

## COUNCIL ASSESSMENT REPORT

|                                                                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|----------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Panel Reference</b>                                                                             | PPSSCC-127                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| <b>DA Number</b>                                                                                   | DA 179/2021/JP                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>LGA</b>                                                                                         | The Hills Shire Council                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Proposed Development</b>                                                                        | Removal of a Temporary Place of Worship and Construction of a Permanent Place of Worship                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Street Address</b>                                                                              | Lot 2 DP 1200708, 118-120 Arnold Avenue Kellyville, Lot 3 DP 1200708, 8 Raymond Court Kellyville                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |
| <b>Applicant</b>                                                                                   | Father Joshua Tadros                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Owner</b>                                                                                       | Coptic Orthodox Church (NSW) Property Trust                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| <b>Consultants</b>                                                                                 | <ul style="list-style-type: none"> <li>• Planner – Andrew Martin Planning</li> <li>• Architect – TIBA Architecture Group</li> <li>• Acoustic Consultant – Day Design Pty Ltd</li> <li>• BCA Consultant – Matt Shuter + Associates</li> <li>• Geotechnical Consultant – Geotechnique Pty Ltd</li> <li>• Land Surveyor – Summit Geomatic Registered Consulting Surveyors</li> <li>• Landscape Architect – Botanique Design</li> <li>• Quantity Surveyor – Haney Mikhael</li> <li>• Stormwater Consultant – Thomas Engineers</li> <li>• Traffic Consultant – TEF Consulting</li> </ul> |
| <b>Date of DA lodgement</b>                                                                        | 7 August 2020                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| <b>Number of Submissions</b>                                                                       | 11 submissions received following the first notification period; and 14 submissions received following the second notification period                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| <b>Recommendation</b>                                                                              | Refusal                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011</b> | State Environmental Planning Policy (State and Regional Development) 2011, Schedule 7, Clause 5(b): Community facilities with a capital investment value (CIV) exceeding \$5 million (\$5,561.86).                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>List of all relevant s4.15(1)(a) matters</b>                                                    | <ul style="list-style-type: none"> <li>• Section 4.15 of the Environmental Planning and Assessment Act, 1979</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• The Hills Local Environmental Plan 2019</li> <li>• DCP Part B Section 2 – Residential</li> <li>• DCP Part C Section 1 – Parking</li> <li>• DCP Part C Section 3 – Landscaping</li> <li>• DCP Part D Section 7 – Balmoral Road Release Area</li> </ul>                                      |
| <b>List all documents submitted with this report for the Panel's consideration</b>                 | <ul style="list-style-type: none"> <li>• Architectural Plans</li> <li>• Clause 4.6 Variation Request</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Report prepared by</b>                                                                          | Consultant Planner - Piers Hemphill and Ellen Robertshaw, DFP Planning Pty Limited                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Report date</b>                                                                                 | 17 February 2022                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    |



|                                                                                                                                                                                                                                                                                                                                                                                                                                |            |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| <b>Summary of s4.15 matters</b><br>Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?                                                                                                                                                                                                                                                           | <b>Yes</b> |
| <b>Legislative clauses requiring consent authority satisfaction</b><br>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?<br><i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i> | <b>Yes</b> |
| <b>Clause 4.6 Exceptions to development standards</b><br>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?                                                                                                                                                                                                          | <b>Yes</b> |
| <b>Special Infrastructure Contributions</b><br>Does the DA require Special Infrastructure Contributions conditions (S94EF)?<br><i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>                                                                                                                               | <b>Yes</b> |
| <b>Conditions</b><br>Have draft conditions been provided to the applicant for comment?                                                                                                                                                                                                                                                                                                                                         | <b>No</b>  |

## EXECUTIVE SUMMARY

The key issues that need to be considered by the Panel in respect of this application are:

- The site is zoned R2 Low Density Residential pursuant to The Hills Local Environmental Plan 2019 (LEP 2019). The application fails to demonstrate that the proposal is consistent with the objectives of the zone which include *"to maintain the existing low density residential character of the area"*
- Clause 4.3 of LEP 2019 prescribes a maximum building height of 10 metres for the subject site. The proposed development exceeds the maximum building height by 3.5 metres or 35%. The application is accompanied by a written request to vary the building height development standard pursuant to Clause 4.6 of The Hills Local Environmental Plan 2019 (The LEP). It is considered that compliance with the height of buildings development standard is unnecessary as the additional height relates only to the tower, an architectural roof feature and walls behind the altar and will not result in any unreasonable amenity impacts. The applicant's request is satisfactory to support the variation to the development standard.
- The application has not adequately considered potential impacts on the local traffic network including the safe and efficient functioning of the surrounding road network and the bus stop at the front of the site.
- The proposed 55 parking spaces are not considered sufficient for the intensity of use of the site. The revised Traffic and Parking Impact report (dated 6 November 2020) based on a maximum of 280 people on site, states that this number of patrons will generate a demand for 140 parking spaces. The report states that the additional 84 cars not able to be accommodated on site will park on the street. Reliance on on-street parking will impact negatively on the safety and efficiency of the local road network and amenity of the surrounding low density residential area and is considered to be an unacceptable outcome.
- Variations to The Hills Development Control Plan 2012 (the DCP) are sought in relation to car parking, landscaping, building setbacks and cut and fill requirements.

Inconsistencies with the objectives of the DCP are also apparent in relation to site analysis, streetscape, and acoustic privacy.

- The application was notified to adjoining and nearby property owners for 14 days on two (2) occasions. 11 individual submissions were received during the first notification period, and 14 submissions were received during the second notification period. The submissions raise concerns regarding intensity of use, building scale, streetscape and character, traffic and parking, acoustic impacts, and management issues.

The application is recommended for refusal on the grounds that the scale and intensity of the development has a high potential to result in land use conflict and would have unreasonable and negative impacts on the amenity of nearby residents and the character of the locality. The proposal is not suitable for the subject site and is not in the public interest.

## **BACKGROUND**

On 25 August 2015, Development Application 1002/2015/HA was approved for a temporary place of public worship on the subject site. The existing temporary place of public worship has a capacity to accommodate a congregation of up to 90 worshippers and 16 deacons, and also contains a Sunday School component which caters for up to 25 children. A subsequent Section 4.55(2) modification application was approved on 23 August 2016 for a new awning structure, two additional portable buildings to accommodate ancillary recreational activities, and amendments to the approved buildings and overflow car park.

The subject Development Application (179/2021/JP) was lodged on 7 August 2020. The application was notified to surrounding properties between 12 August 2020 and 3 September 2020. Eleven (11) submissions were received following the initial notification period. The concerns raised in the submissions generally related to traffic, on-street parking, acoustic impacts, building scale and height, streetscape and character, and intensity of use.

The Sydney Central City Planning Panel was originally briefed on the Development Application on 15 October 2020.

A request for further information was sent to the applicant on 20 August 2020. Additional information in relation to planning, engineering, landscaping, environmental health and waste management matters was requested. A second request for further information was sent to the applicant on 25 September 2020 regarding building height, setbacks, intensity of use, traffic, landscaping, solar access, site management, environmental health and engineering matters. Amended plans and additional information was subsequently received from the applicant on 6 November 2020. Amendments to the original proposal included removal of the dome feature and a reduction in the number of proposed car parking spaces from 56 to 55.

The amended plans were re-notified to adjoining and surrounding property owners between 16 December 2020 to 29 January 2021. Fourteen (14) submissions were received. The matters raised in the submissions generally related to traffic, on-street parking, building height, visual impact and intensity of use.

On 18 March 2021 Council advised the applicant that 25 submissions had been received from surrounding properties and the applicant was requested to provide a detailed response to all submissions received. To date, a response to these issues has not been received.

On 11 August 2021 a further request for information relating to intensity of use, inconsistency in documentation, traffic, parking, acoustic impacts and built form was forwarded to the applicant. On 16 November 2021 further questions regarding landscaping



were also put to the applicant. No response has been received to either of these requests for further information.

The Sydney Central City Planning Panel was briefed on the Development Application for a second time on 8 December 2021.

On 15 December 2021, the applicant filed a Class 1 Application to an appeal against the deemed refusal of the application with the NSW Land and Environment Court.

## DETAILS AND SUBMISSIONS

|                            |                                                                                                                        |
|----------------------------|------------------------------------------------------------------------------------------------------------------------|
| Owner:                     | Coptic Orthodox Church (NSW) Property Trust                                                                            |
| Zoning:                    | R2 Low Density Residential                                                                                             |
| Area:                      | 3,612m <sup>2</sup>                                                                                                    |
| Existing Development:      | Temporary place of public worship with approval for 90 patrons.                                                        |
| Section 7.12 Contribution: | \$61,180.46                                                                                                            |
| Notification:              | 12/08/2020 to 3/09/2020 (first notification) and 16/12/2020 to 29/01/2021 (second notification)                        |
| Notice Adj Owners:         | 14 days on two (2) occasions                                                                                           |
| Number Advised:            | 83                                                                                                                     |
| Submissions Received:      | 11 submissions received during first notification period.<br>14 submissions received during second notification period |

## PROPOSAL

The proposed development seeks consent for the replacement of the temporary place of public worship with a permanent place of public worship over basement parking with 55 spaces. The proposed development comprises a main church building (situated on the corner of Arnold Avenue and Brodrick Boulevard) and an ancillary community hall/Sunday School building (facing Raymond Court). No signage is proposed.

The proposal intends to increase the number of worshippers on-site from 90 to a maximum of 280, plus 16 deacons. In addition, the proposal also involves a Sunday School component which will cater for 25 children. We note that the Operational Management Plan (OMP) is inconsistent with the applicant's Statement of Environmental Effects which states that the Sunday School currently caters for 50-60 children.

The applicant has provided a proposed schedule of activities and hours of operation over a typical week. Where the applicant has identified the number of patrons attending the event, this has been included in the table below.

| DAY       | SERVICE                   | TIME              |
|-----------|---------------------------|-------------------|
| Tuesday   | Holy Liturgy              | 5:30pm – 8:00pm   |
|           | Bible Study               | 9:00pm – 10:00pm  |
| Wednesday | Deacons Meeting           | 7:00pm – 8:00pm   |
| Thursday  | Holy Liturgy              | 4:30pm – 7:00pm   |
|           | Arabic Bible Study        | 8:00pm – 10:00pm  |
|           | English Tasbeha           | 10:00pm – 11:00pm |
| Friday    | Holy Liturgy              | 3:00pm – 6:00pm   |
|           | Youth Meeting             | 8:30pm – 10:00pm  |
| Saturday  | Holy Liturgy (30 patrons) | 7:30am – 10:00am  |

|        |                                       |                   |
|--------|---------------------------------------|-------------------|
|        | St Luke's Aghapy Meal (30 patrons)    | 10:00am – 11:00am |
|        | Kids Bible Study (30 children)        | 5:00pm – 5:45pm   |
|        | Choir (30 children + parents)         | 5:45pm – 6:30pm   |
|        | Vespers (30 children + parents)       | 6:30pm – 7:00pm   |
|        | Choir Hymns Class                     | 7:00pm – 8:00pm   |
|        | Tasbeha (10 Deacons)                  | 8:00pm – 10:00pm  |
| Sunday | Holy Liturgy                          | 8:00am – 11:00am  |
|        | Opening Service                       | 11:30am – 12:00pm |
|        | Sunday School (Currently 60 children) | 12:00pm – 12:45pm |
|        | Servants Meeting                      | 1:00pm – 1:30pm   |

Special services such as Easter, Christmas and New Years where the mass will finish at midnight are also proposed. The Church also proposes to host occasional weddings, funerals and feast days for up to 280 patrons.

## ISSUES FOR CONSIDERATION

### 1. Compliance with State Environmental Planning Policy (State and Regional Development) 2011

Schedule 7 of SEPP (State and Regional Development) 2011 specifies the referral requirements to a Planning Panel as follows:

#### *5 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, being a place of public worship, has a Capital Investment Value (CIV) of \$5,561,56. Accordingly, the proposal requires determination by the Sydney Central City Planning Panel.

### 2. Compliance with State Environmental Planning Policy No. 55 – Remediation of Land

This policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspects of the environment. In accordance with Clause 7 of the SEPP, the consent authority must not grant 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 provided the following in respect to the suitability of the site:

*Site contamination was addressed during site works on land during construction of temporary premises on the site. Accordingly, further investigation with a view to remediation of the site is considered unnecessary.*

The proposal does not constitute a change of use application. No further consideration is deemed necessary to achieve consistency with SEPP No. 55 – Remediation of Land subject to standard conditions of consent.

### **3. Compliance with LEP 2019**

#### **i) Permissibility**

The subject site is zoned R2 Low Density Residential pursuant to LEP 2019. The proposal is defined as a 'place of public 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.

A 'place of public worship' is permissible with consent in the R2 Low Density Residential zone.

#### **ii) Zone Objectives**

The objectives of the R2 Low Density Residential zone are as follows:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To maintain the existing low density residential character of the area.*

The applicant has provided the following statement in respect to the zone objectives:

*The proposal maintains the approved place of public worship use which is a permissible form of development in the zone. The proposal maintains the approved place of public worship use which is an essential service for the local residents of the area. The tower element signifies many churches and is a necessary element for this church. A church is a day to day need/facility. The scale of the development is consistent with a place of public worship which is permissible in the R2 low density residential zone. The site is a large allotment with significant deep soil areas maintained on site. The development is largely compliant with the height limit excluding architectural roof features and the proposed tower. The tower element does not increase the perceived scale of the development when viewed from residences on adjoining lands.*

#### **Comment:**

Concern is raised regarding the intensity of proposed use (and an increase in site population to 280 worshippers plus 16 Deacons and 50 Sunday school children) and whether the site is a suitable location for a development of this intensity having regard to the objectives of the R2 Low Density Residential zone in which the site is located, and in particular the objective “to maintain the existing low density residential character of the area”.

The proposal represents a significantly higher density of use compared to the surrounding low density residential development and that which already occurs on site. Associated with that density and the intensity of use are impacts that have the potential to affect the amenity of surrounding residents including traffic generation, parking, noise and built form which are discussed in this report.

The intensity of the use of the site as a place of worship for up to 280 worshipers will conflict with the low density residential character of the area in which it is located.

### iii) Development Standards

The following addresses the principal development standards of the LEP relevant to the subject proposal:

| DEVELOPMENT STANDARD                             | REQUIRED                                                         | PROPOSED                                                                            | COMPLIANCE                      |
|--------------------------------------------------|------------------------------------------------------------------|-------------------------------------------------------------------------------------|---------------------------------|
| Clause 4.3 – Height of Buildings                 | 10 metres                                                        | 13.5 metres                                                                         | No, refer to discussion below   |
| Clause 4.6 – Exceptions to Development Standards | Exceptions will be considered subject to appropriate assessment. | A variation to Clause 4.3 – Height of Buildings is proposed and is addressed below. | Yes, refer to discussion below. |

#### a) Variation to Building Height

The site is subject to a maximum building height of 10 metres as shown on the Height of Buildings map accompanying LEP 2019. The proposed development exceeds the maximum building height by 1.4 metres at the highest point of the main church building and 3.5 metres for the bell tower.

Clause 4.6 of the LEP allows consent to be granted for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards to achieve better outcomes for and from development.

