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| **COUNCIL ASSESSMENT REPORT**Choose an item. PLANNING PANEL  |

|  |  |
| --- | --- |
| PANEL REFERENCE & DA NUMBER | [Panel Ref Number] – [DA#]  |
| PROPOSAL  | [brief description] |
| ADDRESS | Lot ## DP ## [Street Address] |
| APPLICANT |  |
| OWNER |  |
| DA LODGEMENT DATE |  |
| APPLICATION TYPE (DA, Concept DA, CROWN DA, INTEGRATED, DESIGNATED) |  |
| REGIONALLY SIGNIFICANT CRITERIA | Clause ##, Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* : [type]  |
| CIV | $#### (excluding GST) |
| CLAUSE 4.6 REQUESTS  | [Nominate the relevant LEP/SEPP Clause to be varied and zoning] |
| KEY SEPP/LEP | Housing SEPP, Biodiversity and Conservation SEPP, LEP |
| TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS |  |
| DOCUMENTS SUBMITTED FOR CONSIDERATION | [Plans, reports, Clause 4.6] |
| SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24) |  |
| RECOMMENDATION | Approval/Refusal/Deferred Commencement/Partial consent |
| DRAFT CONDITIONS TO APPLICANT | [YES] [NO] [N/A] |
| SCHEDULED MEETING DATE | Select Date |
| PLAN VERSION | Select Date Version No  |
| PREPARED BY |   |
| DATE OF REPORT | Select Date |

**[Red text – complete and/or delete]**

**[Green text – examples for reference; delete once completed]**

**EXECUTIVE SUMMARY** [approx. 2 pages] [best to prepare this last after completing the report]

* Brief outline of proposal and its characterisation (its definition and permissibility)
* Brief outline of site
* Brief outline of history of application if significant delays)
* Key issues (urban design, density, compatibility with the area etc as bullet points if there are several)
* Key concerns from agencies, community etc (bulk and scale, bushfire)
* Pre-conditions/jurisdictional prerequisites satisfied (prior to the grant of consent)? (i.e. Section 4.6 of SEPP (Resilience & Hazards); Clause 4.6(4) of therelevant LEP or satisfactory arrangement clauses) – listed and relevant recommendations summarised,
* How issues were resolved (briefly – through amendments, conditions)
* Consistent with or contrary to the Public interest??
* Recommendation – 1-2 lines (approval/refusal/why??) including approval from Crown to impose conditions where required
* Summary of s4.15(1) matters

The development application (DA ###) seeks consent for the demolition of existing buildings, the construction of a seven (7) storey mixed use building to be used by ### for church and community purposes (ground and Level 1) with upper-level residential accommodation for people in need, associated landscaping and stormwater infrastructure and a Torrens title subdivision to create a new lot to ### Street (‘the proposal’). The church and community uses facility is proposed for meetings and activities for the community serviced provided by ###.

The subject site is known as #### (‘the site’) and comprises a corner lot with three (3) road frontages including ### to the west, ## Street to the south and ### to the north. The site is located between ### 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 ## Street and ## Street.

Existing development on the site consists of a number of buildings, with the main building comprising a two-storey rendered building on the corner of Dora Street and Bond Street currently used as a ‘Corp’ (a place of worship). Several single storey buildings also exist on the site, currently used as part of ### activities.

The site is located in an area of transition from the high density and multi use buildings of the Hurstville City Centre, located approximately 150 metres to the south (6-8 storeys), to the predominantly low to medium density residential devleopment area which surrounds the site to the north, east and west (3-4 storeys). This area comprises predominantly three (3) to four (4) storey residential flat buildings with ground level car parking.

The site is located in the SP2 – Infrastructure zone (Church and Community Purposes) pursuant to Clause 2.2 of the *### Local Environmental Plan 2012* (‘LEP 2012’). While demolition, subdivision and the construction of a building for church and community purpose is permissible with consent in the SP2 zone, the proposed residential development is prohibited, a fundamental issue which requires refusal of the application.

The principle planning controls relevant to the proposal include *State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development* (‘SEPP 65’)*,* the *### Local Environmental Plan 2012* and the *#### Development Control Plan No.1* (‘DCP’). The proposal is inconsistent with various provisions of the planning controls including:

* Design quality principles of SEPP 65 including Principle 1: Context and neighbourhood character**,** Principle 2: Built form and scale, Principle 3: Density and Principle 9: Aesthetics;
* Provisions of the ADG including a shortfall in communal open space of 110m² (Part 3D), inappropriate vehicle access (Part 3H), car parking shortfall (Part 3J), insufficient dimensions to ascertain compliance with apartment design layout (Part 4D) and balcony (Part 4E) requirements, lack of adequate facades (Part 4M) and uunsatisfactory arrangements having been made for water management & conservation (Part 4V) and waste Management (4W);
* The proposed residential component being prohibited pursuant to the HELP 2012;
* An exceedance of 16.8 metres in building height and 1,671.05m² of gross floor area if the proposed development standards of the Draft LEP 2020 were to be adopted for the site; and
* Inconsistences with Parts 3.1 and 3.7 for car parking and stormwater management respectively under the HDCP;
* The proposal is considered to be contrary to various objects of the EP&A Act (orderly and economic development of land) and is contrary to the public interest given it is inconsistent with various planning controls;
* The proposal also fails some of the matters for consideration under Section 4.15(1) of the EP& A Act in relation to potential adverse impacts to surrounding area due to urban design and bulk and scale.

There were no concurrence requirements from agencies for the proposal and the application is not integrated development pursuant to Section 4.46 of the *Environmental Planning and Assessment Act 1979* (‘EP&A Act’)*.* A referral to Ausgrid pursuant to *State Environmental Planning Policy (Transport and Infrastructure) 2021* (‘Transport and Infrastructure SEPP’) and Sydney Airport Corporation pursuant to Clause 6.9 of the LEP 2012 were sent and raised no objections. NSW Police were also consulted with recommended conditions of consent being provided.

Jurisdictional prerequisites to the grant of consent imposed by the following controls have been satisfied including:

* Section 4.6 of the Transport and Infrastructure SEPP for consideration of whether the land is contaminated;
* Clause 28(2)(a) of SEPP 65 in relation to advice of any design review panel have been satisfied; and
* Section 2.48(2) of the Transport and Infrastructure SEPP in relation to electricity distribution pole.

The application was placed on public exhibition from 21 October 2020 to 18 November 2020, with three (3) submissions being received. These submissions which raised issues relating to building height, streetscape and site context, views, residential use in an infrastructure zone, overdevelopment, and potential acoustic, privacy and overshadowing impacts. Traffic congestion and access points, potential alternative locations for the development and the apartment mix were also raised. These issues are considered further in this report.

The application is referred to the Sydney South Planning Panel (‘the Panel’) as the development is ‘*regionally significant development’*, pursuant to Section 2.19(1) and Clause (5)(b) of Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is development for *community facilities* and a *place of public worship* with a CIV over $5 million.

A briefing was held with the Panel on 11 March 2021 where key issues were discussed, including zoning and permissibility of the proposed residential component, the exceedance of the Draft LEP development standards of height and FSR, SEPP 65 design concerns as well as ADG non-compliances including unit sizes, balcony sizes and communal open space. The proposed subdivision and potential for site isolation, potential heritage impacts and social impacts, potential traffic and car parking issues, noise impacts and inadequate arrangements for waste management were also raised.

The key issues associated with the proposal included:

1. *Permissibility* - 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*.
2. *Urban Design* - The proposed built form does not achieve a sympathetic response to the existing and desired future context, and the building facades fail to contribute positively or provide visual interest to the existing streetscape character. Front setbacks are insufficient and the basement driveway presents a poor outcome resulting in adverse impacts to surrounding properties and the streetscape. A shortfall of proposed communal space and insufficient dimensions to ascertain compliance with apartment layout and balcony dimensions are further issues.
3. *Bulk and Scale* - The bulk and scale of the proposal is incompatible with the existing prevailing character of the surrounding residential area and the future development standards proposed for the site under the Draft LEP 2020.
4. *Site Isolation* - The proposed two (2) lot subdivision results in a new lot with a total site area of 594m² and width of 14.77m, which is a small allotment within the context of the surrounding medium to high density residential developments.
5. *Traffic and Car Parking* - There are a number of fundamental car parking, vehicle access and traffic issues that have not been adequately addressed by the proposal, including a shortfall in car parking of around 18 car parking spaces (DCP) for the church and community uses and 3 spaces for the proposed residential component (ADG).

Other issues include the inadequacy of the Acoustic Report, Waste Management Plan, tree protection on adjoining sites and the proposed stormwater management provisions for the site.

Following consideration of the matters for consideration under Section 4.15(1) of the EP&A Act, the provisions of the relevant State environmental planning policies, in particular #####, the proposal cannot be supported.

The permissibility issue is a fundamental issue and does not allow the application to be supported. The issues of urban design, bulk and scale and site isolation are also critical issues, but not fatal, as it is possible that design amendments may have resolved these issues in the absence of the permissibility issue. The remaining issues are of a technical nature which, if the permissibility issue could have been resolved, is likely to have been resolved through amendments and/or additional information. These technical issues, along with the other critical issues, are still considered in this report in terms of the acceptability of the proposal as currently presented and accordingly contribute to the reasons for refusal.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA ### is recommended for refusal subject to the reasons contained at **Attachment A** of this report.

1. **THE SITE AND LOCALITY**
	1. **The Site**
* Dimensions (including site area), topography, orientation, vegetation, existing development, adjoining development, street frontages etc
* Special features – heritage, environmental, distance from town centre,
* Location map
* Aerial photograph of site and photos of site
	1. **The Locality**
* Type and scale of existing adjoining and surrounding development
* The context of the site – a low density residential area, town centre location, industrial, rural??
* Other similar developments in the area
* Close to services and/or public transport
1. **THE PROPOSAL AND BACKGROUND**
	1. **The Proposal**
* Description of the proposed development including any demolition, construction work, subdivision, tree removal, excavation and/or land use etc.
* Development data (in table below) – provide the key development data such as GFA, floor space ratio, setbacks and heights, car parking spaces etc to ensure the information is easily identified by the Panel.
* Provide some of the plans/diagrams/perspectives/montages to show the general outline of the proposal and include in Annexures. Refer to the current version of the plans upon which the report is based (a list if required).

**Table 1: Development Data**

|  |  |
| --- | --- |
| **Control**  | **Proposal** |
| Site area |  |
| GFA |  |
| FSR (retail/residential) |  |
| Clause 4.6 Requests | Yes/No – specify  |
| No of apartments |  |
| Max Height |  |
| Landscaped area |  |
| Car Parking spaces |  |
| Setbacks |  |
|  |  |

* 1. **Background**

A pre-lodgement meeting was held prior to the lodgement of the applicant on Select Date where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

* Height and FSR
* Urban Design

The development application was lodged on **Select Date**. A chronology of the development application since lodgement is outlined below including the Panel’s involvement (briefings, deferrals etc) with the application:

**Table 2: Chronology of the DA**

|  |  |
| --- | --- |
| **Date** | **Event** |
| Select Date | DA lodged  |
| Select Date | Exhibition of the application  |
| Select Date | DA referred to external agencies  |
| Select Date | Request for Information from Council to applicant  |
| Select Date | Panel briefing  |
| Select Date | Amended plans lodged [outline main change and discuss outside table if needed) dated Select Date accepted by Council under Cl 38(1) of the *Environmental Planning and Assessment Regulation 2021* (‘2021 EP&A Regulation’) on Select Date.  |
|  |  |
|  |  |
|  |  |

* 1. **Site History (if relevant)**
* Has the site been the subject of a previous/ numerous development proposals?
* Are there any concurrent applications currently being considered?
* Any other important points on site or application history
* Any other relevant information on context of the site e.g. adjacent approvals / applications that the Panel should be made aware of.
1. **STATUTORY CONSIDERATIONS**

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (‘EP&A Act’). These matters as are of relevance to the development application include the following:

1. *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*

*(i)  any environmental planning instrument, and*

*(ii)  any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

*(iii)  any development control plan, and*

*(iiia)  any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*

*(iv)  the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*

*that apply to the land to which the development application relates,*

1. *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
2. *the suitability of the site for the development,*
3. *any submissions made in accordance with this Act or the regulations,*
4. *the public interest.*

These matters are further considered below.

It is noted that the proposal is/is not considered to be (which are considered further in this report):

* Integrated Development (s4.46)
* Designated Development (s4.10)
* Requiring concurrence/referral (s4.13)
* Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided
	1. **Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

1. **Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application [add/delete as required]:

* [*State Environmental Planning Policy (Biodiversity and Conservation) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0722)
* [*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2004-0396)
* [*State Environmental Planning Policy (Housing) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0714)
* [*State Environmental Planning Policy (Industry and Employment) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0723)
* [*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2002-0530)
* [*State Environmental Planning Policy (Planning Systems) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0724)
* [*State Environmental Planning Policy (Precincts—Central River City) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0725)
* [*State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0726)
* [*State Environmental Planning Policy (Precincts—Regional) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0727)
* [*State Environmental Planning Policy (Precincts—Western Parkland City) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0728)
* [*State Environmental Planning Policy (Primary Production) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0729)
* [*State Environmental Planning Policy (Resilience and Hazards) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0730)
* [*State Environmental Planning Policy (Resources and Energy) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0731)
* [*State Environmental Planning Policy (Transport and Infrastructure) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0732)
* *[NAME] Local Environmental Plan [YEAR];*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 3: Summary of Applicable Environmental Planning Instruments**

(put Preconditions in **bold**)

|  |  |  |
| --- | --- | --- |
| **EPI** | **Matters for Consideration***(Brief summary)* | **Comply (Y/N)** |
| State Environmental Planning Policy (Biodiversity & Conservation) 2021  | Chapter 2: Vegetation in non-rural areasChapter 3: Koala Habitat Protection 2020Chapter 4: Koala Habitat Protection 2021Chapter 5: River Murray Lands Chapter 6: Bushland in Urban AreasChapter 8: Sydney Drinking Water CatchmentChapter 9: Hawkesbury-Nepean RiverChapter 10: Sydney Harbour CatchmentChapter 11: Georges River CatchmentChapter 12: Willandra Lakes Region World Heritage Area | Y/N |
| BASIX SEPP | No compliance issues identified subject to imposition of conditions on any consent granted.  | Y/N |
| State Environmental Planning Policy (Housing) 2021 | Chapter 2: Affordable HousingInfill affordable housing, boarding houses, boarding houses – Land and Housing Corporation, supportive accommodation, Residential flat buildings—social housing providers, public authorities and joint ventures, Residential development—Land and Housing CorporationChapter 3: Diverse HousingSecondary dwellings, Group Homes, Co-living housing, build-to-rent housing, Housing for Seniors and people with a disability, short-term rental accommodation, manufactured home estates and caravan parks.  | Y/N |
| State Environmental Planning Policy (Industry and Employment) 2021 | Chapter 2: Western Sydney Employment AreaChapter 3: Advertising and Signage* Section 3.6 – granting consent to signage
* Section 3.11(1) – matters for consideration
 | Y/N |
| SEPP 65 | * Clause 30(2) - Design Quality Principles - The proposal is consistent/contrary to the design quality principles and the proposal is consistent/contrary to the ADG requirements for car parking, communal open space….
 | Y/N |
| State Environmental Planning Policy (Planning Systems) 2021 | Chapter 2: State and Regional Development * Section 2.19(1) declares the proposal regionally significant development pursuant to Clause # of Schedule 6 as it comprises [INSERT DEVELOPMENT TYPE].

Chapter 3: Aboriginal Land (where applicable)* Section 3.8 – consent authority must have regard to matters in section 3.7(2) that are included in a development delivery plan that is applicable to land to which this Chapter applies when determining an application for development consent to carry out development on that land.
* Section 3.10 – declaration as regionally significant development
 | Y/N |
| State Environmental Planning Policy (Precincts—Central River City) 2021 or State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021 orState Environmental Planning Policy (Precincts—Regional) 2021 or State Environmental Planning Policy (Precincts—Western Parkland City) 2021 | Based on geographical location. | Y/N |
| State Environmental Planning Policy (Primary Production) 2021 | * Chapter 2: Primary Production and rural development
* Chapter 3: Central Coast Plateau Areas
 | Y/N |
| SEPP (Resilience & Hazards)  | Chapter 2: Coastal Management * Section 2.7(4) – certain development in coastal wetlands or littoral rainforest on the *Coastal Wetlands and Littoral Rainforests Area Map*
* Section 2.8(1) -Development on land in proximity to coastal wetlands or littoral rainforest
* Section 2.10(1) & (2) - Development on land within the coastal environment area
* Section 2.11(1) - Development on land within the coastal use area
* Section 2.12 - Development in coastal zone generally —development not to increase risk of coastal hazards.
* Section 2.13 - Development in coastal zone generally - coastal management programs to be considered.

Chapter 4: Remediation of Land* Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.
 | Y/N |
| State Environmental Planning Policy (Resources and Energy) 2021 | * Chapter 2: Mining, petroleum production and extractive industries
* Chapter 3: Extractive industries in Sydney Area
 | Y/N |
| State Environmental Planning Policy (Transport and Infrastructure) 2021 | Chapter 2: Infrastructure* Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.
* Section 2.118(2) - Development with frontage to classified road
* Section 2.119(2)   Impact of road noise or vibration on non-road development
* Section 2.121(4) - Traffic-generating development

Chapter 3: Educational Establishments* Section 3.23 - Centre-based childcare facility—matters for consideration by consent authorities

Chapter 4: Major Infrastructure CorridorsChapter 5: Three Ports – Port Botany, Port Kembla and Newcastle | Y/N |
| Proposed Instruments  | No compliance issues identified. | Yes |
| LEP | * Clause 2.3 – Permissibility and zone objectives
* Clause ? - Urban release areas/satisfactory arrangements clauses
 | Y/N |
| DCP  |  | Y/N |

For each SEPP:

* Outline only key points of the SEPP in the table including any pre-conditions, definitions or other threshold tests
* Only provide detailed tables of compliance in the attachments
* Note if permissibility is provided via a SEPP (Seniors Housing, Education SEPP etc);
* Note design review, ADG etc for SEPP 65

[Delete/add SEPPs where required]

Consideration of the relevant SEPPs is outlined below [Outline relevant SEPPs from list and add assessment. Any compliance tables needed should be provided as an attachment].

[*State Environmental Planning Policy (Biodiversity and Conservation) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0722)

[*State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2004-0396)

*State Environmental Planning Policy – Building Sustainability Index BASIX– 2004* (‘BASIX SEPP’) applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1139640M\_02 prepared by Northrop Consulting Engineers Pty Ltd dated 29 September 2020 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

[*State Environmental Planning Policy (Housing) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0714)

[*State Environmental Planning Policy (Industry and Employment) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0723)

[*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2002-0530)

[*State Environmental Planning Policy (Planning Systems) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0724) *(‘*Planning Systems SEPP’)

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause ## of Schedule 6 of the Planning Systems SEPP as the proposal is development for [INSERT DEVELOPMENT TYPE].Accordingly, the [INSERT PANEL NAME] Panel is the consent authority for the application. The proposal is consistent with this Policy.

[*State Environmental Planning Policy (Precincts—Central River City) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0725)*/*[*State Environmental Planning Policy (Precincts—Eastern Harbour City) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0726)*/*[*State Environmental Planning Policy (Precincts—Regional) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0727)*/*[*State Environmental Planning Policy (Precincts—Western Parkland City) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0728)

The site is located at [INSERT LOCATION] and therefore the [INSERT RELEVANT SEPP] SEPP is relevant to the development application.

* [*State Environmental Planning Policy (Primary Production) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0729)
* [*State Environmental Planning Policy (Resilience and Hazards) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0730)

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021 (‘the* Resilience and Hazards SEPP’) have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Preliminary Site Investigation (‘PSI’) has been prepared for the site.

The PSI consisted of a search of historical records and a site walkover. This research found that the main church and storage building have been present and in use on the site since approximately 1919. The administration office was present in 1943 and the demountable Chinese church in 1961. Building extensions/modifications were completed in 1961 for the main church, and 1982 for the administration office. Outside of these changes, the land use has remained the same. The report also notes that aerial photographs show the land immediately surrounding the site has remained predominantly residential.

The potential sources of contamination were considered to be weathering of hazardous building materials such as asbestos, metal flashing and lead based paint as well as fill materials of unknown origin on the front (northern) garden of …….

The report concluded that the site can be made suitable for the proposed community facility/place of worship and residential/crisis accommodation subject to conditions of consent. This conclusion was based on the proposed demolition of the buildings and the excavation of the site for the basement removing fill materials (if present) as well as shallow residual soils and perched water that may have been impacted by the contamination sources identified. This will effectively mitigate the potential health and ecological risks associated with these materials for future use of the site. The proposal is considered to be consistent with SEPP 55, subject to imposition of relevant conditions of consent in relation to remediation works during construction on any consent granted.

[*State Environmental Planning Policy (Resources and Energy) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0731)

[*State Environmental Planning Policy (Transport and Infrastructure) 2021*](https://legislation.nsw.gov.au/view/html/inforce/current/epi-2021-0732)

*[NAME] Local Environmental Plan [YEAR]*

The relevant local environmental plan applying to the site is the *[NAME] Local Environmental Plan [YEAR]* (‘the LEP’). The aims of the LEP include ……… The proposal is consistent/inconsistent with these aims as the proposal ###.

*Zoning and Permissibility (Part 2)*

The site is located within the …. Zone pursuant to Clause 2.2 of the LEP [insert extract of zoning map].

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of [land use] which is a permissible use with consent in the Land Use Table in Clause 2.3. [If proposal is permissible under a SEPP, this should also be referenced here].

The zone objectives include the following (pursuant to the Land Use Table in Clause 2.3):

* *To provide …...*

The proposal is considered to be consistent with these zone objectives for the following reasons:

* ….

*General Controls and Development Standards (Part 2, 4, 5 and 6)*

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below. [The proposal does not comply with the development standard/s in Part 4 of the LEP/Clause ## of SEPP ### and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum INSERT DEVELOPMENT STANDARD].

**Table 4: Consideration of the LEP Controls**

|  |  |  |  |
| --- | --- | --- | --- |
| **Control** | **Requirement**  | **Proposal** | **Comply** |
| Minimum subdivision Lot size (Cl 4.1) | ##m² |  | Yes/No |
| Height of buildings (Cl 4.3(2)) | # metres |  | Yes/No |
| FSR (Cl 4.4(2)) | #:1 (##m²) |  | Yes/No |
| Land acquisition (Cl 5.1/5.1A) |  |  | Yes/No |
| Heritage (Cl 5.10) |  |  | Yes/No |
| Acid sulphate soils (Cl 6.1) |  |  | Yes/No |
| