

24 April 2020

Submission - Clause 4.6 Exception to a Development Standard

Warringah Local Environmental Plan 2011, Clause 4.3 – Height of Buildings Frenchs Forest Bushland Cemetery

1 Request for exception to LEP Clause 4.3 Building Height

1.1 Overview

Clause 4.6 of the Warringah LEP 2011 (LEP) provides a mechanism to allow an exception to a development standard.

As previously identified with the Statement of Environmental Effects, the proposed Chapel contravenes LEP Clause 4.3 Height of Buildings and an exception is sought. As required by clause 4.6 (3) the following is a written request to justify this contravention for the consent authority's consideration. The LEP Height of Buildings Map for the site establishes a height of 8.5m, whereas as the chapel's proposed height is 10.970m, as detailed on the architectural plans. This exceeds the 8.5m standard by 2.47 metres or 29% of the requirement.

As required by clause 4.6 (3) the following is a written request to justify this contravention for the consent authority's consideration.

1.2 Land and property details

The site is located on Hakea Avenue, Frenchs Forest. It is legally described as Lot 7335 in Deposited Plan 1152473. The site is irregular in shape and has a large area of approximately 22 hectares, frontage to several roads and a perimeter of approximately 4 kilometres. The land is zoned SP1 Special Activities - cemetery under the LEP.

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

Presently on the site, and since 1940, is a long-established cemetery within a treed and landscaped setting.

The site fronts 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.

1.3 Proposed development and the nature and extent of exception sought

The proposed development mainly involves works within the south eastern section of the site and includes the demolition of an existing unused and dilapidated caretaker's cottage; development of a new chapel, incorporating a new storage and operations shed; alterations and additions to the existing administration building to provide a small function room whilst maintaining administration functions; a new amenities building; landscaping works for the upgrade of associated spaces including an ash garden; and augmentation of carparking spaces within the cemetery.

The exception relates to the proposed height of the new chapel. The LEP Height of Buildings Map for the site establishes a height of 8.5m, whereas as the proposed Chapel's height is 10.970m, as detailed on the architectural plans. This exceeds the 8.5m standard by 2.47 metres or 29% of the requirement, as illustrated within the figures below.

Clause 4.6 of LEP provides a mechanism to allow an exception to a development standard. LEP Clause 4.3 'Height of Buildings' is a development standard and is applicable to the assessment of the proposal. As required by clause 4.6 (3) the following is a written request for the proposed development to exceed the development standard for the consent authority's consideration.

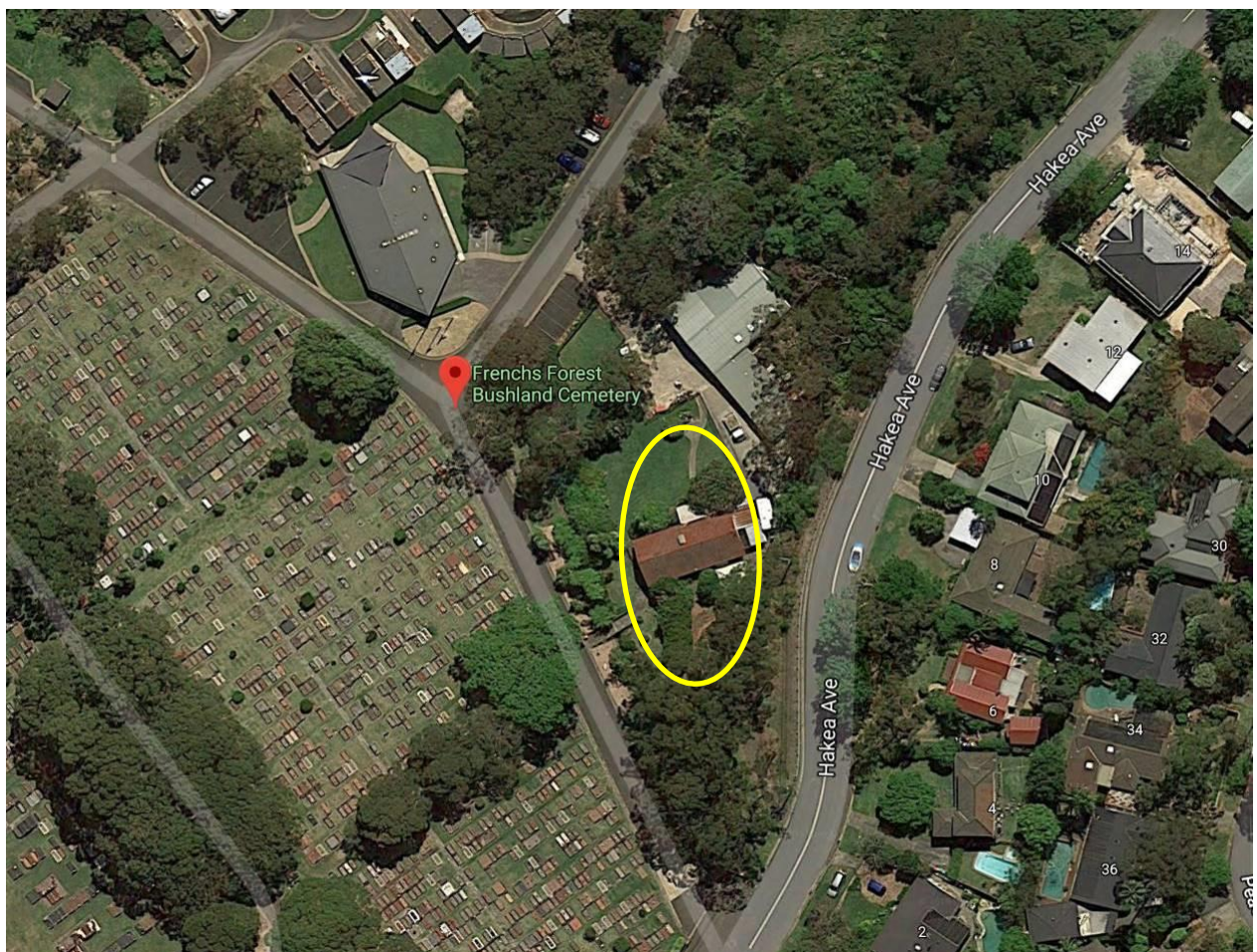


Figure 1 – Location of the proposed Chapel development and its surrounding context (courtesy Google maps)