Clause 4.6 – Exceptions to Development Standards is as follows:

- (1) *The objectives of this clause are as follows—*
  - (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.*
- (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*

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

- (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.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless—*
  - (a) *the consent authority is satisfied that—*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning 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 Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
  - (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
  - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
  - (a) *a development standard for complying development,*
  - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
  - (c) *clause 5.4,*
  - (ca) *clause 6.2 or 6.3,*
  - (cb) *clause 7.11.*

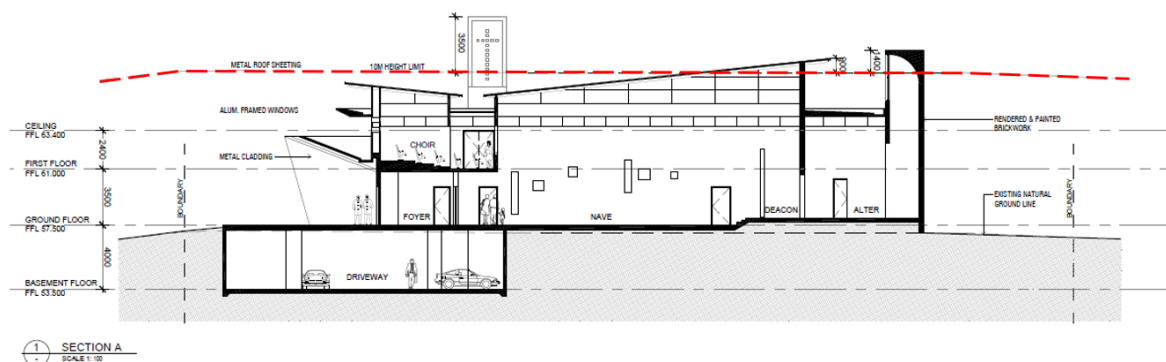
The applicant has submitted a written Clause 4.6 Variation request to vary the building height standard (refer to **Attachment 8**).

The variation request states that the proposed building height is appropriate for the following reasons:

- The tower element is characteristic for many churches. This projecting feature above the 10m height control helps identify the site as a 'place of public worship' and without the tower the effectiveness and overall role the building plays is diminished.
- The variation has been reduced from 6.4m to 3.5m as a result of the removal of the dome roof element.
- The general wall height complies with the development standard and it is the tower element and altar wall projection that results in the non compliance with the building height development standard.
- The tower is sited towards the middle of the site with good separation to neighbouring properties and the streetscape.
- The site is a large corner allotment with single dwellings adjoining the western boundary. Other remaining boundaries front local roads.
- The land has a cross fall.
- The projecting architectural roof elements could be permitted through the provisions of Clause 5.6 architectural roof elements of the LEP but are being sought through a comprehensive Clause 4.6 variation request.
- The roofed areas above the height control enable the designer to provide a skillion style roof element which is compatible with the surrounding residential roof designs.
- Adequate access to sunlight to the adjoining properties is maintained.

#### **Comment:**

Assessment of the Clause 4.6 variation request has been undertaken and it is considered that the height variation itself does not result in unreasonable or negative amenity impacts to adjacent properties. It is accepted that the tower elements are characteristic of a place of public worship and there are sufficient planning grounds to justify contravening the development standard to accommodate these design features. The extent of the height variation is demonstrated in **Figure 1** below.



**Figure 1: Height plane – indicated in red (Source: Tiba Architecture Group 3/11/20)**

The only components of the development which exceed the 10m height control are the tower feature, part of the roof of the main church roof and the walls behind the altar.

No evidence has been provided by the applicant with respect to whether alternative building placement and/or compliant roof designs have been considered. Notwithstanding, it is considered appropriate to provide an element of flexibility in applying the maximum building height standard to accommodate a bell tower element as proposed to signify the use of the

site as a place of public worship. The non-compliances of the roof element and altar wall are not unreasonable.

The proposed building height does not result in unreasonable amenity impacts and there are sufficient environmental planning grounds to justify a contravention of the height control. Therefore strict compliance with the maximum building height control is considered unnecessary in this instance.

#### iv) Compliance with DCP 2012

Part D Section 7 of The Hills DCP 2012 relates to land within the Balmoral Road Release Area. The site is located within the Balmoral Road Release Area.

The DCP does not provide specific controls which relate to places of public worship. A merit assessment against the applicable DCP controls has therefore been undertaken to consider the character of the proposed development in the context of the streetscape and wider locality. Accordingly, the proposal has been assessed against the following provisions of The Hills DCP 2012:

- Part B Section 2 – Residential,
- Part C Section 1 – Parking,
- Part C Section 3 – Landscaping, and
- Part D Section 7 – Balmoral Road Release Area.

The following addresses the controls of the DCP relevant to the subject proposal:

| CONTROL                               | REQUIRED                                                                                                                                                                                | PROPOSED                                                                                                                                                                                                                                                                                                                                                                                           | COMPLIANCE                                                                                                                                                                                                                                                                          |
|---------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>PART B SECTION 2 – RESIDENTIAL</b> |                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                     |
| 2.4 Site Analysis                     | Development should be sited on the area of land presenting the least topographic constraints.<br>Development should be designed to be consistent with the character of the streetscape. | The proposed development locates built form elements on the western side of the site, closest to adjoining residential properties.<br>The Church foyer faces the western boundary of the site.<br>The tallest elements are placed on the highest points of the site.<br>Built form presents to Arnold Avenue and Raymond Court with a building length more than twice that of adjoining dwellings. | No.<br>Built form elements have been placed where they will have the greatest visual and acoustic impacts on neighbouring properties.<br>The streetscape outcome, particularly along Raymond Court is unsatisfactory and not in keeping with the residential character of the area. |
| 2.5 Streetscape and Character         | The proposed development should maintain neighbourhood amenity and appropriate residential character by considering where buildings are located on neighbouring properties.             |                                                                                                                                                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                     |
| 2.14.9 Privacy – Visual and Acoustic  | Windows should be placed to minimise direct viewing between dwellings.<br>Dwellings are to be designed to limit the                                                                     | The placement of windows limits direct viewing to adjoining dwellings.<br>The church foyer has been placed immediately                                                                                                                                                                                                                                                                             | No.<br>Refer to discussion below.                                                                                                                                                                                                                                                   |

| CONTROL                                              | REQUIRED                                                                                                                                                                                             | PROPOSED                                                                                                                                                                                                                                                                                                                                             | COMPLIANCE                                                                                           |
|------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------|
|                                                      | potential for noise transmission to the living and sleeping areas of adjacent existing and future developments.                                                                                      | adjacent to the adjoining dwelling at 116 Arnold Avenue where patrons entering, exiting and mingling will have the greatest acoustic impact.                                                                                                                                                                                                         |                                                                                                      |
| 2.14.10 Solar Access                                 | 50% of the required private open space of adjoining properties are to receive direct sunlight for a minimum of 4 hours between 9am and 3pm on June 21                                                | The proposed development will maintain 4 hours of solar access to 50% of adjoining private open space.                                                                                                                                                                                                                                               | Yes.                                                                                                 |
| <b>PART C SECTION 1 – PARKING</b>                    |                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                      |                                                                                                      |
| Parking – Place of public worship                    | 1 space per 5 seats                                                                                                                                                                                  | 280 seats/patrons proposed – Minimum 56 spaces required.<br><br>Total: 55 parking spaces proposed in basement.                                                                                                                                                                                                                                       | No. Refer to discussion below.                                                                       |
| <b>PART C SECTION 3 – LANDSCAPING</b>                |                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                      |                                                                                                      |
| 3.1. General Planning and Design Controls            | Landscaping to side and rear boundaries should effectively screen the development.                                                                                                                   | Appropriate planting is proposed around the boundaries of the site                                                                                                                                                                                                                                                                                   | No. The landscaping proposed is not considered adequate having regard to the scale of the buildings. |
|                                                      | Landscaping plans to be consistent with architectural plans and engineering plans.                                                                                                                   | The landscape plans are not consistent with the architectural plans. No plan showing existing landscaping to be removed has been provided                                                                                                                                                                                                            | No                                                                                                   |
| <b>PART D SECTION 7 – BALMORAL ROAD RELEASE AREA</b> |                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                      |                                                                                                      |
| Building Setbacks (Corner Lots)                      | Minimum: <ul style="list-style-type: none"> <li>• 6m to primary road</li> <li>• 4m to secondary road</li> <li>• 4m rear setback (single storey)</li> <li>• 6m rear setback (two+ storeys)</li> </ul> | <ul style="list-style-type: none"> <li>• 8.5m to Arnold Avenue;</li> <li>• 4.7m to Raymond Court;</li> <li>• 7m from Brodrick Boulevard;</li> <li>• 9.1m to rear – eastern boundary of 116 Arnold Avenue – single storey);</li> <li>• 7.4m to rear (eastern boundary of 10 Raymond Court – two storey)</li> <li>• 3.3m to rear - northern</li> </ul> | No. Rear setback is non-compliant. Refer to discussion below.                                        |



| CONTROL       | REQUIRED                                                                                                                                                                                    | PROPOSED                                                                                                                        | COMPLIANCE                        |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|
|               |                                                                                                                                                                                             | boundary of 116 Arnold Avenue.<br>4m required                                                                                   |                                   |
| Site Coverage | Maximum 60% for two storey buildings<br>NOTE:<br>The DCP does not include a control for a 3 storey development in the R2 zone as this scale of development is not envisaged in the R2 zone. | Approximately 60%                                                                                                               | Yes                               |
| Cut and Fill  | Maximum 500mm cut and fill                                                                                                                                                                  | Up to 4 metres of cut proposed to facilitate basement parking.<br>Small elements of fill are proposed under the church building | No.<br>Refer to discussion below. |
| Salinity      | Development applications must be accompanied by a salinity assessment report                                                                                                                | Salinity report provided supports the application                                                                               | Yes                               |

The provisions of Section 8 of the DCP relate to building design and development of land for buildings in all zones in the Balmoral Road Release Area. The development has therefore been considered having regard to the objectives and controls in Section 8.

Section 8.1 of the DCP relates to dwellings. As the proposed development is located within a low density residential area, it is not unreasonable to assess it against the objectives and controls within this Section of the DCP, as discussed below.

#### **a) Cut and Fill**

Section 8.1.4 of the Balmoral Road Release Area DCP permits a maximum cut and fill of 500mm.

The objectives of Section 8.1.4 of the DCP control are as follows:

- (i) *To ensure that dwellings are designed with regard to the site conditions and minimise the impact on landform.*
- (ii) *To reduce the risk that potentially saline soils may affect dwellings.*
- (iii) *To maintain topsoil and endemic plant species seed bank.*

The applicant has provided the following justification in support of the variation:

*The proposal accommodates a partial basement with excavation of approximately 4m. Existing levels are maintained outside of the building footprint. The proposal does not significantly or excessively alter the natural topography of the site outside the nominated building footprints and is acceptable.*

The development proposes excavation up to 4,000mm (4 metres) to accommodate a single level of basement parking under the Community Hall/Sunday School building. A full storey of

brick screening will be visible to Raymond Court below the two storey structure, presenting as a three (3) storey structure along this frontage.

The fill and associated walls are 2.45m high at their highest proximate to the boundaries. This height does not comply with the cut and fill control.

Surrounding development is predominantly two (2) storeys with some single storey dwellings also present. The proposed development has not been designed having regard to the site conditions and its surrounding context.

The proposed cut and fill is also inconsistent with the objectives of Clause 8.1.3 Building Form and Height of the Balmoral Road Section of the DCP which seek to ensure development is compatible with adjoining residential development and the overall streetscape, to minimise bulk and scale, and to provide articulation in building form and design.

## **b) Building Setbacks**

Section 8.1.1 of Part 8 of the DCP relates building setbacks. The objectives of Section 8.1.1 are as follows:

- (i) To provide setbacks that complement the streetscape and protect the privacy and sunlight to adjacent dwellings in accordance with ESD objective 7.*
- (ii) To ensure that new development is sensitive to the landscape setting, site constraints and desired future character of the street and locality.*
- (iii) To ensure that the appearance of new development is of a high visual quality and enhances the streetscape.*

Notwithstanding that the basement parking level protrudes above the natural ground level in places and results in a building height greater than a typical two (2) storey structures characteristic of a low density residential area, (particularly along the Raymond Court frontage) for the purposes of assessing the setbacks, the basement level has not been considered as a storey. In this regard, it is noted that the DCP controls only anticipate a maximum of two storeys in the low density residential area.

The site is an L-shaped corner lot with three (3) road frontages and is in a highly prominent and visual location.

As detailed in the table above, the proposed development is generally compliant with the DCP setback controls for dwellings, with the exception of the rear setback for part of the two storey component of the Sunday School/community building.

Notwithstanding, the proposed development is considered to be inconsistent with the objectives of Section 8.1.1 – Setbacks of the DCP in that it does not result in development that complements and enhances the streetscape. Nor does the proposed development result in development which is sensitive to the landscaping setting and constraints of the site or the character of the area.

## **c) Building Form and Height**

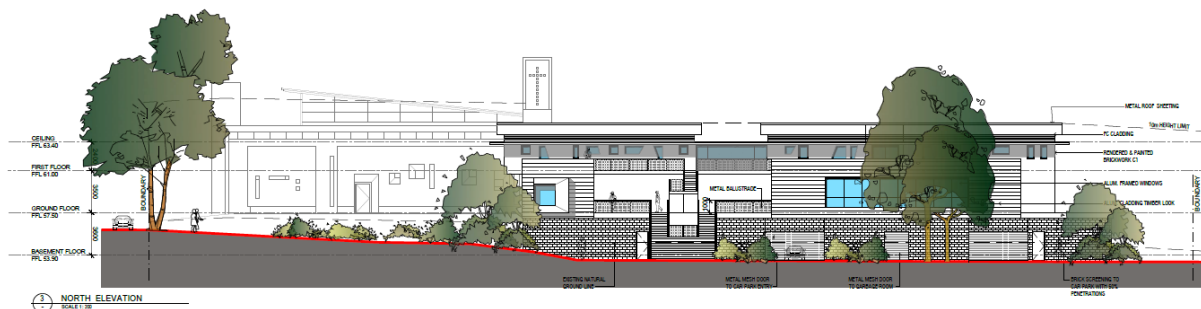
The objectives of Part 8.1.3 – Building Form and Height of the DCP control are as follows:

- (i) *To ensure the height of dwellings is compatible with adjoining residential development and the overall streetscape.*
- (ii) *To minimise the impact of overshadowing, loss of privacy on adjoining properties and open space areas.*
- (iii) *To minimise bulk and scale of residential development.*
- (iv) *To provide articulation in building form and design.*

The scale of the proposed development is significantly bulkier than the adjoining detached residential dwellings and the current temporary church building on site. The existing development defines the streetscapes and character of the area. The proposed building lengths are more than twice the length of adjacent dwellings and will dominate the streetscapes.

