

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSNH-92
DA Number	DA2020/0484
LGA	Northern Beaches Council
Proposed Development	Demolition works, alterations and additions to an existing Cemetery, including the construction of new chapel building, new amenities building, storage and operations shed
Street Address	Lot 7335, DP 1152473 Hakea Avenue, Frenchs Forest
Applicant/Owner	Department Of Lands (Owner) Frenchs Forest Cemetery (Owner) Northern Metropolitan Cemeteries Land Manager (Applicant)
Date of DA lodgement	14 May 2020
Number of Submissions	15
Recommendation	Approval – subject to conditions
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	Development carried out by or on behalf of the Crown with a Capital Investment Value (CIV) of more than \$5 million.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Warringah Local Environmental Plan 2011 • State Environmental Planning Policy (Coastal Management) 2018 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy No. 55 – Remediation of Land (and draft) • Warringah Development Control Plan 2011
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Attachment 1: Architectural Plans; • Attachment 2: Pre-Lodgement meeting notes • Attachment 3: Applicant's Clause 4.6 • Attachment 4: Applicant's response to SNPP matters raised at the briefing • Attachment 5: Draft conditions of consent
Clause 4.6 requests	Yes – Clause 4.3 Height of Buildings (variation of 29%)
Summary of key submissions	<ul style="list-style-type: none"> • Lack of Parking and Traffic issues • New chapel is out of character • Non-compliance with height control (8.5m) • Not sufficient community consultation • Insufficient landscape screening
Report prepared by	Lashta Haidari – Principal Planner
Report date	25 November 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

EXECUTIVE SUMMARY

Development Application DA2020/0484 was lodged on behalf of the Crown seeking approval for the redevelopment of part of the site as a cemetery and associated facilities, known as the Frenchs Forest Bushland Cemetery.

The proponent is the Northern Metropolitan Cemeteries, which is a Crown cemetery trust within the meaning of the Cemeteries and Crematoria Act 2013 and is therefore a Crown authority for the purposes of the DA and Clause 4.33 of the EP&A Act.

The application is classified a Regionally Significant development under Part 4 of the EPA Act, 1979 and Clause 4, Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, as it is development carried out by or on behalf of the Crown and has a Capital Investment Value of more than \$5million. Consequently, the Sydney North Planning Panel (SNPP) is the consent authority for the application.

The applicant states that the reason for the proposal is to respond to a shortage of burial space across Metropolitan Sydney, as identified within *A Plan for Growing Sydney* and publications released by Cemeteries and Crematoria NSW.

The proposed development has been assessed against the applicable state and local planning policies and the assessment concludes that the proposal represents a design and form that is generally consistent with the objectives of the planning controls and policies as they apply to the site and will have an acceptable environmental impact. The main building in the proposal is the chapel building, which is reliant upon a variation to the 8.5m maximum building height development standard prescribed by clause 4.3 of WLEP 2011, having a height of 10.97m, which represents a variation of 29% (2.47m).

The proposal is consistent with the objectives of the zone and the development standard and the proposed variation is appropriate in the circumstance. The development will not create unreasonable impacts on the site or adjoining properties. For this reason, the applicant has successfully demonstrated that strict compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to justify contravening the development standard. It is considered that the Clause 4.6 variation is well founded and has addressed the matters within Clause 4.6(3) and should be supported.

The proposed development does not comply with the 6.5m front setback requirement in Clause B7 "Front Building Setback" of WDCP 2011. The siting of the proposed chapel is dictated by the constraints of the site, being the location of existing and future internments, a stormwater channel, significant native trees, the riparian zone and the location of existing buildings. Therefore, due to these circumstances, the available area for the Chapel means the building is on a reduced setback, ranging from 1.9m to 3.5m. The non-compliance is found to be acceptable in the circumstances, having regard to the site constraints.

The public exhibition resulted in 15 individual submissions, all of which raised concerns with the proposed development. The majority of the submissions raised concerns with regards to location and height of the chapel and the adverse environmental impacts of the proposal. The issues raised in the submissions have been addressed in the "Public Notification" section of this report.

Having considered all the relevant matters, the assessment concludes that the proposal represents an appropriate and considered development response to the site which satisfies the relevant planning controls and policies. The proposal is in the public interest as it will deliver much needed internment space for the Northern Beaches area, whilst ensuring the historical and ecological opportunities of the site are fully realised. Accordingly, it is recommended that Sydney

North Planning Panel (SNPP) approve the development, subject to the special and general conditions contained in Attachment 5 of this report.

PROPOSED DEVELOPMENT IN DETAIL

The application seeks consent for demolition works and additions and alterations to the existing cemetery, including the construction of a new chapel building.

Specifically, the proposed development comprises:

- The expansion of the existing administration building (known as the Lorikeet Room) to provide a chapel and function room, whilst maintaining administration functions. The function space is designed to accommodate 130 people.
- The construction of a new chapel to the south-east of the existing administration building which can accommodate up to 131 people.
- New operations areas within the chapel building for administration, staff amenities and storage.
- Vehicle access to the new chapel involves a new 5.0m-wide vehicular driveway on the Darwina Drive southern frontage. The access will be restricted to hearses only and service vehicles for the new chapel.
- Carparking for 213 cars.
- Amenities building in the north-eastern section of the site.

Figure 1 and Figure 2 below is provided to assist in the identification of the proposed building footprint within the site.

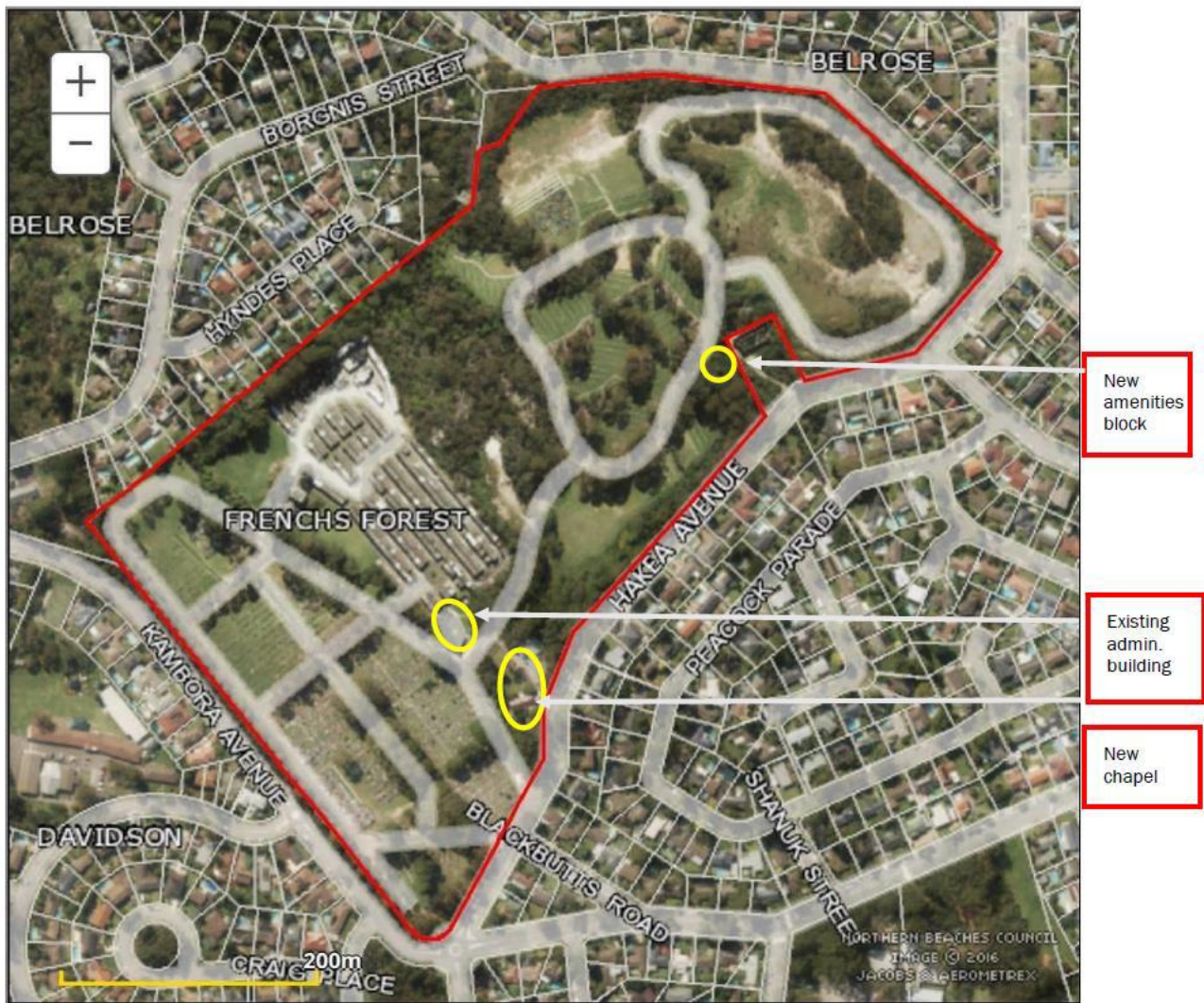


Figure 1 – Location of the proposed development within the site (Source: Statement of Environmental Effect, prepared BBF Planners)



Figure 2 – Site Plan (Source: Hector Abrahams Architects)

ASSESSMENT INTRODUCTION

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

SITE DESCRIPTION

The site is located on Hakea Avenue, Frenchs Forest. The site is irregular in shape, has an area of approximately 22 hectares, has frontage to several streets with vehicle and pedestrian access via Hakea Avenue at the south eastern portion of the site. Other frontages and boundary interfaces include Kambora Avenue, Ashworth Avenue, and the rear boundaries of residential properties that are accessed from Hyndes Place and Borgnis Street.

The site is Crown Land under the care and management of the Northern Metropolitan Cemeteries Land Manager and is operated as the *Frenchs Forest Bushland Cemetery*.



Figure 3: Site Map

Presently on the site (and since 1940), is a long-established cemetery within a bushland/landscape setting.

Access to the Cemetery is provided by two driveways along Hakea Avenue. A primary driveway is provided via Kanooka Way and secondary driveway is provided via Casuarina Crescent on the southern side of the site. They currently accommodate two-way access and all turning movements at their intersections with Hakea Avenue.

The section of the site that is the subject of this application is approximately 3 hectares in area and is situated in the south-eastern section of the site. The area is near the site entrance and the established administration and operational buildings, which include a maintenance and operations compound, administration building, a small chapel and gathering space, caretakers cottage (dwelling house) with separate vehicle access to Hakea Avenue.

SITE HISTORY

A Pre-DA lodgement meeting was held on 14 January 2020 with Council officers to discuss key planning and related issues associated with the proposed development.

A copy of the notes are attached to this report (refer to Attachment 2).

HISTORY OF THE SUBJECT APPLICATION

The current application was lodged with Council on 14 May 2020. During the assessment of the application, a number of internal referral bodies raised concerns with the proposal, particularly in regards to location, height and scale of the chapel, biodiversity and riparian issues. In response, the applicant submitted additional information on a number of occasions in an attempt to address the concerns raised.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EP&A Act)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The proposal has been reviewed by Council’s Environmental Health Officer – Contaminated Lands and no concerns have been raised.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan 2011 applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the regulations	Division 8A of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.

Section 4.15 'Matters for Consideration'	Comments
	<p>Clauses 54 and 109 of the EP&A Regulation 2000 provide that Council may request additional information and consider the number of days taken in this assessment of the development application. Additional information was submitted during the assessment of the application.</p> <p>Clause 92 of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p>Clause 98 of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</p>
<p>Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</p>	<p>(i) Environmental Impact The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan 2011 section in this report.</p> <p>In summary, the proposal has been found to be satisfactory with regards its environmental impacts.</p> <p>(ii) Social Impact The proposed development will have a positive social impact on the greater Northern Beaches community by providing an upgraded cemetery and chapel. It is not anticipated that the development will have any adverse social impacts.</p> <p>(iii) Economic Impact The proposed development will not have a detrimental economic impact on the locality considering the cemetery and religious nature of the existing and proposed land use.</p>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The suitability of the site in terms of likely impacts on the environment and amenity has been discussed in detail in the various section of this report. In summary, the site is considered to be suitable for the proposed development for the following reasons:</p> <ul style="list-style-type: none"> • The uses are permissible with development consent on the site; • The proposal responds to an identified need for cemetery space with Metropolitan Sydney and particularly within the Northern Beaches; • The proposed development is appropriate for the site and the locality as it has been designed having full consideration for the environmental constraints of the site and the amenity and character of the setting and surrounding area; • The existing utility infrastructure and services can be extended, augmented or amplified (if required) to accommodate the increased population using the development; • The proposed traffic generation will not adversely affect the existing operations of the surrounding road network; and • The proposed built form has been assessed as being compatible with the site and surrounding environment.
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification & Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>The proposed development is in the public interest as the proposal will have a number of important economic, environmental, social and community impacts as discussed above.</p>

Section 4.15 'Matters for Consideration'	Comments
	In addition, the proposal provides opportunities for positive ecological outcomes through the integration of these important environmental values into the built form and landscape design.

NOTIFICATION & SUBMISSIONS RECEIVED

The application was exhibited from 22 May 2020 until 19 June 2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Northern Beaches Community Participation Plan (CPP).

As a result of the public exhibition process, Council is in receipt of 15 individual submissions, which raised issues in relation to the proposed development.

The following issues were raised:

- **Traffic and Pedestrian safety and congestion**

Concern has been raised that the development will have a detrimental impact on the existing congestion of surrounding streets and will give rise to greater traffic hazards and risks, particularly during funeral services.

Comment

This issue is addressed by Council's Traffic Officers in the Referral Comments.

In summary, the applicant submitted a Traffic Impact Assessment with the application, which assessed the likely traffic impacts of the proposal and parking demand generated by the proposed development.

The assessment and information provided by the applicant is satisfactory and Council's Traffic Section raises no concerns in relation to the proposed development on traffic grounds, noting that the proposal will be acceptable in relation to traffic impacts.

Overall, the increase in traffic associated with the proposed development is not considered to have a significant traffic impact on the adjacent road network and intersections, nor on the amenity of adjoining and surrounding areas.

This issue does not warrant the refusal of the application.

- **Height and Out of Character**

Concern has been raised that the proposed chapel does not comply with building height, front setback and will be totally out of character. Concerns have also been raised in relation to the loss of outlook to the cemetery.

Comment

This issue is addressed in detail in the Building Height and Front Setback sections of this report.

In summary, the applicant has provided sufficient details to demonstrate that there is no feasible alternative location for the proposed chapel due to the built and natural constraints of the site. Accordingly, the assessment has found that the proposed development responds to the site conditions and the surrounding built and urban environment.

Therefore, the proposed chapel is supported subject to a condition that requires that the colour of the chapel be more natural/earthy tones so as to blend it in with the characteristic bushland setting.

- **Acoustic and Visual privacy Impact**

Concern has been raised that the proposed development will result in an adverse impact on adjoining properties, particularly during a funeral service

Comment

The site is being used as an existing cemetery, and the services provided within the site will remain as per existing.

The proposed chapel is orientated to the west, therefore it will not have a significant visual privacy impact on the residential development to the east of the site.

The applicant has advised that the hours of operation of the chapel are 10.00am to 3.00pm Monday – Friday and occasionally on Saturday (if required).

This issue does not warrant the refusal of the application.

- **Impact of construction on existing residents (noise, dust, amenity)**

Concern is raised regarding the excavation and construction impacts associated with the development and the potential impact on the suitability of adjoining development.

Comment:

With regard to excavation and construction management, appropriate conditions can be imposed on a consent, should this application be approved.

Therefore, this issue should not be given determining weight.

- **Insufficient community consultation**

Concern is raised that the development has not undergone sufficient community consultation. In particular, concern is expressed that notices and details of the application were not sent to enough residents.

Comment:

The Northern Beaches Community Consultation Plan (CCP) requires adjoining properties to be notified by letter. However, this can be extended at the discretion of Council officers should it be seen as necessary or warranted due to potential impacts of the development and public interest in the application.

The notification of the application was extended to all properties that were deemed to be directly impacted by the development or within a reasonable zone of affectation. 218 letters were sent to adjoining and adjacent properties.

The public exhibition of the application was in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and CCP.

It is noted that the applicant also carried out a separate community consultation.

Therefore, this issue should not be given determining weight.

- **Impact on the Environmental and Historical significance of the site**

A number of submissions received have raised concerns in relation to the impact of the development on the environment. In particular, the following specific concerns have been raised:

- ***Northern Cemeteries defined two unique features of the Frenchs Forest Bushland Cemetery. These were; 1. Maintaining the bushland setting and surrounds, and 2. Operating harmoniously within a residential setting. This DA goes against both those principles.***
- ***Cannot see where the trees T212, T213, T214 and T217 that are designated for removal are currently located.***
- ***Insufficient details about the stormwater runoff***
- ***Conservation of biodiversity/endangered animals***
- ***The significance of the site should be preserved.***

Comment:

These issues are addressed in the relevant referral sections by Council's Natural Environment Sections, Aboriginal Heritage Officer, Landscape Officer, and Development Engineers referral comments. In summary, the impact on the natural environment are found to be satisfactory, subject to conditions that will mitigate and manage the impacts of the development.

- **Devaluation of Property Values**

Concern has been raised that the location and height of the proposed chapel will result in a devaluation of surrounding property prices.

Comment:

Devaluation of surrounding properties is not matter for consideration as part of the assessment of this application under the EPA Act 1979, and therefore this issue does not warrant the refusal of the application.

- **Screening/buffer along Hakea Avenue to screen the proposed chapel**

Concerns have been raised that the screening along Hakea Avenue is not sufficient to screen the bulk and scale of the proposed chapel.

Comment:

The applicant has provided additional details, which includes additional landscaping within the site and within the road reserve to further screen the development.

The application is accompanied and supported by landscape plans which propose a retaining wall within the boundary of the cemetery land to provide a suitable area with flatter gradient for the planting of native vegetation along the eastern edge of the proposed Chapel building.

The landscape plans demonstrate that a suitable and effective planting strip can be established that will enhance the setting for the development when viewed from the street and residential properties.

The concern raised in this regard is noted and has been addressed by the applicant.

REFERRALS

Internal Referral Body	Comments
Building Assessment	Supported subject to conditions The application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the attached conditions of approval and consideration of the notes below.

Internal Referral Body	Comments
	<p>Note: The proposed development may not comply with some requirements of the BCA and the Premises Standards. Issues such as this however may be determined at Construction Certificate Stage.</p>
Development Engineering	<p>Supported subject to conditions</p> <p>The proposed chapel and associated roadworks are acceptable as the consultants flood management report has indicated that the chapel finished floor level has adequate freeboard to the 1 in 100 year AEP water surface level in the adjoining creek system.</p>
NECC (Riparian Lands and Creeks)	<p>Supported subject to conditions</p> <p>The applicant has provided a suitable riparian zone and planting plans. The only cross-sections provided for the creek are in the Landscape Plan and these are of insufficient detail. A long section and cross-section of the creek is required marked with chainages to show how infrastructure crossing the creek is located.</p> <p>The pedestrian bridge location must be improved to ensure that the bridge piers are not inside 'top of bank'; currently the bridge pier on the Kanooka Way side of the creek is inside the 'top of bank' in order to allow sufficient space for a kerb ramp. Pedestrians are also released straight into the roadway.</p> <p>The Waterway Impact Statement notes that stabilisation will be required at the location of the bridge, but none is described in the civil plans. Rock sizing, placement and/or other stabilisation methods should be indicated. Details and cross sections should be provided of any other stabilisation work required around the upstream and downstream culverts.</p> <p>The WIS also notes the need for either fencing or landscaping along the boundary of the riparian area. Landscaping is preferred as long as there is a clear distinction between mowed areas and areas to be retained, to prevent machinery encroaching on the riparian area.</p> <p>A referral has been made to the Natural Resources Access Regulator for their general terms of approval. These must be obtained before development approval is given, as the riparian referral will refer to the NRAR's advice.</p>
NECC (Water Management)	<p>Supported subject to conditions</p> <p>On consideration of the response from the applicant and further assessment of the site, it is accepted that the site will not support a vegetated stormwater treatment measure. While the proposed filter cartridges remove particulate phosphorus and nitrogen, they are limited in their ability to remove dissolved pollutants, particularly nitrogen; however at this time there is no alternative suitable for this site.</p> <p>The applicant has proposed a system that includes Ocean Protect Ocean Guard filters (or equivalent) to capture gross pollutants in five inlet pits. If the applicant decides to use an equivalent device, it will require Council approval before installation. The main stormwater treatment measures to be installed include six PSorb StormFilters by Ocean Protect. Again, if an equivalent device is proposed, Council will need to approve its use prior to installation.</p> <p>The location of the stormwater outlet must be revised to point the outlet and direct discharge downstream according to the NSW guidelines for stormwater outlets in order to prevent scout damage to the opposite bank.</p>
Environmental Health – industrial use	<p>Supported subject to conditions</p> <p>A review of the Statement of Environmental Effects date April 2020 prepared by BBF Town Planners has identified 'the site is considered at low risk for contamination or potential contamination'. However a report entitled Hazardous Building Materials Assessment prepared by Greenplus Property Services dated 1 August 2019 has identified Asbestos Containing Materials onsite therefore a condition will apply.</p>

Internal Referral Body	Comments
Landscape Officer	<p>Supported subject to conditions</p> <p>The development proposal is for the alterations and additions to the existing French's Forest Bushland Cemetery, with demolition of the existing caretaker's cottage, development of a new chapel, new storage and operations shed, alterations and additions to the existing administration building, new amenities building, landscaping works including an ash garden, and the upgrade of associated spaces and augmentation of carparking spaces.</p> <p>Council's Landscape Referral staff have assessed the proposal against the following inter-related Warringah DCP Controls:</p> <ul style="list-style-type: none"> • D9 Building Bulk • E1 Preservation of Trees or Bushland Vegetation <p>The existing site predominately contains built form within a landscape setting, and is surrounded by residential land use. A number of existing established trees are located in close proximity to the proposed development area. A Arboricultural Impact Assessment is provided with the application and a total of six (6) trees are required to be removed due to impact from development and without any design alternative to facilitate retention. A further seven (7) trees are recommended for removal irrespective of development works based on poor tree condition and/or structure or identification as undesirable weed species. The majority of existing trees as reported in proximity to the development works are retained by the development proposal and shall be subject to tree protection measures. The retained trees include native trees such as Allocasuarina, Angophora, Callistemon, Ceratopetalum, Corymbia, and Eucalyptus species.</p> <p>Landscape Plans are provided that compliments the natural bush character of the existing Cemetery landscape, and proposes to enhance the landscape setting and provide pedestrian connections to the Chapel, be responsive to the revegetation of the riparian zone associated with the existing creek and provide a natural and contemplative space associated with the Ashes Garden. The landscape proposal seeks to establish an improved setting for the Function room and provide a suitable space for outdoor gatherings and events.</p> <p>The Landscape Plans nominates additional trees for removal (numbered 210, 212, 213, 214, 215, 216, and 217). Exempt Species on this list include 210, 212, 215, 216, and 217, and these do not require Council consent. It is noted that the Arboricultural Impact Assessment assesses existing trees numbered 213 and 214 are recommended for retention and protection, and in this instance the Arboricultural Impact Assessment takes precedence.</p> <p>Subject to the protection of existing trees nominated for retention in accordance with the Arboricultural Impact Assessment, and the completion of landscape works in accordance with the Landscape Plans and any conditions of consent, no landscape issues are raised.</p>
NECC (Bushland and Biodiversity)	<p>Supported subject to conditions</p> <p>This updated biodiversity referral is provided based on the following additional information:</p> <p>Email advice to Council - RFS Planning and Environment Services (East) (13 October 2020)</p> <ul style="list-style-type: none"> - Addendum - Arboricultural Impact Assessment (ArborSafe Tree Consultancy, 29 September 2020) - Revised Bushfire Assessment (Sydney Bushfire Consultants, 7 October 2020) - Peer Review of Revised Bushfire Assessment (Travers Bushfire and