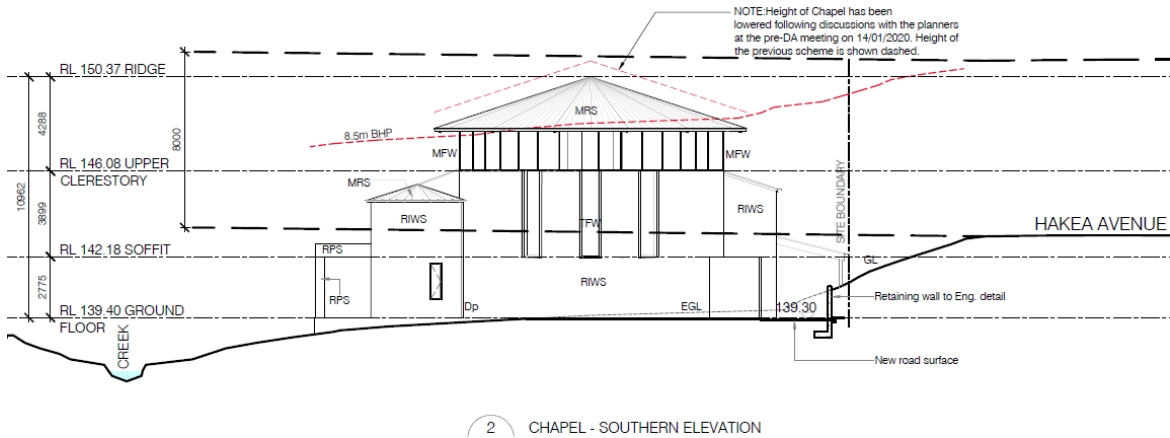


Figure 2 – the proposed Chapel's southern elevation

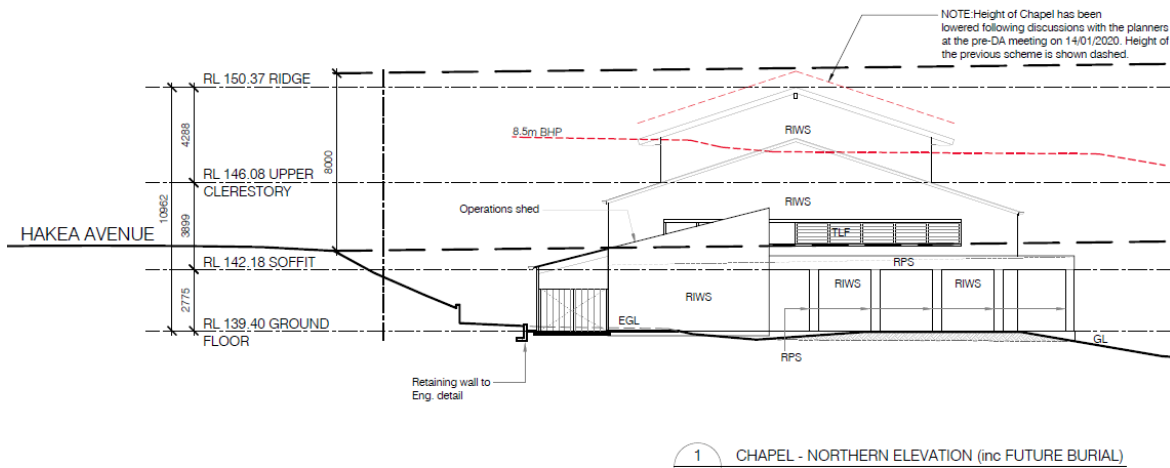


Figure 3 – the proposed Chapel's northern elevation

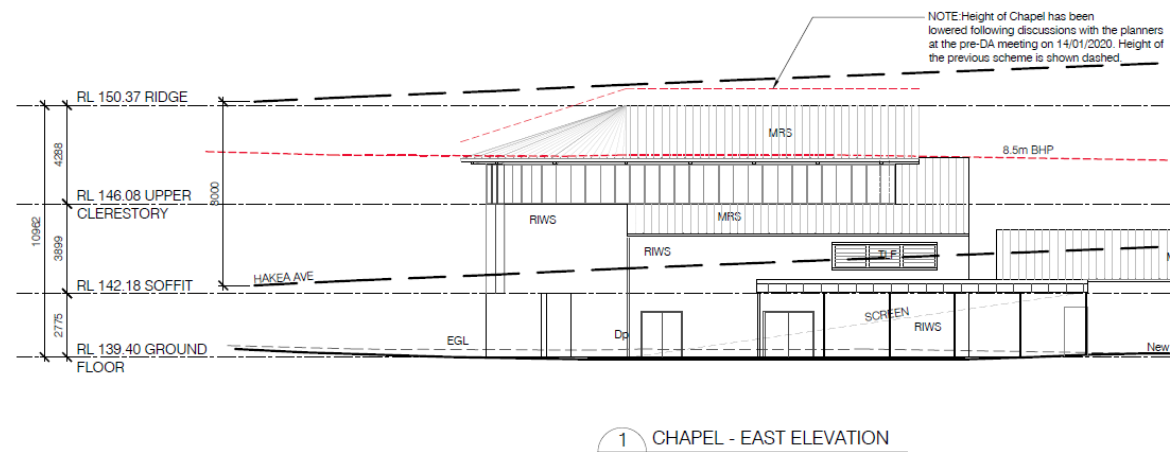


Figure 4 – the proposed Chapel's eastern elevation

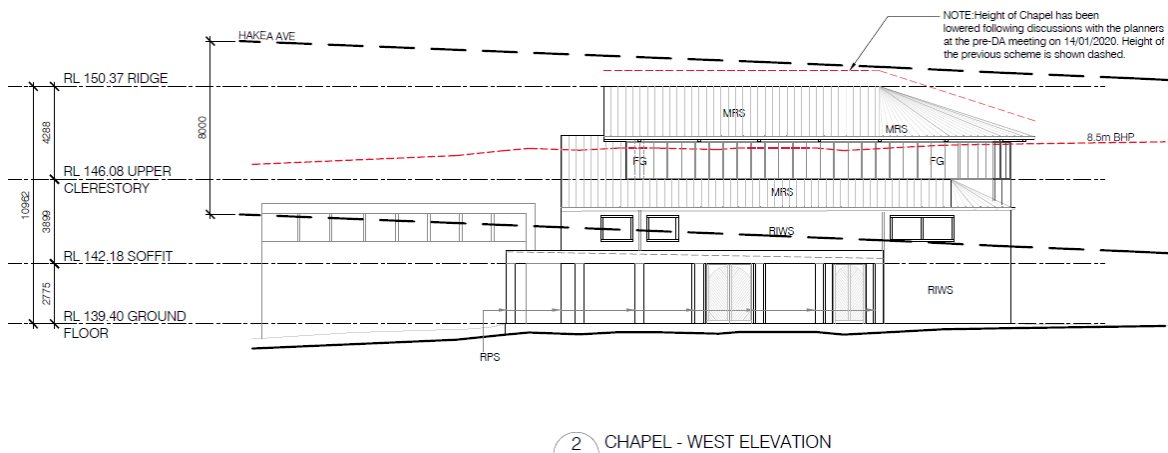


Figure 5 – the proposed Chapel's western elevation

2 Clause 4.6

Relevant to the subject matter, Clause 4.6 states:

- (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 Secretary has been obtained.