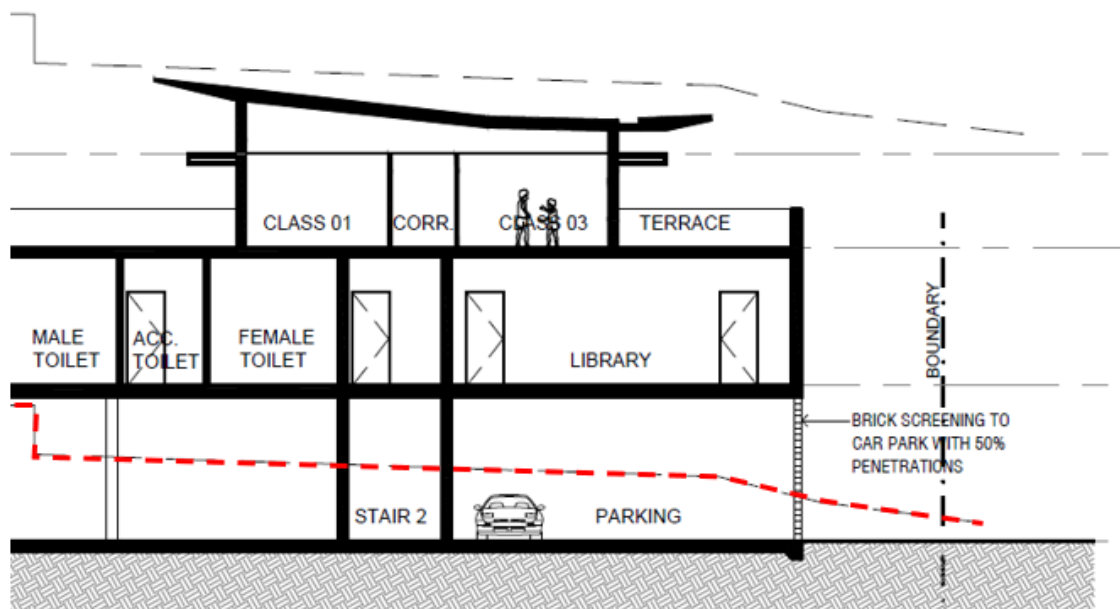
The proposed development locates built form elements on the western side of the site, closest to adjoining residential properties and the tallest elements are placed on the highest points of the site, amplifying their visual dominance.

The alteration to the natural ground level in order to create the basement car park is inconsistent with the low density residential character of the locale. The height of the basement wall above the natural ground level particularly on the Raymond Court frontage of the site is also excessive and will dominate this streetscape. The hall building will present as three (3) storeys on that frontage as shown in **Figure 2** below. This component of the development will be visually dominating and would result in development which is out of character with the surrounding area.



**Figure 2: Northern elevation (Source: Tiba Architecture Group 3/11/20)**

The basement wall at its northern end facing Raymond Court appears to be more than one (1) metre above the natural ground level which is an unacceptable built form outcome in a low density residential area. **Figure 3** below shows the natural ground level in red.



**Figure 3: Eastern cross section – natural ground level in red (Source: Tiba Architecture Group 3/11/20)**

The proposed design and scale of the development is inconsistent with the surrounding low density residential character and is not considered to be compatible with the existing streetscapes, especially Raymond Court. The inappropriate bulk and scale is a source of considerable public concern as evidenced in the submissions received.

#### **d) Access and Parking**

Part C Section 1 of The Hills DCP relates to parking. The overarching objectives of this Section of the DCP are:

- (i) *To provide guidelines aimed at improving overall traffic management and safety.*
- (ii) *To ensure satisfactory access, parking provisions, circulation and goods loading and delivery facilities are provided within developments.*
- (iii) *To ensure the efficient flow of traffic through car parks to minimise the potential for pedestrian and vehicle conflict.*
- (iv) *To set out Council's planning and engineering standards for parking in the Shire.*
- (v) *To encourage the use of more ecologically sustainable forms of transport such as bicycles.*
- (vi) *To ensure that all parking provided by development relates to the site's environmental conditions.*

An assessment of the proposed development against Part C Section 1 of THDCP is provided below. Whilst there are no specific provisions in the DCP in relation to traffic, this is ineradicably linked to the scale, design and intensity of the development and the parking associated with the development.

## Traffic

The development provides for a one-way drop off zone via Arnold Avenue. The entry to the drop off zone is located immediately adjacent to a public bus stop.

There is the potential for the proposed drop-off area entry to conflict with the operation of the existing bus stop on Arnold Avenue and hinder bus movements as a result of vehicles entering and exiting the site.

Furthermore, the exit driveway onto Arnold Avenue is located within a painted median on the approach to the roundabout at the intersection of Brodrick Boulevard and Arnold Avenue. There is the potential that vehicles exiting the drop-off driveway will impact on the safe operation of the roundabout.

The Church currently operates a minibus. The operation of the minibus is not referred to in any of the submitted documentation. Despite requests, the applicant has not confirmed whether the Church proposes to continue to operate a minibus from the site and if so, how the bus is used by the Church, including any associated management practices and amenity impacts.

## Parking

The objectives relating to car parking are detailed in Section 2.1 of this Part of the DCP. Relevantly the objective to Section 2.1 – General Parking Requirements is:

- (i) *To provide sufficient parking that is convenient for the use of residents, employees and visitors of the development.*

Table 1 of this Section of the DCP sets out Council's minimum parking requirements for various uses. Pursuant to Table 1, the DCP requires a minimum of one car parking space per 5 seats. The church can accommodate 280 people at any one time. Therefore a minimum of 56 spaces is required. It is proposed to provide 55 car parking spaces within the proposed basement to cater for the use. The DCP does not specify a parking provision for the 16 deacons also will also be in attendance at the same time as the 280 worshippers.

Whilst the proposed car parking provision only fails to comply with the DCP requirement by 1 space, the applicant's traffic consultant indicated (in the original DA documentation) that the proposed maximum attendance of 310 people on site (280 at the Liturgy and 30 at the Sunday school) is likely to generate a **total parking demand for 155 cars** and that the balance of parking (i.e. – 100 vehicles) will occur on surrounding streets.

There is considerable public concern about the impacts of on-street parking currently being experienced by surrounding residents as a result of the operation of the current place of public worship on the site (which is limited to 90 worshippers). As evidenced in the submissions received, nearby residents are concerned that these impacts will be exacerbated under the proposed scheme notwithstanding the proposed basement car park.

A revised Traffic and Parking Impact report (dated 6 November 2020) indicated that a site 'population' of 280 persons would create demand for 140 car spaces (not 155 spaces as originally stated). The revised report stated that the development will rely on on-street parking on local residential streets.

Therefore, notwithstanding that the development is practically compliant with the minimum parking rates specified in the DCP, the use of the site as a place of public worship already contributes to amenity impacts for local residents as a result of on street parking.

By the applicant's own admission, the proposed population, with an anticipated site population of 280 worshippers plus 16 deacons will result in an even higher demand for on-street parking. Therefore, it is not unreasonable require the proposed development to provide additional on site parking.

The submitted Traffic and Parking Impact report also fails to consider parking provision for the minibus operated by the Church. On street parking is not considered an acceptable solution for the mini bus.

#### **e) Noise Management**

Part B, Section 2 of The Hills DCP relates to residential development generally. This section of the DCP contains a number of objectives and controls aimed at ensuring that the acoustic environment of residents is protected and preserved. Ways in this can be achieved include design considerations, construction methodology, consideration of the environment in which the development is proposed and operational management.

An Acoustic report (dated 24 June 2020) has been submitted in support of the application. However, the Acoustic report does not appear to have adequately considered:

- A fair and reasonable based background noise level. The night background noise levels appear high without an explanation of the source or nature of the noise.
- An assessment of the ringing of the bell.
- An assessment of the use of musical instruments if they are to be used on site.
- The impacts if the stated assumption that all windows and doors will be closed during any functions being held inside the community hall is not complied with.
- Noise generated from additional on-street parking (which is proposed by the Traffic and Parking Impact report) particularly in relation to vehicle movements, starting of engines, car door operations, and voices as patrons leave and arrive, especially late at night.
- Activities proposed outside and in the covered court area.
- The operation of the Church's minibus.

A request for a response to these issues was raised numerous times but no response was provided by the applicant.

Scheduled services and activities are proposed six (6) days a week and would occur as early as 7:30am and conclude as late as 11pm.

The proposed development is likely to have adverse acoustic impacts of the proposal on surrounding residential uses. The cumulative impacts of up to 320 persons on site (and associated activities with the use of the site as a place of public worship), together with associated additional traffic movements have not been adequately assessed. Therefore, it is not possible to determine what the impacts the proposal might have on the acoustic amenity of the surrounding low density residential area and whether those impacts are reasonable and consistent with the existing low density residential character.

## **f) Operational Details**

The Operational Management Plan (OMP) provides a general overview of the proposed activities/services and the rooms on site in which those activities will be conducted. However, despite numerous requests for a more comprehensive OMP to be provided this has not occurred. The submitted OMP is not sufficient to demonstrate that a facility with a capacity of 280 worshippers will be able to operate without adverse impacts on the surrounding residential area.

Further, the OMP is inconsistent with the Statement of Environmental Effects submitted with the Development Application.

Insufficient detail regarding how the site will be managed and how patrons will be supervised to minimise noise impacts as a result of worshippers congregating outside (both within and beyond the site boundaries), have not been addressed. It is essential for the OMP to demonstrate how identified amenity impacts will be avoided, or if not avoided, minimised.

The OMP has not demonstrated that the site has the environmental capacity to be able to accommodate a development of the intensity proposed without adverse environmental impacts on the surrounding area occurring.

## **g) Landscaping**

The proposal will result in the removal of landscaping that was required to be provided as part of the approval of DA 1002/2015/HA for the temporary place of public worship. No attempt has been made to retain these established planting. This is contrary to Part D section 7 – Balmoral Road Release Area DCP which requires a site to be designed to respect site characteristics such as topography, drainage, soil, landscapes, flora, fauna, salinity and bushfire hazard.

Insufficient landscaping to effectively screen the development in accordance with the THDCP Part C Section 3 Landscaping has been provided. There are large amounts of hard surface which extend to the street boundaries.

The landscape design has not been coordinated with the stormwater design. For example, dense landscaping is proposed between the western boundary of the site (adjacent to No. 10 Raymond Court) and the 2/3 storey community hall building. Significant stormwater drainage infrastructure is also proposed in this setback. It is not clear if landscaping to the density and height proposed will be possible without impacting on the functioning of the stormwater drainage infrastructure.

## **4. Submissions**

The application was notified to surrounding properties for 14 days on two occasions. 11 submissions were received following the first notification period, and 14 submissions were received following the second notification period. The concerns raised in the submissions are summarised in the table below:

| <b>Issue/Objection</b>                                                                                                                                                                                         | <b>Comment</b>                                                                                                                                                                                          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Appropriateness of scale/intensity in the R2 Low Density Residential Zone</b>                                                                                                                               |                                                                                                                                                                                                         |
| Current proposal is far too big for a small residential street and more suited to an industrial area which can handle (and is designed for) increased in traffic/moving vehicles, ample space for car parking, | The intensity of the proposed use is incompatible with the low density residential character of the surrounding area and the associated R2 zone objectives. The application is recommended for refusal. |

| Issue/Objection                                                                                                                                                                                                                                                                                                         | Comment                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| vandalism and no risk of noise disturbance etc.                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                       |
| Local neighbours in the area do not access the church regularly and therefore there is no rationale in the argument that the expansion supports the local community. Don't believe the Kellyville community will benefit from church expansion.                                                                         | There is no requirement for the proposed scale of the place of public worship to only service the local community however it is considered that the proposal is not consistent with the R2 zone objectives. The application is recommended for refusal.                                                                                                                               |
| The location is inappropriate for such large development as it is residential area for families. Local footpaths are used by kids, individuals etc. Patrons will be outside of local community, it brings various risks for child safety, privacy, vandalism & police related incidents.                                | The site is not considered to be a suitable location for the proposed development. The intensity of the proposed use is incompatible with the low density residential character of the surrounding area and the associated R2 zone objectives. The places of residence of future patrons are not a matter of consideration under the Environmental Planning and Assessment Act, 1979. |
| The current scale of the Church is appropriate but any enlargement is more suitable in a commercial or industrial land use zone.<br>The residents of the surrounding streets moved to the area for its quiet and tranquil nature and believe the church in its current state is appropriate for the residential street. | The bulk and scale of the hall building is considered to be incompatible with the Raymond Court streetscape. The intensity of the proposed use is incompatible with the low density residential character of the surrounding area and the associated R2 zone objectives. The application is recommended for refusal.                                                                  |
| Concern is raised regarding potential uses in the proposed communal hall. Use of the hall will be an additional nuisance to local residents as it will also draw additional crowds, particularly at night time. Concerned that this will be used as a "function hall" for individuals outside of the church.            | Function centres are a separate land use and are prohibited in the R2 zone. The Operational Management Plan submitted with the application only proposes church related uses in the hall.                                                                                                                                                                                             |
| A marginal increased capacity can be justified, but increasing the numbers by three times without any increase in the land area cannot be justified.                                                                                                                                                                    | The site is not considered to be a suitable location for the proposed development. The intensity of the proposed use is incompatible with the low density residential character of the surrounding area and the associated R2 zone objectives.                                                                                                                                        |
| <b>Streetscape and Character</b>                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                       |
| While the removal of the dome is supported, there is still concern that the bulk and scale of the proposed development is disproportionate and inappropriate for the general area.                                                                                                                                      | The proposed built form is inconsistent with the low density residential character of the surrounding area.                                                                                                                                                                                                                                                                           |
| The height and scale of the proposal is not in keeping with the low-density residential character of the area.                                                                                                                                                                                                          | The proposed built form is inconsistent with the local area. Associated amenity impacts are detailed in this report.                                                                                                                                                                                                                                                                  |
| The height of the roof feature and tower exceed the control height of 10m. This is not in keeping with the local residences which are standard houses which have had to follow strict Council development guidelines                                                                                                    | A Clause 4.6 written submission has been included with the Development Application and are applicable for all land uses. This is addressed in the body of the report.                                                                                                                                                                                                                 |



| Issue/Objection                                                                                                                                                                                                                                                                                                                                                                                                                     | Comment                                                                                                                                                                                                                         |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| in order to keep in harmony with each other and the character of the area.                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                 |
| <b>Traffic and Parking</b>                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                                                                                 |
| There are already issues with car parking on surrounding streets. The proposed development will exacerbate this issue.                                                                                                                                                                                                                                                                                                              | The submitted Traffic and Parking Impact report states that the Church will result in up to 100 cars parking on the street. This is not considered to be an acceptable outcome.                                                 |
| We have witnessed patrons illegally parking on bus stops, pavements etc which is blocking street view and is unsafe.                                                                                                                                                                                                                                                                                                                | Insufficient parking for the scale and intensity of the use can be provided on site and the development will rely on on-street parking. This outcome is not supported. and is a reason for refusal for the subject application. |
| Local streets are used by residents to travel between Old and New Windsor Road and are typically busy streets with vehicles parked on either side. Existing traffic movements associated with the temporary place of worship is already problematic.                                                                                                                                                                                | Concerns regarding traffic and parking management have been raised with the applicant. An adequate response or solution has not been provided.                                                                                  |
| Church users have been blocking private driveways. The increase in numbers will only exacerbate the issue.                                                                                                                                                                                                                                                                                                                          | Reliance on on-street parking is not considered an acceptable outcome. Patrons blocking private driveways are a civil matter and any offences should be reported to the NSW Police.                                             |
| The updated traffic report justifies reliance on on-street parking by <i>"indicating times and days where there were spaces vacant. This suggests that the spaces are 'allocated' to the church and then when not in use vacant. However, the reality is that these spaces are in front of residential homes. These spaces may be used by residents when they have multiple cars within the family or visitors to their homes."</i> | Reliance on on-street parking is not considered an acceptable outcome.                                                                                                                                                          |
| The proposed car park of 55 spaces has ingress / egress from Raymond Court. The road itself is unable to support this kind of increase in traffic. This would lead to traffic congestion when the place is in use.                                                                                                                                                                                                                  | Concerns regarding traffic and parking management have been raised with the applicant. An adequate response/solution has not been provided.                                                                                     |
| The proposed drop off driveway at Arnold Avenue has the exit very close to the existing round about. This further increases the danger on the road due to multiple cars entering and exiting so close to roundabout. The traffic report provides no satisfactory analysis demonstrating that the drop off zone will comply with all relevant Australian standards requirements.                                                     | Concerns regarding traffic and parking management have been raised with the applicant. An adequate response/solution has not been provided.                                                                                     |
| <p>The following requests are made:</p> <ul style="list-style-type: none"> <li>• Remove the pedestrian entranceway on Arnold Avenue;</li> <li>• Relocate the drop off zone to Broderick</li> </ul>                                                                                                                                                                                                                                  | Concerns regarding traffic and parking management have been raised with the applicant. An adequate response/solution has not been provided. This report                                                                         |

