCP requires the following parking to be provided:

Place of Worship:

1 space per 5 seats

Given that the site will be consolidated (Lots 1 and 2) and the site will also include an educational establishment, the educational establishment has also been assessed which has the following rate:

Educational Establishment (School):

1 space per employee plus

1 space per 8 year 12 students, plus

1 space per 30 students enrolled for visitors and/or parent parking

Note: it is considered reasonable to assess parking based on both the existing and proposed uses. It is also relevant to note that the existing place of worship is undertaken within one of the existing school buildings (within St Madeline's primary school) and currently shared parking arrangements occur. The shared parking arrangement will continue.

The following applies:

USE	RATE	REQUIRED
Place of Worship:	1 space per 5 seats (300 seat capacity)	60
Educational Establishment (School):	1 space per employee (127 staff comprising 95 (Marian College) and 32 (St Madeline's))	127
	1 space per 8 year 12 students (150 x Year 12 students)	19
	1 space per 30 students enrolled for visitors and/or parent parking (1475 students total)	50
Total Spaces Required:		256
Spaces Provided:	School: 106 sealed spaces and 66 unsealed spaces	
	Church: 137 sealed spaces and potential for overflow parking on the grass	
Total:	Sealed spaces: 243 Unsealed spaces: 66 Overflow parking on the grass Total: 309 spaces	

In regard to the above, when considered in isolation, the church requires 60 parking spaces, with 137 sealed spaces provided with potential for overflow parking on the grass.

However, while the total number of spaces exceed the DCP requirements, the number of sealed spaces is less than required when considering the site as a whole. This is contrary to the DCP which requires that parking areas be sealed.

The use of overflow parking for the church is considered reasonable given that these spaces would only be used for larger events such as Christmas, Easter, funerals and weddings. The use of the unsealed spaces within the school is considered reasonable given that the spaces are existing, are located in convenient locations for users and do not contribute further to site coverage.

The proposed parking provision is considered satisfactory subject to a condition limiting the church activities to a maximum of 300 persons (See Condition 51).

6. Rural Fire Service Comments

The proposal was referred to Rural Fire Service (RFS) as the proposal is defined as a 'special fire protection purpose'. The RFS have issued a Bush Fire Safety Authority under Section 100B of the Rural Fire Act 1997 subject to the imposition of a condition relating to asset protection zones, water and utilities, access, evacuation and emergency management, design and construction and landscaping (See Condition 2 and Appendix 1).

7. Submissions

The proposal was notified to adjoining property owners on two occasions. One submission was received during the first notification period, and no submissions were received during the second notification period. The following issues were raised:

ISSUE	COMMENT
The LEP limits height to 10 metres, however the proposal has a height of 19.57 metres. The excessive height of the proposed church building will adversely affect the overall streetscape of Annangrove Road and adjoining properties, as the proposed building is clearly visible from the public domain on the street. The proposed height will make the church building too prominent and too overpowering that is not compatible with that of adjoining development and streetscape. I strongly object to the proposed height of the church building specified in this DA. The explanations provided in the Clause 4.6 Variation document is not satisfactory. I strongly request the Council to reject the current proposal and advise the applicant to revise the design and substantially reduce the height of the church building to an acceptable height.	The proposed height is considered satisfactory and will not result in unreasonable impacts to adjoining properties. See Section 3 above.

8. A Metropolis of Three Cities – the Greater Sydney Region Plan

The Central City District Plan contained 'Directions for Liveability' which include:

- A City for People – Planning Priority C3 - Providing services and social infrastructure to meet people's changing needs; and
- A City for People – Planning Priority C4 - Fostering healthy, creative, culturally rich and socially connected communities.

The plan seeks to ensure that social interaction is encouraged where people can support creativity and cultural expression. The plan also refers to the co-location of schools, youth and health services, aged care, libraries, community and cultural facilities, parks and recreation. The Plan also seeks to support social connections to help foster healthy, culturally rich and networked communities that share values and trust and can develop resilience to shocks and stress.

Implementation and monitoring of the Plan and the potential indicators are as follows:

Direction 3: Improved quality of life can be achieved by co-locating schools, recreation, transport, community and health facilities, social infrastructure and local services in walkable mixed use places.

Direction 5: The creation and renewal of great places for people, together with better local accessibility through walking and cycling, will achieve local liveability that attracts and retains residents and workers. Great places exhibit design excellence and start with a focus on open spaces and a people-friendly realm.

The proposed development meets the intent of the Plan as follows:

- The proposal will meet the demand for an improved cultural service within the existing site, which also contains a primary and high school;
- The proposal will provide a permanent place of worship and is an appropriate built form outcome;
- The proposal will allow the continuation of a current social activity for residents of the area.

The proposal is considered satisfactory in regard to the Central City District Plan.

TRAFFIC COMMENTS

The proposal seeks to provide a purpose-built church facility on the site rather than the shared arrangement which currently exists where the church use is carried out in the school hall. The church and school currently share a parking area which is mainly used by the school during the week and the church during the weekend, with the exception of activities such as funerals which mainly occur during the week.

Additional parking will be provided adjoining the new church building to provide convenient parking for attendees. In addition overflow parking will also be available on the grassed areas.

There are currently traffic management measures in place on Annangrove Road, fronting the church and school which, over a period of time have proven effective in managing the existing turning movements into and out of the school property.

No objection raised to the proposal.

SECTION 94 COMMENTS

The applicant has submitted a request for an exemption to Section 7.12 (previously 94A) Contributions and has stated as follows:

This submission to Council is to request that the contribution not be levied for this application for the following reasons:

1. *The new Church is replacing an existing facility in which Religious services have been held in the school multi-purpose space for almost 30 years. The existing facility will return to its intended use for primary education. The new Church is thus not increasing intensity of the overall site development, services or any other infrastructure relating to this property;*
2. *Having regard to the above, the imposition of a development contribution levy upon the construction of a Church which does not impose demand upon public facilities which would be required to maintain or enhance amenity or service delivery within the area (identified as the purpose of the S94A Plan); and*
3. *Moreover, the new Church will provide desirable and integral services to the community and is being constructed from funds raised from residents in the community (the majority of whom have already contributed to community infrastructure in the area). On these grounds it is considered the new Church development will contribute to the community much in the same way as would facilities constructed with the funding from the S94A plan.*

Council is requested to consider that the new Church adds to the 'amenity' of the community in Kenthurst. Its construction will not impact financially or otherwise upon any community service or element of infrastructure the purpose of the S94A plan.

Council's Forward Planner has reviewed the request for an exemption and advised as follows:

On the 22 May 2017, the applicant for a proposed new place of public worship at 20-28 Annangrove Road, Kenthurst provided a written request to be exempt from The Hills Section 94A Contributions Plan.

To be considered for an exemption from the application of Section 94A, an Applicant must demonstrate that the development meets the requirements of a direction from the Minister for Planning under Section 94E of the EP&A Act.

The current Section 94E Direction states that a levy under section 94A of the Act cannot be imposed on development that is:

- a) for the purpose of disabled access,*
- b) for the sole purpose of affordable housing,*
- c) for the purpose of reducing the consumption of mains-supplied potable water, or reducing the energy consumption of a building,*
- d) for the sole purpose of the adaptive reuse of an item of environmental heritage, or*
- e) other than the subdivision of land, where a condition under section 94 of the Act has been imposed under a previous development consent relating to the subdivision of the land on which the development is proposed to be carried out.*

The Applicant has requested an exemption from the S94A levy on the basis that:

- a. The new church replaces an existing facility that was used to hold religious services and the new church will not increase the intensity of the site (the old building will be retained and used so the proposal does not technically replace it);
- b. The Church would provide desirable and integral services to the community and is being constructed from funds raised from residents within the community (who they believe have already contributed to infrastructure in the area).

Having considered the points provided in the letter, and having regard to the Ministerial Directions under Section 94E of The Act, the Applicant's request does not meet these requirements. Further, it is noted that:

- The development will increase the intensity of development on the site;
- The development will generate demand for local infrastructure; and
- S94A(4) of the Act clearly states that a condition imposed under this section is not invalid by reason only that there is no connection between the development the subject of the development consent and the object of expenditure of any money required to be paid by the condition.

Based on all of the above, the application of a S94A condition as part of the consent is considered to be fair and necessary.

HEALTH COMMENTS

The use of the church is not expected to have an acoustic impact upon the nearby residential premises. There is potential for noise from motor vehicles to have an impact when the church is at capacity. This is expected to occur infrequently (ie Easter and Christmas) and be a minor impact. A condition of consent has been recommended (as detailed in the acoustic report) requiring a Traffic Management Plan to be implemented to minimise noise impacts during busy periods.

SUBDIVISION COMMENTS

No objection raised to the proposal. Relevant conditions are included in the recommendation.

TREE COMMENTS

No objection raised to the proposal. Relevant conditions are included in the recommendation.

WASTE COMMENTS

No objection raised to the proposal. Relevant conditions are included in the recommendation.

FIRE SAFETY COMMENTS

No objection raised to the proposal. Relevant conditions are included in the recommendation.

CONCLUSION

The proposal has been assessed having regard to the requirements of Section 4.15 of the Environmental Planning and Assessment Act, SEPP 55 Remediation of Land, SREP 20 – Hawkesbury Nepean River, LEP 2012 and DCP Part B Section 1 – Rural and Part C Section 1 – Parking and is considered satisfactory. The proposed variation to the LEP 2012 height limit and the Clause 4.6 variation request submitted by the applicant have been considered and the proposal will result in a better planning outcome. The DCP variations to site coverage, screen landscaping and parking have been assessed and are considered reasonable and are supported. One submission was received and the issue raised in the submission does not warrant refusal of the application.

The proposal is recommended for approval subject to conditions.

IMPACTS:

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

The Hills Future - Community Strategic Plan

The Hills Future Community Strategic Plan outlines the aspirations of community residents for The Hills Shire region. Desired community outcomes include balanced urban growth, vibrant communities and a protected environment. The social and environmental impacts have been addressed in the report and are consistent with the outcomes of The Hills Future Community Strategic Plan.

RECOMMENDATION

The Development Application be approved subject to the following conditions.

GENERAL MATTERS

1. Development in Accordance with Submitted Plans

The development being carried out in accordance with the following approved plans and details, stamped and returned with this consent except where amended by other conditions of consent.

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	DATE
DA00	Site Analysis	29/03/2018 Issue A
DA01	Proposed Site Plan	27/03/2018 Issue 15
DA02	Proposed Church Site Plan	23/04/2018 Issue 10
DA03	Proposed Ground Floor Plan	23/04/2018 Issue 14
DA04	Proposed Roof Plan	29/03/2018 Issue A
DA06	Proposed Elevations – Sheet 1	29/03/2018 Issue A
DA07	Proposed Elevations – Sheet 2	29/03/2018 Issue A
DA08	Proposed Sections – Sheet 1	28/03/2018 Issue A
DA09	Proposed Sections – Sheet 2	29/03/2018 Issue A
DA10a	Sun Shadow Diagram Winter Solstice (June 21) 9am	29/03/2018 Issue A
DA10b	Sun Shadow Diagram Winter Solstice (June 21) Midday	29/03/2018 Issue A
DA10c	Sun Shadow Diagram Winter Solstice (June 21) 3pm	29/03/2018 Issue A
DA11	Perspective	29/03/2018 Issue A
DA12	Proposed Cut and Fill Plan, Section	29/03/2018 Issue A
DA13	Street Elevation	29/03/2018 Issue A
DA15	Tree Removal Plan	23/04/2018 Issue 9
LDA-01	Existing Site Plan	20.4.18 Rev. F
LDA-02	Tree Removal/Retention Plan	20.4.18 Rev. F
LDA-03	Landscape Masterplan	20.4.18 Rev. F
LDA-04	Landscape Plan 01	20.4.18 Rev. F
LDA-05	Landscape Plan 02	20.4.18 Rev. F
LDA-06	Plant Schedule/Landscape Details	20.4.18 Rev. F
LDA-07	Overall Planting Plan	20.4.18 Rev. F
0728-10	Plan of Detail Survey & Contours Lot 1 DP 709237	16 th March 2016
0728-3	Plan of Detail Survey & Contours over Lot 1 & 2 in DP 709237	6 th -14 th June 2007
----	Plan of Management for the Operation of a Church	May 2018 Rev. C

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.

2. Compliance with NSW Rural Fire Service Requirements

Compliance with the requirements of the NSW Rural Fire Service attached as Appendix A to this consent and dated 03 May 2018.

3. Provision of Parking Spaces

The development is required to be provided with 137 off-street car parking spaces. These car parking spaces shall be available for off street parking at all times. Overflow parking is permitted on the grassed areas of the site for occasional large events.

4. Tree Removal

Approval is granted for the removal of Trees numbered 1, 2, 3, 8, 9, 11, 17- 20, 22, 24, 25, 26, 29, 30, 33, 35-45, 46a, and 64-86, 98, 100 as detailed in Tree Removal/Retention Plan LDA-02 Rev F prepared by Ground ink, dated 20 April 2018.

All other trees are to remain and are to be protected during all works. Suitable replacement trees are to be planted upon completion of construction.

5. Fencing Setback and Planting Requirements

All trees planted as part of the approved landscape plan are to be minimum 75 litre pot size. All shrubs planted as part of the approved landscape plan are to be minimum 200mm pot size. Groundcovers are to be planted at 5/m².

The section of new fencing fronting Annangrove Road shall be set back a minimum of 800mm from the property boundary to allow for landscape planting between the boundary and proposed fence. Planting shall be undertaken in this area with suitable species to obtain a min height of 1m. Plants shall be planted at a maximum of 1m centres.

6. Replacement Planting Requirements

To maintain the treed environment of the Shire, 25 advanced (min 100 litres) replacement trees from the following list are to be planted within the carpark as indicated on Landscape Masterplan LDA-03 as '3 Native canopy tree planting'.

<i>Angophora bakerii</i>	Narrow-leaved Apple
<i>Ceratopetalum apetalum</i>	Coachwood
<i>Corymbia eximia</i>	Yellow Bloodwood
<i>Syncarpia glomulifera</i>	Turpentine
<i>Angophora costata</i>	Smooth barked Apple
<i>Angophora floribunda</i>	Rough-barked Apple
<i>Corymbia gummifera</i>	Red Bloodwood
<i>Eucalyptus acmenoides</i>	White Mahogany
<i>Eucalyptus creba</i>	Narrow Leaved Ironbark
<i>Eucalyptus fibrosa</i>	Broad leaved Ironbark
<i>Eucalyptus moluccana</i>	Grey Box
<i>Eucalyptus paniculata</i>	Grey Ironbark
<i>Eucalyptus pilularis</i>	Blackbutt
<i>Eucalyptus piperita</i>	Sydney Peppermint
<i>Eucalyptus punctata</i>	Grey Gum

<i>Eucalyptus resinifera</i>	Red Mahogany
<i>Eucalyptus saligna</i>	Sydney Blue Gum
<i>Eucalyptus sclerophylla</i>	Scribbly Gum
<i>Eucalyptus tereticornis</i>	Forest Red Gum

7. Protection of Public Infrastructure

Adequate protection must be provided prior to work commencing and maintained during building operations so that no damage is caused to public infrastructure as a result of the works. Public infrastructure includes the road pavement, kerb and gutter, concrete footpaths, drainage structures, utilities and landscaping fronting the site. The certifier is responsible for inspecting the public infrastructure for compliance with this condition before an Occupation Certificate is issued. Any damage must be made good in accordance with the requirements of Council and to the satisfaction of Council.

8. Vehicular Access and Parking

The formation, surfacing and drainage of all driveways, parking modules, circulation roadways and ramps are required, with their design and construction complying with:

- AS/ NZS 2890.1
- AS/ NZS 2890.6
- AS 2890.2
- DCP Part C Section 1 – Parking
- Council's Driveway Specifications

Where conflict exists the Australian Standard must be used.

The following must be provided:

- All driveways and car parking areas must be prominently and permanently line marked, signposted and maintained to ensure entry and exit is in a forward direction at all times and that parking and traffic circulation is appropriately controlled.
- All driveways and car parking areas must be separated from landscaped areas by a low level concrete kerb or wall.
- All driveways and car parking areas must be concrete or bitumen. The design must consider the largest design service vehicle expected to enter the site.
- All driveways and car parking areas must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

9. Minor Engineering Works

The design and construction of the engineering works listed below must be provided for in accordance with Council's Design Guidelines Subdivisions/ Developments and Works Specifications Subdivisions/ Developments.

Works on existing public roads or any other land under the care and control of Council must be approved and inspected by Council in accordance with the Roads Act 1993 or the Local Government Act 1993. A separate minor engineering works application and inspection fee is payable as per Council's Schedule of Fees and Charges.

a) Site Stormwater Drainage

The entire development site area must be graded, collected and drained by pits and pipes to a suitable point of legal discharge.

b) Inter-allotment Stormwater Drainage

Piped inter-allotment stormwater drainage catering for the entire development site area must be provided. All collected stormwater is to be piped to a legal point of discharge.

Where OSD is required, a minimum level difference of 800mm measured between the surface level and the invert of the outlet pipe must be provided.

c) Water Sensitive Urban Design Elements

Water sensitive urban design elements, consisting of proprietary products, are to be located generally in accordance with the plans and information submitted with the development application (March 2018).

Detailed plans for the water sensitive urban design elements must be submitted for approval. The detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure. The design must be accompanied, informed and supported by detailed water quality and quantity modelling. The modelling must demonstrate a reduction in annual average pollution export loads from the development site in line with the following environmental targets:

- 90% reduction in the annual average load of gross pollutants
- 85% reduction in the annual average load of total suspended solids
- 65% reduction in the annual average load of total phosphorous
- 45% reduction in the annual average load of total nitrogen

All model parameters and data outputs are to be provided.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to:

Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>

Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

10. Water Sensitive Urban Design Handover Process

An operations and maintenance plan must be prepared for all WSUD proposals. The operations and maintenance plan must include:

- The location and type of each WSUD element, including details of its operation and design;
- A brief description of the catchment characteristics, such as land uses, areas etc;
- Estimated pollutant types, loads and indicative sources;
- Intended maintenance responsibility, Council, landowner etc;
- Inspection method and estimated frequency;
- Adopted design cleaning/ maintenance frequency;
- Estimate life-cycle costs;
- Site access details, including confirmation of legal access, access limitations etc;
- Access details for WSUD measure, such as covers, locks, traffic control requirements etc;
- Description of optimum cleaning method and alternatives, including equipment and personnel requirements;
- Landscape and weed control requirements, noting that intensive initial planting is required upfront to reduce the requirement for active weed removal;
- A work method statement;

- A standard inspection and cleaning form.

For the purposes of complying with the above a WSUD treatment system is considered to include all functional elements of the system as well as any landscaped areas directly surrounding the system.

11. Road Opening Permit

Should the development necessitate the installation or upgrading of utility services or any other works on Council land beyond the immediate road frontage of the development site and these works are not covered by a Construction Certificate issued by Council under this consent then a separate road opening permit must be applied for and the works inspected by Council's Maintenance Services team.

The contractor is responsible for instructing sub-contractors or service authority providers of this requirement. Contact Council's Construction Engineer if it is unclear whether a separate road opening permit is required.

12. Construction Certificate

Prior to construction of the approved development, it is necessary to obtain a Construction Certificate. A Construction Certificate may be issued by Council or an Accredited Certifier. Plans submitted with the Construction Certificate are to be amended to incorporate the conditions of the Development Consent.

13. Clause 94 Considerations

Under clause 94 of the Environmental Planning & Assessment Regulation, the following fire safety/Building Code of Australia (BCA) works are to be undertaken with the construction certificate works and are to be completed prior to the issue of the occupation certificate:

- i. Should the existing hydrant system that is used to cover the school buildings be utilised to service the new worship building, then the system is to be upgraded to the current standard of performance required under the BCA, this being AS 2419.1-2005.
- ii. As an awning is proposed to be erected to connect the existing presbytery and the new church, a review of restricting fire spread between buildings is to be undertaken appropriate to CP2 of the BCA.

14. Building Work to be in Accordance with BCA

All building work must be carried out in accordance with the provisions of the Building Code of Australia.

15. Protection of Existing Trees and Native Vegetation

No additional native vegetation (trees and understorey) is to be removed for the creation of an Asset Protection Zone or otherwise without prior consent of Council.

16. Management of Construction and Demolition Waste

Any waste generated as a result of construction and/ or demolition for the development is to be reused and recycled where possible, and any residual waste is to be disposed of at a licenced waste facility. Waste materials must be appropriately stored and secured within a designated waste area onsite at all times, prior to its reuse onsite or being sent offsite. Building waste containers are not permitted to be placed on public property at any time unless a separate application is approved by Council to locate a building waste container in a public place. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

17. Disposal of Surplus Excavated Material

The disposal of surplus excavated material, other than to a licenced waste facility, is not permitted without the previous written approval of Council prior to works commencing on site. Any unauthorized disposal of waste, which includes excavated material, is a breach of the Protection of the Environment Operations Act 1997 and subject to substantial penalties. Receipts of all waste/ recycling tipping must be kept onsite at all times and produced in a legible form to any authorised officer of the Council who asks to see them.

18. Outdoor Lighting

Any lighting must not cause a detrimental impact on the amenity of adjoining properties and shall comply with AS 4282 - Control of the obtrusive effects of outdoor lighting.

PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

19. Onsite Stormwater Detention – Hawkesbury River Catchment Area

Onsite Stormwater Detention (OSD) is required in accordance with Council's adopted policy for the Hawkesbury River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook, with amended parameters for the site storage requirement and permissible site discharge.

The stormwater concept plan prepared by Abel & Brown Project 2716 Revision C dated March 2018 is for development application purposes only and is not to be used for construction. The detailed design must reflect the approved concept plan and the following necessary changes:

- a) The base of the discharge control pit is to be concrete benched towards the invert of the orifice.

The design and construction of the OSD system must be approved by either Council or an accredited certifier. A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council. The following must be included with the documentation approved as part of any Construction Certificate:

- Design/ construction plans prepared by an accredited OSD designer.
- A completed OSD Drainage Design Summary Sheet.
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes.
- A completed OSD Detailed Design Checklist.
- A maintenance schedule.

20. Works on Adjoining Land

Where the engineering works included in the scope of this approval extend into adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

21. Stormwater Discharge Acceptance

Where the engineering works included in the scope of this approval necessitate the discharge of stormwater onto adjoining land, written consent from all affected adjoining property owners must be obtained and submitted to Council before a Construction Certificate is issued.

22. Security Bond – Road Pavement and Public Asset Protection

In accordance with Section 80A(6)(a) of the Environmental Planning and Assessment Act 1979, a security bond of \$66,300.00 is required to be submitted to Council to guarantee the protection of the road pavement and other public assets in the vicinity of the site during construction works. The above amount is calculated at the rate of \$85.00 per

square metre based on the entry point of the subject site plus an additional 20m on either side (60m) multiplied by the width of the road (13m).

The bond must be lodged with Council before a Construction Certificate is issued.

The bond is refundable upon written application to Council and is subject to all work being restored to Council's satisfaction. Should the cost of restoring any damage exceed the value of the bond, Council will undertake the works and issue an invoice for the recovery of these costs.

23. Security Bond Requirements

A security bond may be submitted in lieu of a cash bond. The security bond must:

- Be in favour of The Hills Shire Council;
- Be issued by a financial institution or other accredited underwriter approved by, and in a format acceptable to, Council (for example, a bank guarantee or unconditional insurance undertaking);
- Have no expiry date;
- Reference the development application, condition and matter to which it relates;
- Be equal to the amount required to be paid in accordance with the relevant condition;
- Be itemised, if a single security bond is used for multiple items.

Should Council need to uplift the security bond, notice in writing will be forwarded to the applicant 14 days prior.

24. Erosion and Sediment Control

The detailed design must be accompanied by an Erosion and Sediment Control Plan (ESCP) prepared in accordance with the Blue Book and Council's Works Specification Subdivision/ Developments.

An ESCP must include the following standard measures along with notes relating to stabilisation and maintenance:

- Sediment fencing.
- Barrier fencing and no-go zones.
- Stabilised access.
- Waste receptacles.
- Stockpile site/s.

25. Section 94A Contribution

Pursuant to section 80A (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 94A Contributions Plan, a contribution of **\$55,741.30** shall be paid to Council. This amount is to be adjusted at the time of the actual payment in accordance with the provisions of the Hills Section 94A Contributions Plan.

The contribution is to be paid prior to the issue of the Construction Certificate.

You are advised that the maximum percentage of the levy for development under section 94A of the Act having a proposed construction cost is within the range specified in the table below;

Proposed cost of the development	Maximum percentage of the levy
Up to \$100,000	Nil
\$100,001 - \$200,000	0.5 %
More than \$200,000	1%

PRIOR TO WORK COMMENCING ON THE SITE

26. Protection of Existing Trees

The trees that are to be retained are to be protected during all works strictly in accordance with the Arboricultural Impact Assessment prepared by Horticultural Management Services (dated 1 June 2017 and amended 7 March 2018) and AS4970-2009 Protection of Trees on Development Sites.

At a minimum a 1.8m high chain-wire fence is to be erected at least three (3) metres from the base of each tree and is to be in place prior to works commencing to restrict the following occurring:

- Stockpiling of materials within the root protection zone,
- Placement of fill within the root protection zone,
- Parking of vehicles within the root protection zone,
- Compaction of soil within the root protection zone.

All areas within the root protection zone are to be mulched with composted leaf mulch to a depth of not less than 100mm.

A sign is to be erected indicating the trees are protected.

The installation of services within the root protection zone is not to be undertaken without prior consent from Council.

27. Trenching within Tree Protection Zone

Any trenching for installation of drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to Council (72 hours notice) or under supervision of a project arborist.

If supervision by a project arborist is selected, certification of supervision must be provided to the Certifying Authority within 14 days of completion of trenching works.

28. Separate OSD Detailed Design Approval

No work is to commence until a detailed design for the OSD system has been approved by either Council or an accredited certifier.

29. Public Infrastructure Inventory Report

A public infrastructure inventory report must be prepared and submitted to Council recording the condition of all public assets in the direct vicinity of the development site. This includes, but is not limited to, the road fronting the site along with any access route used by heavy vehicles. If uncertainty exists with respect to the necessary scope of this report, it must be clarified with Council before works commence. The report must include:

- Planned construction access and delivery routes; and
- Dated photographic evidence of the condition of all public assets.

30. Erection of Signage – Supervision of Work

In accordance with Clause 98A(2) of the Environmental Planning and Assessment Regulations 2000, a sign is to be erected in a prominent position displaying the following information:

- The name, address and telephone number of the Principal Certifying Authority;
- The name and telephone number (including after hours) of the person responsible for carrying out the works;
- That unauthorised entry to the work site is prohibited.

This signage must be maintained while the development work is being carried out and must be removed upon completion.

31. Contractors Details

In accordance with Section 109E(3) of the Environmental Planning and Assessment Act 1979, the contractor carrying out the development works must have a current public liability insurance policy with an indemnity limit of not less than \$10,000,000.00. The policy must indemnify Council from all claims arising from the execution of the works. A copy of this insurance must be submitted to Council prior to works commencing.

32. Erosion and Sediment Control

The approved ESCP measures must be in place prior to works commencing and maintained during construction and until the site is stabilised to ensure their effectiveness. For major works, these measures must be maintained for a minimum period of six months following the completion of all works.

33. Engagement of a Project Arborist

Prior to works commencing, a Project Arborist (minimum AQF Level 5) is to be appointed and the following details provided to The Hills Shire Council's Manager – Environment & Health:

- a) Name:
- b) Qualification/s:
- c) Telephone number/s:
- d) Email:

If the Project Arborist is replaced, Council is to be notified in writing of the reason for the change and the details of the new Project Arborist provided within 7 days.

34. Construction and Demolition Waste Management Plan Required

Prior to the commencement of works, a Waste Management Plan for the construction and demolition phases of the development must be submitted to and approved by the Principal Certifying Authority. The plan should be prepared in accordance with The Hills Development Control Plan 2012 Appendix A. The plan must comply with the waste minimisation requirements in the relevant Development Control Plan. All requirements of the approved plan must be implemented during the construction and demolition phases of the development.

DURING CONSTRUCTION

35. Working Hours

All work must be restricted to between the hours of 7:00am and 5:00pm, Monday to Saturday. No work can occur outside the hours specified above on Sundays or public holidays. The contractor must instruct sub-contractors regarding the hours of work.

Upon receipt of justified complaint/s in relation to local traffic impacts arising from roadworks being carried out on existing public roads those roadworks will be restricted to between the hours of 9:00am and 3:00pm, Monday to Friday or as otherwise directed by Council staff. Requests to carry out roadworks on existing public roads during the night in order to avoid local traffic impacts will also be considered based on the circumstances of the site and must be approved in writing by Council's Manager – Subdivision and Development Certification.

36. Hours of Work

Work on the project to be limited to the following hours: -

Monday to Saturday - 7.00am to 5.00pm;

No work to be carried out on Sunday or Public Holidays.

The builder/contractor shall be responsible to instruct and control sub-contractors regarding the hours of work.

37. Project Arborist

The Project Arborist must be on site to supervise any works in the vicinity of or within the Tree Protection Zone (TPZ) of any trees required to be retained on the site or any adjacent sites.

Supervision of the works shall be certified by the Project Arborist and a copy of such certification shall be submitted to the Private Certifying Authority within 14 days of completion of the works.

PRIOR TO ISSUE OF AN OCCUPATION CERTIFICATE

38. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of any Occupation Certificate. The Landscaping shall be either certified to be in accordance with the approved plan by an Accredited Landscape Architect or be to the satisfaction of Council's Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.

39. Completion of Engineering Works

An Occupation Certificate must not be issued prior to the completion of all engineering works covered by this consent, in accordance with this consent.

40. Public Infrastructure Inventory Report - Post Construction

Before an Occupation Certificate is issued, an updated public infrastructure inventory report must be prepared and submitted to Council. The updated report must identify any damage to public assets and the means of rectification for the approval of Council.

41. Consolidation of Allotments

All allotments included in this consent must be consolidated into a single allotment before any Occupation Certificate is issued. A copy of the registered plan must be submitted to Council.

42. OSD System Certification

The Onsite Stormwater Detention (OSD) system must be completed to the satisfaction of the Principal Certifying Authority (PCA) prior to the issuing of an Occupation Certificate. The following documentation is required to be submitted upon completion of the OSD system and prior to a final inspection:

- Works as executed plans prepared on a copy of the approved plans;
- A certificate of hydraulic compliance (Form B.11) from a suitably qualified engineer or surveyor verifying that the constructed OSD system will function hydraulically;
- A certificate of structural adequacy from a suitably qualified structural engineer verifying that the structures associated with the constructed OSD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

43. Creation of Restrictions / Positive Covenants

Before an Occupation Certificate is issued the following restrictions/ positive covenants must be registered on the title of the subject site via a request document, Section 88B instrument associated with a plan or the like. Council's standard recitals must be used.

a) Restriction/ Positive Covenant – Onsite Stormwater Detention

The consolidated lot must be burdened with a restriction and a positive covenant using the "onsite stormwater detention systems" terms included in the standard recitals.

b) Restriction/ Positive Covenant – Water Sensitive Urban Design

The consolidated lot must be burdened with a positive covenant that refers to the WSUD elements referred to earlier in this consent using the "water sensitive urban design elements" terms included in the standard recitals.

44. Water Sensitive Urban Design Certification

An Occupation Certificate must not be issued prior to the completion of the WSUD elements conditioned earlier in this consent. The following documentation must be submitted in order to obtain an Occupation Certificate:

- WAE drawings and any required engineering certifications;
- Records of inspections;
- An approved operations and maintenance plan; and
- A certificate of structural adequacy from a suitably qualified structural engineer verifying that any structural element of the WSUD system are structurally adequate and capable of withstanding all loads likely to be imposed on them during their lifetime.

Where Council is not the PCA a copy of the above documentation must be submitted to Council.

45. Works as Executed Plans

Works as executed (WAE) plans prepared by a suitably qualified engineer or registered surveyor must be submitted to Council when the development works are completed. The WAE plans must be prepared in accordance with Council's Design Guidelines Subdivisions/ Developments.

The plans must be accompanied by pavement density results, pavement certification, concrete core test results, site fill results, structural certification, CCTV recording, signage details and a public asset creation summary, where relevant.

46. Confirmation of Pipe Locations

A letter from a registered surveyor must be provided with the works as executed plans certifying that all pipes and drainage structures are located within the proposed drainage easements.

47. Traffic Management Plan

A Traffic Management Plan shall be prepared to address traffic movement during busy times and to encourage parishioners to enter and leave in a quiet manner.

THE USE OF THE SITE

48. Offensive Noise - Acoustic Report

The use of the premises must not create offensive noise so as to interfere with the amenity of the neighbouring properties.

Should an offensive noise complaint be received and verified by Council staff, an acoustic assessment is to be undertaken (by an appropriately qualified consultant) and an acoustic report is to be submitted to Council's Manager – Environment and Health for review. Any noise attenuation measures directed by Council's Manager - Environment and Health must be implemented.

49. Waste and Recycling Management

To ensure the adequate storage and collection of waste from the use of the premises, all garbage and recyclable materials emanating from the premises must be stored in the existing School's main waste storage area, which must include provision for the storage of all waste generated on the premises between collections. Arrangement must be in place in all areas of the development for the separation of recyclable materials from garbage. All waste storage areas must be screened from view from any adjoining residential property or public place. Under no circumstances should waste storage

containers be stored in locations that restrict access to any of the car parking spaces provided onsite.

50. Waste and Recycling Collection

All waste generated onsite must be removed at regular intervals and generally consistent with the School's existing waste collection arrangements. The collection of waste and recycling must not cause nuisance or interfere with the amenity of the surrounding area. Garbage and recycling must not be placed on public property for collection without the previous written approval of Council. Waste collection vehicles servicing the development are not permitted to reverse in or out of the site.

51. Schedule of Activities

Activities at the place of worship are to be carried out in accordance with the following schedule:

TIME	ACTIVITY NAME	NATURE OF ACTIVITY	ROOM	ESTIMATED NUMBERS
MONDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
TUESDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20 + Students
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
WEDNESDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	8-10
THURSDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20 + Students
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
FRIDAY				
9:15am – 10:30am	Weekday Mass	Morning worship service	Church	20
10:30am – 11:30am	Prayer Group	Mid-morning prayer group	Meeting Room	15
7:30pm – 8:30pm	Weekday Mass	Evening worship service	Church	20
SATURDAY				
5:30pm – 7pm	Saturday Vigil	Evening vigil service	Church	140
SUNDAY				
8am – 9:30am	Sunday Morning Mass	Morning worship service	Church	130
10am – 11:30am	Sunday Morning Mass	Morning worship service	Church	170
5:30pm – 7:30pm	Sunday Evening Mass	Evening worship service	Church	100
OTHER ACTIVITIES				
7pm-8pm	Stations of the	Prayer service	Church	20-30

	Cross – Fridays of Lent	and discussion group		
7pm	Maundy Thursday evening Mass	Evening vigil service	Church	200
9am	Good Friday morning Service	Morning worship service	Church	300
3pm	Good Friday afternoon Service	Afternoon worship service	Church	300
7:30pm	Evening Reconciliation Service (twice a year prior to Easter and Christmas)	Evening vigil service	Church	150
Midnight	Christmas Midnight Mass	Midnight worship service	Church	200
8am	Christmas Day Mass	Morning worship service	Church	200
10am	Christmas Day Mass	Morning worship service	Church	200
10am (generally)	Funerals (general)	Morning funeral service	Church	250
10am or 2pm (generally)	Weddings	Morning or afternoon wedding service	Church + Meeting	250
MEETING PURPOSE	TIME	FREQUENCY	LOCATION	ESTIMATED NUMBERS
Finance Committee	7:30pm – 9pm	4 times a year	Meeting Room	5-10
Parish Council	7:30pm – 9pm	5 times a year	Meeting Room	5-10
Liturgy Committee	7:30pm – 9pm	4 times a year	Meeting Room	5-10
Seniors Group	7:30pm – 9pm	2 times a year	Meeting Room	5-10
Seniors Mass & Luncheon	11:30am – 2pm	Once a year	Meeting Room	70-80
Women's Breakfast	8am-10am	3 times a year	Meeting Room	40-50
Men's Gathering	7pm-9pm	3 times a year	Meeting Room	20-30
Thanksgiving meeting for volunteers	7pm-9pm	Once a year	Meeting room	70-80

Note: Where students are invited to weekday Mass, two streams of students typically join.

52. Operation of Church Activities

- a. Church activities are required to be scheduled to avoid the morning and afternoon peak periods of the adjacent schools. In particular, wedding and funeral services held on weekdays are required to be scheduled after 9:30am and before 2:30pm or after 4:00pm.

- b. When the church expects a large wedding or funeral (attendance of 250+), the adjoining schools must be notified to ensure any school-based parking within the vicinity of the church is reduced.

53. Amplified Public Address noise level

The sound power level from the amplified public address system shall not exceed 70 dB(A).

54. Doors to be closed

During any service, the external doors on the western side of the Church are to be kept closed to protect acoustic amenity.

During any service between 6:00pm and 8:00am, all external doors to the Church are to be kept closed to protect acoustic amenity.

55. Restriction on the use of bells

There shall be no bells (with the exception of handheld Sanctus bells used during the Mass) used on the premises.

56. External speakers

There shall be no amplification speakers external to the Church.

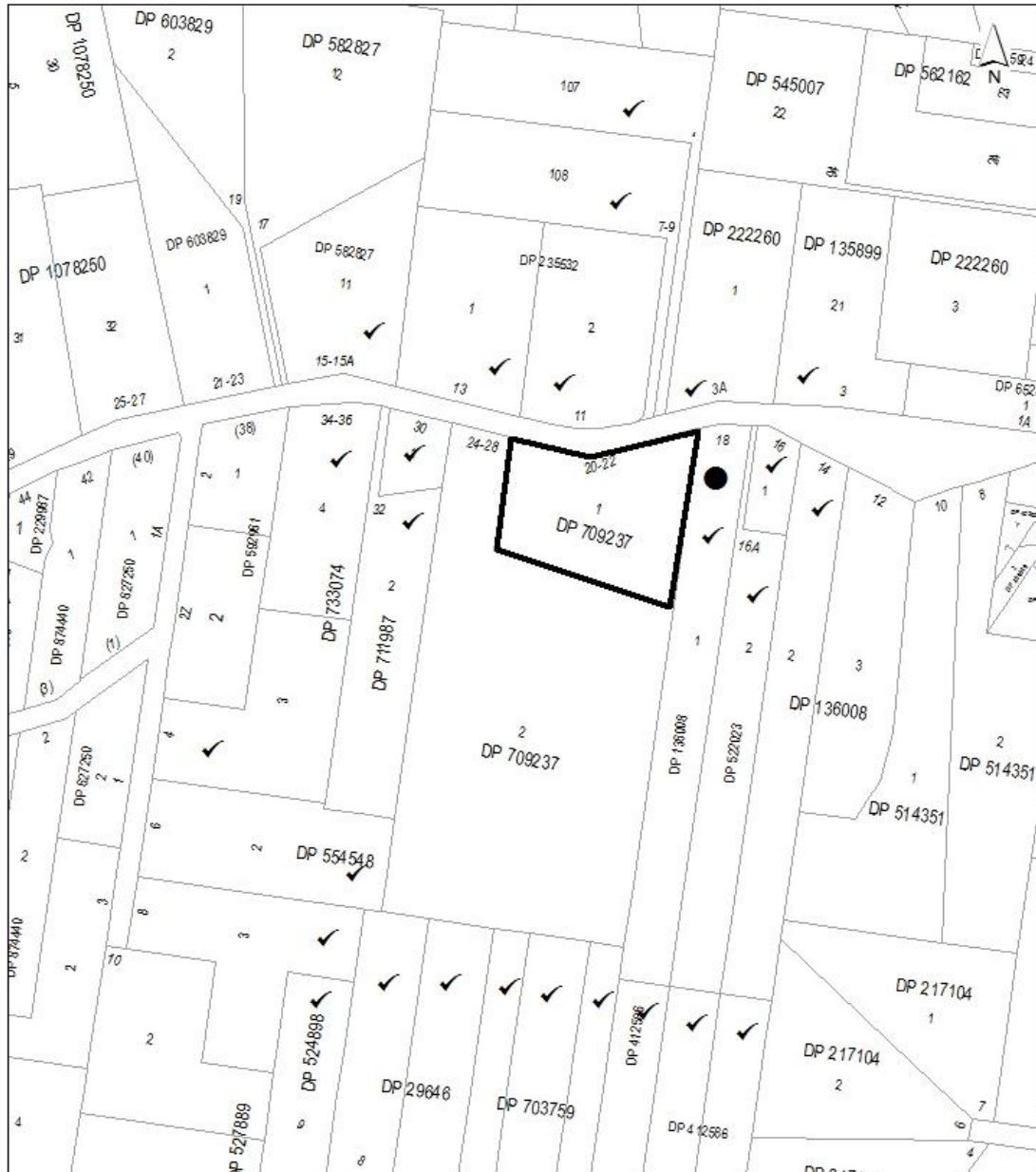
57. Traffic Management Plan

The Traffic Management Plan shall be implemented during busy periods, such as Christmas and Easter or other times where the carpark is expected to be at 75% capacity.

ATTACHMENTS

1. Locality Plan
2. Part Aerial Photograph
3. Full Aerial Photograph
4. Full Site Plan
5. Part Site Plan
6. Approved Site Plan showing School Additions DA 72/2018/JP
7. Internal Layout Plan
8. Elevations (North and West)
9. Elevations (South and East)
10. Perspectives
11. Clause 4.6 Variation Request
12. Appendix A – Rural Fire Service General Terms of Approval

ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSION RECEIVED

THE HILLS
Sydney's Garden Shire

THE HILLS SHIRE COUNCIL

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ATTACHMENT 2 – PART AERIAL PHOTOGRAPH



ATTACHMENT 3 – FULL AERIAL PHOTOGRAPH



THE HILLS
Sydney's Garden Shire

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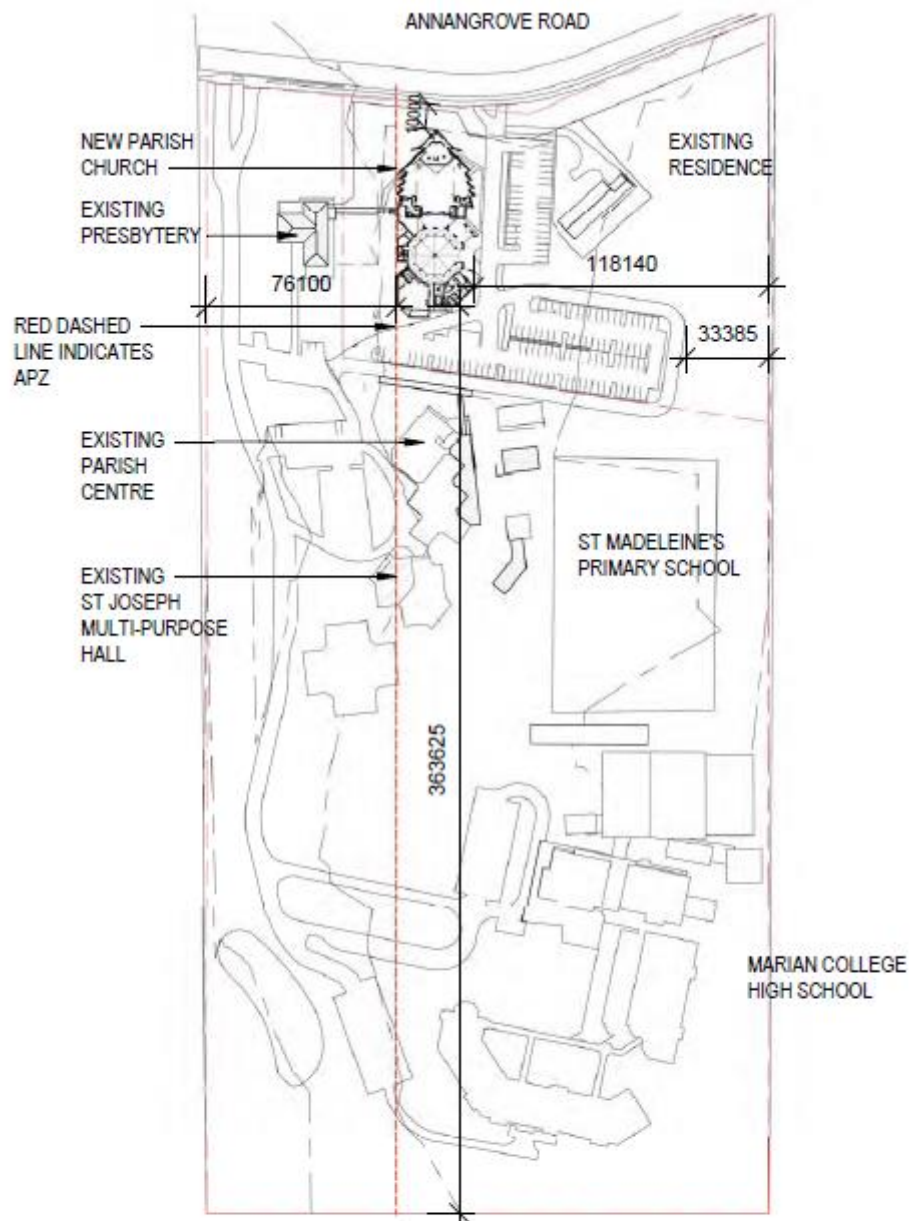


Scale (A4): 1:3021

Date: 30/05/2018

Prepared by: Kristine McKenzie

ATTACHMENT 4 – FULL SITE PLAN



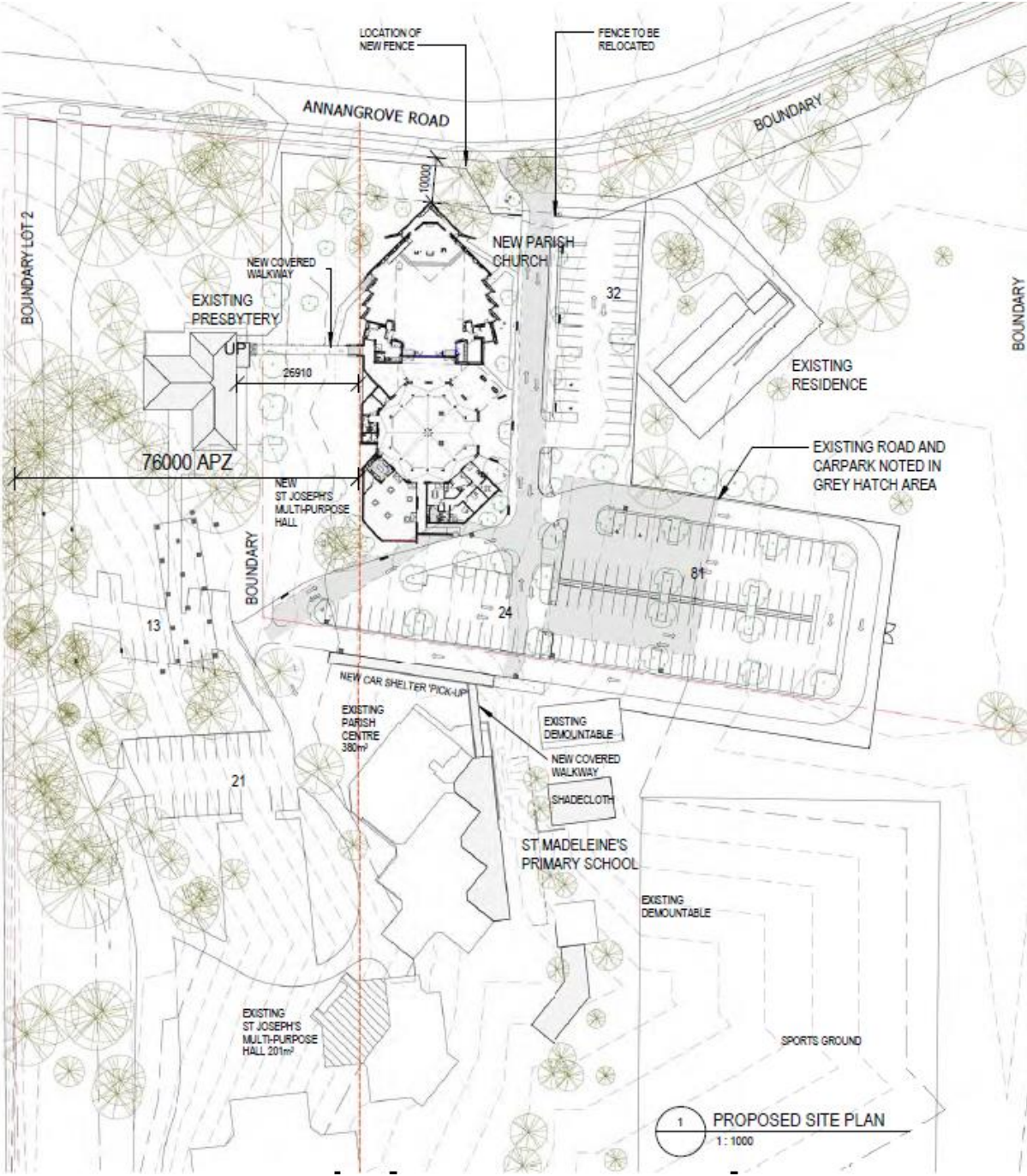
2 PROPOSED OVERALL SITE PLAN
1:2500

SITE DETAILS (RED BOUNDARY LINE)

STREET ADDRESS: 20-22 Annangrove Rd, Kenthurst NSW 2156
TITLE REFERENCE: 1/709237
LOCAL AUTHORITY: THE HILLS SHIRE COUNCIL
SITE AREA: 21,118m²

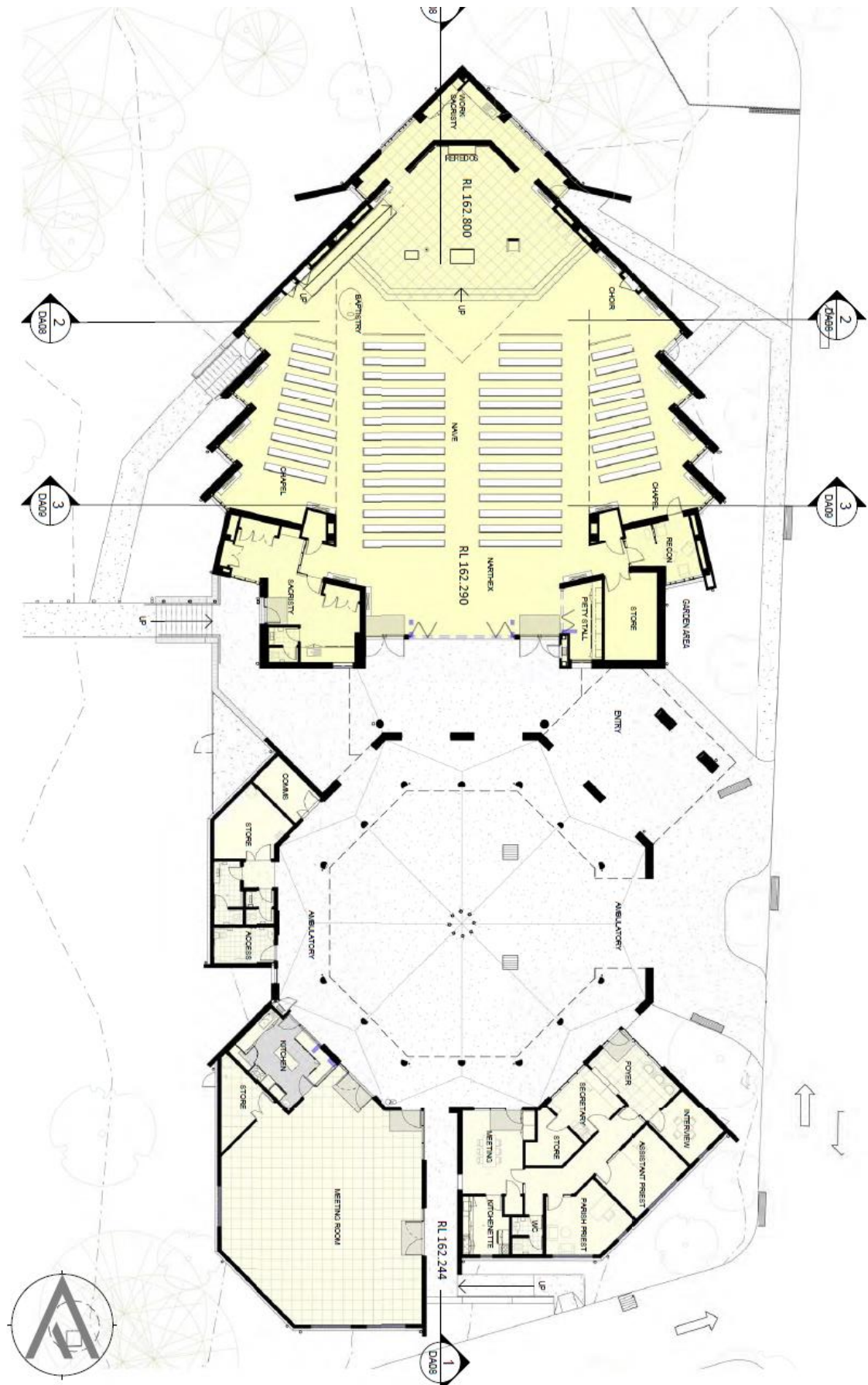


ATTACHMENT 5 – PART SITE PLAN



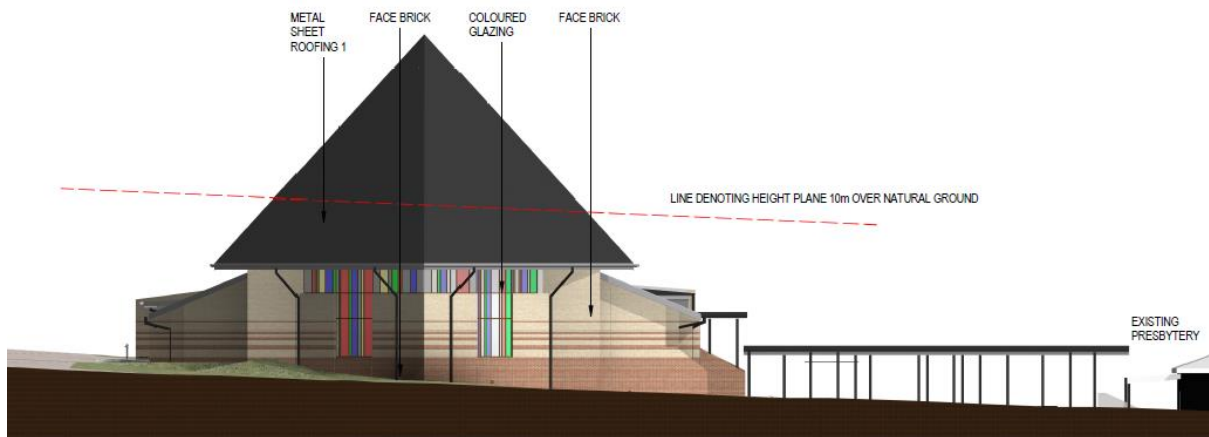
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ATTACHMENT 7 –INTERNAL LAYOUT PLAN

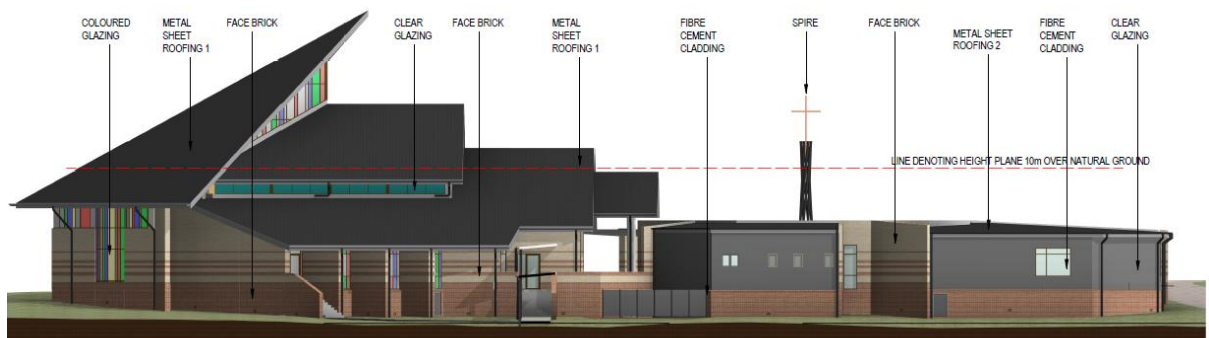


ATTACHMENT 8 –ELEVATIONS (NORTH AND WEST)

North Elevation

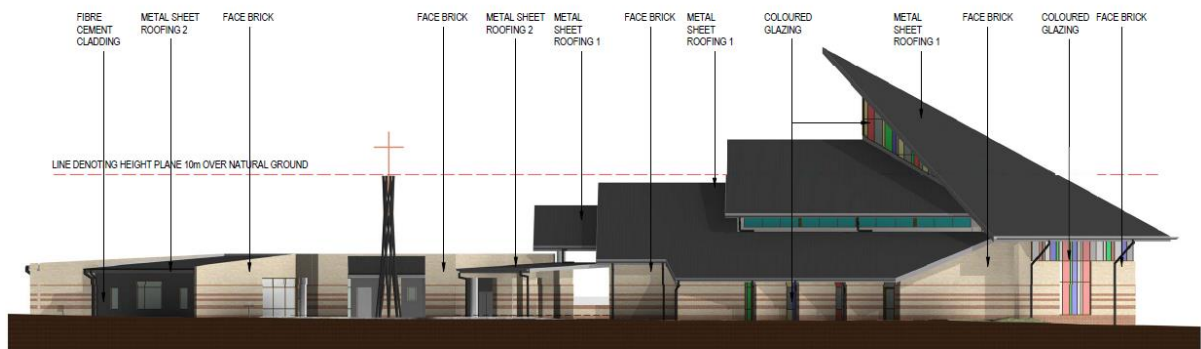


West Elevation

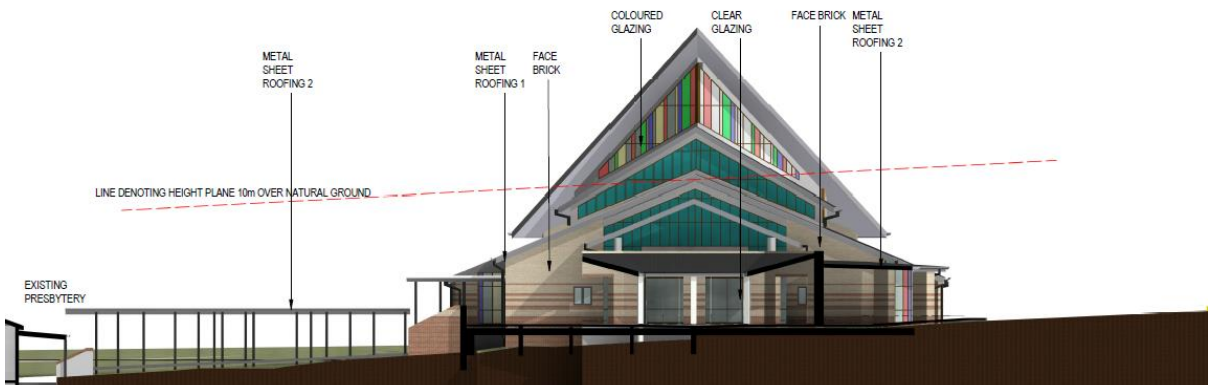


ATTACHMENT 9 –ELEVATIONS (SOUTH AND EAST)

East Elevation



South Elevation



ATTACHMENT 10 –PERSPECTIVES



ATTACHMENT 11– CLAUSE 4.6 VARIATION REQUEST

23 May 2018
Our Ref: 9881A.PS_CI4.6_Height



planning consultants

Clause 4.6 Variation Request

Clause 4.3 – Height of Buildings Development Standard The Hills Shire Council Local Environment Plan 2012

Proposed Place of Public Worship
Parish of St Madeleine Sophie Barat
20-22 Annangrove Road, Kenthurst

1.0 Introduction

This Variation Request relates to the proposed place of public worship for the Parish of St Madeleine Sophie Barat (the Parish), located at 20-22 Annangrove Road, Kenthurst being Lot 1 DP 709237 (the Site).

More specifically, the Variation Request relates to Clause 4.3 of *The Hills Shire Local Environment Plan 2012* (The Hills LEP) which establishes a development standard for a maximum building height of 10m.

The Variation Request has been prepared pursuant to Clause 4.6 of The Hills LEP as Clause 1.9(2) of The Hills LEP provides that *State Environmental Planning Policy No. 1 – Development Standards* (SEPP 1) does not apply to land to which The Hills LEP applies (which includes the Site).

The Variation Request includes assessment of the relevant matters to clarify whether the proposed development, inclusive of the variation to the building height development standard, would result in a better planning outcome. The requirements of Clause 4.6, the nature of the variation, and justification for the variation are provided in the following sections of this letter.

2.0 Requirements of Clause 4.6

Subclause 4.6(1) of The Hills LEP states the objectives of the clause as follows:

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

A response to these provisions is contained within this submission.

Subclause 4.6(2) of The Hills LEP provides that:

- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply*

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to a development standard that is expressly excluded from the operation of this clause.”

The Height of Buildings development standard at Clause 4.3 of The Hills LEP is not expressly excluded from the operation of Clause 4.6 and accordingly, consent may be granted to the variation.

Subclause 4.6(3) of The Hills LEP relates to the making of a written request to justify an exception to a development standard and states:

- (3) 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."

As discussed in Section 3.0 below, the proposed development does not comply with the development standard relating to Height of Buildings pursuant to Clause 4.3 of The Hills LEP.

Strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as the proposal achieves the relevant objectives of the development standard which are to ensure that the height of buildings is compatible with that of adjoining development and the overall streetscape, and to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

Furthermore, strict compliance would limit the opportunity for architectural expression typical of a Church which enhances the internal amenity of the building and positive contribution of the building to the Annangrove Road streetscape as a way-finding symbol within the locality. To this end, the Statement of Environmental Effects supporting this application provides further discussion in regard to the architectural roof feature under Clause 5.6 of The Hills LEP. Permitting flexibility in the application of the building height development standard will result in a better planning outcome for the site and locality than if the development standard was strictly applied.

Subclause 4.6(4) of the LEP provides that 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
- (b) the concurrence of the Director-General [Secretary] has been obtained."

The remainder of this written request to vary the development standard addresses the matters required under subclauses 4.6(4) of the LEP.

Subclause 4.6(5) provides that in deciding whether to grant concurrence, the Secretary must consider:

- “(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Director-General [Secretary] before granting concurrence."

The proposed non-compliance does not of itself raise any matter of significance for State or regional environmental planning and it is considered that there would be no significant public benefit of maintaining the development standard in this instance.

It is considered that there are no other matters of relevance that need to be taken into consideration by the Secretary.

3.0 The Nature of the Variation

Subclause 4.3(2) of The Hills LEP sets out the Height of Buildings as follows:

"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."

The Height of Buildings Map designates a maximum building height for the Site of 10 metres.

The Hills LEP defines building height (or height of building) as:

"... the vertical distance between ground level (existing) at any point to the highest point of the building...including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like."

The proposed development will result in a building that exceeds the maximum building height control of 10 metres, with the roof peak extending to a height of 19.57m (+9.57m) and the forecourt cross extending to a height of 15.75m (+5.75m). Details of the non-compliant components of the proposed development are provided in the Section Plan prepared by Alleanza Architects (refer to extract at Figure 1).



Figure 1 Extract of Section Plan (prepared by Alleanza Architects)

4.0 Justification for the Variation ('5-Part Test')

The proposed variation to the development standard has been considered in light of the abovementioned objectives, potential environmental impacts and the 5-part test established by the NSW Land & Environment Court and strict compliance is considered to be unreasonable and unnecessary for the reasons expressed hereunder.

The Land and Environment Court of NSW, through the Judgment in *Winten Developments Pty Ltd v North Sydney Council* [2001], has established a '5-part test' for considering whether strict



compliance with a development standard is unreasonable or unnecessary in a particular case. This 5-part test was later supplemented by the Judgment in *Wehbe v Pittwater Council [2007]* where Chief Justice Preston expressed the view that there are 5 different ways in which an objection to a development standard may be assessed as being well founded and that approval of the objection may be consistent with the aims of the policy. The full extent of the judgement in *Wehbe* has not been copied out in this submission, but is referenced to make clear the methodology of assessment.

Whilst these Judgments related to variation requests under SEPP 1, the methodology and reasoning expressed in those Judgments continues to be the accepted basis upon which to assess variation requests pursuant to clause 4.6 and accordingly, we have applied this methodology to the assessment below.

1. Is the planning control a development standard?

Yes, the control requiring a maximum building height of 10 metres in Clause 4.3 of The Hills LEP is a development standard, defined in section 4 of the EP&A Act as follows:

"development standards means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (c) *the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work".*

2. What is the underlying object or purpose of the standard?

The stated objectives of Clause 4.3 of The Hills LEP are as follows:

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*
(b) *to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas."*

The proposal is consistent with the relevant objectives of the development standard under clause 4.3 for the following reasons:

- **Objective (a)** – The proposed church building is a single level structure with architectural roof features that exceed the height limit. The proposed built form is compatible with the buildings of the adjoining school site and achieves appropriate separation from adjoining residential properties. The contemporary and high-quality design of the place of public worship will provide a positive contribution to the streetscape, does not detract from the residential character of the locality (unlike a simple, box-shaped development), is appropriately scaled to its bushland setting, and presents as a way-finding symbol within the Kenthurst locality.
- **Objective (b)** – The proposed church will not result in any adverse overshadowing of surrounding dwellings or the private open space of adjoining properties as any shadows will fall within the Church site as shown in the shadow diagrams prepared by Alleanza Architects.

The components of the proposed place of public worship which exceed the building height development standard do not constitute floor area and will not result in adverse visual impacts or the loss of privacy from adjoining properties.



It is also relevant to consider the objectives of the RU6 Rural Transition Zone (within which the Site is located) expressed in the Land Use Table to Clause 2.3 of The Hills LEP as follows:

Zone RU6 Rural Transition

- *To protect and maintain land that provides a transition between rural and other land uses of varying intensities or environmental sensitivities.*
- *To minimise conflict between land uses within this zone and land uses within adjoining zones.*
- *To encourage innovative and sustainable tourist development, sustainable agriculture and the provision of farm produce directly to the public."*

The proposal is consistent with the zone objectives for the following reasons:

- The use of the Site as a place of public worship is permissible in the Zone and is a continuation of the existing land use which has operated for over 30 years.
- The use of the Site as a place of public worship does not conflict with other land uses and is complementary with sustainable tourism and agricultural uses as well as urban land uses. The proposal will not detract from the amenity or development opportunity of surrounding properties.
- The proposal will not result in any adverse overshadowing, loss of views or bulk and scale amenity impacts.

Accordingly, notwithstanding the non-compliance with the 10 metre building height limit, the proposal is consistent with the objectives of the development standard and the relevant objectives of the RU6 Transition Zone within which the Site is located.

3. *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in s 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*

The non-compliance with the height of buildings development standard would permit the inclusion of an architectural roof feature of a unique, contemporary roof form consistent with that expected of a Catholic Church or other place of public worship. The site has been used as a place of public worship for over 30 years so the construction of a purpose-built facility on the site is considered to promote the orderly and economic use and development of land, as well as provide the provision of community services and facilities and thus achieve a better planning outcome.

Accordingly, requiring strict compliance with the development standard would be inconsistent with the objectives of Clause 4.6 which are to provide flexibility in the application of the standard and to achieve better outcomes for and from development through such flexibility.

Furthermore, it is considered that the relevant Objects of the Act are satisfied as the proposed non-compliance with the development standard:

- will have no negative consequences in terms of the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment; and
- will promote the orderly and economic use and development of the Site in a manner which achieves the objectives of the relevant planning controls.



Accordingly, strict compliance with the development standard is considered to hinder the promotion and co-ordination of the orderly and economic use and development of land comprising the Site.

4. *Is compliance with the development standard unnecessary or unreasonable in the circumstances of the case?*

For the reasons expressed in this clause 4.6 variation request, strict compliance with the development standard is considered to be both unnecessary and unreasonable in the circumstances of this particular case.

5. *Is the objection well founded?*

This variation request relies upon the first 'way' expressed by Chief Justice Preston in *Wehbe v Pittwater Council* [2007] as follows:

- "1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard.*"

As discussed above, notwithstanding the non-compliance the proposed development achieves the objectives or "purpose" of the development standard under clause 4.3 and will not adversely impact on the natural or built environment and therefore, the objection is considered to be well founded.

Yours faithfully
DFP PLANNING PTY LTD

A handwritten signature in black ink, appearing to read 'Stephen Earp', written over a horizontal line.

STEPHEN EARP
PRINCIPAL PLANNER

searp@dfplanning.com.au

Reviewed: _____

A handwritten signature in black ink, appearing to read 'P. Kelly', written over a horizontal line.

ATTACHMENT 12 – APPENDIX A RURAL FIRE SERVICE GENERAL TERMS OF APPROVAL



NSW RURAL FIRE SERVICE



The General Manager
The Hills Shire Council
PO Box 7064
Baulkham Hills NSW 2153

Your reference: 20/2018/JP
Our reference: D17/2340
03/05/2018

Attention: Kristine McKenzie

Dear Sir/Madam,

Integrated Development for 1 & 2/709237 Marian College 20-22 Annangrove Road & St Madeleine'S Primary School, 24-28 Annangrove Road Kenthurst NSW 2156

I refer to your letter dated 20 March 2018 seeking general terms of approval for the above Integrated Development in accordance with Section 91 of the 'Environmental Planning and Assessment Act 1979'.

This response is to be deemed a bush fire safety authority as required under section 100B of the 'Rural Fires Act 1997' and is issued subject to the following numbered conditions:

1. The development proposal is to comply with the subdivision layout identified on the drawing prepared by Alleanza Architecture numbered Drawing No. DA01, Issue 15, dated 27 March 2018.

Asset Protection Zones

The intent of measures is to provide sufficient space and maintain reduced fuel loads so as to ensure radiant heat levels of buildings are below critical limits and to prevent direct flame contact with a building. To achieve this, the following conditions shall apply:

2. At the commencement of building works, and in perpetuity, the entire property shall be managed as an Inner Protection Area (IPA) as outlined within section 4.1.3 and Appendix 5 of 'Planning for Bush Fire Protection 2006' and the NSW Rural Fire Service's document 'Standards for asset protection zones'.

Water and Utilities

The intent of measures is to provide adequate services of water for the protection of buildings during and after the passage of a bush fire, and to locate gas and electricity so as not to contribute to the risk of fire to a building. To achieve this, the following conditions shall apply:

3. The provision of water, electricity and gas shall comply with section 4.1.3 of 'Planning for Bush Fire Protection 2006'.

Access

The intent of measures for internal roads is to provide safe operational access for emergency services personnel in suppressing a bush fire, while residents are accessing or egressing an area. To achieve this, the following conditions shall apply:

Postal address

NSW Rural Fire Service
Planning and Environment Services
Locked Bag 17
GRANVILLE NSW 2141

T 1300 NSW RFS
F (02) 8741 5433
E records@rfs.nsw.gov.au
www.rfs.nsw.gov.au



4. Internal roads shall comply with section 4.2.7 of 'Planning for Bush Fire Protection 2006'.

Evacuation and Emergency Management

The intent of measures is to provide suitable emergency and evacuation (and relocation) arrangements for occupants of special fire protection purpose developments. To achieve this, the following conditions shall apply:

5. A Bush Fire Emergency Management and Evacuation Plan shall be prepared consistent with the NSW Rural Fire Service's document 'Development Planning- A Guide to Developing a Bush Fire Emergency Management and Evacuation Plan December 2014'. This plan is to be supplied to the local Rural Fire Service Fire Control Centre prior to completion of the building.

Design and Construction

The intent of measures is that buildings are designed and constructed to withstand the potential impacts of bush fire attack. To achieve this, the following conditions shall apply:

6. New construction shall comply with Sections 3 and 5 (BAL 12.5) Australian Standard AS3959-2009 'Construction of buildings in bush fire-prone areas' or NASH Standard (1.7.14 updated) 'National Standard Steel Framed Construction in Bushfire Areas – 2014' as appropriate and section A3.7 Addendum Appendix 3 of 'Planning for Bush Fire Protection 2006'.
7. The proposed covered walkway between the Church and Presbytery shall be constructed from non-combustible materials.

Landscaping

8. Future landscaping to the site is required to comply with the principles of Appendix 5 of 'Planning for Bush Fire Protection' 2006.

General Advice – consent authority to note

The APZ requirements for the proposed development has been assessed based on a calculated 'performance based' solution. As such, a reduced setback of 76 metres has been accepted, rather than the 85 metre requirement as given in Table A2.6 within 'Planning for Bush Fire Protection 2006'.

If you have any queries regarding this advice, please contact Adam Small, Development Assessment and Planning Officer, on 1300 NSW RFS.

Yours sincerely,



Kalpana Varghese
A/Team Leader, Development Assessment and Planning
Planning and Environment Services (East)