

COUNCIL SUPPLEMENTARY ASSESSMENT REPORT

SYDNEY SOUTH PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSSH-61 – DA2020/0387
PROPOSAL	Demolition of existing buildings and construction of a new multi-storey mixed use facility for church and community purposes including residential accommodation.
ADDRESS	Lot 1 in D.P. 586989; 23 Dalcassia Street, Hurstville
APPLICANT	The Salvation Army (NSW) Property Trust
OWNER	The Salvation Army (NSW) Property Trust
DA LODGEMENT DATE	13 October 2020
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause (5)(b), Schedule 7 of the SRD SEPP: Community facilities and a place of public worship with CIV over \$5 million
CIV	\$7,921,288 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	Hurstville LEP 2012
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	Three (3) submissions
DOCUMENTS SUBMITTED FOR CONSIDERATION	Correspondence from the Applicant dated 22 July 2021 containing a further legal opinion
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Refusal
DRAFT CONDITIONS TO APPLICANT	No – refusal on permissibility issue
SCHEDULED MEETING DATE	29 July 2021
PLAN VERSION	Original version (no amendments proposed)

PREPARED BY	Kim Johnston (Consultant Planner)
DATE OF REPORT	27 July 2021

EXECUTIVE SUMMARY

An assessment report has been provided from Georges River Council ('the Council') prepared by a Consultant Planner to the Panel dated 28 June 2021 ('the original assessment report') for Development Application DA 2020/0387. This DA proposes demolition of existing buildings on the site, including a place of worship for The Salvation Army ('TSA'), and the construction of a new multi-storey mixed use facility for church and community purposes, including residential accommodation on the upper levels.

Council recommends refusal of the application, primarily due to the proposed residential accommodation component of the proposal being prohibited in the zone. While there were other issues with the proposal, it is considered that resolution of those other issues may have been achieved had the proposal been permissible.

This issue of permissibility was raised with the Panel at a briefing on 11 March 2021, at which time the Panel considered that the permissibility of the residential development as ancillary to the place of worship and community uses needs verification. This issue was further considered by Council following the provision of advice.

Additional information has now been provided by the applicant, TSA, to address this permissibility issue, which consists of correspondence from the Applicant dated 22 July 2021 comprising the following:

- Cover letter from Ethos Urban dated 22 July 2021;
- Cover letter from Holding Redlich dated 22 July 2021 summarising the further legal advice and appending their earlier advice dated 29 September 2020 (provided with the original DA); and
- An opinion from Michael Wright of Frederick Jordan Chambers (Senior Counsel) dated 16 July 2021 stating that the proposed residential accommodation component is permissible.

This supplementary report has been prepared to consider this additional information on permissibility. This issue of permissibility was summarised by the following in the original assessment report:

The proposed residential accommodation component of the proposal is not permissible in the SP2 zone as it can only be considered to be for residential accommodation which is prohibited in the SP2 zone and cannot be considered to be ancillary to a church and community purpose. The proposed residential units also are inconsistent with the objectives of the infrastructure zone and cannot be considered to be infrastructure.

The Consultant Planner engaged by the Council is of the opinion that the proposed residential accommodation is prohibited in the zone, and that this additional information does not change the recommendation for refusal. The additional information refers to potential amendments of the proposal to re-describe the proposed residential accommodation as being for the purpose of supported, affordable, and social housing purposes, in line with the Salvation Army's charitable mandate, however, this will not change the recommendation for refusal. Furthermore, such amendments have not been made.

1. THE SITE AND LOCALITY

The site is known as 23 Dalcassia Street, Hurstville ('the site') and is legally described as Lot 1 in D.P. 586989. The site comprises a corner lot with three (3) road frontages including Dora Street to the west, Bond Street to the south and Dalcassia Street to the north. The site is located between Bond Street in the south and Gordon Street to the north and occupies an irregularly shaped area of 1,679m². There are multiple vehicle access points to the site, including from Dora Street and Bond Street.

The site and locality is described in detail in the original assessment report.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The development application (DA2020/0387) seeks consent for the demolition of existing buildings and the construction of a seven (7) storey mixed use building to be used by The Salvation Army ('TSA') for church and community purposes with upper level residential accommodation.

The building will include a two storey church and community uses facility which is proposed for meetings and activities operated by TSA. Studio, two and three bedroom apartments are proposed on the upper levels for families in need under the management of TSA. Associated landscaping and stormwater infrastructure is proposed as well as a Torrens title subdivision of the site to create a new lot to Dalcassia Street.

The correspondence from the applicant does not propose any amendments to the proposal and accordingly the proposal remains as described in the original assessment report. The applicant has provided an additional advice from a Senior Counsel in relation to the permissibility issue, which is considered in this report.

2.2 Background to the Permissibility Issue

The issue of permissibility was raised with the Panel at a briefing on 11 March 2021, with Panel's record of briefing stating that "*The permissibility of the residential development as ancillary to the place of worship and community uses needs verification*".

Following this briefing, the Council obtained advice which confirmed that the proposed residential accommodation component of the proposal is prohibited in the zone. The applicant was subsequently advised of this permissibility issue in correspondence dated 4 May 2021 and requested to consider amending or removing this component of the proposal (emphasis added):

- a) **Residential accommodation** – *Residential accommodation is not permissible in the SP2 zone and cannot be considered to be ancillary to a church and community purpose. The proposed residential units also are inconsistent with the objectives of the infrastructure zone and cannot be considered to be infrastructure. The proposed units cannot be defined as anything other than being for residential accommodation which is prohibited in the SP2 zone.*

Residential flat buildings, however, are permissible in the adjoining R3 Medium density residential zone. Pursuant to Clause 5.3 of the HLEP 2012, development consent may be granted for any purpose that may be carried out in the adjoining

zone, in this case being the R3 zone, provided that the requirements in Clause 5.3 are satisfied.