| Issue/Objection                                                                                                                                                                                                                                                                                                                                                                   | Comment                                                                                                                                                                                                                                                                                  |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Boulevard, or alternatively locate the drop off zone at the garbage collection area on Raymond Court; and</p> <ul style="list-style-type: none"> <li>Fence the Arnold Avenue boundary to prevent pedestrian access immediately adjacent to their home.</li> </ul>                                                                                                              | <p>recommends refusal of the application in its current form.</p>                                                                                                                                                                                                                        |
| <p>The streets were not designed for the volume of vehicles that the church will bring and this presents safety risks for cyclists and pedestrians.</p>                                                                                                                                                                                                                           | <p>Concerns regarding traffic and parking management have been raised with the applicant. An adequate response/solution has not been provided.</p>                                                                                                                                       |
| <p>Implications of the additional on-street parking will be a need to sign "no parking" around the development.</p>                                                                                                                                                                                                                                                               | <p>Concerns regarding traffic and parking management have been raised with the applicant. An adequate response/solution has not been provided.</p>                                                                                                                                       |
| <p>Arnold Avenue is treated like a racetrack and a speed humps are needed approaching the intersection of Arnold and Butler with so many children playing on the site.</p>                                                                                                                                                                                                        | <p>Concerns regarding traffic management have been raised with the applicant. An adequate response/solution has not been provided.</p>                                                                                                                                                   |
| <p>The cumulative impact of traffic associated with the future shopping centre at the corner of corner of Memorial Ave and Hector Ct. has not been considered.</p>                                                                                                                                                                                                                | <p>Concerns regarding traffic management have been raised with the applicant. An adequate response/solution has not been provided.</p>                                                                                                                                                   |
| <b>Residential Amenity</b>                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                          |
| <p>The proposal will result in unreasonable noise disturbance.</p>                                                                                                                                                                                                                                                                                                                | <p>Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses. An adequate response/solution has not been provided.</p>                                                                                            |
| <p>Concerned that the site could accommodate more than the 280 persons accounted for in the Acoustic Report and it would be difficult to 'police' the number of persons attending the site.</p>                                                                                                                                                                                   | <p>Concern has been raised with the applicant as to whether adequate assessment of associated noise impacts has been undertaken and whether potential adverse impacts are capable of being appropriately managed and mitigated. An adequate response/solution has not been provided.</p> |
| <p>The submitted Acoustic report assumes all windows and doors will be closed during any functions being held inside the community hall. This is an unrealistic assumption. This is especially true is the hall is used by non-church groups.</p>                                                                                                                                 | <p>Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses. An adequate response/solution has not been provided.</p>                                                                                            |
| <p>There has been no acoustic assessment of noise from outdoor activities such as from the covered court, church entrance, drop off zone, pedestrian entrance from Arnold Avenue, or landscaped play area. The covered court in particular is a space which is open and may include a large number of people congregating prior to church services or activities in the hall.</p> | <p>Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses. An adequate response/solution has not been provided.</p>                                                                                            |
| <p>Inadequate acoustic assessment has been undertaken for nighttime activities including feast days and special events that go until</p>                                                                                                                                                                                                                                          | <p>Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses.</p>                                                                                                                                                 |

| Issue/Objection                                                                                                                                                                                                                                                                                                                                      | Comment                                                                                                                                                                                                                                                                                                          |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| after midnight.                                                                                                                                                                                                                                                                                                                                      | An adequate response/solution has not been provided.                                                                                                                                                                                                                                                             |
| Four (4) of seven (7) nights a week finish at 10pm or later and experience has shown that following the end of activities there is noise of people leaving and children continuing to play.<br>Night schools need to close earlier and have noise restrictions.                                                                                      | Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses. An adequate response/solution has not been provided.                                                                                                                           |
| The church entry being proximate to the neighbour's boundary, with consequent acoustic impacts from people entering, leaving and talking, particularly at night.                                                                                                                                                                                     | Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses. An adequate response/solution has not been provided.                                                                                                                           |
| The proposed western setback is insufficient to manage acoustic impacts. The Church should be reorientated so that noise from those gathering at the foyer/entrance is redirected to the east.                                                                                                                                                       | Inconsistencies in site planning and setbacks as required by the DCP are noted in this report.<br>Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses. An adequate response/solution has not been provided.                         |
| The Acoustic report does not consider whether musical instruments are to be used on site.                                                                                                                                                                                                                                                            | Concern has been raised with the applicant regarding the likely acoustic impacts of the proposal on surrounding residential uses and the inadequacy of the submitted Acoustic report. An adequate response/solution has not been provided.                                                                       |
| The proposal will result in local vandalism.                                                                                                                                                                                                                                                                                                         | There is no evidence to suggest that the proposed development will result in an increase in vandalism.                                                                                                                                                                                                           |
| Even 'smaller' functions on site have resulted in unreasonable nuisance. <i>"A wedding which occurred last year where the guests were driving dangerously around the street and doing 'burn outs' almost hitting a group of children. When the church was approached by a resident about this to assist with managing the guests, they refused."</i> | The proposed use is permissible within the R2 zone. Whilst individuals demonstrating dangerous driving is a matter for police, the use of surrounding streets for parking associated with the proposed development and the safety issues associated with this outcome is a matter for consideration and concern. |
| The proposed hours of operation start too early and finish too late. This will unreasonable disturb local amenity.                                                                                                                                                                                                                                   | Concern has been raised with the applicant regarding the likely acoustic and traffic impacts of the proposal on surrounding residential users. An adequate response/solution has not been provided.                                                                                                              |
| The pedestrian entry drop off zone being in close proximity to 116 Arnold Avenue.                                                                                                                                                                                                                                                                    | Concern has been raised with the applicant regarding the traffic impacts associated with the location of the drop off/pick up area. An adequate response/solution has not been provided.                                                                                                                         |
| The proposal does not meet the DCP overshadowing control. There is less than 50% sunlight between 9am and noon. The site does not achieve 50% solar access until                                                                                                                                                                                     | The submitted shadow diagrams appear to demonstrate compliance with the DCP requirement as discussed in this report.                                                                                                                                                                                             |

| Issue/Objection                                                                                                                                                                                                                                | Comment                                                                                                                                   |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| approximately 1.30pm.                                                                                                                                                                                                                          |                                                                                                                                           |
| <b>Other</b>                                                                                                                                                                                                                                   |                                                                                                                                           |
| Construction impacts from vibration arising from machinery and excavation so close to the property boundary.<br>The heavy machinery for construction caused problems for a neighbouring house during the construction of the temporary church. | Construction impacts are similar for any proposed land use and would be managed through appropriate conditions of consent and compliance. |
| The proposal will result in a decrease in property values because the area will be seen as unsafe for families.                                                                                                                                | Property values are not a planning consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.                |
| This is a prime residential area with medium to high end homes.                                                                                                                                                                                | Noted.                                                                                                                                    |
| The consultant's report states there is no 'signage' on the church. But the Tower with a crucifix is 'signage' in my opinion.                                                                                                                  | Signage, as defined by the LEP Standard Instrument is not proposed.                                                                       |

## 5. Internal Referrals

The application was referred to following sections of Council:

### Environmental Health

Council's Environmental Health team has raised the following concerns in relation to the proposed development:

The potential noise of people outside and the potential noise from people leaving and entering the site from cars parked on the street due to a lack on onsite parking. This is particularly a concern for evenings and late nights and the potential use of the community hall.

The amended acoustic report has not specifically addressed the potential noise from the covered court yard or the potential people and car noise of cars as a result of vehicles being parked on the street as people leave in the late evening.

There is potential unassessed noise from people leaving the site particularly from the community hall. The potential uses have not adequately been explained or explored. Submissions have described noise nuisance from the inconsiderate use of cars of attendees at a wedding and the potential for problems would only be worse once approval has been obtained.

There is significant potential for disturbance and nuisance by the persons attending the community hall late at night due to the unassessed and potentially uncontrollable people noise and car or traffic noise.

The most desirable outcome would be for the application to remove the community hall and provide more onsite parking.

While the community hall is not supported if the application is to be assessed in its current form still more information regarding acoustics is required.

The following additional information was requested from the applicant but not received:

- The proposed outdoor activities or activities to be undertaken in the covered court area.
- An assessment for the activities proposed outside and in the covered court area.
- Comments and assessment of on street parking which is proposed to be associated with this development with consideration to: parking, car door, potential voices of patrons as they leave and head to their cars and car starting and leaving late at night.

### Landscape Management

The following comments have been provided by Council's Tree Officer:

Concerns remain in relation to the bulk and scale of the development, and the ability to provide sufficient landscaping to effectively screen the development in accordance with the THDCP Part C Section 3 Landscaping. There are large amounts of hard surface which extend to the street boundaries, and un-detailed high walls and platforms which result in negative streetscape impacts and amenity impacts on neighbouring properties.

Furthermore, there remains a lack of tree retention as required by the DCP. There are existing established trees planted as part of the landscaping for DA 1002/2015/HA of the site which has not been attempted to be retained as requested by Council staff. Appropriate tree retention must be achieved to comply with the THSC Part D section 7 – Balmoral Road Release Area development control which requires a site to be designed to respect site characteristics such as topography, drainage, soil, landscapes, flora, fauna, salinity and bushfire hazard.

The landscape plan proposes trees to be retained (undashed) which are within the development footprint and not able to be retained under the current design.

The protruding basement to the western and southern setback adjacent the neighbouring properties are not supported.

The fill and associated walls are 2.45m high at their highest in close proximity to the boundaries. This height does not comply with THDCP Part D Section 7 - Balmoral Road Release Area cut and fill control which allows a maximum of 500mm fill.

The visual impact of the exposed basement remains a significant concern. Too much reliance is put on the landscaping to effectively screen the high exposed basement and the rest of the development beyond, especially at the approx. 2m wide pinch points with the neighbouring boundary.

The architectural plans show a large area of basement slab which is exposed on the western setback adjacent the community hall. The landscape plan has acknowledged the lack of ability to plant this area by leaving these areas blank; this landscape outcome is not supported. Due to the elevated height of this area, it would likely require significant acoustic treatment to protect neighbouring residential properties if it were to be a raised, usable open space area.

The proposed planting box over the high exposed basement is not supported as it adds additional height to an already exceedingly high wall adjoining a neighbouring property.

The location of the planter box also suggests that the area is proposed to be trafficable which would require a balustrade. This is not an acceptable outcome.

There are stormwater impacts proposed which impact on the Tree Protection Zone (TPZ).

#### Subdivision

General conditions of consent have been provided by Council's Subdivision team. These relate to recycled water, vehicular access and parking, minor engineering works, flood protection, erosion and sediment control, basement car park requirements, works on adjoining land, security bonds, water sensitive urban design, public assists, and certification requirements.

#### Traffic

Council's Traffic and Roads Management team requested the applicant to investigate the impact of the drop off zone off Arnold Avenue on the operation of the existing bus stop.

Council's Traffic Engineer has also indicated that access of the proposed drop off zone on Arnold Avenue will be restricted to left in left out. To reinforce the left turn out only restriction, the applicant will be required to provide an 'All Traffic' (Left) symbolic arrow sign (R2-14 I).

Whilst Council's Traffic and Roads Management team has not identified the reliance on on-street parking as a matter of concern, it is considered that this is an indication that the site is not a suitable location for the intensity of the use proposed.

#### Development Contributions

A development contribution of 1% of the total cost of works calculated in accordance with section 4.17 (1) of the Environmental Planning and Assessment Act 1979, and The Hills Section 7.12 Contributions Plan will be required to be paid in the event that the application is approved.

### **6. External Referrals**

The application was externally referred to Sydney Water.

Sydney Water reviewed the application and requested that a condition of consent be applied to any approval requiring approved plans be submitted to the Sydney Water online service to determine impacts on any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

### **7. Conciliation Conference**

In accordance with Council's DCP, a Conciliation Conference is required when more than 10 submissions were received during the notification period. However, a Conciliation Conference was not held due to the ongoing concerns regarding COVID-19.

### **CONCLUSION**

The Development Application has been assessed against the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, The Hills Local Environmental Plan 2019 and The Hills Development Control Plan 2012 and is considered unsatisfactory. The accompanying Clause 4.6 request for variation has been

assessed and breaches in the building height standard have been determined to be not unreasonable based on the use of the site as a place of public worship. Notwithstanding, refusal of the application is recommended on the grounds that the scale and intensity of the proposed use is inconsistent with the objectives of the R2 Low Density Residential zone and the low density residential character of the locality, and would give rise to an unreasonable negative impact on surrounding residential amenity.

## **IMPACTS**

This matter may have a direct financial impact upon Council's adopted budget. On 15 December 2021, the applicant filed a Class 1 Application to an appeal against the deemed refusal of the application with the NSW Land and Environment Court which Council is required to defend.

### **The Hills Future Community Strategic Plan**

Whilst the use of the site for the purposes of a place of public worship is consistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future", as the proposed development provides a facility which will support urban growth in the surrounding area, the intensity of the development is not supportable and will result in adverse environmental and social amenity impacts. The proposed built form does not respect to the streetscape or the character of the locality.

### **Local Strategic Planning Statement**

The Hills Future 2036 Local Strategic Planning Statement was made on 6 March 2020. The proposal has been considered against the outcomes planned within the Local Planning Strategic Planning Statement and Implementation Plan and is considered to be satisfactory.

## **RECOMMENDATION**

That the Development Application for *Removal of a Temporary Place of Worship (for up to 90 patrons) and Construction of a Permanent Place of Worship (for up to 280 patrons plus 25 Sunday School children plus 16 deacons)* be refused on the following grounds:

1. The proposed development is inconsistent with the objectives of the R2 Low Density Residential zone, especially "*to maintain the existing low density residential character of the area*".  
(Section 4.15 1(a)(iii) of the NSW Environmental Planning and Assessment Act 1979).
2. The application has not adequately considered potential impacts on the local traffic network including the safe and efficient functioning of the surrounding road network and the operation of the bus stop at the front of the site. The development will rely heavily on on-street parking and this will impact negatively on the amenity of the surrounding low density residential area and the local road network. The anticipated on-street parking will result in unreasonable safety, efficiency and amenity impacts.  
(Section 4.15 1(b) of the NSW Environmental Planning and Assessment Act 1979).
3. The design and scale of the proposed development is inconsistent with the surrounding low density residential character and is not compatible with the existing streetscapes, particularly the Raymond Court streetscape. The site is not considered to be a suitable location for the scale and intensity of the proposed development.  
(Section 4.15 1(c) of the NSW Environmental Planning and Assessment Act 1979).
4. The development is inconsistent with the objectives of Clause 8.1.3 Building Form and Height of the Balmoral Road Section of the DCP which seeks to ensure development is compatible with adjoining residential development and the overall

streetscape, to minimise bulk and scale, and to provide articulation in building form and design.  
(Section 4.15 1(a)(iii) of the NSW Environmental Planning and Assessment Act 1979).

5. Insufficient detail has been provided with respect to the extent of excavation required for the basement.  
(Section 4.15 1(b) of the NSW Environmental Planning and Assessment Act 1979).
6. Insufficient detail has been provided to demonstrate that the development will not have negative acoustic impacts on surrounding residential uses.  
(Section 4.15 1(b) of the NSW Environmental Planning and Assessment Act 1979).
7. The development has not been designed having regard to existing site features, including existing established landscaping. The proposed landscaping does not provide adequate screening of the buildings.  
(Section 4.15 1(c) of the NSW Environmental Planning and Assessment Act 1979).
8. The documentation provided with the application is inconsistent. The Operational Management Plan is inconsistent with the Statement of Environmental Effects and the landscape plans are inconsistent with the architectural plans and stormwater management plans. The Operational Management Plan does not provide sufficient detail with respect to the numbers of persons attending the site and overall management of the place of public worship.  
(Section 4.15 1(b) of the NSW Environmental Planning and Assessment Act 1979).
9. There is a lack of coordination between the landscape design and the stormwater drainage design.  
(Section 4.15 1(b) of the NSW Environmental Planning and Assessment Act 1979).
10. The development is not in the public interest.  
(Section 4.15 1(e) of the NSW Environmental Planning and Assessment Act 1979).

## **ATTACHMENTS**

1. Locality Plan
2. Aerial Map
3. Zoning Map
4. Height Map
5. Site Plan / Landscape Plan
6. Architectural Plans
7. Shadow Diagrams
8. Clause 4.6 Variation



## ATTACHMENT 1 – LOCALITY PLAN



- ☐ SUBJECT SITE
- ✓ PROPERTIES NOTIFIED
- SUBMISSIONS RECEIVED

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE  
BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THIS COPYRIGHT.

## ATTACHMENT 2 – AERIAL MAP



 SUBJECT SITE

**THE HILLS**  
Sydney's Garden Shire

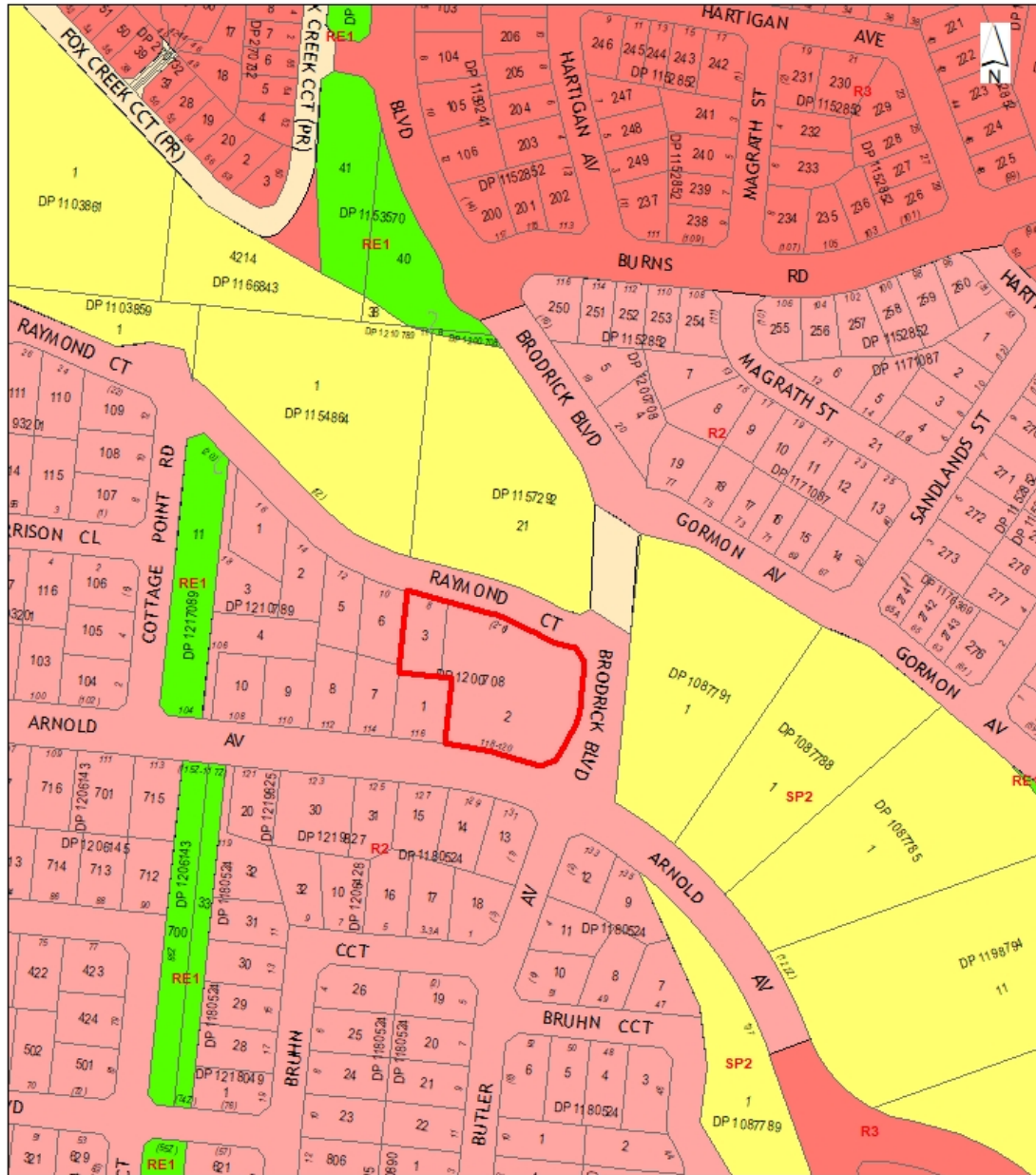
### THE HILLS SHIRE COUNCIL

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THIS COPYRIGHT.



## ATTACHMENT 3 – ZONING MAP



SUBJECT SITE

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE

BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THIS COPYRIGHT.

## ATTACHMENT 4 – HEIGHT MAP



**SUBJECT SITE - LEP HEIGHT MAP**

### Legend

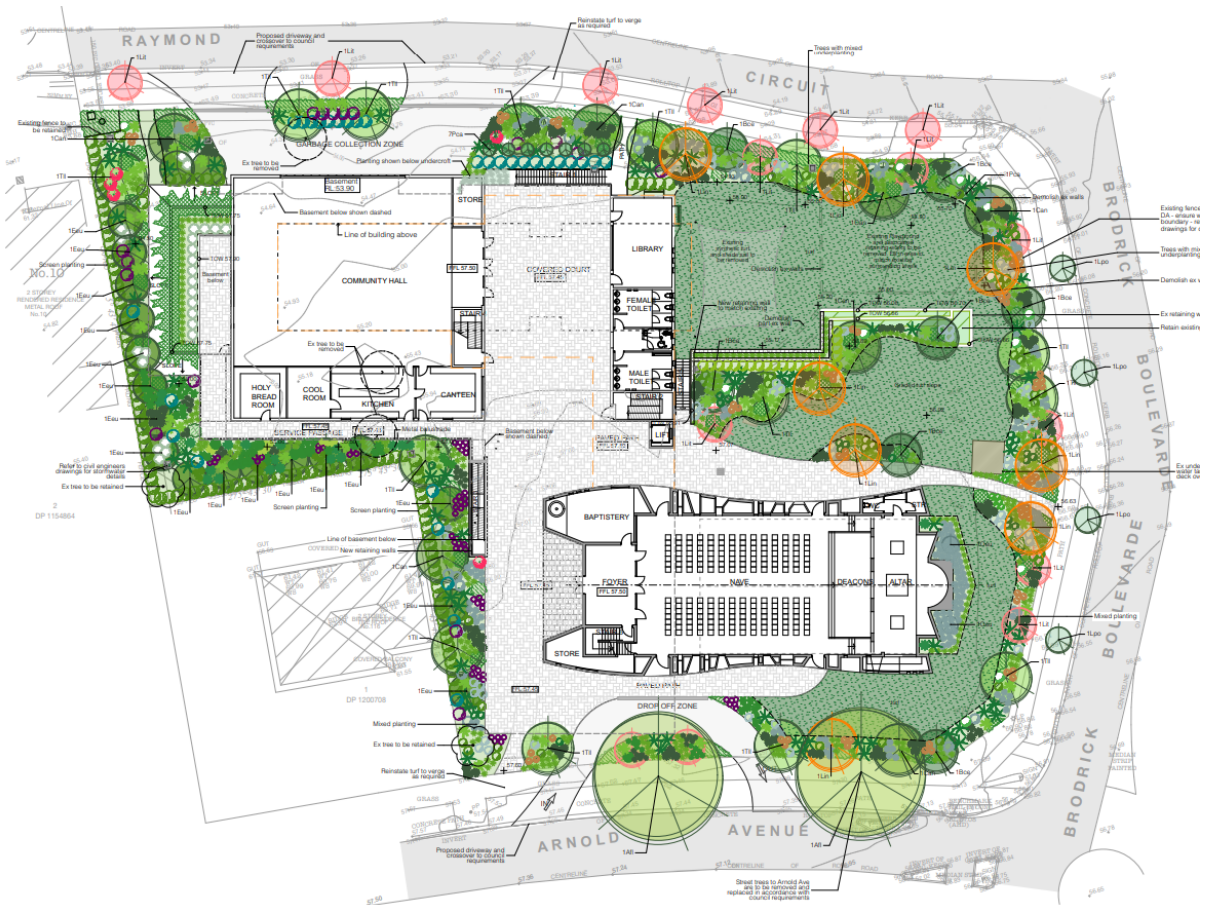
|                                                                                                                               |                                                                                                                                |                                                                                                                                |                                                                                                                                |                                                                                                                                |                                                                                                                                |                                                                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------|
| <span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> G | <span style="background-color: #FFFF00; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> M1 | <span style="background-color: #D2B48C; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> O2 | <span style="background-color: #8B4513; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Q2 | <span style="background-color: #FF6347; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T1 | <span style="background-color: #FF0000; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> V1 | <span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> X2 |
| <span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> I | <span style="background-color: #FFFF00; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> M2 | <span style="background-color: #D2B48C; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> P1 | <span style="background-color: #8B4513; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R1 | <span style="background-color: #FF6347; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T2 | <span style="background-color: #FF0000; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> V2 | <span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Y1 |
| <span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> J | <span style="background-color: #FFFF00; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> N  | <span style="background-color: #D2B48C; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> P2 | <span style="background-color: #8B4513; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> R2 | <span style="background-color: #FF6347; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> T3 | <span style="background-color: #FF0000; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> W  | <span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Y2 |
| <span style="background-color: #90EE90; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> K | <span style="background-color: #FFFF00; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> O1 | <span style="background-color: #D2B48C; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Q1 | <span style="background-color: #8B4513; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> S  | <span style="background-color: #FF6347; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> U  | <span style="background-color: #FF0000; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> X1 | <span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> Y3 |
|                                                                                                                               |                                                                                                                                |                                                                                                                                |                                                                                                                                |                                                                                                                                |                                                                                                                                | <span style="background-color: #DDA0DD; border: 1px solid black; display: inline-block; width: 15px; height: 10px;"></span> AA |

**THE HILLS**  
Sydney's Garden Shire

### THE HILLS SHIRE COUNCIL

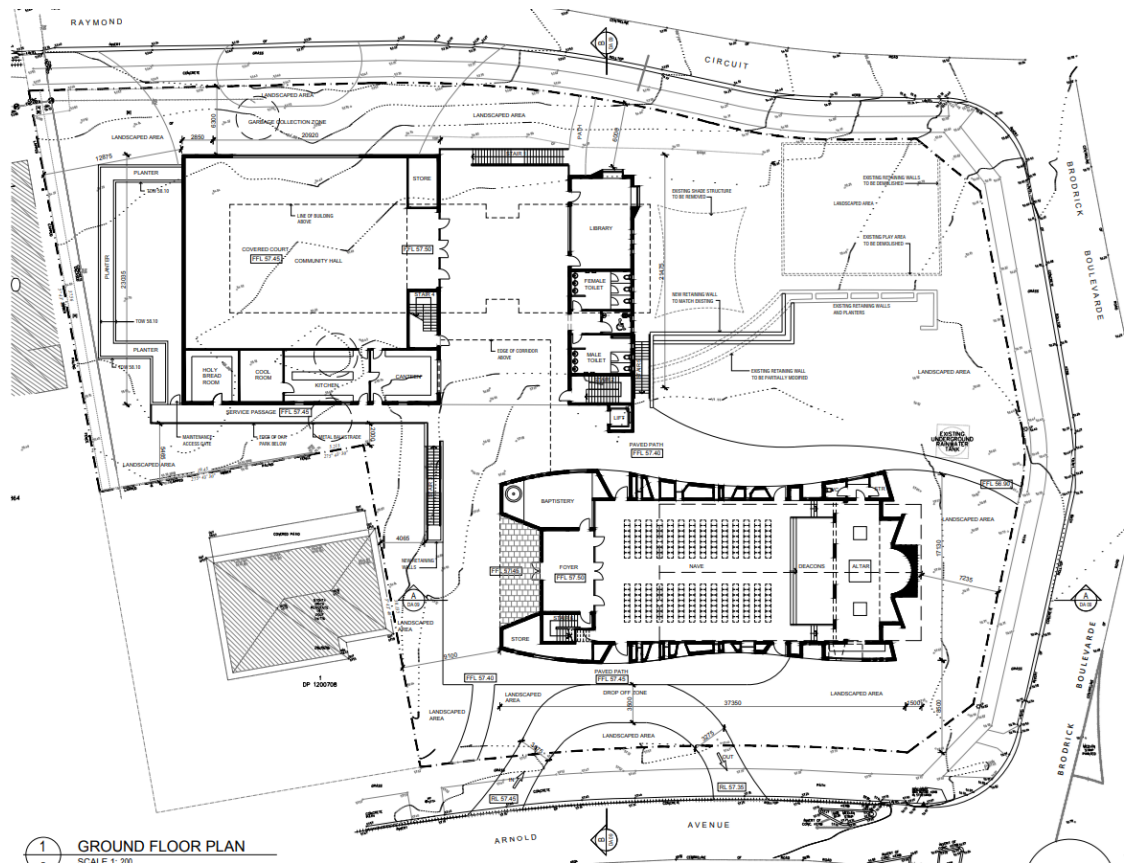
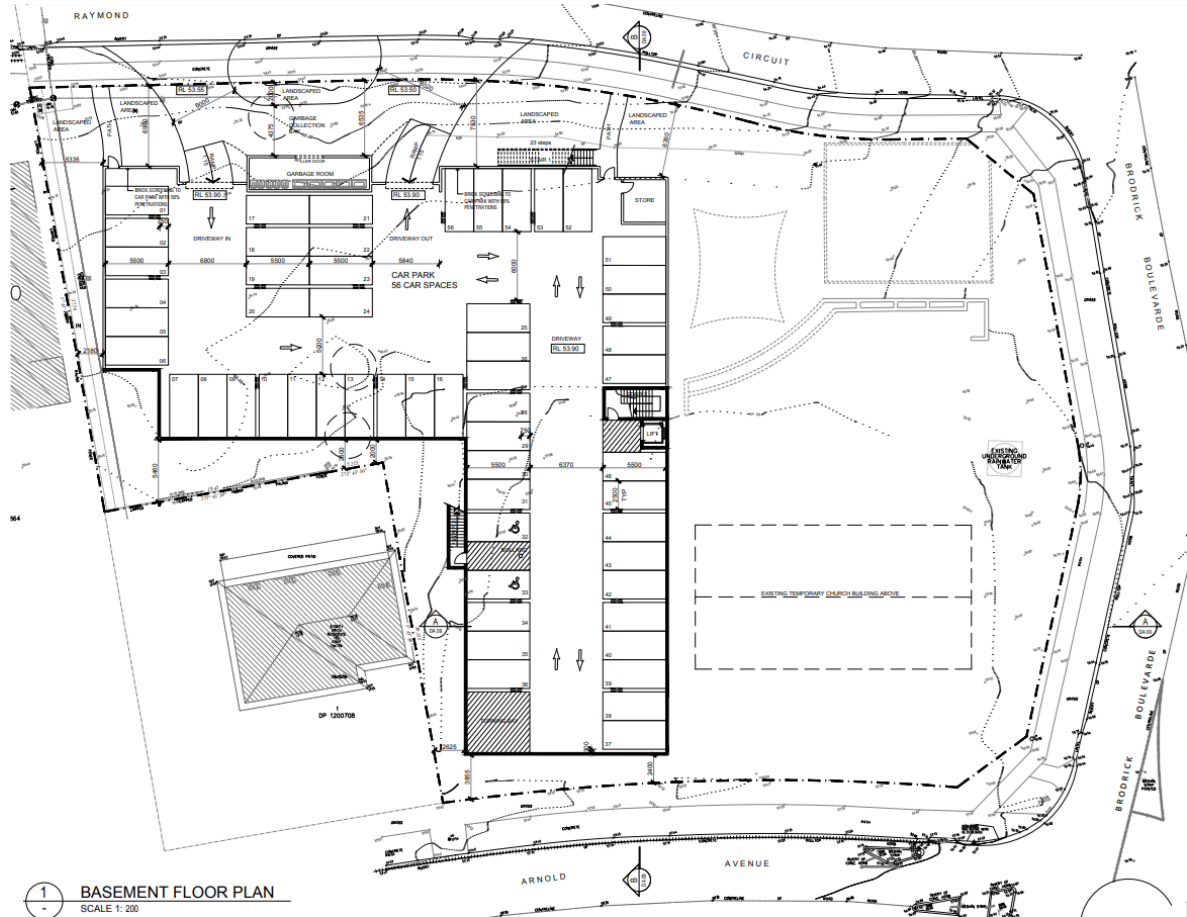
THE HILLS SHIRE COUNCIL DOES NOT GIVE ANY GUARANTEES CONCERNING THE ACCURACY, COMPLETENESS OR CURRENCY OF THE TEXTUAL INFORMATION HELD IN OR GENERATED FROM ITS DATABASE  
BASE CADASTRE COPYRIGHT LAND & PROPERTY INFORMATION NSW (LPI). CADASTRE UPDATE INCLUDING COUNCIL GENERATED DATA IS SUBJECT TO THIS COPYRIGHT.

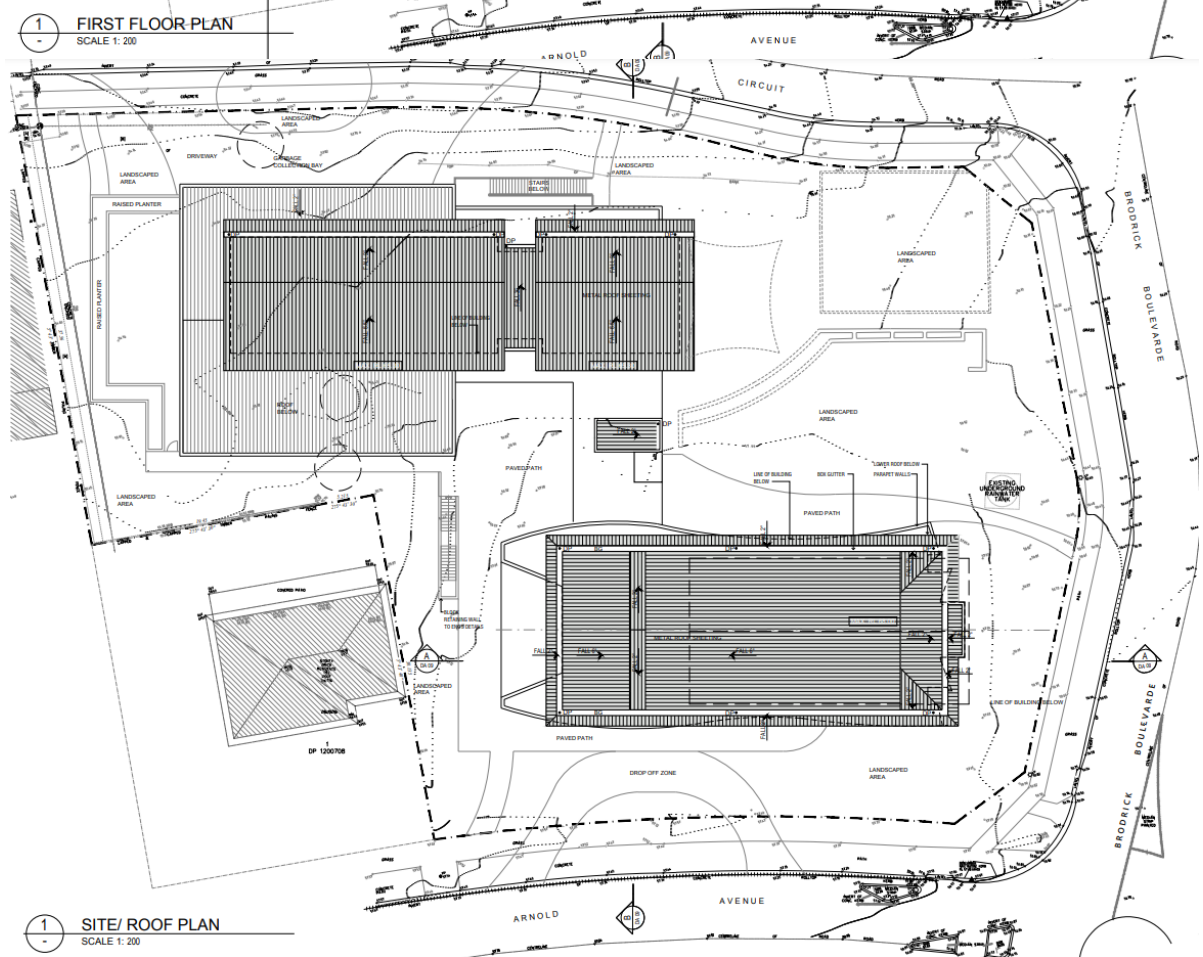
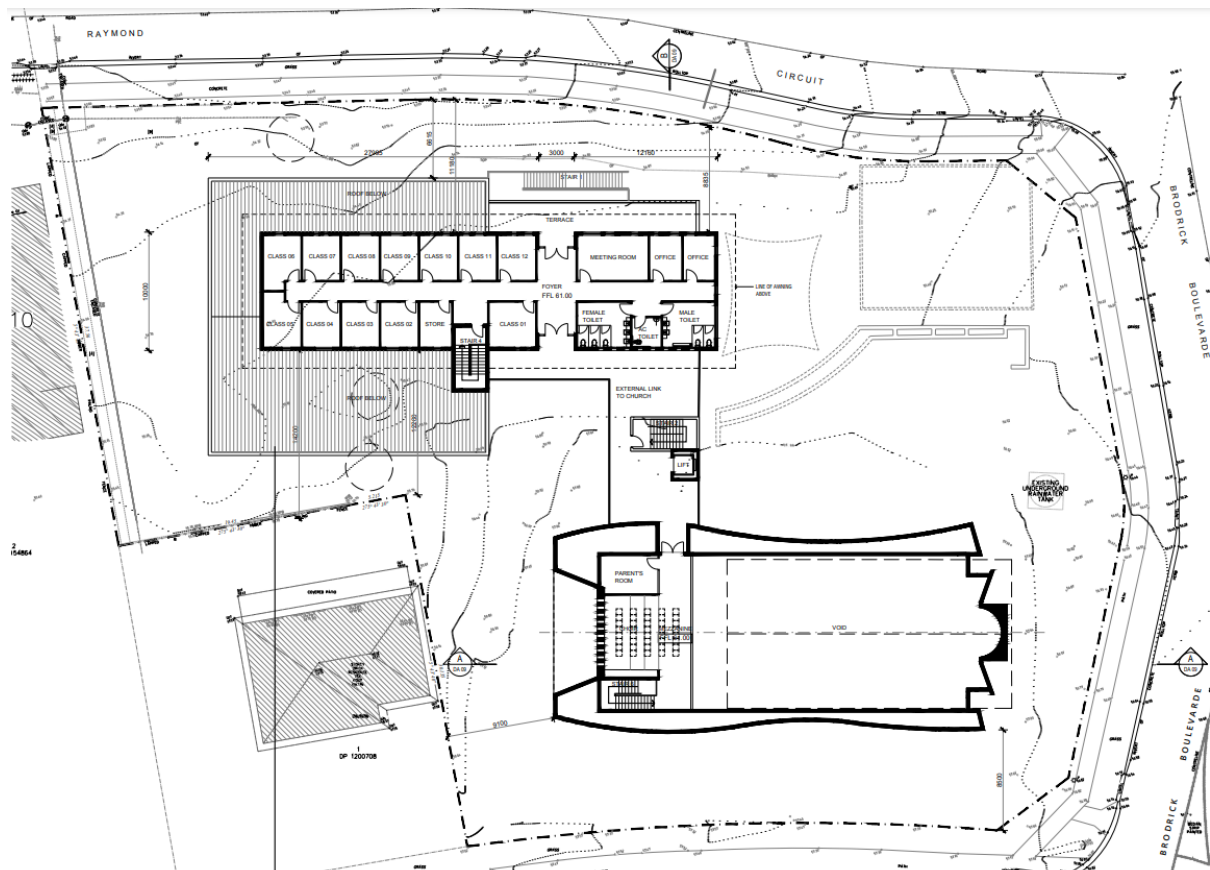
## ATTACHMENT 5 – SITE PLAN / LANDSCAPE PLAN

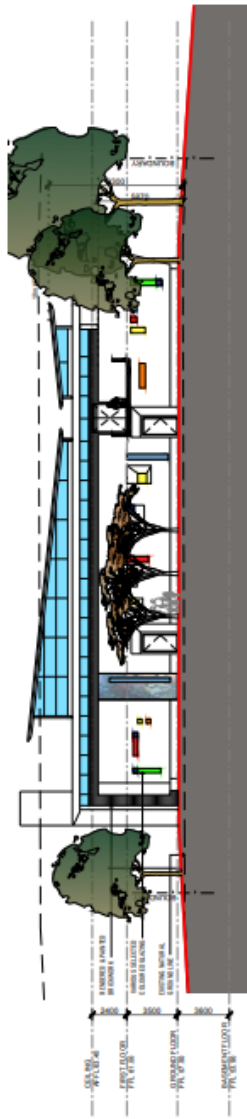




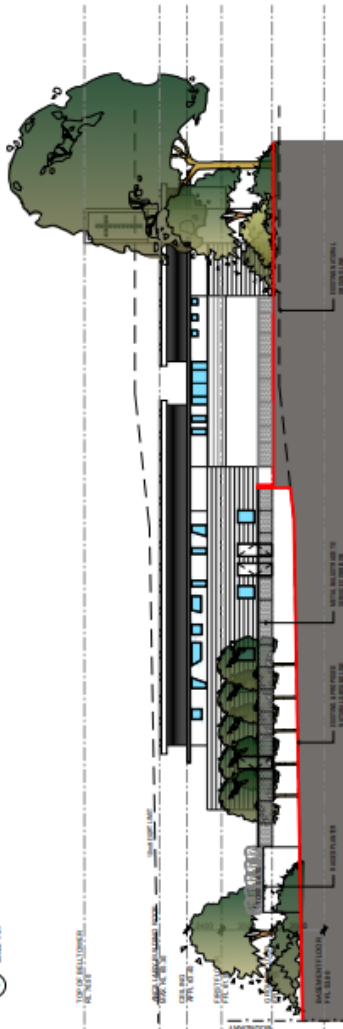
# ATTACHMENT 6 – ARCHITECTURAL PLANS







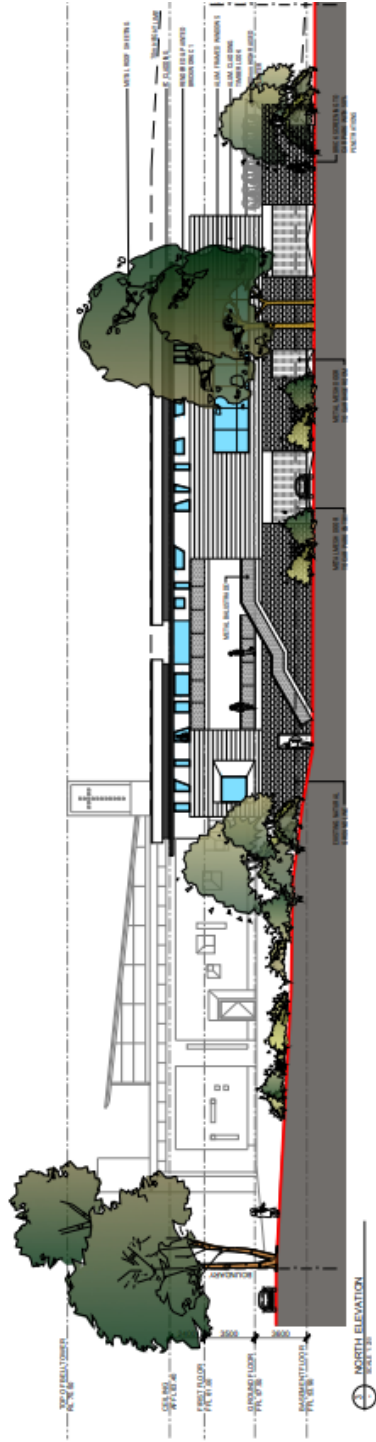
⊕ INTERIOR NORTH ELEVATION  
SCALE 1/8"



⊕ INTERIOR SOUTH ELEVATION  
SCALE 1/8"

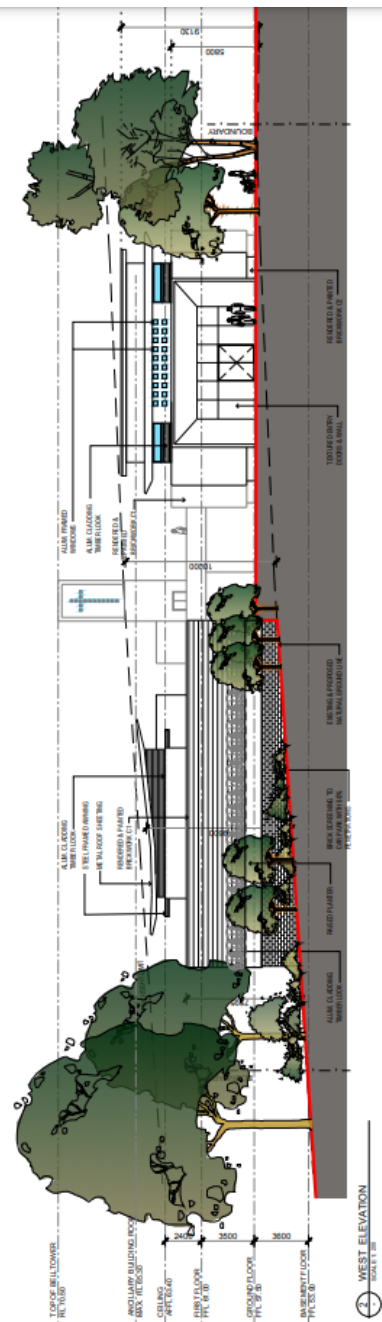
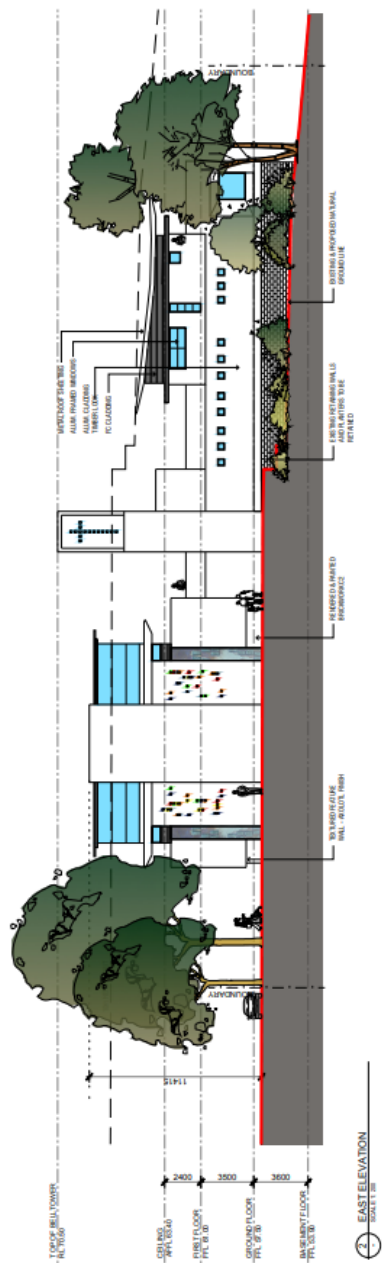
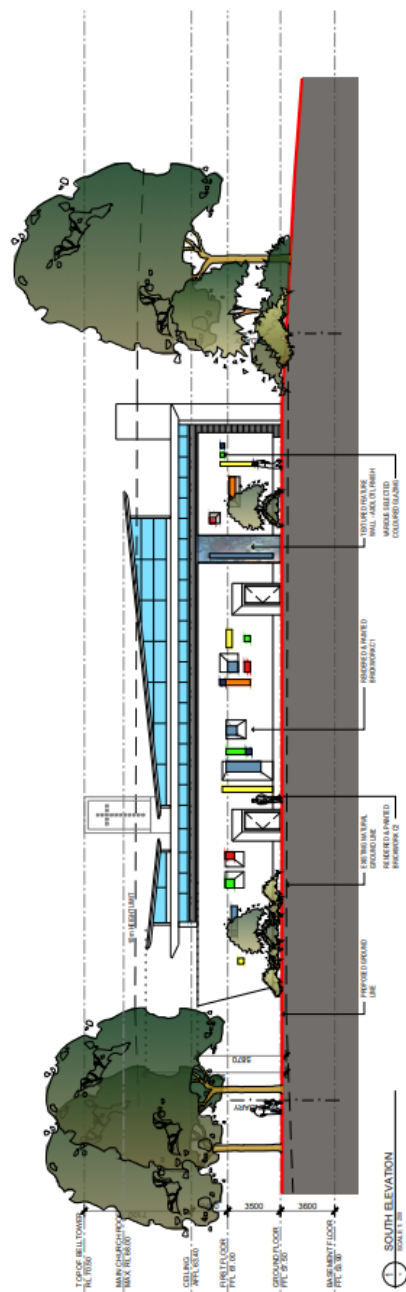


CAR PARKING WALLS - DESIGN INTENT



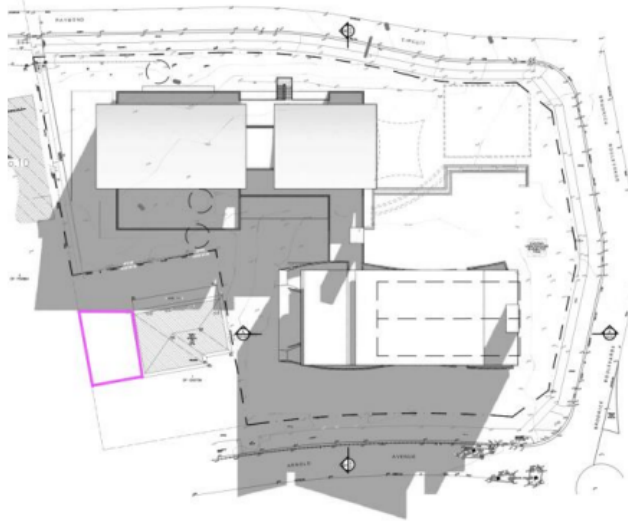
⊕ NORTH ELEVATION  
SCALE 1/8"







## ATTACHMENT 7 – SHADOW DIAGRAMS



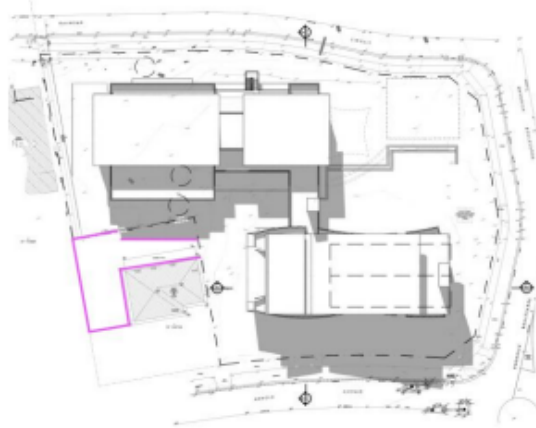
**9AM**



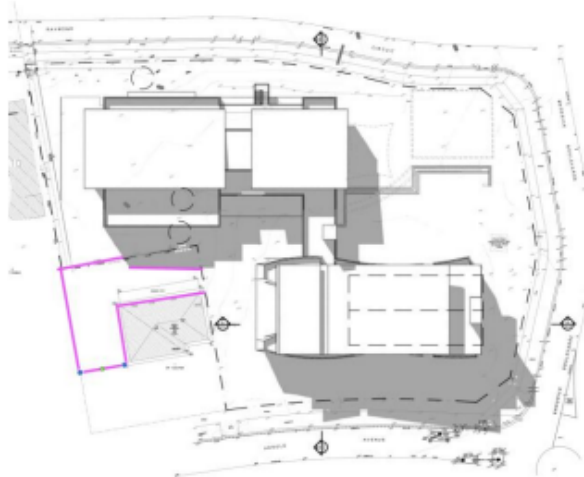
**10AM**



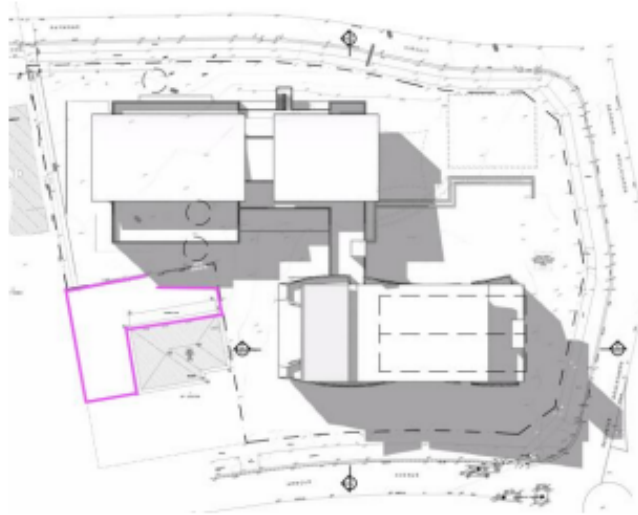
**11AM**



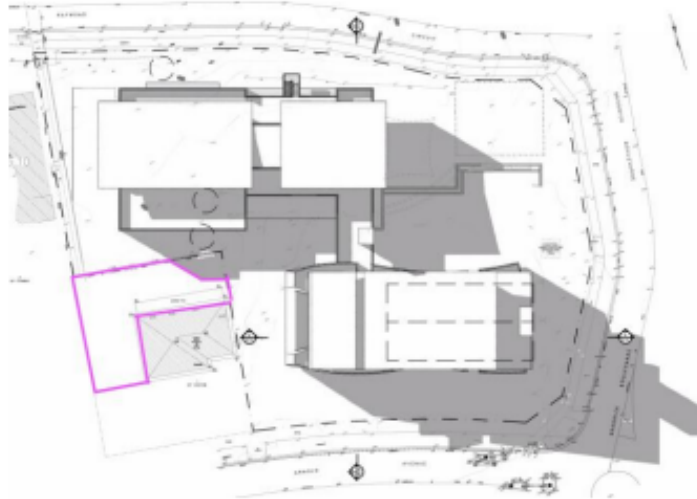
**12 Midday**



**1 PM**



**2PM**



**3PM**

## ATTACHMENT 8 – CLAUSE 4.6 VARIATION

Clause 4.6 to Height  
Proposed Place of Public Worship  
8 Raymond Court and 118 – 120 Arnold Avenue Kellyville

---



# **CLAUSE 4.6**

## **REQUEST FOR VARIATION TO**

### **CLAUSE 4.3 (2) (HEIGHT OF BUILDING)**

### **THE HILLS LOCAL ENVIRONMENTAL PLAN**

### **2019**

*8 Raymond Court &  
118 – 120 Arnold Ave,  
**KELLYVILLE***

**Updated June 2021**

© Andrew Martin Planning Pty Ltd  
Reproduction of this document or any part thereof is not  
permitted without the prior written permission of Andrew Martin Planning Pty Ltd

## 1.0 Introduction

- This is a request to vary a development standard pursuant to the provisions of Clause 4.6 of The Hills Local Environmental Plan 2019 (LEP 2019), the relevant clause being Clause 4.3(2) (Height of Building).
- The relevant Height of Building control is a *development standard* for the purposes of the *EP & A Act 1979*.
- The relevant maximum height of building control is **10.0m** and the variation to the control is **3.5m** as a maximum for the tower element signifying the church building.
- The relevant Height of Building control is a *development standard* for the purposes of the *EP&A Act 1979*. This request to vary the height development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112* (SJD DB2).
- The objectives of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6 1(b). The variation is required for the church tower element and other elements of the building. The tower element is characteristic for many churches. The land has a cross fall.
- The site is not a State or locally listed heritage item under Schedule 5 of CLEP 2012. It is not located in a Heritage Conservation Area and is not within proximity to any locally listed heritage items.
- The plans relied upon for the clause 4.6 variation are those prepared by TIBA Architecture Group dated 23.6.20

## 2.0 Development Standard to be Varied – Height

The relevant *development standard* to be varied is the 10m height control under Clause 4.3(2). Clause 4.3 of LEP 2019 relevantly provides:

### 4.3 Height of buildings

- (1) *The objectives of this clause 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.*
- (2) *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 relevant height of buildings map is identified below:

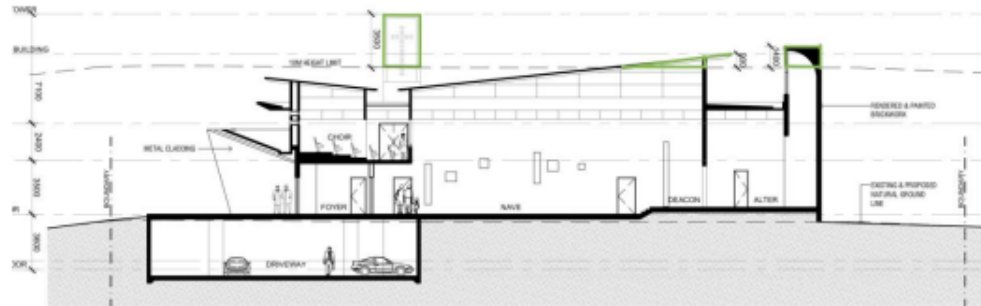


The subject site is mapped "K" – 10m (max)

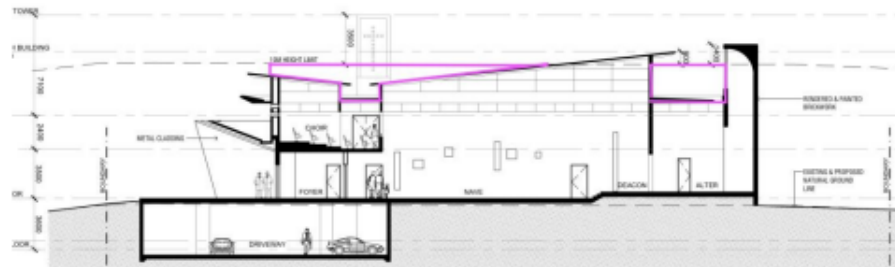


### 3.0 Nature of Variation Sought

The variation for the tower element is **3.50m** reduced from 6.40m proposed as part of the original application with the dome roof element.



**Figure A:** Area of the building in green greater than the height control. The elements of the building over the height are architectural type elements.



**Figure B:** Purple outline represents the volume of the building that is under the height that is not utilised as part of this proposal. The proposal offers a balance between the areas under and over the control so that the proposal is appropriate for the site.

The volume of the building under the control (as shown in pink) within the building footprint is much greater than the building volume greater than the height control (shown in green).

The lowered roof and raised columns around the alter provide an architectural outcome to the building that requires a minor variation to the control that is more than offset by the volume of the building well under the controls.

#### 4.0 Height – Development Standard

A 'development standard' is defined in S1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

*"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:*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed."*

The 10m maximum height standard is a *development standard* as defined under the EP&A Act 1979.

#### 5.0 Clause 4.6 of The Hills Local Environmental Plan 2019 (THLEP 2019)

The following provides a response to the relevant Clause 4.6 provisions:

Clause 4.6(2) 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 to a development standard that is expressly excluded from the operation of this clause.*

The HOB development standard is not expressly excluded from the operation of cl4.6 and accordingly, consent may be granted.

Clause 4.6(3) relates to the making of a written request to justify the contravention of 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:*
- (4) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (5) that there are sufficient environmental planning grounds to justify contravening the development standard. (our emphasis)*

The proposed development does not comply with the HOB development standard pursuant to cl4.3 of the THLEP 2019. However, strict compliance is considered to be unreasonable and unnecessary in the circumstances of this case as detailed further in this written request.

development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

**SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).**

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

**7.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under **Cl. 4.6(3)(a)**.

Preston CJ at states as follows:

*"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Based on the above the following identifies the first method identified in *Wehbe*:

*"Ways of establishing that compliance is unreasonable or unnecessary"*

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: (our emphasis).*

**Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY**

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.



Sufficient environmental planning grounds exist to justify contravening the development standard as detailed in Section 8.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a development standard unless:

- (6) *Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) *the consent authority is satisfied that:*
    - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
  - (b) *the concurrence of the Secretary has been obtained.*

Sections below of this written request address the matters required under cl4.6(4)(a) of the LEP 2019 and cl4.6(4)(b).

Clause 4.6(5) provides that:

- (7) *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 Secretary before granting concurrence.*

Sections below of this written request addresses the matters required under cl4.6(5) of the LEP 2019.

Clauses 4.6(6) and (8) are not relevant to the proposed development

Clause 4.6(7) is an administrative clause requiring the consent authority to keep a record of its assessment under this clause after determining a development application.

## 6.0 Relevant Decisions

### Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ('Initial Action'), Preston CJ indicated that cl4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard. There is no provision in LEP 2019 clause 4.6 that requires a development that contravenes a development standard to achieve better outcomes.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the

development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

**SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).**

This appeal sought consent for the construction of a six-storey Shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

**7.0 Clause 4.6(3)(a): Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 options available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under **Cl. 4.6(3)(a)**.

Preston CJ at states as follows:

*"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."*

Based on the above the following identifies the first method identified in *Wehbe*:

*"Ways of establishing that compliance is unreasonable or unnecessary"*

*42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard: (our emphasis).*

**Clause 4.6(3)(a) – UNREASONABLE AND UNNECESSARY**

This clause 4.6 responds to the matters required to be demonstrated by sub-clause 4.6(3) namely:

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

Having considered the above the applicant relies upon the first method demonstrating that compliance is *unreasonable and unnecessary* because the objectives of the development standard are achieved notwithstanding a variation with the standard.

In dealing with the control it is necessary to identify the purpose of the height control and then progress to dealing with the consistency or otherwise with the height objectives. The first consideration relates to overall scale of a building given that both height and FSR can determine the scale of a building relative to another building or natural feature.

The site is a large corner allotment with single dwellings adjoining the western boundary. Other remaining boundaries front local roads. An SP2 (Stormwater Management System) parcel of land exists adjacent to the northern and eastern boundaries of the site. A place of public worship is a permissible use within the low density residential zoning. The proposed church is compatible with the residential dwellings even though it does not look the same. While there are elements of the built form (namely roof elements) which exceed **10 metres** in height, as a whole the development is largely compliant when the wall heights are considered. The general wall height complies and it is the tower element and alter wall projection that results in the variation.

The projecting architectural roof elements are covered by the enabling provisions of clause 5.6 of the THLEP 2019 however the projections above the **10m** height are included in this variation request. The variations sought are limited to architectural features which are considered characteristic of a church. The tower element is an intrinsic feature of a church and this type of land use that are not desired or required for other types of buildings permitted within the zone. Figures **A** and **B** identify the area over and under the height control. The roofed areas above the height control enable the designer to provide a skillion style roof element. The skillion roof element is compatible with the surrounding residential roof designs.

The site is quite substantial in size and proposes adequate setbacks to adjoining residential properties and the three road frontages. The tower is sited towards the middle of the site with good separation to neighbouring properties and the streetscape. The lower wall feature symbolises the head of the alter precinct and is again a feature element that symbolises the church hierarchy. The two projecting features are symbolic elements relevant to a church use. There are other areas of the building footprint well under the **10m** height control. The projecting elements add visual interest and articulation and are well suited to the corner position which is the reason why the land was acquired in the first instance. The tower element is used in way finding on the site for small children. The tower does not support a working church bell and therefore does not give rise to noise impacts.

As shown in the elevations the scale of the church is compatible with adjoining development. The built form has been appropriately sited offering a sound urban design outcome notwithstanding the height variation proposed for the elements (as shown in green Fig A) above the 10m. The proposal maintains appropriate visual separation between the structures onsite and adjoining residential developments. The church has acquired a large land holding to construct the church, parking and ancillary structures. Ample deep soil is provided around the perimeter of the building which will soften the appearance of the building. The proposal is supported by a detailed landscaping plan.

The tower element is a small scaled element that signifies the church and is centrally located on the site. Whilst higher than the main building it is nevertheless subservient to the main built form and does not increase the perceived scale of the church when viewed from the street or neighbouring properties. The tower element is used in way finding and is a symbolic feature of this type of building typology.

Further insight into the purpose of the standard can be obtained by investigating the objectives of the standard. The objectives in this case include both built form and amenity considerations with particular regard to solar, visual and privacy impacts. The height control requires a development to achieve a high-quality built form and provide reasonable amenity impacts. The following justification relates to both the built form, locational context and amenity.

- (a) *to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,*

The proposal whilst offering an increased scale than the existing temporary church is compatible with the height and scale envisaged for a place of public worship and is in line with the desired future character and future urban form of the area. The site is a corner site and therefore additional height can be justified based on urban design principles. The built form should be of



sufficient scale to frame the corner given the three street frontages. The built form of many new dwellings is two storeys.

There are two relatively slender elements of the building which exceed 10m in height including the tower. The tower is an integral component of a place of public worship and has been designed with a dual function to accommodate the lift run. The design is well considered and ensures the built form is representative of a place of public worship but compatible with the scale of a low density residential zoning. The generous deep soil areas around the perimeter of the site ensure the proposal is compatible. Other areas of the building are well below the height control even with the sloping nature of the site (see area in pink in Figure B).

Planning principles establish that a building does not necessarily need to be the same in order to be compatible (see Project Ventures Constructions v Pittwater Council). In this regard the bulk, scale and overall volume is compatible with surrounding streetscape. From a streetscape perspective the proposed development offers an acceptable built form that is compatible with the likely future built form contemplated by the THLEP and DCP, given the permissibility of the use. The proposed tower and alter wall projection does not reduce the ability of the primary built form achieving the height objectives. As shown in Figure B there is a significant volume under the height control not utilised by the proposal and the volume of the building greater than the control is not significant. The roof projection facilitates a pitched skillion roof element.

- (b) *to minimise the impact of overshadowing, visual impact and loss of privacy on adjoining properties and open space areas.*

Shadow diagrams are submitted with the DA plan set. The site has a north-south orientation. The submitted diagrams demonstrate, in detail, what the changes in shadow impacts are at various times of the day and the extent of the shadow arising from the height variations. Given the orientation of the site and the location of the built form adequate access to sunlight to the adjoining properties is maintained. Figures C, D and E below demonstrate the additional impact resulting from the additional height projections:

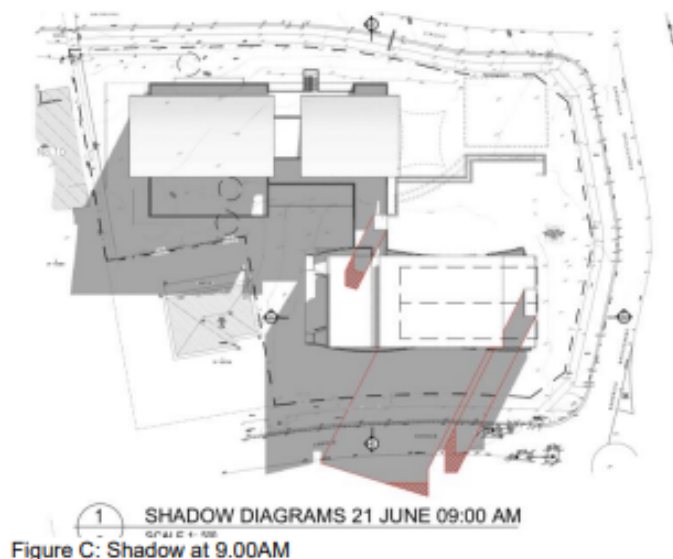






Figure D: Shadow at 12 midday

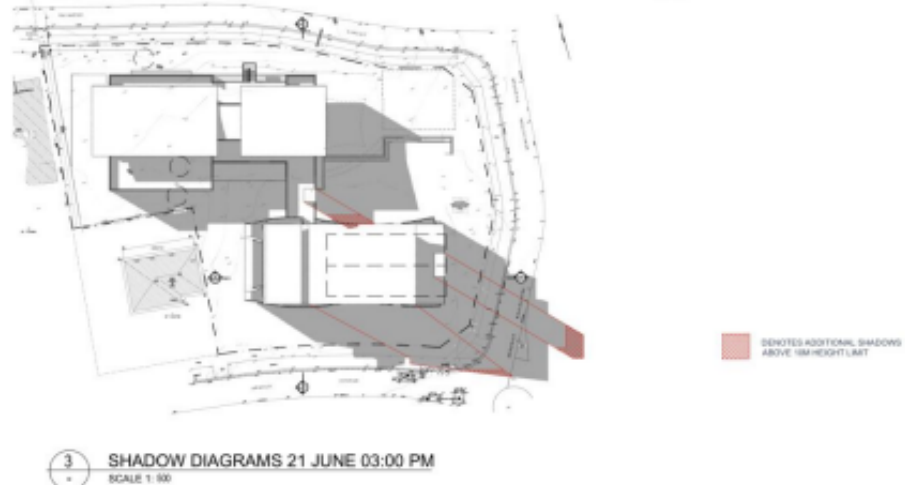


Figure E: Shadow at 3pm

As shown above the hatched area in red depicts the additional shadow arising from the non compliant height which is quite limited in terms of its impact and is acceptable in the circumstances.

The place of public worship is well considered and locates the built form within a large allotment of land ensuring minimal privacy and acoustic impacts. Although a height variation is proposed, the built form is well sited to ensure that the allotment retains its openness due to the separation between the two primary built form elements. The allotment is significantly larger than what is traditionally anticipated for a single dwelling. The tower does not increase the perception of bulk and scale and has no additional impact. The site would accommodate a number of two storey dwellings that would have solar and amenity impacts based on a 10m height set in 1.5m from the boundary.

Windows within the ancillary building have been located to minimise impacts on adjoining properties. Windows along the western elevation are minimal, with no windows at first floor and one at ground floor relating to the holy bread room. The components of the building above the height control do not facilitate any additional amenity impacts on immediate neighbours or public domain.

#### 8.0 4.6(3)(b) – Sufficient Environmental Planning Grounds

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

The variation relates to height and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all lands zoned R2 low Density Residential.

The additional height attributable to the tower is **3.5m**. The environmental planning grounds justification for the height variation is provided as follows:

- The proposed use of the site as a place of public worship is permissible in the R2 zone. The built form of a place of public worship is typically distinguishable by its roof and tower features to signify the building as a landmark/feature within the streetscape. The projecting features above the 10m height control help identify the site as a 'place of public worship'. Without the tower the effectiveness and overall role the building plays is diminished. Notwithstanding the development has been sited and designed to respect the residential zoning and the built form controls. The tower element has been sited centrally so as to minimise the impacts on the streetscape and adjoining properties yet create a destination feature on the building intrinsic to a place of public worship.
- The zone objective is satisfied and relates to enabling other land uses that provide facilities or services to meet the day to day needs of residents within the residential zone. The proposed height variation significantly increases the likelihood of the strategic planning objectives being satisfied. The permitted uses should not thwart the objectives of the zone.
- The site dimensions create a development site that is capable and suitable for development of a building that has greater height for certain elements. The site has an area of 3612sqm with a maximum length of 63m and a maximum width of 65m. In this regard, the site significantly exceeds the minimum allotment size in an R2 zone. The result of the large site area is an ability to achieve suitable setbacks to the tower element. The projecting alter element provides visual articulation to the façade.
- The proposal has been designed and located to ensure development is compatible with the surrounding streetscape and adjoining properties.
- Sufficient onsite parking for the place of public worship is accommodated within the proposed basement parking with access from Raymond Circuit.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to height. Clause 1.3 of the EP and A Act 1979 relevantly provides:

#### **"1.3 Objects of Act (cf previous s 5)**

*The objects of this Act are as follows:*

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)*

A development that complies with the landuse zoning of the site (R2 Low Density Residential) satisfies the objectives of under S1.3 EP&A Act 1979.

The plans by **TIBA Architecture Group** and specifically the height variation indicated on the elevation and section plans of the DA plan set, satisfies the objectives in bold given that:

- The development replaces the temporary place of public worship landuse with a permanent place of public worship, in line with Council's strategic planning objectives and the THLEP 2019.
- The development of a place of public worship in this location provides a community service in an accessible location.
- The additional height of the development facilitates architectural elements which are characteristic/intrinsic to a place of public worship. Given the large allotment and significant road frontage, the site is well suited to a church use where the tower element and alter wall feature ensures visibility for community members without unduly impacting on the adjoining residences and the streetscape.
- The siting of the tower element does not give rise to any adverse solar impacts and does not increase the perceived bulk and scale of the church.
- Deep soil zones are provided around the perimeter of the site where landscaped area is 42.3%.

Based on the above the consent authority can be satisfied that there are sufficient environmental planning grounds to warrant the variation. The proposal provides good design and amenity to the site and its surrounds so as to satisfy the stated objective. The area below the height standard far exceeds the minimal area which is above the 10m height standard.

Notwithstanding the above Preston CJ clarified in Micaul and Initial Action, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. In this case, these include:

- The proposal has an acceptable visual fit and balances the opportunities and constraints.
- Maintains reasonable levels of solar access and amenity to neighbouring properties.

Figures C, D and E demonstrate that the height variation has no significant impact on neighbours or the public domain. Shadow diagrams in **Annexure 1** demonstrate that adequate solar access is provided to adjoining properties private open space. The shadow diagrams demonstrate that adequate POS areas of the adjoining properties receive natural light during the day.

In summary, the HOB variation is considered to be in the public interest given its ability to not cause undue adverse impacts but also because of its ability to provide site specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case.

Clause 4.6(4)(a)(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.



### Consistency with the Zone Objectives

An enquiry is now made in relation to the ability of the proposal and the identified variation, as one departing from the HOB standard, to reasonably satisfy the stated objectives of the zone.

#### R2 Low Density Residential

The objectives of the R2 Low Density Residential zone are as follows:

##### 1 Objectives of zone

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To maintain the existing low density residential character of the area.

The following provides a review of the zone objectives:

- To provide for the housing needs of the community within a low density residential environment.

The proposal maintains the approved place of public worship use which is a permissible form of development in the zone.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The proposal maintains the approved place of public worship use which is an essential service for the local residents of the area. The tower element signifies the church and is a necessary element for this particular church. A church is a day to day need/facility and therefore the objective is duly satisfied.

- To maintain the existing low density residential character of the area.

The scale of the development is consistent with a place of public worship which is permissible in the R2 low density residential zone. The site is a large allotment with deep soil areas maintained on the site. The development is largely compliant with the height limit excluding the proposed tower and alter wall feature. The tower element does not increase the perceived scale of the development when viewed from residences on adjoining lands. The objective is duly satisfied.

### 9.0 Other Matters For Consideration

#### Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the LEP 2019.

The Council has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary by reason of s39(6) of the *Land and Environment Court Act 1979* (the Court Act).

#### Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

- whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- the public benefit of maintaining the development standard, and

- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposed contravention of the HOB development standard has been considered in light of cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in Section 7 and Section 8, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the zone and the objectives of the development standard.

The proposed development contravenes the Height of Building development standard under cl4.3 of LEP 2019 and the **10m** building height control under cl4.3 of the LEP 2019 is a development standard and is not excluded from the application of cl4.6.

This written request to vary the development standard has been prepared in accordance with cl4.6(3) of the LEP and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant objectives of the development standard pursuant to cl4.3 of the LEP 2019 and is consistent with the relevant objectives of the R2 zone and therefore, the proposed development is in the public interest;
- Notwithstanding the contravention of the development standard, the proposed place of public worship will not result in adverse environmental harm in that the amenity of neighbouring properties will be reasonably maintained and there will be no adverse impacts on the streetscape;

In addition, this written request outlines sufficient environmental planning grounds to justify the contravention of the HOB development standard including:

- The proposed use of the site as a place of public worship is permissible in the R2 zone. A place of public worship is historically distinguished by architectural roof features and towers that commonly project above height controls. These projecting features help to identify the site as a 'place of public worship' being a permissible use in the zone. The development has been sited and designed to respect the residential zoning and the built form controls. The tower element has been located centrally to the site boundaries in order to minimise the impacts on the streetscape and adjoining properties.
- The use of the site as a place of public worship is permissible in the zone. The zone objective relates to enabling other land uses that provide facilities or services to meet the day to day needs of residents. The proposal satisfies the objective.
- The site dimensions create a development site that is capable and suitable for development of a building that has greater height than that anticipated by the 10m height limit. The site has an area of 3612sqm with a maximum length of 63m and a maximum width of 65m. In this regard, the site significantly exceeds the minimum allotment size in an R2 zone.
- The proposal has been designed and located to account for the sites constraints ensuring that the development is compatible with the surrounding streetscape and adjoining

properties. There are no adverse impacts which arise from the tower element or the alter wall projections.

**Andrew Martin MPlA  
Planning Consultant**