Internal Referral Body	Comments
	<p>Ecology, 7 October 2020) - Advice regarding hollow-bearing trees (Travers Bushfire and Ecology, 30 September 2020)</p> <p><u>Revised assessment of impacts to Coastal Upland Swamp and riparian vegetation</u></p> <p>Email advice received by Council 13 October 2020 from the RFS Planning and Environment Services branch states that: "NSW RFS has reviewed the revised consultant's report for the below mentioned proposal and would raise no objection to the revised conditions proposed being implemented in a revised Bush Fire Safety Authority". This advice is in reference to the revised bushfire assessment and peer review reports prepared by Sydney Bushfire Consultants (7 October 2020) and Travers Bushfire and Ecology (7 October 2020) respectively. The additional bushfire reports propose an Asset Protection Zone (APZ) around the new chapel and existing function centre of up to 25m. Subject to RFS concurrence and a revised Bush Fire Safety Authority that is consistent with the APZs shown in Schedule 1 of the bushfire assessment peer review (Travers Bushfire and Ecology, 7 October 2020) and Appendix 1 of the revised bushfire assessment (Sydney Bushfire Consultants, 7 October 2020), it is considered that the proposal is unlikely to impact upon the Coastal Upland Swamp endangered ecological community to the north-west of the development. Impacts to riparian vegetation are also decreased by reduction of the APZ (relative to the initial RFS recommendation of a 67m APZ).</p> <p>The RFS support for the reduced APZs and has issued revised conditions.</p> <p><u>Revised assessment of impacts to Tree 207</u></p> <p>The addendum to the Arboricultural Impact Assessment (Arborsafe Tree Consultancy, 29 September 2020) states that: "Tree 207 is now recommended for retention, with minimal negative impacts to the tree's ongoing health or stability considered likely following the completion of the development". It is stated that this assumption is based on implementation of general tree protection measures outlined in the original arborist report, in addition to three new recommendations specifically targeted to retention of Tree 207. These recommendations are supported. The report further states that "In the original Arboricultural Impact Assessment an ash garden was proposed within the tree's northern TPZ. The current plans do not detail or show this, but the intent is to possibly incorporate a garden into the area at some future time". Based on this statement, and consideration of submitted plans which indicate the ash garden as "To Be Confirmed", it is assumed that the ash garden does not comprise part of this application and may be addressed in a future development application. This is appropriate as the current application does not provide sufficient information (architectural or arboricultural) to enable an adequate assessment of the ash garden's impacts on existing significant trees. Subject to recommended conditions, Council's Biodiversity referral body are satisfied that Tree 207 can be safely retained.</p> <p><u>Impacts to hollow-bearing Tree 202</u></p> <p>Additional information prepared by Travers Bushfire and Ecology (30 September 2020) confirms that Tree 202 (<i>Angophora costata</i>) is the one hollow-bearing tree indicated for removal in the original biodiversity report (Travers Bushfire and Ecology, April 2020) but identified for retention in the original arborist report (Arborcare Tree Consultancy, 27 March 2020). An amended biodiversity report (Travers Bushfire and Ecology, September 2020) has been prepared to confirm that no hollow-bearing trees are proposed for removal.</p> <p><u>Conclusion</u></p> <p>Subject to recommended conditions to ensure consistency with the conclusions and statements of the additional information listed above, it is</p>

Internal Referral Body	Comments
	considered that the proposal can achieve consistency with relevant controls and is therefore supported.
Parks, reserves, beaches, foreshore	<p>Supported subject to conditions</p> <p>The development proposal is for the alterations and additions to the existing French's Forest Bushland Cemetery, with demolition of the existing caretaker's cottage, development of a new chapel, new storage and operations shed, alterations and additions to the existing administration building, new amenities building, landscaping works including an ash garden, and the upgrade of associated spaces and augmentation of carparking spaces.</p> <p>Council's Parks Referral staff have assessed the proposal against the following Warringah DCP Controls:</p> <ul style="list-style-type: none"> • C5 Erosion and Sedimentation • C8 Demolition and Construction • D7 Development on Land Adjoining Public Open Space <p>The existing site predominately contains built form within a landscape setting, and is predominately surrounded by residential land use, with a small portion adjoining Kambora Avenue Reserve. As such impact to public land is not anticipated as the works are not in close proximity to the public reserve.</p> <p>The proposed development does not impact upon the use of adjoining land as public open space. Parks Referral has no objections to the proposal, with conditions of consent to be imposed to ensure surface sediment runoff and/or erosion is controlled, managed and contained from entering the Reserve</p>
Strategic and Place Planning (Urban Design)	<p>Supported</p> <p>The proposed chapel building breaches the 8.5m building height and 6.5m setback to Hakea Avenue. The additional building height will not be obvious when viewed from Hakea Avenue, as the site drops away from the road. However, there will be an inadequate landscape buffer to reduce the visual impact.</p> <p>In response to this concern, the applicant submitted additional information to support the feasibility of the current location for the chapel. They have also proposed an additional landscape buffer on the public road reserve to reduce the visual impact of the Chapel from Hakea Avenue.</p> <p>Given the chapel will be a place for gathering and funeral services, the built form can have more of a presence from the main approach street for way-finding reasons. The proposed roof form is also appropriate and can be identified as a place of worship.</p>
Traffic Engineer	<p>Supported subject to conditions</p> <p>The proposed development scheme comprises:</p> <ul style="list-style-type: none"> -The expansion of the Lorikeet Room to accommodate an additional 30 people with a maximum capacity of 130 people. -The construction of a new chapel to the southwest of the existing administration building which can accommodate up to 170 people <p>Vehicle access to the new chapel involves a new 5m-wide vehicle driveway on the Darwina Drive southern frontage. The access will be restricted to only hearse and service vehicles for the new chapel.</p> <p>The proposal also includes 37 new/upgraded angled/parallel central car parking spaces (including 5 disabled spaces) to the west and east of the</p>

Internal Referral Body	Comments
	<p>existing administration building. This includes the formalisation of the on-site parking area to the west of the administration building to include RMS standard line-marking for 14 car spaces. On-street spaces will be formalised through sign posting to allow parking for 182 cars. In summary, the proposed development will provide a total of 219 car spaces.</p> <p>Parking: There are currently no parking requirements within DCP 2011 in relation to cemeteries. As such, the proposed development's car parking requirement was determined based on an empirical assessment of the existing Liverpool Cemetery.</p> <p>Considering the proposed chapel and expanded function room will be operated with the services being offset, there is ample time between services for current patrons to leave whilst the next session arrives.</p> <p>As such, the requirement of 171 spaces is deemed appropriate. Accordingly, the provision of 219 parking spaces is deemed satisfactory.</p> <p>Traffic: It is noted that the peak for cemetery would generally occur during mid/ late morning (such as 10 am to 11 am). This would mean the peak usage does not coincide with the peak commuter periods.</p> <p>Based on the traffic survey, the Liverpool Cemetery generated 55 and 95 trips during the weekday and weekend noon peak hour respectively. This traffic would comprise visitors to grave sites, the two chapels, the condolence room and staff. As such, these trips represent 0.22 and 0.38 vehicle trips per person during the weekday and weekend noon peak hour respectively.</p> <p>In the busiest weekday and weekend cemetery peak hours and based on the maximum capacity of 300 people of the proposed chapel and upgraded function room, the proposed development would generate up to 66 and 114 trips during the weekday and weekend noon peak hours respectively.</p> <p>As these generation rates are not expected to coincide with the commuter peak periods, the impact on the local road network is deemed to be minimal.</p> <p>Car Park: <i>The car park is generally compliant with AS2890.1. However a number of the parking spaces in the central car park are not compliant. The applicant should either make these spaces compliant or remove any spaces that do not comply. Removal of non-compliant spaces is deemed satisfactory as the applicant is deemed to be providing excess parking spaces.</i></p> <p><i>All roads within the site should operate as one-way with appropriate directions. Plans should be amended and resubmitted for council approval. this will be conditioned.</i></p> <p>Servicing: <i>The servicing facilities of the site are deemed adequate. The applicant will be need to ensure they engage a commercial contractor who can adhere to the restricted vehicle types identified in the report.</i></p> <p>Pedestrians: <i>The whole site should operate as a 10km zone to ensure safe pedestrian movements in and around the cemetery.</i></p> <p>Conclusion Council's Traffic team raise no objections.</p>
Aboriginal Heritage	Supported

Internal Referral Body	Comments
	The Aboriginal Heritage has raised no objection to the proposed development.
External Referral Body	Comments
Ausgrid: (SEPP Infra.)	Ausgrid has no objection to this development application, however Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath.
NSW RFS	(Not Integrated Development) - RFS has reviewed the application and has provided recommended conditions (development is not a Special Fire Protection Purpose, therefore S4.14 of the EPA Act, 1979 applies)
Natural Resources Access Regulator	The Natural Resources Access Regulator (NRAR) has reviewed documents for the above development application and considers that, for the purposes of the Water Management Act 2000 (WM Act), the proposed works are exempt from the need to obtain a controlled activity approval and no further assessment by this agency is necessary.
Transport for NSW (TfNSW)	TfNSW has reviewed the submitted information and raises no objections to the proposed development as it is unlikely to have a significant impact on the classified road network.
Crown Land	The application was referred to Crown Land for comments, as the owners the Land. The Crown Land did provided comments to the application, but verbally indicated that owners consent is not required as pursuant to the Crown Land Management Act 2016 No. 58 (Part 2, Division 2.6, Section 2.23, item 2(g) the Minister is taken to have given consent on behalf of the Crown for its Crown Land Manager to make a development application.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIS)*

All, Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs, REPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

Crown Development

Part 4 Division 4.6 of the EP&A Act allows for DAs to be made by, or on behalf of the Crown. Among other persons, Clause 226 of the EP&A Regulations prescribes that a public authority (not being a Council) is the Crown for the purposes of Part 4 Division 4.6 of the EP&A Act.

The proponent is the Northern Metropolitan Cemeteries Land, which is a Crown cemetery trust within the meaning of the Cemeteries and Crematoria Act 2013 and is therefore a crown authority for the purposes of the DA and Clause 4.33 of the EP&A Act.

Cemeteries and Crematoria Act 2013

Section 93 of the Act states that the Cemeteries authority may require the land manager to prepare a Plan of Management.

There is currently no approved Plan of Management for the site, as this was not requested by the Cemeteries Authority. However, the applicant has advised that the Northern Metropolitan Cemeteries Land Manager has prepared a masterplan for the property as reflected in the

document submitted for information purposes with the DA, prepared by Group GSA architects and urban designers. It reflects the current stage of the masterplan's development.

The development of the Chapel proposed as part of the subject DA is consistent with the draft masterplan for the site.

State Environmental Planning Policies (SEPPs)

A further consideration is required for the following State policies:

State Environmental Planning Policy (Koala Habitat Protection) 2019

The SEPP applies to land within Local Government Areas (LGAs) listed under Schedule 1 of the Policy. In addition, Part 2 of the Policy outlines the process to assess the likelihood of the land in question being potential or core koala habitat. Part 2 applies to land which has an area of greater than 1 hectare or has, together with any adjoining land in the same ownership, an area of more than 1 hectare.

The Flora and Fauna Assessment undertaken by Travers Ecology and Bushfire with the Development Application notes that the site does not support "Core Koala Habitat" and a Koala Assessment Report and associated development design criteria will not be required.

Accordingly, the requirements of the SEPP are satisfied.

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No. 55 – Remediation of Contaminated Lands (SEPP 55) establishes State-wide provisions to promote the remediation of contaminated land.

The SEPP 55 states that land must not be developed if it is unsuitable for a proposed use because it is contaminated. If the land is unsuitable, remediation must take place before the land is developed. The policy makes remediation permissible across the State, defines when consent is required, requires all remediation to comply with standards, ensures land is investigated if contamination is suspected, and requires councils to be notified of all remediation proposals. The Managing Land Contamination: Planning Guidelines were prepared to assist councils and developers in determining when land has been at risk.

Clause 7 of the SEPP 55 requires that a consent authority must not grant consent to a development if it has considered whether a site is contaminated, and if it is, that it is satisfied that the land is suitable (or will be after undergoing remediation) for the proposed use.

In this regard, a Preliminary Site Investigation report has been submitted with the application. The report prepared by Environmental Earth Sciences NSW concludes that the site is considered at low risk for contamination or potential contamination'. The report contains recommendations for physical works stages of the development at the site and these recommendation will form conditions of development approval

Accordingly, the land is considered to be suitable for the development subject to conditions.

State Environmental Planning Policy (Infrastructure) 2007

Clause 45 – Ausgrid

Clause 45 of the SEPP requires the Consent Authority to consider any DA (or an application for modification of consent) for any development carried out:

- *Within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists);*
- *Immediately adjacent to an electricity substation;*
- *Within 5m of an overhead power line;*
- *Includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5m of an overhead electricity power line.*

The proposal was referred to Ausgrid. Ausgrid has no objection to this development application.

Clause 104

Clause 104 'Traffic generating development' of the SEPP Infrastructure requires the application be referred to the Transport NSW (Former RMS) within seven days, and take into consideration any comments made within 21 days, if the development is specified in Schedule 3 of the SEPP Infrastructure.

Schedule 3 of SEPP Infrastructure requires that the following developments are referred to the Transport NSW as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Any development purpose	200 or more vehicles	Any size and capacity

The application was referred to the Transport NSW for comment as Traffic Generating Development under Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007, as the development provides for 213 spaces.

Transport NSW has provided their response which raises no objection to the proposed development subject to conditions.

Draft State Environmental Planning Policy Remediation

As discussed above with regards to SEPP 55, the site is considered to be suitable for the proposed development and unlikely to be subject to land contamination.

WARRINGAH LOCAL ENVIRONMENTAL PLAN 2011

Is the development permissible?	Yes (refer to discussion below)
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes

Zoning and Permissibility

Definition of proposed development: (ref. WLEP 2011 Dictionary)	The definition of a Cemetery under the WLEP 2011 is:
---	--

	<p>"Cemetery means a building or place used primarily for the interment of deceased persons or pets or their ashes, whether or not it contains an associated building for conducting memorial services."</p> <p>Each of the incidental and ancillary' land uses is also defined below: The Chapel would be defined under the WLEP 2011 as a "Place of Public Worship" being:</p> <p>"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".</p> <p>The proposed function space is defined under the WLEP 2011 as a "Community Facility" and is defined as:</p> <p>"A building or place: (a) owned or controlled by a public authority or non-profit community organisation, and (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation."</p> <p>Finally, a mortuary is proposed to be located within the chapel building. A "Mortuary" is defined under the WLEP 2011 as:</p> <p>"A mortuary means premises that are used, or intended to be used, for the receiving, preparation, embalming and storage of bodies of deceased persons pending their interment or cremation".</p>
Zone:	SP1 Special Activities - Cemetery
Permitted with Consent or Prohibited:	<p>Permitted with consent</p> <p>It is determined that the above land uses are assessed as being ancillary to the principal land use on the site as a Cemetery.</p> <p>These ancillary land uses would not exist in isolation of the primary use of the site as a cemetery.</p> <p>Therefore, the land uses serve the functions of the cemetery and are ancillary to the principal land use on the site.</p>



Figure 4 – Site Zoning under WLEP 2011 – SP1 “Cemetery” (note: site boundaries shown in light blue)

Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes
5.10 Heritage conservation	Yes
6.5 Coastline hazards	Yes
Schedule 5 Environmental heritage	Yes
4.3 Height of buildings	No (see detail under Clause 4.6 below)
4.6 Exceptions to development standards	Yes (refer to discussion below)
Part 5 Miscellaneous Provisions	
5.10 – Heritage conservation	Yes
5.9 Preservation of trees or vegetation	Yes
Part 6 Additional Local Provisions	
6.2 Earthworks	Yes (refer to discussion below)
6.3 Flood planning	Yes (Refer to Development Engineer comments above)
6.4 Development on sloping land	Yes (refer to discussion below)

Detailed Assessment

Principal Development Standards

Relevant Development Standard	Requirement	Proposed	Variation (%)	Compliance
Clause 4.3 Height of Buildings	8.5m	10.97m	29% (2.47m)	No

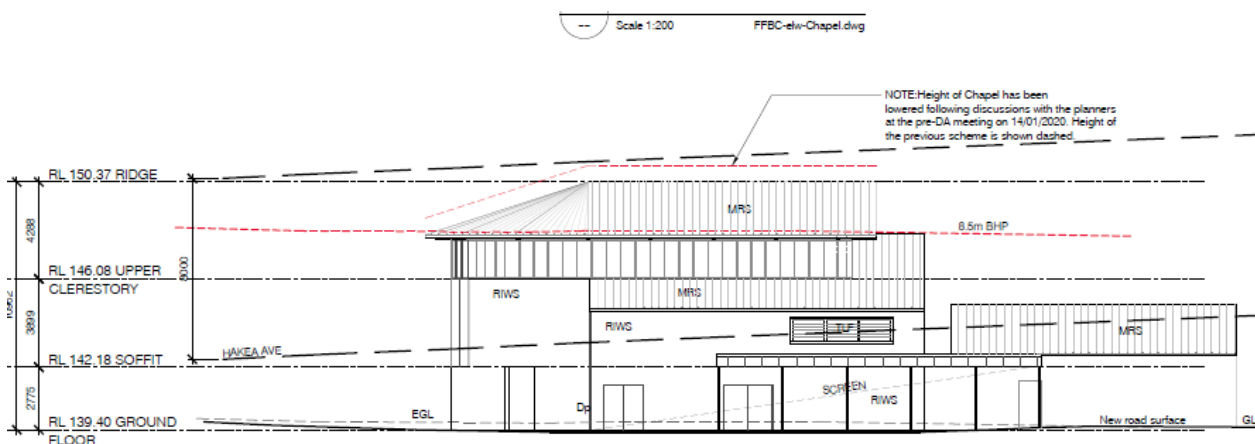


Figure 5 - Areas of Building Height non-compliance indicated by red dashed “8.5m BHP” line on the East Elevation Looking from Hakea Ave (Source: Architectural Plans, prepared by Hector Abrahams Architects)



Figure 6- Plan showing the scale of the proposed chapel within the context of the local topography (Source: Architectural Plans, prepared by Hector Abrahams Architects)

Building Height

A maximum building height of 8.5m is permitted under WLEP 2011. A maximum building height of 10.97m is proposed for the Chapel, representing a variation of 2.47m or 29%.

Clause 4.6 of WLEP 2019 allows for exceptions to development standards. Under Clause 4.6, 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.

The applicant has provided a written request seeking a variation to the development standard which is included as an attachment to this report (Attachment 3). Under Clause 4.6(3) the written request is required to demonstrate:

- 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.

A recent judgement of the NSW LEC in **Baron Corporation Pty Limited v Council of the City of Sydney [2019] NSWLEC 61** provides direction to the consent authority that they may need to themselves in fact form a view as to whether the matters in Clause 4.6(3) (a) and (b) are met and not simply rely on the applicant to do so. It is not enough for the applicant to simply cover the matters or that an argument has been advanced.

As such, the following assessment against Clause 4.6 and presents both the applicant's argument and an assessment of that argument to ensure that Clause 4.6 is wholly considered:

Clause 4.6 Exceptions to Development Standards:

(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.

Comment:

Clause 4.3 – Height of Buildings development standard is not 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 Secretary has been obtained.*

Clause 4.6 (4)(a)(i) (Justification) Assessment

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3). There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

Comment:

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

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

Comment:

In the matter of ***Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118***, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

*'As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see **Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90** at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.'*

s 1.3 of the EPA Act reads as follows:

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.*

The applicant's written request argues, in part:

The Development Standard is unreasonable and unnecessary in the circumstances of the proposed development on the following basis:

- *The proposal is of good design, suitable for its purpose as a sacred place for reflection and mourning as part of conducting memorial services. As explained with the Architectural Design Statement which accompanies this submission, the proposed Chapel's geometry creates a building of a certain size that is in proportion to its floor plan (accommodation capacity) based on the 'Fibonacci Series (Golden Ratio)'. A degree of vertical height is needed to admit light from high windows which contributes to creating a dignifying space that is appropriate in fulfilling the building's function for reflection and mourning by the community during memorial services.*

- *The proposal demonstrates that the site area can physically accommodate the footprint, intensity, and scale of the proposed Chapel and its building height without having any unreasonable or excessive physical impacts on the neighbouring properties in terms of shadowing, privacy, bulk, scale and view impacts.*
- *There is a level change between the land that proposed Chapel is to be sited upon and residential development to the east. The cemetery land is set down approximately 2.5m below the adjacent Hakea Ave road level. Therefore, the full scale the proposed building, when viewed from 'top-to-bottom' will be obscured by the topography and the lower relative levels of the subject site. Therefore, the proposed Chapel and its building height will:*
 - *not result in significant or inappropriate visual impacts on the streetscape or public spaces*
 - *not be incompatible with the visual scale and character of established development in the location.*
- *The proposed Chapel and the land area that the building height exception it will occupy is minor in extent, relative to the site's 22 hectare area, and the setbacks and landscaped setting that it will be located within.*
- *The location of the proposed Chapel makes efficient use of existing established public infrastructure and services through the utilisation of a location on the site that is close to the site entry, close to car parking, close to the administration building / function space, mostly cleared, relatively flat, and where its functions (as a caretakers' residence) are redundant.*
- *The location of the proposed Chapel will provide for orderly development and efficient use of an existing cemetery. In relation to cemeteries there is an identified shortage in land supply, relative to current zoned land provision, population growth projections, and demand for burial space. The optimisation of land within the existing cemetery is therefore consistent with established community need and NSW State Government policy.*
- *The proposed Chapel meets the objectives of the development standard and the zone as detailed within Section 5 of this submission.*

Each of these matters are further explained within this submission. For these reasons, in the circumstances, insistence upon strict compliance with the standard would be unreasonable or unnecessary. It is therefore assessed that the requirements of clause 4.6(3)(a) are satisfied and Council has the authority to grant approval to the proposal

Justification of the proposed Chapels location on the site

The location of the proposed Chapel is justified on both site specific and strategic planning grounds. Being within a large 22 ha area of land, consideration of alternative locations for the proposed Chapel within the cemetery have been made and discounted based on the established and proposed functions of the site. Furthermore, the chapel is proposed in a location on the site that makes efficient use of zoned cemetery land, of which there is an identified shortage, relative to current zoned land provision and population growth projections, which is in the public interest and consistent with NSW State Government policy.

The chapel is proposed in a location on the site that is mostly cleared, relatively flat, and where its functions (as a caretakers' residence) are redundant. Furthermore, a site master plan prepared by Group GSA Architects and urban designers documents the various other functions of the cemetery, a copy of which accompanies the DA (but does not form part of the application). In summary:

- *The proposed Chapel has been located within proximity to the existing administration and function centre facilities and within proximity to existing car parking areas, creating equitable access and movement between the facilities.*
- *The proposed Chapel creates a new arrival experience with the Chapel being visible from the main entry and Hakea Avenue facilitating way finding for visitors to the property. Within the broader landscape of the cemetery, it is intended for the chapel to become a appropriate focal point for visitors as part of the cemetery's functions.*
- *The proposed Chapel is located on relatively flat and cleared topography, which was previously used for a caretakers' residence, minimising impact to the existing vegetation and relying on existing services that are established within the vicinity.*
- *The proposed Chapel has been located away from designated burial sites and appropriate separated (within convenient walking distance) from the administration and function centre, which allows each of the areas to function at the same time. Allowing services to happen while patrons can still access the burial sites throughout the broader cemetery site.*

In this regard, the applicant's written request has demonstrated that the proposed development is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (c) and (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Accordingly, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) Assessment

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the SP1 Special Activities zone. An assessment against these objectives is provided below.

The underlying objectives of the standard, pursuant to Clause 4.3 – 'Height of buildings' of the WLEP 2011 are:

(1) The objectives of this clause are as follows:

a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development.

Comment:

The proposed development involves the construction of a chapel, which will replace the existing caretaker's residence which is redundant. The height breach of the development relates to the primary use of the facility which requires a degree of vertical height to enable light from high windows for the building to function appropriately.

The built form and location for the proposed chapel will ensure the development fits comfortably within its local context. The overall height and scale of the proposed development is not considered excessive and is appropriate to its function.

The proposed development is considered, in its design, to be suitably located in comparison to the height and scale of surrounding and nearby development. In this regard, the proposed chapel is located lower than the adjoining Hakea Avenue roadway and residential land to the east, so therefore the non-compliance of the building will not be as visually prominent when viewed from the residential properties to the east of the site.

The development is considered to be consistent with this objective.

b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,

Comment:

The proposed development raises no significant external amenity impacts on adjoining developments in terms of loss of views, privacy, solar access or overshadowing.

The non-compliance with the building height is limited to the roof form of the building which is due to its functionality. The proposed building is located lower and well away from the eastern R2 Low Density Residential zone. It is therefore considered that the proposed contravention would have no impact on nearby residential housing.

However, the proposal, being a white based colour scheme, is considered to be out of context with the natural environment and a condition is included in the draft consent requiring that the external walls are finished in a natural/earthy tone.

The development is considered to be consistent with this objective, subject to a suitable condition in relation to the colour scheme.

c) to minimise adverse impact of development on the scenic quality of Warringah's coastal and bush environments,

Comment:

The development will not have an unreasonable impact on the scenic quality of Northern Beaches coastal and bush environments, subject to the condition in relation to the colour scheme.

The development is considered to be consistent with this objective.

d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities,

Comment:

The proposed built form is acceptable due to its functionality, and a condition will be included in the draft consent to ensure materials and finishes are natural/earthy tones which will ensure the development will not have an unreasonable visual impact when viewed from the adjoining and nearby public spaces.

Zone Objectives

The underlying objectives of the SP1 Special Activity zone are:

- *To provide for special land uses that are not provided for in other zones.*

Comment:

The proposed land uses, which include the proposed chapel is consistent with the objective in that it is designated for its principal land use on the site as a Cemetery.

- *To provide for sites with special natural characteristics that are not provided for in other zones.*

Comment:

The proposed Chapel development will provide for ancillary land uses that support and improve the function of the site as a cemetery, consistent with the special activities zoning of the site.

- *To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.*

Comment:

The proposed chapel building will provide for a complementary and compatible development with the special characteristics of the site or its existing or intended special use that will have minimal impact on the surrounding R2 Land.

Conclusion:

For the reasons detailed above, the proposal is considered to be consistent with the objectives of the SP1 zone.

Clause 4.6 (4) (b) (Concurrence of the Secretary) Assessment

cl. 4.6(4) (b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 dated 21 February 2018, as issued by the NSW Department of Planning, advises that the concurrence of the Secretary may be assumed for exceptions to development standards under environmental planning instruments that adopt Clause 4.6 of the Standard Instrument. In this regard, given the consistency of the variation to the objectives of the zone, the concurrence of the Secretary for the variation to the Height of buildings Development Standard is assumed by the Sydney North Planning Panel.

Clause 6.2 - Earthworks

The objectives of Clause 6.2 - 'Earthworks' require development:

- (a) *to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land, and*
- (b) *to allow earthworks of a minor nature without requiring separate development consent.*

In this regard, before granting development consent for earthworks, Council must consider the following matters:

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality

Comment: The proposal is unlikely to unreasonably disrupt existing drainage patterns and soil stability in the locality.

(b) the effect of the proposed development on the likely future use or redevelopment of the land

Comment: The proposal will not unreasonably limit the likely future use or redevelopment of the land.

(c) the quality of the fill or the soil to be excavated, or both

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties

Comment: The proposed earthworks will not result in unreasonable amenity impacts on adjoining properties. Conditions have been included in the recommendation of this report to limit impacts during excavation/construction.

(e) the source of any fill material and the destination of any excavated material

Comment: The excavated material will be processed according to the Waste Management Plan for the development. A condition has been included in the recommendation of this report requiring any fill to be of a suitable quality.

(a) the likelihood of disturbing relics

Comment: The site is not mapped as being a potential location of Aboriginal or other relics.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area

Comment: The issue associated with the watercourse, drinking water catchment or environmentally sensitive areas has been addressed with the relevant referral bodies, and are found to be acceptable.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s.5(a)(i) and (ii) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported in relation to earthworks.

Clause 6.4 - Development on sloping land

The site is identified as being within 'Areas A and B' on Council's Landslip Risk Map, Clause 6.4 of the WLEP is relevant as the proposal includes excavation works. In this regard, the applicant has submitted a Geotechnical Report, prepared by JK Geotechnics in accordance with requirements of this clause.

Under this clause, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:

(a) the application for development has been assessed for the risk associated with landslides in relation to both property and life, and

Comment: The applicant has submitted a Geotechnical Assessment Report prepared by a suitably qualified geotechnical expert. This report concludes that the proposed development is acceptable from a geotechnical perspective and therefore, Council is satisfied that the development has been assessed for the risk associated with landslides in relation to both property and life.

(b) the development will not cause significant detrimental impacts because of stormwater discharge from the development site, and

Comment: The applicant's Geotechnical Assessment report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions. Therefore, Council is satisfied that the development will not cause significant detrimental impacts because of stormwater discharge from the development site.

(c) the development will not impact on or affect the existing subsurface flow conditions.

Comment: The applicant's Geotechnical Assessment report concludes that the proposed development is acceptable from a geotechnical perspective. The application has also been assessed by Council's Development Engineers in relation to stormwater. The Engineers have raised no objections to approval, subject to conditions.

Therefore, Council is satisfied that the development will not result in adverse impacts or effects on the existing subsurface flow conditions.

DEVELOPMENT CONTROL PLAN

WARRINGAH DEVELOPMENT CONTROL PLAN

Built Form Controls

Part B: Built Form Controls			
Relevant Control	Requirement	Proposed	Compliance
B5 Side Boundary Setbacks	10.0m	Exceeds 10.0m	YES
B7 Front Boundary Setbacks	6.5m	Chapel – 1.9m – 3.5m to Hakea Avenue	NO
B9 Rear Boundary setbacks	6.0m	Not applicable as the site has dual frontages	N/A

Detailed Assessment against Relevant Clauses with the WDCP:

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction		
A.5 Objectives	Yes	Yes
Part B Built Form Controls		

Clause	Compliance with Requirements	Consistency Aims/Objectives
B5 Side Boundary Setbacks	Yes	Yes
B7 Front Boundary Setbacks	Yes	Yes
B9 Rear Boundary setbacks	Yes	Yes
Part C Siting Factors		
C2 Traffic, Access and Safety	No	Yes
C3 Parking Facilities	Yes	Yes
C3(A) Bicycle Parking and End of Trip Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C5 Erosion and Sedimentation	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
Part D Design		
D1 Landscape Open Space and Bushland Setting	Yes	Yes
D2 Private Open Space	N/A	N/A
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D16 Swimming Pools and Spa Pools	Yes	Yes
D18 Accessibility	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes
D22 Conservation of Energy and Water	Yes	Yes
Part E The Natural Environment		
E1 Private Property Tree Management	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
E2 Prescribed Vegetation	Yes	Yes
E3 Threatened species, populations, ecological communities listed under State or Commonwealth legislation, or high conservation habitat	Yes	Yes
E5 Native vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
E7 Development on land adjoining public open space	Yes	Yes
E8 Waterways and riparian lands	Yes	Yes
E10 Landslip Risk	Yes	Yes
F3 Special Activities (Cemetery, Hakea Ave, Frenches Forest)	Yes	Yes

Detailed Assessment

Clause B7 – Front Setback

The proposed development does not comply with the 6.5m front setback requirement as stipulated in Clause B7 of WDCP 2011. The siting of the proposed chapel is dictated by the constraints of the site, being the location of existing and future internments, stormwater channel, established native trees, riparian zone and the location of existing buildings.

Due to these constraints on the site, the limited area available for the Chapel results in a variation to the 6.5m front setback, being 1.9m to 3.5m, as shown in the diagram below.

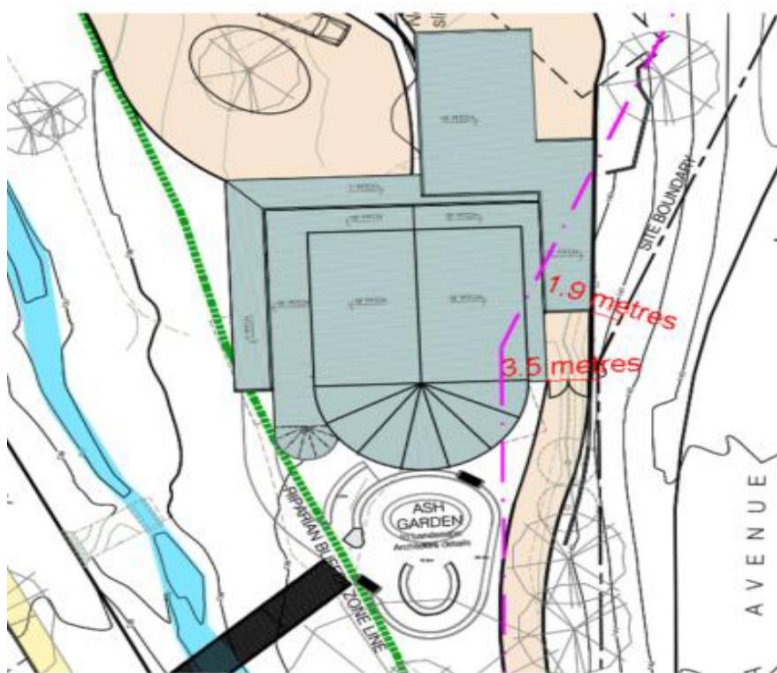


Figure 8 – Extent of non-compliance with the 6.6m Front Setback (purple line)

Merit consideration:

With regard to the consideration for a variation, the development is considered against the underlying Objectives of the Control as follows:

- ***To create a sense of openness.***

Comment

Due to the topography, character and setting of the site, the proposed encroaching element relating to the proposed chapel will be mostly screened from the street and therefore will not add any significant or prominent built form to the streetscape structures and will not unreasonably reduce the sense of openness of the site, particularly given that the development occurs on large 22ha site.

The development satisfies this objective.

- ***To maintain the visual continuity and pattern of buildings and landscape elements.***

Comment

The proposed chapel is located on a large site and given the unique nature of built forms within the site, there are no visual continuity and pattern of buildings on the cemetery site to be maintained

The development satisfies this objective.

- ***To protect and enhance the visual quality of streetscapes and public spaces.***

Comment

The proposed development encroachment will be within a landscape setting and be below the established height of the tree canopy and public roadway. The encroachment, when considered in the context of the site is relatively minor in impact.

The development satisfies this objective.

- ***To achieve reasonable view sharing.***

Comment

The development will not unreasonably reduce view sharing from adjoining properties.

The development satisfies this objective.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

Clause C3- Parking Facilities

Appendix 1 of the WDCP 2011 provides no numerical parking requirement for cemeteries. As such, the applicant's traffic report has provided a comparison assessment for car parking based on the existing cemetery located within Liverpool LGA.

The proposed development will provide a total of 219 car spaces. Of these spaces, 37 central car spaces (including 5 disabled spaces and 8 staff spaces) are provided within a formal carpark near the chapel/function room.

The number parking spaces for the development has been found to be satisfactory by Council's Traffic Engineer. Therefore, the development is acceptable with regards to the parking provided for the development.

THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES

This section requires a range of matters to be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats.

Section 1.3 of the EPA Act, 1979 contains the relevant provisions for the assessment of biodiversity issues for all applications. The matters for consideration under section 1.3 include a range of matters that must be considered and Council is required to adopt a conservative approach in its determination of the biodiversity value.

The proposal has been reviewed by officers in Council's Natural Environmental Unit who have raised no objections subject to conditions included in the recommendation of this report.

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is consistent with the principles of Crime Prevention through Environmental Design.

POLICY CONTROLS

Northern Beaches Section 7.12 Contribution Plan 2019

Northern Beaches Section 7.12 Contributions Plan does not apply to the development pursuant to Section 2.5 of the Contributions Plan.

CONCLUSION

The application has been assessed against the relevant matters for consideration under Section 4.15 of the EP&A Act 1979. This assessment has also taken into consideration the plans and all documentation submitted with the application, all referral responses received from relevant stakeholders and all community submissions received during the public exhibition periods.

The assessment of this application has found that the planning, urban design, character, landscaping, traffic, stormwater, services infrastructure and noise issues are satisfactory can be supported subject to conditions.

The assessment also concludes that the built form of the proposed chapel is acceptable within the context of the site, and would not result in any significant detrimental impacts on the site, the streetscape or nearby residential properties.

The traffic and parking generated by the proposed development can be accommodated within the local traffic network.

The development has been found to be consistent with the Aims of the WLEP 2011 and consistent with the Objectives of Clause 4.6 - Exceptions to Development Standards with regard to a variation to the building height standard. The Clause 4.6 Variation is supported for the reasons detailed in this report.

The submission received have been considered in detail pursuant to Section 4.15 of the EP&A Act 1979 and the relevant local planning controls. The raises raised do not warrant refusal of the application or further amendment to the proposal, where appropriate, have been addressed by conditions.

In summary, the proposal is supported, subject to conditions to mitigate and manage construction and operational aspects of the development in a manner consistent with the provisions of the Warringah DCP 2011 and Warringah LEP 2011. This includes conditions to address noise management, erosion measures, fire and accessibility and managing the construction related activities.

As a direct result of the application and a consideration of the matters detailed within this report, it is recommended that the Sydney North Planning Panel (SNPP) approve the development.

RECOMMENDATION (APPROVAL)

- A. That the Sydney North Planning Panel vary the Height of Buildings development standard pursuant to Clause 4.6 of the WLEP 2011, as the applicant's written request has adequately addressed the merits required to be demonstrated by subclause (3) and the proposed development will be in the public interest and is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.
- B. That the Sydney North Planning Panel grant to Development Consent to Development Application No. DA2020/0484 for demolition works, alterations and additions to the existing Cemetery, including the construction of a new chapel building, new amenities building, storage and operations shed at Lots 7335 and 7336, DP 1152473, Hakea Avenue, Frenchs Forest, subject to the conditions as contained in Attachment 5.