In response to the provisions of Clause 4.6, the matters in support of the proposal are documented with this *written request* to justify this contravention of the development standard.

2.1 Context and Format

This “*written request*” has been prepared having regard to “*Varying development standards: A Guide*” (August 2011), issued by the former Department of Planning, and relevant principles identified in the following court judgements:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 1009;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248;
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7;
- *Moskovich v Waverley Council* [2016] NSWLEC 1015; and
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118.
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130
- *Hansimikali v Bayside Council* [2019] NSWLEC 1353

With the guidance provided by the above judgements, the matters in support of the proposal are documented with this *written request* to justify this contravention of the development standard.

3 Assessment

3.1 Compliance is unreasonable or unnecessary in the circumstances

Subsection 3 (a) of Clause 4.6 states:

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

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

Guidance is provided by the following court judgement in establishing what the relevant considerations are in assessing what is ‘*unreasonable or unnecessary in the circumstances of the case*’.

In addressing the requirements of Clause 4.6 (3) (a), the accepted five possible approaches for determining whether compliance is unnecessary or unreasonable were established by the NSW

Land and Environment Court in *Wehbe vs Pittwater Council*. Whilst at the time, this was specific to SEPP 1, in the matter of Four2Five (2007) LEC 827, the Commissioner stated within the judgement the following, in reference to a variation:

“...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1.”

In the decision of *Wehbe vs Pittwater Council* (2007) LEC 827, Preston CJ summarised the five (5) different ways in which an objection under SEPP 1 has been well founded and that approval of the objection may be consistent with the aims of the policy. The five possible ways are:

1st *The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable.

2nd *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

3rd *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

4th *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

5th *A fifth way is to establish that “the zoning of particular land” was “unreasonable or inappropriate” so that “a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land” and that “compliance with the standard in that case would also be unreasonable or unnecessary.*

In response to the 5 Wehbe principles it is assessed that the first principle is relevant to the subject matter. Our assessment of the proposal under clause 4.6(3)(a) finds that: compliance with the development standard is unreasonable and unnecessary in the circumstances of the case because, despite the proposed Chapel's building height, the proposal satisfies the various objectives of the development standard and other relevant assessment considerations, noting:

- 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.

4 Environmental planning grounds

Subsection 3 (b) of Clause 4.6 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:

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

Despite non-compliance with the height of building standard, there are sufficient environmental planning grounds to justify contravening the development standard noting the following considerations -

The proposed building height exception applies to a small section of the proposed building, where there is a steep, sudden and significant change in topography within the allotment and does not undermine or disrespect the relevance of the building height control or its objectives.

Our assessment finds that there are sufficient environmental planning grounds to justify contravening the development standard noting the following considerations.

4.1 The chapel's purpose for memorial services and its design principles

The height of the proposed Chapel is supported by architectural design principles that are specific to the proposed building's purpose for the congregation of people, as a sacred place for reflection and mourning as part of memorial services.

An architectural design statement accompanies this clause 4.6 submission and explains the design reasons for the height of the proposed Chapel. Key aspects from this design statement are noted as follows:

'The scale of the building is appropriate to its function as a sacred place for all people within society, creating a sequence of spaces that allow them to celebrate the lives of people they love and grieve for them with dignity'.

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)', as explained with the Architectural Design Statement which accompanies this submission. A degree of vertical height is needed to admit light from high windows which contributes to dignifying the space that is appropriate in fulfilling the building's function for reflection and mourning by the community during memorial services. In regard to the proposed Chapel geometry, the architectural design statement states:

'Geometry, or the use of certain proportions, has been used by civilisations to bring harmony, beauty and order to their structures for thousands of years.

In this building, geometry serves four functions:

First, it defines the proportions of the chapel space, family room space and the elevations. Ensuring each part of the building has a formal relationship with the whole.

Second, it ensures that the experience of the volume of spaces is harmonious and reassuring for those in need of support.

Third, it creates structure and order within the building.

Finally, it creates a building of a certain size in proportion to its plan. This size gives the building presence in the broad landscape of the cemetery, of which it becomes an appropriate focus point.

The form of the building is not overly assertive. The form is broken down in segments and the roof has a gentle and imposing low pitch.

The internal proportion is most suitable to the dignity of a funeral service. There is sufficient vertical height to admit light from high windows which dignifies people. There is space for emotional release. There is generosity'.

These design principles relate to the building fulfilling its purpose to facilitate the grieving process associated with funerals and burial. The proposal has therefore deliberately not attempted to minimise the building height but rather design the building appropriately for its purpose within its unique setting and for its unique purpose. These principles provide specific environmental planning grounds in justification of the building's height.

Conversely a lower building height, that may be consistent with the development standard would not fulfil the purpose of the building which is for the use of general public and a key element of community infrastructure that is directly related to the proper functioning of the cemetery. This is an environmental planning ground in justification of the building's height.

Furthermore, the design statement makes the following observations regarding the design intent of the proposed Chapel as it relates to the proposed height of the structure:

- 1. It enables the cemetery to fulfill its purpose within the local community by supporting and enabling the community to mourn when they need to.*
- 2. It is carefully sited within a bushland setting to create a subtle presence adjacent to the road. It does not impose itself on its neighbours but nor does it hide.*
- 3. The scale of the building is appropriate to its function as a sacred place for all people within society, creating a sequence of spaces that allow them to celebrate the lives of people they love and grieve for them with dignity.*
- 4. It replaces a semi-derelict house and degraded bush with a carefully crafted building and curated and regenerated native bush.*
- 5. The proposed building is appropriately scaled and sited within its bushland site for its function and location.*

The above considerations provide environmental planning grounds in justification of the proposed Chapels location on the property.

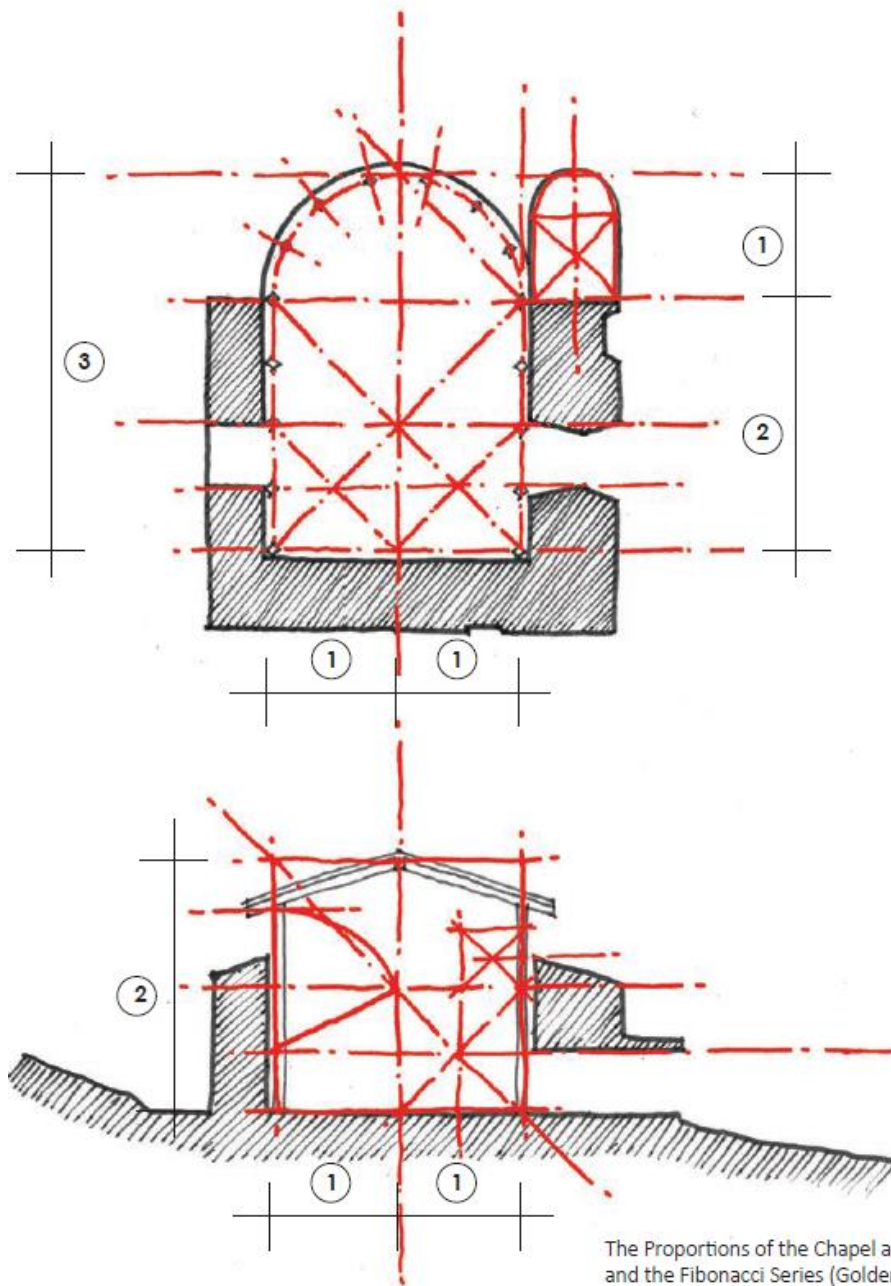


Figure 6 – The proposed Chapel's height and geometry is in proportion to its floor plan (accommodation capacity) based on the 'Fibonacci Series (Golden Ratio)' (source: Architectural Design Statement)



Figure 7 – an illustration demonstrating that a degree of vertical height is needed to admit light from high windows which contributes to dignifying the space that is appropriate in fulfilling the building’s function for reflection and mourning by the community during memorial services (source: Architectural Design Statement)

4.1.1 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.



existing streetscape



proposed streetscape

Figure 8 – excerpt from the photomontage report showing the existing and proposed streetscapes with the scale and location of the proposed Chapel within the context of the topography and landscaped setting

The chapel is proposed in a location on the site that makes efficient use of zoned cemetery land which is consistent with established community need and government policy.

Demand for burial space is high and land supply (zoned and unzoned) is limited within the Greater Sydney Metropolitan Area. Establishment of new cemeteries is inherently difficult due to various environmental considerations, the large land area needed, and the scarcity of suitable land within the Greater Metropolitan Area of Sydney in proximity to established communities.

The 'Metropolitan Sydney Cemetery Capacity Report' (November 2017 by Cemeteries and Crematoria NSW) has been adopted by the NSW State Government and provides a detailed strategic analysis that demonstrates that there is strong demand and need for cemetery land, having regard to population projections, the capacity of existing cemeteries, and the anticipated operational lifespan of existing cemeteries. Despite the fact that supply shortages are forecast to arise from 2050, no additional land within the Northern Beaches area or North District has been identified, zoned or set aside for future cemetery use. Higher utilisation of the Frenchs Forest Bushland Cemetery makes a positive contribution to meeting future burial demand in this part of Sydney. The report is referenced within the 'Greater Sydney Regional Plan – A Metropolis of Three Cities – Connecting People (March 2018 updated)'. It outlines the delivery and long-term direction for cemeteries and crematoria infrastructure as part of 'Direction 1.11: Deliver infrastructure', and the associated 'Action 1.11.5: Deliver long-term planning for cemeteries and crematoria infrastructure'.

It is therefore justified that the Crown Land Manager optimises the utilisation of the land which the siting of the proposed Chapel achieves. The above considerations provide environmental planning grounds in justification of the proposed Chapel's location on the property.



Figure 9 – the chapel is proposed in a location on the site that is mostly cleared, relatively flat, and where the its functions (caretakers residence) are redundant

LEGEND

	Site Boundary		Protected Vegetation
	Existing Buildings		Easement
	Existing Vegetation		Existing Parking
	Current Proposed Design Areas		Proposed Parking
	Re-generative Planting		Creek
	Landscape Opportunities		Water Flow
	Proposed Ash Gardens		Gateway
	Existing Plots		
	Potential Occupiable Plots		
	Additional Plot/Extensions		
	Additional Lawn		

Key to the masterplan by Group GSA on the next page



Figure 10 – excerpt from site masterplan by Group GSA showing the strategic plan for the property (colour legend below)

4.1.2 Compatibility with context, Places of public worship and unique aspects of the site and the proposed Chapel building

In terms of the characteristics of the proposed Chapel building's design and its compatibility with the surrounding area, the planning principle established by the NSW Land and Environment Court in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 provides assistance in making this consideration. The provisions of this principle are used in assessing the merits of the proposal below.

The character of the local area, being the visual catchment of the site, principally comprises a mix of 1 to 2 storey detached dwellings (to the east) and buildings associated with the cemetery (to the west). The cemetery is also characterised by a 'bushland-like' setting, with large canopy trees, natural areas, large open spaces and gardens areas that comprise the 22-hectare cemetery site.

Being within a large 22 hectare established cemetery site, that is adjacent to, but not part of the residential subdivision pattern, the proposed Chapel building is unique in terms of both its land use, building form, and setting. Furthermore, there is no regular subdivision pattern or building scale/typology for the proposed Chapel to replicate. Notwithstanding, it is assessed that the proposed Chapel achieves a form, scale, and density on the site that is harmonious with the character of the local area for the reasons provided below:

- In relation to the adjacent roadway, the topography upon which the proposed Chapel building's height exception will be located is lower than the adjoining Hakea Avenue roadway and residential land to the east. It will therefore not be visually prominent when viewed from various locations within its streetscape setting as shown within the photomontage (figure 8).
- The landscaped setting that the proposed Chapel is to be sited within provides an appropriate context for a unique building of additional height due to the size and shape of the cemetery land compared to the different residential subdivision pattern of the allotments within the adjacent R2 zone. Furthermore, the proposed Chapel site is within a 22 ha land area and a setting comprising large open spaces and treed areas. Therefore, the curtilage of the proposed building is different to the domestic scale of dwelling houses and R2 zoned, low density allotments within the visual catchment along Hakea Avenue.
- The proposed Chapel is appropriately scaled and sited within its bushland-like setting noting the number, density, height, and scale of trees on the property. Mature canopy trees will provide a setting to the proposed Chapel building which will limit and obscure the visibility and prominence of the proposed building height exception. The size of the trees are noted to range from up to approximately 15 to 30 m in height and 1.5 to 2.5 metres in trunk diameter. The height of the proposed Chapel will be significantly lower than the predominant tree canopy. They can be seen in figure 11 and are detailed within various plans and reports submitted with the application. These large trees provide landscape elements of an appropriate scale that will significantly exceed the height of the proposed Chapel building. Furthermore, the site's bushland character setting will be largely retained by the proposal. These characteristics will assist in the proposed Chapel building visually presenting within a landscape context. The height, character, and location of these trees provide an appropriate environmental planning ground in which to consider the proposed height exception.

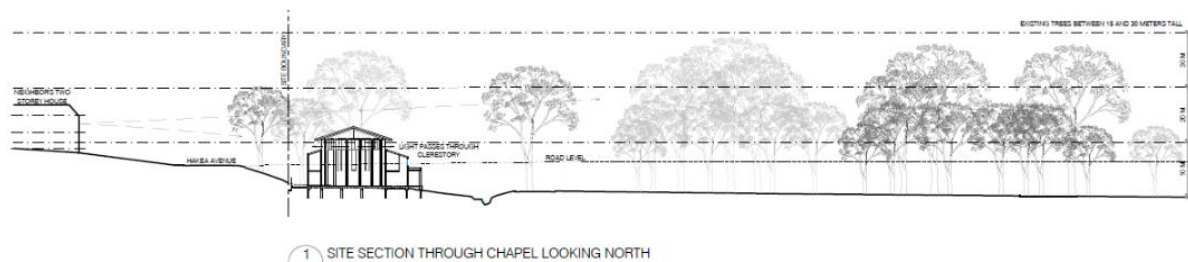


Figure 11 – excerpt from architectural plans showing the scale of the proposed Chapel within the context of the local topography, canopy trees, and nearby dwelling houses

- In terms of its potential for physical impacts, the proposed Chapel is appropriately sited noting its significant separation from neighbouring residential dwelling houses. This is achieved in two ways:
 - One, by its setback/distance from residential properties; and
 - Two, by the lower relative level of the land that the Chapel will be sited upon. 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.

The proposed Chapel does not impose itself on the streetscape or its neighbours but nor does it hide from public view which is appropriate for the proposed Chapel’s function as a community building. Appropriate spatial separation is achieved by the proposed Chapel.

The proposed Chapel will not result in excessive or inappropriate physical impacts in terms of privacy, shadowing, visual impact, or view loss on nearby development, nor will it constrain the development potential of nearby land. These matters are further detailed within Section 5 of this submission.
- A photomontage of the proposed Chapel building within its streetscape context accompanies the application (figure 8) and provides an opportunity to view the proposal in the same way that a member of the public would. It is assessed that the proposed Chapel building will achieve an appropriate streetscape outcome noting:
 - The level change between the proposed chapel development site and residential development to the east. 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.
 - The proposed Chapel building will be viewed within a landscaped setting of established/proposed vegetation and established large canopy trees, compatible with the streetscape. These mature canopy trees will limit and obscure the visibility and prominence of the proposed building height exception.
 - In these ways the proposal maintains a scale that will be compatible when viewed from the east and south, commensurate with the domestic front setbacks and landscaped settings of residential development within the local area.
- The proposal provides appropriate building articulation, fenestration, and modulation along each of its elevations and within its roof form.
- The proposed Chapel building satisfies the objectives of the height of building development standard as stated within section 5.1 of this report.

- The proposed Chapel building satisfies the objectives of the zone as stated within section 5.2 of this report.
- The land being zoned 'SP1 Special Activities – cemetery', and the proposed Chapel building being ancillary to the site's functions as a cemetery, the proposed Chapel building is commensurate with the anticipated range and mix of building forms that may reasonably be anticipated within the site's visual setting.

Based on the above, it is assessed that the proposal will have an appropriate impact when viewed from the adjacent public roadway and surrounding land. The above considerations provide environmental planning grounds in justification of the proposed Chapel's location on the property.

In conclusion, the proposed Chapel building has appropriately considered and responded to the local character of surrounding development. It is assessed that the proposal will not result in excessive or inappropriate physical impacts on surrounding development, nor will it constrain the development potential of nearby land. It is assessed that the proposal is capable of existing in harmony with the land use, built form and landscape character of the local area.

4.2 Will not establish a precedent

The proposed Chapel building is unique and for a public purpose. Being on a large 22 hectare site that is public (Crown) land it is a 'one-off'; the land use and building purpose being unique within its context. It will not establish a precedent for buildings of a similar height in the location having regard to the principles established in *Goldin & Anor v Minister for Transport Administering the Ports Corporatisation and Waterways Management Act 1995* [2002] NSWLEC 75. The proposed building form will not set an undesirable precedent because it is associated with the established cemetery which is unique within its setting and context.

4.3 Unreasonable burden

Compliance could be achieved by lowering the height of the dwelling at that point, however there would be insignificant gains in amenity and the change would be to the detriment of the proposed Chapel's future occupants. There are positive impacts achieved by the development in its proposed form. To lower the proposed Chapel down below the maximum height standard would reduce the function and amenity afforded to the future users of the Chapel.

It is appropriate that the merits of the proposal on environmental planning grounds be balanced with the impact that strict compliance with the standard places on the site, and whether such strict compliance would result in a better or neutral planning outcome. The proposed building height exception will provide a compatible building outcome which will have no impact on streetscape.

The height exception has minimal impact on the surrounding amenity in terms of shading, visual bulk, scale, privacy, and streetscape appearance. Strict compliance in the circumstances would not achieve any significant gains with regards to the neighbouring community or relevant objectives of the zone or standard.

Based on the above strict compliance would result in an unreasonable burden on the proposed development with insufficient planning or amenity benefits.

4.4 How does the proposed development / exception relate to the objectives of the Act?

Having regard to *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the built form outcomes achieved through the proposed Chapel's building height and location on

the site are consistent with objectives (a) and (g) of clause 1.3 of the Environmental Planning and Assessment Act 1979 (the Act) noting the following:

In response to objective 1.3(c) of the Act, the exception results in a proposed development that will promote the orderly and economic use and development of the land making efficient use of existing established public infrastructure (an established cemetery) and services. The proposal will optimise the use of the land for a public purpose by a design that is responsive to its development context that achieves the intended and specific function of the building for memorial services and maintains appropriate amenity to adjoining land.

In response to objective 1.3(g) of the Act, the proposed development results in a development that will promote good design and amenity of the built environment. The built form outcome has been developed through detailed site, context, privacy, views sharing and shadow analysis to ensure an appropriate contextual and streetscape fit. The proposed development maintains high levels of residential amenity to nearby residential properties by minimising its impacts, by being compatible with those developments in terms of its scale, separation, visual presentation, orientation, and landscape spaces.

4.5 Conclusion

For these reasons the proposed building height exception is assessed as being appropriate to the circumstances of the site it's zoning and spatial context. It is assessed that there are appropriate and sufficient environmental planning grounds to support the building height exception.

5 Public Interest Considerations

5.1 Objectives of the height of buildings development standard

In accordance with 4.6 (4)(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the Height of buildings development standard which are stated as follows:

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access,*
- (c) to minimise any adverse impact of development on the scenic quality of Warringah's coastal and bush environments,*
- (d) to manage the visual impact of development when viewed from public places such as parks and reserves, roads and community facilities.*

The following responses are made to these objectives.

- (a) to ensure that buildings are compatible with the height and scale of surrounding and nearby development,*

Response –

Despite a section of the proposed Chapel building displaying heights of 10.970m, the proposed building height exception does not compromise the proposal's ability to ensure that the building is compatible with the height and scale of surrounding and nearby development.

In terms of public viewing points to the east, the proposed building will be viewed from the elevated land (Hakea Ave roadway and residential land to the east). From these locations the

upper portion of the proposed building will be apparent, but the full scale of the proposed building will be obscured by the topography and the lower relative 'set-down' levels of the subject site.

In terms of the proposed *buildings compatibility* -

The building height exception relates to a chapel (*place of public worship*) that is permitted within both the SP1 zone that applies to the subject site and the R2 zone that adjoins the site to the east and south.

The proposed building is unique and for a public purpose. Being on a large 22 hectare site that is public (Crown) land it is a 'one-off'; the land use and building purpose being unique within its context. The chapel will necessarily be different from the 'domestic-scale' residential dwelling houses nearby. As noted by the project architect: *'The scale of the building is appropriate to its function as a sacred place for all people within society, creating a sequence of spaces that allow them to celebrate the lives of people they love and grieve for them with dignity'*.

Noting the above, the proposed Chapel is appropriately scaled and sited within its setting for its function and location. It is also appropriately sited within a treed, bushland-like setting and significantly separated from neighbouring residential dwelling houses. Furthermore, due to the lower level of the site than the adjacent roadway, the proposed Chapel will have a modest presence adjacent to the road. The proposed Chapel does not impose itself on the streetscape or its neighbours but nor does it hide from public view which is appropriate for the proposed Chapel's function and location.

Notwithstanding, the chapel will have some differences in its appearance to single residential houses that front the eastern side of Hakea Ave. In accordance with the findings of Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191 at 22-31 a proposed development does not need to be the same as existing development to satisfy the test of compatibility with local character. In this regard it is assessed that the proposed design:

- will not be prominent with the site's position being below the street levels of the adjoining roadways.
- will be located within a treed, landscaped setting
- is within a large 22ha site and appropriately separated from residential land
- presents no physical impacts in terms of shading, privacy, visual impact, or scale

Overall, the proposed development outcome will be contextually appropriate with the built form and landscape setting of the site, without any unreasonable physical impacts on the adjoining residential properties. It is therefore assessed as being compatible with the local character and satisfying this assessment consideration.

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

Response -

Despite a section of the proposed Chapel building displaying heights of 10.970m, the proposed building height exception does not compromise the proposal's ability to *minimise its visual impact, disruption of views, loss of privacy and loss of solar access*.

In relation to minimising its visual impact:

- There is a level change between the proposed development (new chapel site) 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.
- The proposed building height exception will be within a treed and vegetated setting and be below the natural and established height of the tree canopy. There is an established natural canopy of trees within and generally around the perimeter of the cemetery site that will provide a visual setting that the height exception will be viewed within.
- Due to the topography and siting of the proposed Chapel it will not be visually prominent within its local context.

For these reasons the proposal is assessed as satisfying the objective of the development standard will minimise its visual impact.

In relation to disruption of views:

- There are no iconic views identified within the local context that the proposed building height exception is likely to obscure.
- There is a level change between the proposed development (new chapel site) and residential development to the east. The cemetery land is set down approximately 2 to 4 metres below the residential land on the eastern side of Hakea Ave.
- The proposed building height exception will occupy a minor and relatively small area of the overall 22ha site and there will remain district views, characterised by the treed and vegetated setting within and around the proposed building.

For these reasons the proposal is assessed as satisfying the objective of the development standard and will minimise its disruption of views.

In relation to loss of privacy -

Appropriate separation between the location of the proposed Chapel and the residential development to the east is achieved by the Hakea Ave roadway, and the front setbacks to the respective developments on either side of the roadway. Dwelling houses are appropriately separated from the proposal chapel being approximately 30m to the east and 80m to the south east within an established setting.

Visual privacy between the Chapel and the local houses is important for both the local residents and the mourners who will be grieving at the Chapel. The development has been designed to provide mourners with the privacy they need as individuals and as a small community. This ensures that the privacy of local residents is also achieved.

The level of the land upon which the proposed Chapel is to be sited is lower than the adjoining Hakea Avenue roadway and residential land to the east. There is a level change of up to approximately 2.5m – 4.5m between the location of the proposed development (new chapel site) and the adjacent roadway and nearby dwellings. This will assist in achieving an appropriate privacy outcome because the line-of-sight between the existing dwellings and the proposed Chapel will be on different levels and therefore obscured.

The chapel building is designed to orientate to the south west, away from residential development towards the proposed landscaped garden and the existing creek-line. Colonnades are provided along this side of the proposed building. The service areas are located to the east of the building. These design features assist in maintaining visual and acoustic privacy.

For these reasons the proposal is assessed as satisfying the objective of the development standard and will have an appropriate privacy impact.

In relation to loss of solar access -

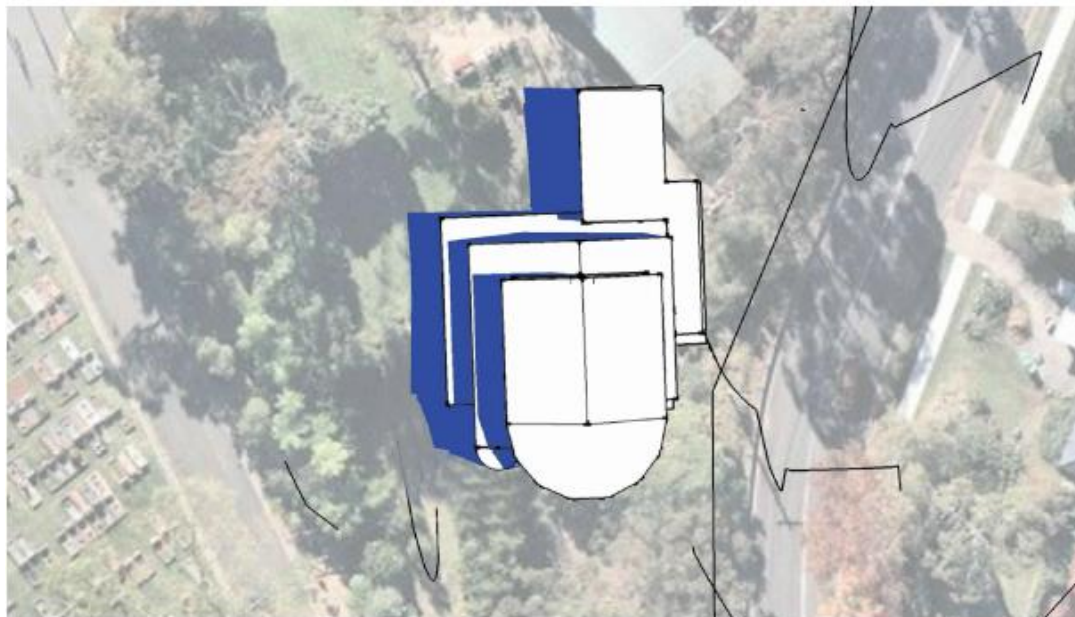
In relation to proposed shadowing impacts – Clause D6 of the Warringah DCP requires:

- ‘1. Development should avoid unreasonable overshadowing any public open space.*
- 2. At least 50% of the required area of private open space of each dwelling and at least 50% of the required area of private open space of adjoining dwellings are to receive a minimum of 3 hours of sunlight between 9am and 3pm on June 21’.*

In relation to proposed shadowing impacts, in accordance with Clause D6 of the DCP, shade will not be cast over residential land during the specified times (between 9am and 3pm on June 21st as demonstrated by the shadow diagrams that accompany the DA.

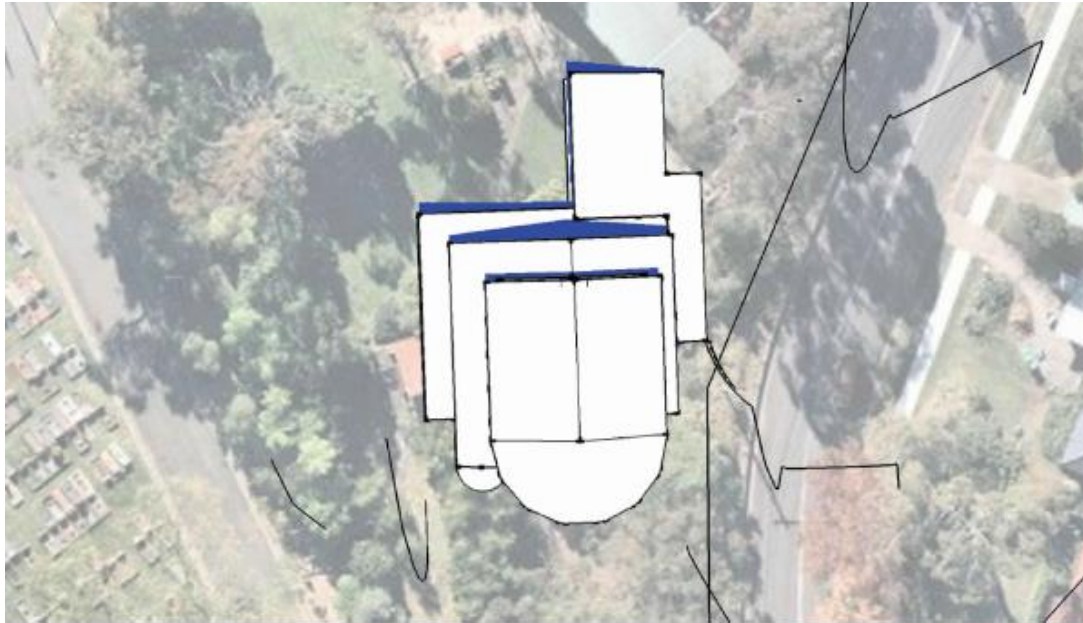
The level of the land upon which the proposed Chapel is to be sited is lower than the adjoining Hakea Avenue roadway and residential land to the east, resulting in modest extent of shading being cast. The proposed shading will not negatively impact on neighbouring residential properties or any public open space.

For these reasons, and based on the shadow diagrams, the proposal is assessed as satisfying the objective of the development standard and will have an appropriate shading impact.



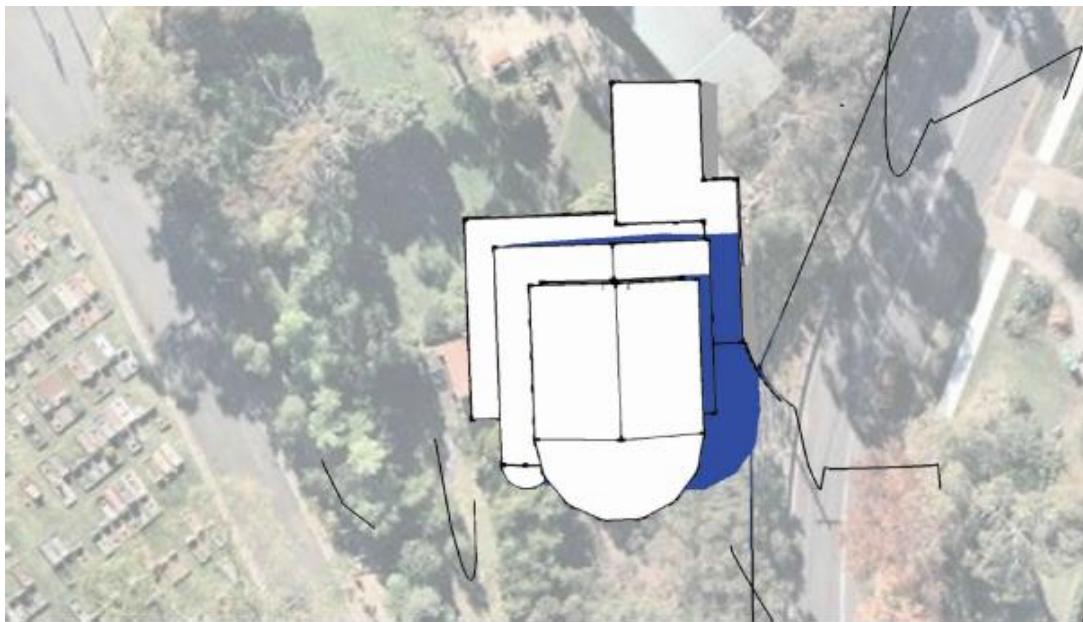
1 SHADOW DIAGRAM - 9AM

Figure 12 – the proposed shading Impact at 9am



2 SHADOW DIAGRAM - 12PM

Figure 13 – the proposed shading impact at 12pm



3 SHADOW DIAGRAM - 3PM

Figure 14 – the proposed shading impact at 3pm

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

Response –

Despite a section of the proposed Chapel building displaying heights of 10.970m, the proposed building height exception does not compromise the proposal's ability to minimise adverse impact on the scenic quality of Warringah's coastal and bush environments.

The proposal will be compatible with the property's treed 'bushland' character. The large and generously proportioned landscaped setting that the proposed Chapel is to be sited within provides an appropriate context for a unique building of additional height to be located.

Mature trees provide a bushland-like setting which limit and obscure the visibility and prominence of the buildings within the site including the proposal chapel.

The level of the land upon which the proposed Chapel is to be sited is lower than the adjoining Hakea Avenue roadway and residential land to the east. There is a level change of approximately 2.5m to 4.5m between the location of the proposed development (new chapel site) and the adjacent roadway and nearby dwellings. The land upon which the proposed building height exception will be located is not significantly prominent.

For these reasons, the proposal is assessed as satisfying the objective of the development standard and will have an appropriate impact on the *scenic quality* of the location.

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

Response –

Despite a section of the proposed building displaying heights of 10.970m the proposed building height exception does not compromise the proposal's ability to have an appropriate visual impact when viewed from public places.

There are no public parks, reserves, or community facilities within the local context from which the proposed building height exception will be viewed.

In relation to the adjacent roadway:

- The land upon which the proposed building height exception will be located on land that is lower than the adjoining Hakea Avenue roadway and residential land to the east and therefore is not visually prominent.
- The landscaped setting that the proposed Chapel is to be sited within provides an appropriate context for a unique building of additional height. Furthermore, the site and land use are unique within the context of surrounding low-density residential land. The site is 22 ha in area, within a setting comprising large open spaces and treed areas.
- Mature trees provide a bushland-like setting to the proposed building which will limit and obscure the visibility and prominence of the proposed building height exception. The height of the proposed Chapel will be significantly lower than the canopies of large, established trees on the site (figure 11). Furthermore, the site's treed character and bushland-like setting will be retained by the proposal.

For these reasons, the proposal is assessed as satisfying the objective of the development standard and will have an appropriate impact when viewed from the adjacent public roadway and community facilities.

For these reasons, the proposal is assessed as satisfying the objective of the development standard and will have an appropriate impact when viewed from the adjacent public roadway and community facilities.

5.2 Zone Objectives

In accordance with 4.6 (4)(a)(ii), the proposed development will be in the public interest because it is consistent with the objectives for development within the R2 Low Density Residential zone in which the development is proposed to be carried out. These are stated and responded to as follows:

(a) *To provide for special land uses that are not provided for in other zones.*

Response -

The proposed development will provide for ancillary land uses that support and improve the function of the site as a cemetery. The proposed Chapel is ancillary to the established development of the site for a cemetery and it will enable the property to fulfill its functions through the provision of a purpose designed building for conducting memorial services.

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 consistent with established community need and NSW State Government policy.

The proposed Chapel will support the utilisation the land for a cemetery which is a land use that is not provided for in other zones. The proposed development therefore responds positively to zone objective (a).

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

Response -

The landscaped setting that the proposed Chapel is to be sited within provides an appropriate context for a unique building of additional height due to the size and shape of the cemetery land compared to the different residential subdivision pattern of the allotments within the adjacent R2 zone.

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.

The proposed Chapel development will facilitate the property fulfilling its functions as a cemetery through the provision of a purpose designed building and spaces for conducting memorial services.

The proposed development therefore responds positively to zone objective (b)

(c) *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.*

Response -

The proposed Chapel development will provide for a compatible development that is responsible to the natural features and treed aesthetics of the site in response to the

special natural characteristics of the land and land use that are not provided for in other zones.

The proposed Chapel development will facilitate development that minimises any adverse impacts on surrounding land.

The proposed development will maintain an appropriate interface with the adjacent, the low density residential character of the location. It will not significantly alter or negatively impact upon the sites existing streetscape character. It will not result in any significant or unreasonable or adverse effects on other land uses. The proposed development therefore responds positively to zone objective (c).

In conclusion it is assessed that the proposal is consistent with or not antipathetic to the objectives of the zone.

5.3 Are there any matters of State or regional significance?

The proposed exceedance to the building height development standard does not raise any matters of State or regional significance.

5.4 What is the public benefit of maintaining the standard?

The proposed Chapel development is generally consistent with, or not antipathetic to, the objectives of the development standard, notwithstanding the numerical variation. In the circumstances, the proposed development does not affect the public benefit of maintaining the building height standard in other instances.

6 Conclusion

The exception proposed to the building height development standard has been appropriately acknowledged and the circumstances assessed, having regard to the objectives of the control.

In conclusion, Council can be satisfied that:

- This written request has adequately addressed the matters required to be demonstrated by 4.6 (3) & 4.6(a)(i);
- Is well founded and adequately address the matters required in accordance with & 4.6(a)(i);
- The exception is appropriate taking into account the range of relevant environmental planning considerations, the circumstances of the case, and public interest matters.
- The proposal succeeds when assessed against the Heads of Consideration pursuant to clause 4.6. There is no statutory planning impediment to the assessment and approval of the application.

Yours sincerely,



Michael Haynes
Director - BBF Town Planners

Annexure 1 - Architectural Design Statement