*The site is surrounded on all boundaries by the R3 zone. Clause 5.3 appears to indicate that any development that is permissible in the R3 Zone may be permissible (assuming compliance with the relevant matters in Clause 5.3) to a depth of 10 metres from each boundary of the site. The applicant may elect to seek further legal advice to confirm the extent of the site to which Clause 5.3 may apply these circumstances (it would appear that the central portion of the site would not benefit from this clause which would significantly restrict the provision of this component of the proposal). **The decision to amend or remove this component of the proposal needs to be made by the applicant, having regard to the requirements of Clause 5.3 of the Hurstville LEP 2012.***

A meeting was subsequently held on 6 May 2021 with the applicant to discuss the letter, in particular the permissibility issue, at which time the Council agreed to clarify some of its earlier advice. While the letter outlined other issues of concern, it was agreed that it would be unproductive to discuss the other issues given the permissibility issue. The Council informed the applicant on 12 May 2021 that the proposed residential accommodation component of the proposal is not permissible in the zone.

The applicant was given the following options to progress the application:

1. Amend the proposal to provide the residential accommodation in the form of a boarding house. This ensures the residential component is linked to the community use of the site as it will be housing provided by a social housing provider. This was discussed in a meeting last year held with Council prior to the DA being lodged; or
2. Have the DA determined by the SSPP in its current form. The recommendation of the report would be for refusal; or
3. Withdraw the application.

On 25 May 2021, the applicant proposed several conditions in an attempt to resolve the permissibility issue which included a Plan of Management condition and an Affordable Housing Covenant condition. These proposed conditions were considered by Council; however, the applicant was advised on 9 June 2021 that the proposed conditions did not overcome the permissibility issue. The original assessment report to the Panel recommends refusal on the basis of this permissibility issue as outlined in that report.

This additional information was received by Council on 22 July 2021 following the uploading of the original assessment report on the Planning Portal. This information is considered below, however, the opinion of Council is that the proposed residential accommodation component is prohibited.

3. STATUTORY CONSIDERATIONS

There are no changes to the proposal and accordingly the statutory consideration of the proposal as outlined in detail in the original assessment report provided to the Panel dated 28 June 2021 remains relevant.

4. REFERRALS AND SUBMISSIONS

The development application has not been referred to any other agencies or experts beyond those outlined in the original assessment report dated 28 June 2021.

5. KEY ISSUE – Additional Information on Permissibility

The additional information the subject of this supplementary report has been lodged in response to Council's assessment of the permissibility issue. For clarity, this assessment included the following (extracted from the original assessment report to the Panel dated 28 June 2021):

“Residential Accommodation Component

The proposal involves residential apartments on Levels 2 to 6 inclusive for people in need of housing. The SEE states in Section 4.3.2 in relation to the proposed residential component of the development;

4.3.2 Residential

The five levels of residential uses above the Corps Levels, comprise a mix of studios, 2 and 3 bedroom units. The accommodation is intended to house people within the Salvation Army's housing continuum and therefore forms part of its community purpose. This includes a diverse range of users that might be experiencing disadvantage based on need at the time and could include everything from crisis housing for individuals and families through to market rentals. The flexibility is important for the Salvo's to enable it to meet the needs of the community at any point in time whilst also providing on-going revenue to support the community services it provides as a charitable organisation.

The applicant submitted a legal opinion on the permissibility of the proposed residential apartments, which has been considered in detail by Council and the Consulting Planner.

Residential units cannot be characterised as being for infrastructure or a church and community purpose. The units are a type of 'residential accommodation', which may not be included in a 'community facility'. Regardless of the likely people who are proposed to utilise the proposed units, they will be used predominately as places of residence, consistent with the definition of residential accommodation in the HLEP 2012. The proposed units cannot be defined as anything other than being for residential accommodation which is prohibited in the SP2 zone.

It is also not sufficiently apparent how the use of the units as residential accommodation could be sufficiently differentiated from the ordinary understanding of that term and the definition of it in the HLEP 2012 so as to allow them to be permissible on the site as serving a church and community purpose or as being ancillary to that purpose. The application has been submitted on the basis of the proposed residential component being essentially a residential flat building, including in the BASIX Certificate and the references to SEPP 65.

The application also fails to establish in any of the supporting documents (SEE, POM, plans etc) that the proposed residential accommodation will in fact serve a church and community purpose or be ancillary to that purpose. There is nothing to guarantee that the housing would be used for those in need, particularly given there is nothing preventing the owner from selling the units at market value, or renting them at market rent as is referred to in the SEE.

Residential flat buildings, however, are permissible in the adjoining R3 Medium density residential zone. Pursuant to Clause 5.3 of the HLEP 2012, development

consent may be granted for any purpose that may be carried out in the adjoining zone, in this case being the R3 zone, provided that the requirements in Clause 5.3 are satisfied.

The site is surrounded on all boundaries by the R3 zone. Clause 5.3 appears to indicate that any development that is permissible in the R3 Zone may be permissible (assuming compliance with the relevant matters in Clause 5.3) to a depth of 10 metres from each boundary of the site.

It would appear that the central portion of the site would not benefit from this clause which would significantly restrict the provision of this component of the proposal.

Following consideration of the applicant's legal opinion lodged with the application and a further assessment of the HLEP 2012 provisions, Council informed the applicant in the RFI letter dated 4 May 2021 that the proposed residential component is not permissible and that only Clause 5.3 of the HLEP 2012 could provide permissibility subject to compliance with the requirements of Clause 5.3. The options were to either remove the residential component of the proposal or amend that component to be consistent with Clause 5.3.

The applicant attempted to address Council's concerns by proposing various draft conditions of consent relating to a requirement for a Housing for Community Purpose Operational Plan of Management (OPM) and the registration of an Affordable Housing Covenant condition (as a public positive covenant under section 88E of the Conveyancing Act 1919 (NSW)). The applicant considered that this would provide greater certainty that the residential accommodation would be tied to the overarching community purpose component and would therefore be permissible as special purpose – church and community purpose under the SP2 Zoning of the site.

While this additional information from the applicant was considered, it was deemed to be inadequate as the proposed conditions did not overcome the fact that residential accommodation is not permissible in the SP2 zone. This is a fundamental issue for the proposal and accordingly warrants refusal of the application”.

The additional information consisted of correspondence from the Applicant dated 22 July 2021 comprising the following:

- Cover letter from Ethos Urban dated 22 July 2021;
- Legal advice from Holding Redlich dated 29 September 2020 (provided with the original DA); and
- An opinion from Michael Wright of Frederick Jordan Chambers dated 16 July 2021 stating that the proposed residential accommodation component is permissible.

The legal advice from Holding Redlich dated 29 September 2020 was provided with the original development application and was appropriately considered in Council's assessment in the original assessment report (refer to the extract above). The cover letter and legal opinion dated 16 July 2021 is considered below.

The Covering Letter

The issues outlined in this covering letter from Ethos Urban are considered below:

Ethos Urban: Requests that the Panel consider the issue of permissibility at its meeting on 29 July 2021 and to defer the determination of the DA to enable it to work with Council in

relation to the other matters raised.

Consultant Planner comment: At a meeting held on 6 May 2021 with the applicant, it was agreed that it would be unproductive to discuss the other issues given the permissibility issue. The Consultant Planner is of the opinion that the proposed residential component of the proposal is prohibited and therefore there is no benefit in deferring the determination of the DA as recommended in the original assessment report unless significant amendments are made to the proposed residential component (as outlined previously to the Applicant).

Ethos Urban: Council has taken the position that the residential component of the development, that is specifically for housing people experiencing disadvantage, is not a 'community purpose' and therefore is not permissible in the zone.

Consultant Planner comment: The residential component of the proposal is prohibited as it is not for a *church and community purpose* and is also not ancillary to this purpose. It cannot be considered as infrastructure. While the Council supports the important and vital work undertaken by TSA in the Community, it cannot recommend approving a use which is prohibited in the zone.

Ethos Urban: The Salvation Army is very disappointed with Council's position given it is contrary to Council's advice at the pre-DA discussion on 18 September 2020. This Council advice was crucial in supporting their decision to invest over \$150,000 in the preparation of the DA, money that could have been spent on other community programs services. Further, this position is not consistent with the planning and legal advice The Salvation Army have sought and submitted in the DA and accompanying this letter.

Consultant Planner comment: No comment as the Consultant Planner was not in attendance.

Ethos Urban: In our opinion, Council's assessment report fails to adequately justify its position or respond to The Salvation Army's legal advice. These were submitted with the DA, confirming the permissibility of the supported, social and affordable housing within the broader zoning and specifically under the undefined term of a community purpose.

Consultant Planner comment: The permissibility issue is clearly outlined in the original assessment report dated 28 June 2021.

Ethos Urban: As the consent authority, the Panel will need to make a determination in relation to permissibility. To assist the Panel, The Salvation Army sought further legal opinion of Holding Redlich with support of Michael Wright SC, which is attached for the Panel's consideration. The barrister's opinion, with a covering letter prepared by Holding Redlich, clearly concludes that the residential component is permissible.

Consultant Planner comment: The legal opinion dated 16 July 2021 is considered below, however, it is concluded that this advice is essentially the same as the initial legal advice provided with the development application, which is contrary to Council's advice.

Ethos Urban: The Salvation Army recognise and wish to respond to the other issues raised by Council in relation to the DA. The Salvation Army is prepared to work with Council in relation to these matters but given the threshold nature of the permissibility issue, it needed a direction from the Panel before it could invest further funds in to resolving the other matters raised by Council. Accordingly, we request that the Panel consider the issue of permissibility at its meeting on the 29 July 2021 and then defer the determination of the DA to enable it to work with Council in relation to the other matters. We note that any feedback in relation to

these other issues from the Panel to assist the Salvation Army and Council in that process would also be welcome.

Consultant Planner comment: Refer to the comments outlined above.

This cover letter does not raise any new information which has not already been considered in the original assessment report.

Legal Opinion from Michael Wright of Frederick Jordan Chambers dated 16 July 2021

The legal opinion from the Senior Counsel raised similar points which were included in the Holding Redlich advice. The following observations are made:

- Paragraph 4 & 5 - This advice is contingent on the DA being amended as outlined in paragraphs 4(b), (d) and (f) and 5. This point is not made clear in either of the covering letters (from Ethos or Holding Redlich) and such amendments have not been made (despite the applicant having the opportunity to do so prior to the report being prepared). It is considered however, that such amendments would not affect the prohibited nature of the proposed residential development.
- Paragraph 6 & 7 – This describes the nature of TSA as a charitable organisation which is not disputed.
- Paragraphs 8 to 14 & 16-17 – This describes the DA as lodged and is not disputed.
- Paragraph 15 – This notes that the proposal does not involve strata subdivision and then states that *“this reinforces the integrated nature of the proposed development and a single mixed used facility”*. However, it is noted that strata subdivision can be complying development pursuant to Part 6 of the Codes SEPP.
- Paragraphs 18 to 24 - This describes the site and zoning and is not disputed.
- Paragraph 25 to 32 – This describes the meaning of *church and community purpose* and is largely not disputed. In particular, it is agreed that TSA is a non-profit community organisation that pursues the physical, social, cultural or intellectual development or welfare of the community (Paragraph 30). As outlined above, the Council does not dispute the vital services that TSA provides.
- Paragraph 33 – This again refers to the *“assumptions”* which when referring back to paragraph 4 means that the DA has been amended. This is not the case. Also, this paragraph asserts that *“the provision of accommodation is central to the fulfilment of the Salvation Army’s Christian mission”*. There is currently no residential accommodation provided on the site or known to have been provided on the site previously.
- Paragraph 34 – It is not agreed that the residential component of the proposal can be considered to be infrastructure nor is it consistent with the objectives of the zone as outlined in the original assessment report.
- Paragraph 35 – This outlines case law and principles for characterisation. It is also noted that while the advice states that the level of generality does not need to be too detailed, yet without this the proposal is purely for residential development.

- Paragraph 36 & 37 – This states that an appropriate level of generality is needed in relation to characterising the use and that each of the components of the proposal do not have to be individually considered. However, each of the proposed components have been considered in the original assessment report and were found to be ancillary to the main purpose which is *church and community purpose*, with the exception of the proposed residential accommodation component. This is consistent with the approach in the advice provided by Council. Refer to **Table 1**.
- Paragraphs 38 & 39 – This states that the designation of land of *church and community purpose* is to reflect TSA's historical use of the site; however, this has not included residential development in association with the TSA's current use of the land. The Council's advice is that the proposed residential component does not fall within the designation of *church and community purpose*.
- Paragraph 40 – This states that the characterisation of the use is a matter of fact and degree and that even though the residential component of the development does not form part of the existing or historical uses on the site, *the provision of accommodation services is central to the fulfillment of the Salvation Army's benevolent purposes. Providing those services in the proposal is reasonably viewed as a logical extension and fulfillment of its community purpose*. As outlined above, it is considered that TSA can provide significant community services without the provision of residential apartments as proposed.
- Paragraph 40 – The advice concludes that the proposed mixed use facility:
 - *is capable of being characterised as "church and community purpose" taking into account all elements of the proposal including the provision of residential accommodation.*
 - *As to ancillary use, the provision of residential accommodation is one element of the proposed mixed development..... the residential component should not be regarded as an independent use as it subserves the provision of the Salvation Army's services. Whilst it is always a question of fact and degree, the unique nature of the Salvation Army, its historical use of the site and the nature of the nominate permissible land use all suggest that the residential component is subordinate to the purpose which inspires its use of the site.*

It is considered that following the advice from Council that the proposed residential accommodation component cannot be considered to be for a *church and community purpose* and also cannot be considered to be ancillary to *church and community purpose*.

Table 1: Components of the Proposal (Source: Original Assessment Report, 28 June 2021)

Component/USE	Categorisation (& DEFINITION)	Permissible
Worship hall (ground floor) - Church	place of public worship <i>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;</i>	Yes (Church)
Café (ground floor) - providing refreshments to	food and drink premises <i>premises that are used for the preparation and retail sale of food or drink (or both) for</i>	Only as an ancillary use to the dominant use for community purposes

people on site as well as training opportunities for people seeking future employment	<p><i>immediate consumption on or off the premises, and includes any of the following—</i></p> <p>(a) <i>a restaurant or cafe,</i></p> <p>(b) <i>take away food and drink premises,</i></p> <p>(c) <i>a pub,</i></p> <p>(d) <i>a small bar.</i></p> <p>Note— <i>Food and drink premises are a type of retail premises—see the definition of that term in this Dictionary</i></p>	<p>(which has yet to be established by the Plan of Management).</p> <p>An amended Plan of Management would be required to clearly link this use to the Church and Community Purpose use.</p>
Office (ground floor reception & offices) - administration purposes for TSA	<p>Office Premises means <i>a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.</i></p> <p>Note— <i>Office premises are a type of commercial premises—see the definition of that term in this Dictionary</i></p>	<p>Only as an ancillary use to the dominant use for community purposes (which has yet to be established by the Plan of Management).</p> <p>An amended Plan of Management would be required to clearly link this use to the Church and Community Purpose use.</p> <p>Relevant conditions of consent will also need to be imposed.</p>
Activity room (first floor) - activities including training, bible studies, mini musos, after school activities, financial assistance meetings, counselling services and other community services	<p><i>Community purposes</i> (not defined in the HLEP 2012 or the EP&A Act).</p> <p>community facility means <i>a building or place—</i></p> <p>(a) <i>owned or controlled by a public authority or non-profit community organisation, and</i></p> <p>(b) <i>used for the physical, social, cultural or intellectual development or welfare of the community,</i></p> <p><i>but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.</i></p>	<p>Yes</p> <p>(considered to satisfy 'community purposes' of the Infrastructure zone given it provides services for the social development and welfare of the community by a non-profit community organisation)</p>
Community/Meeting rooms (first floor) - small group meetings, community assistance and small teaching and assistance classes	<p><i>Community purposes</i> (not defined in the HLEP 2012 or the EP&A Act)</p>	<p>Yes</p> <p>(considered to satisfy 'community purposes' of the Infrastructure zone given it provides services for the social development and welfare of the community by a non-profit community organisation)</p>
Residential apartments – accommodation for those in need	<p>Residential flat building means <i>a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling</i></p>	<p>No</p>

	<i>housing.</i> Note— <i>Residential flat buildings are a type of residential accommodation—see the definition of that term in this Dictionary.</i>	
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6. CONCLUSION

This additional information has been considered; however, following a thorough assessment, it is considered that the proposed residential accommodation component of the proposal cannot be supported. The recommendation for refusal of the application remains valid.

7. RECOMMENDATION

That Development Application DA 2020/0387 for demolition of existing buildings and construction of a new multi-storey mixed use facility for church and community purposes including residential accommodation at No 23 Dalcassia Street, Hurstville (Lot 1 DP 586989) be REFUSED pursuant to Section 4.16(1)(b) of the *Environmental Planning and Assessment Act 1979* subject to the reasons for refusal as outlined in the original assessment report to the Panel dated 28 June 2021.

The following attachments are provided:

- Attachment A: Correspondence from Ethos Urban dated 22 July 2021 and associated attachments

04/05/2021

Salvation Army (Nsw) Prop Trust
Po Box A435
SYDNEY SOUTH NSW 1235

Dear Sir/Madam

Development Application No: DA2020/0387
Property: 23 Dalcassia Street HURSTVILLE NSW 2220
Legal Description: Lot 1 DP 586989
Proposed Development: Demolition works and construction of a new multi-storey mixed use facility for church and community purposes. The application will be determined by the Sydney South Planning Panel.

I refer to the abovementioned development application for the subject premises.

Following an assessment of your application and having regard to the *Hurstville Local Environmental Plan 2012* ('HLEP 2012') and *Hurstville Development Control Plan 1* ('HDCP 1'), you are advised that the application submitted requires a number of matters be addressed so as to enable Council to continue assessment of your proposal.

The following deficiencies have been identified and shall be submitted to Council to allow proper consideration of your application. Please note, the application has been advertised/neighbour notified but may need to be re-notified in accordance with Council's DCP once the requested information identified below is submitted:

1. Permissibility

The permissibility of the proposal has been further considered by Council. The proposed 'place of worship' (worship space on the ground floor) is clearly within the definition of a *church* and accordingly, this proposed use is permissible in the zone. However, the proposed use of the other components of the proposal are not permissible in their own right and require further consideration as outlined below.

a) **Café & office** – The proposed café and office uses on the site do not

serve a *church and community purpose* as their dedicated use for this purpose is not established by the Plan of Management ('POM') that accompanies the application. Accordingly, such uses are not permissible in the SP2 zone in their own right as currently proposed.

This issue of permissibility for the proposed café and offices can be resolved through appropriate amendments to the application, in particular to the POM and by conditions of consent (if consent were to be granted) to control the use of these components of the proposal so that they are required to serve a *church and community purpose* or as ancillary to that purpose following any potential grant of consent. Therefore, the POM is required to be amended to clearly link these elements to the *church and community purpose* or ensure that these uses are clearly ancillary to that use. The use of the proposed office must demonstrate it is to be used for, or ancillary to, a *church and community purpose*. The café, which is stated as being used for training for unskilled workers and to serve members of the Church and the community, rather than to operate as a profitable venture, may be consistent with the *church and community purpose* requirement or ancillary or subordinate to that purpose and permissible on the site.

The amendments to the POM must be provided for these components of the proposal to be permissible.

- b) **Residential accommodation** – Residential accommodation is not permissible in the SP2 zone and cannot be considered to be ancillary to a *church and community purpose*. The proposed residential units also are inconsistent with the objectives of the infrastructure zone and cannot be considered to be infrastructure. The proposed units cannot be defined as anything other than being for *residential accommodation* which is prohibited in the SP2 zone.

Residential flat buildings, however, are permissible in the adjoining R3 Medium density residential zone. Pursuant to Clause 5.3 of the HLEP 2012, development consent may be granted for any purpose that may be carried out in the adjoining zone, in this case being the R3 zone, provided that the requirements in Clause 5.3 are satisfied.

The site is surrounded on all boundaries by the R3 zone. Clause 5.3 appears to indicate that any development that is permissible in the R3 Zone may be permissible (assuming compliance with the relevant matters in Clause 5.3) to a depth of 10 metres from each boundary of the site. The applicant may elect to seek further legal advice to confirm the extent of the site to which Clause 5.3 may apply these circumstances (it would appear that the central portion of the site would not benefit from this clause which would significantly restrict the provision of this component of the proposal). The decision to amend or remove this component of the proposal needs to be made by the applicant, having regard to the requirements of Clause 5.3 of the Hurstville LEP 2012.

2. Urban Design

It is considered that the current scheme requires adjustments to the overall built form to achieve a more sympathetic response to the existing and desired future context and a better urban design outcome. The urban design issues which require further consideration and amendments to the proposal include the following:

- a) **Building facades** - The current design presents a large portion of blank wall facades on the upper levels facing Bond (south) and Dora Streets (west) and to the east elevation. This fails to contribute positively to the existing streetscape character, and reduces passive surveillance and visual interest to the public domain. The following changes are required:
 - (i) Incorporate larger window openings on the southern and western elevations with the main balconies orientated towards the streets as well as high-quality materials/architectural design to the side elevation;
 - (ii) Incorporate more horizontal façade elements to break up its verticality, achieving a more balanced composition, as the proposed façade design presents a strong sense of verticality, which contributes to its perceived scale.
 - (iii) Incorporate a more defined podium base on the north elevation through expressed horizontal elements and a balanced solid and void pattern to mitigate the perceived scale and height of the podium.
- b) **Building Height** - The proposal presents a 7-storey mixed-use development with an additional level of roof structure on top (total height of 28.8 metres). A reduction in the maximum building height to 5 to 6 storeys at the intersection of Bond and Dora Streets, transitioning down to 4 storeys towards the northern and eastern portion of the site is required to achieve a better scale transition from the town centre area to surrounding residential areas.
- c) **Setbacks** - Greater setbacks are required for the Bond and Dora Street frontages to align with adjoining development and having regard to the minimum 6 metre setback to primary streets under the DCP. The nil front setbacks for the podium levels to the street corner are acceptable, as it provides increased opportunity for street activation. The proposed setbacks must align with the existing developments as outlined in **Figure 1**.

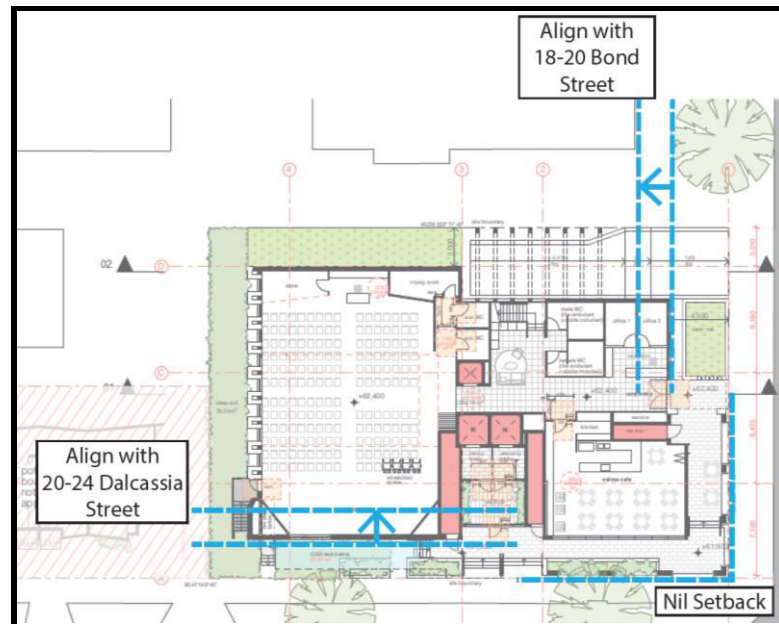


Figure 1: Proposed Setbacks (Source: GMU Urban Design and Architecture, 17/12/20)

- d) **Vehicular entry** - The basement driveway is exposed along the eastern boundary which presents a poor outcome resulting in adverse impacts to surrounding public and private domain areas. To meet ADG guidelines (Part 3H-1), prevent visual dominance and to provide more deep soil landscape screening along the common boundary, the driveway is recommended to be incorporated within the built form and integrated into the composition of the front façade.
- e) **Internal Layout** - The fire stairs end within the lift lobby on the ground floor, which is a safety concern that must be addressed in accordance with the NCC requirements.
- f) **Other ADG issues** - The following ADG issues also require further resolution:
 - (i) There is a shortfall of around 110m² of communal space for the site (Part 3D of the ADG), more communal open space is required;
 - (ii) There are insufficient dimensions on the plans to ascertain compliance with the living and bedroom room size controls for apartment design layout requirements and the two (2) bedroom units contain three (3) bedrooms with no main bathroom (Part 4D of the ADG); and
 - (iii) There is a general lack of information in relation to the balcony dimensions, particularly the depth of balconies for the two (2) and three (3) bedroom units (Part 4E of the ADG).

3. Bulk and scale

The bulk and scale of the proposal is not supported. The area to the immediate north, north-west and east of the site is characterised by 3-4 storey residential flat buildings while the area to the south and south-west comprising largely 8 storeys buildings within in the B4 Mixed Use zone of the Hurstville town centre. A bulk and scale more compatible with the 12 metre height and FSR of 1:1 development standards proposed for the site under the Draft LEP 2020, and the existing prevailing character of the surrounding residential area, is required (also refer to Issue 2).

4. Site isolation (of lot facing Dalcassia Street)

The proposed two (2) lot subdivision results in a new lot facing Dalcassia Street which has a total site area of only 594m² with a lot width of only 14.77 metres. This is an undersized allotment within the context of the surrounding medium to high density residential developments surrounding the site.

The following concerns are raised:

- a) The Draft LEP 2020 proposes a minimum lot size of 1000m² and a rezoning to R4 High Density Residential for the site. Such zoning and lot size changes, coupled with a new height limit of 12 metres and a maximum FSR control of 1:1, identifies this site for future residential flat and/or mixed use development (among other uses). Such development types ordinarily require a large area of land to provide the necessary facilities (and for viability reasons). This is unlikely to be achieved on a site as currently proposed.
- b) The proposed subdivision is likely to result in an isolated allotment given the site is a corner lot and the adjoining lot to the east at 19-21 Dalcassia Street contains a strata titled residential flat development containing six (6) apartments.
- c) A schematic design which demonstrates how the isolated site may be developed in the future is required by the DCP.

Accordingly, further consideration of the proposed subdivision is required as it is currently not supported.

5. Traffic and Car Parking

There are a number of fundamental car parking and traffic issues that need to be addressed in the form of significant amendments to the proposal and a revised Traffic and Parking Report. These issues include the following:

- a) **Proposed Scale** – The Traffic Report does not reference the Plan of Management, which is critical with respect to the operation of the site and associated changes in patronage profiles over a typical week and

corresponding parking demand changes. Further concerns include:-

- (i) There is no indication as to when services or events occur, the duration of services or events and the expected patronage associated with each service or event. These activities may have an impact upon parking conditions or traffic conditions during the AM or PM peak hour periods. This schedule should be assessed with respect to traffic to ensure that weekday events do not significantly impact the peak hour traffic conditions of the surrounding roads;
- (ii) It is unclear if the residential portion of the proposal is associated with the Community Use / Place of Worship or if they are separate. If the occupants of the residential portion are unknown, then it should be assessed independent of the community / Place of Worship use of the site.
- (iii) The Traffic Report does not adequately outline the baseline structure and patronage / parking demand of existing operations in order to undertake a robust comparison to the future operations.

- b) **Traffic Generation** - The traffic generation of the proposal has not been adequately determined in the Traffic report. No assessment has been made on the traffic impacts associated with daily operations of the site, particularly those that effect the AM and PM commuter peak periods. The report relies on TfNSW AADT data from counter locations remote from the site and from 'site observations' with no date or time, assumed to be conducted by the traffic consultant.

As such, the existing traffic environment has not been adequately assessed, with the data provided in the Traffic report unable to be relied upon to robustly support the external traffic and parking impact of the proposed development. Traffic modelling is required, including traffic generation rates for the proposed café.

- c) **Car and motorbike/bicycle parking** - The proposal provides insufficient car parking as outlined below:

- (i) **Retail** - does not utilise the correct car parking rates for the retail/café component (DCP controls requires 15 spaces for the café located outside the business and industrial zones; not 3 spaces as proposed);
- (ii) **Residential components** - the site is not located in the Hurstville City Centre and is therefore not located within a *metropolitan centre* as outlined in the ADG (Part 3J). Accordingly, the residential and associated visitor car parking requirement has been underestimated (the site is within a subregional centre with different parking requirements) and there is a shortfall in this parking of approximately 3 spaces;
- (iii) **Place of Worship** - does not allocate parking to satisfy the car parking requirements (DCP requires 26 spaces, only 20 provided);
- (iv) **Motorbike and bicycle parking** - The report fails to outline and assess the bicycle and motorcycle requirements of the proposal. The proposed bicycle parking on the lowest basement level is also considered to be impractical.

The Traffic report fails to outline, justify or explain the shortfall, as such the parking allocation requires revision to satisfy the relevant DCP and SEPP 65 requirements (ADG) or justify any departures sought by the application.

- d) **Loading and servicing** – The proposal does not provide any spaces for service/loading/courier vehicles for the retail/café and

office/meeting/activity rooms. There is limited on-street car parking in the vicinity of the site as a result of the proximity to the surrounding town centre and accordingly, this needs to be further addressed;

- e) **Vehicle access** - The design of the access arrangement and car parking areas have not been assessed for compliance with *AS2890.1:2004*. Most notably, the width of access ramps, non-compliant pedestrian sight lines and provision of a one-way ramp between ground and basement 1 and its impact upon queuing are unacceptable. The combined entry and exit driveway to the site on Bonds Road is required to be a minimum of 5.5 metres from kerb to kerb for the first 6 metres from the boundary, and a swept path diagram of a B85 passing a B99 at the vehicular access will need to be submitted;
- f) **Internal vehicle circulation** - The report fails to provide swept path testing of critical areas and how internal vehicle circulation will be managed during peak service times to ensure efficiency within the car park. Additional information is also needed in regards to the waiting bay and STOP line proposed in the upper basement plan;
- g) **Car park design** – The Traffic Report does not comment on the compliance of the car parking design to the relevant Australian Standards, with the exception of internal circulation (which is not properly assessed) with limited dimensions on the plans in order to ensure compliance. The design of car park should be as per the relevant clauses of *AS2890.1:2004*, including car parking space dimensions, aisle widths, column locations, clearances, blind aisle extensions and the like. The Traffic report also fails to detail how the car park will operate during peak service times. A Traffic Management Plan is required in order to direct visitors of the Place of Worship during peak service times to ensure efficient operations within the car park due to its constrained layout and to close the car park when all spaces are occupied.

6. Acoustic Impacts

Council engaged a consultant Acoustic Engineer to peer review the Acoustic Report submitted by the applicant, which concluded that the submitted Report was unsatisfactory as a result of the following:

- a) The methodology, noise levels used for calculation purposes and assumptions are not satisfactory for the assessment of noise for this type of development. The report did not show any type calculations or resulting noise levels at the sensitive receivers. Accordingly, it was considered that compliance with Council's and NSW EPA's *Noise Policy for Industry* ('NPfI') requirements could not be verified.
- b) The noise emissions assessment from the site must be based on detailed, substantiated noise source levels of the activities taking place at the site while operating simultaneously. Specific scenarios must be presented for each use as recommended in the peer review report.
- c) The resulting noise levels from the use of the site must be compared to NPfI's criteria, including sleep arousal (if applicable);
- d) A new road traffic noise assessment must be carried out. Traffic noise logging must be carried out at a suitable location(s). The measured traffic noise levels derived from the noise survey must

be processed in accordance with the EPA's *Development in Rail Corridors and Busy Roads – Interim Guideline*.

- e) The noise control recommendations must be reviewed and updated once the new noise assessment has been carried out to reflect the new findings and changes as required

These fundamental acoustic issues need to be addressed by the applicant in the form of a revised Acoustic Report which assesses whether the proposal complies with the Council's requirements.

7. Waste Management

The Waste Management Plan ('WMP') has been reviewed by Council's Waste Officer and the following concerns were raised:

- a) The method for transporting waste to the central storage area from each unit/floor is not provided. Separate waste streams must be stored in separated MGB's and transferred to the central bin storage area by an onsite building manager or similar (two days' worth of waste can be stored on each floor). It is unacceptable for residents to transport loose/unbagged waste/ recycling likely to cause spills through stairwells and/or lifts from each occupied level to the basement bin storage area.
- b) The bin storage area should be provided on the ground floor (and not the upper basement) to reduce the need for unsightly large volumes of bulky waste being presented on the kerbside and reduces the need for waste to be moved from the basement to the kerbside by the building manager;
- c) There is no bulky waste storage area provided (separate 4m² areas for residential and commercial/retail components are referred to in the WMP);
- d) There is no provision for the management of garden organic waste;
- e) The applicant proposes waste collection services by private waste contractor. However, Council is required to levy fees and charges for the residential component of the proposal so it is more appropriate for on-going operation of the site that the residential properties receive a Council waste collection service, designed in accordance with Council's controls.
- f) Separate (lockable) bin storage areas are required for the commercial/community uses and residential uses of the site.

These matters need to be addressed by the applicant in the form of a revised Waste Management Plan.

8. Tree Removal

A *Callistemon salignus* tree (White Bottlebrush and noted as Tree 5 in the Arborist's report) is located on the adjoining site to the east (No 18-20 Bond Street), in close proximity to the subject site's eastern boundary. This tree has a TPZ of 5.4 metres according to the submitted Arborist's report and is located close to the proposed basement which has the potential to significantly affect the future viability of this tree on

the adjoining site (the basement will encroach almost entirely into the TPZ).

Further Arborist advice is required to address the potential impacts on this tree. Changes to the layout and location of the basement are likely to be required based on this further Arboricultural and adjoining owner advice.

9. Stormwater Management

The Stormwater Drainage Plan has been reviewed by Council's Development Engineer and the following concerns were raised:

- a) Stormwater and OSD documentation check list as per Appendix-1 of Council's Stormwater Management Policy (SMP) shall be completed by a qualified registered engineer (current NER in Civil Engineering) and be submitted;
- b) Finished ground levels would need to be clearly shown in the drainage plans in addition to pits' surface levels and consistent with landscaping plan;
- c) Driveway entry finished pavement level at Bond Street property boundary should be raised to minimum RL 63.270 in order to prevent street runoff entering directly to the basement;
- d) Basement pump sump capacity is currently provided as 5.5m³, however, this needs to be increased to 10.0m³ minimum (3.0m x 3.0m x 1.1m) given the proposed four basement levels and incorporating subsoil drainage seepage collection (noting there are two pumps to be installed in the sump);
- e) Internal drainage system long section with HGL analysis leading to boundary pit is to be submitted for internal drainage performance;
- f) Provide long section of proposed new 375mm RCP from boundary pit to proposed new street pit and then to the nearest downstream pit. Hydraulic Grade line Analysis must be from the proposed Kerb Inlet Pit to nearest downstream Kerb Inlet Pit.

Please be advised that your application has been referred to the relevant assessment officers for specialist comment and assessment. As such, further information may be required subsequent to this letter.

You are requested to provide the abovementioned information within **twenty one (21) days** from the date of this letter, in order to provide Council with sufficient information to give proper consideration to your application.

The requested information must be submitted in accordance with Council's requirements for electronic lodgement and emailed to mail@georgesriver.nsw.gov.au quoting the DA number in the subject field.

<http://www.georgesriver.nsw.gov.au/StGeorge/media/Documents/Development/Fact-Sheet-DA-Electronic-Lodgement.pdf>

You are advised that no further processing of your application will be undertaken pending receipt of the above listed information. If the requested information is not

provided or the matters identified insufficiently addressed, Council will determine the application based on the documentation available.

Alternatively, in the event that you do not wish to proceed with the application, you are requested to withdraw the application in writing, for which you may be refunded a percentage of the submitted development application fees.

For any further information regarding this matter please contact Linley Love on 9330-6400 during normal business hours.

Yours faithfully

A handwritten signature in black ink, appearing to be 'Linley Love', with a stylized, cursive-like script.

Linley Love
Senior Development Assessment Planner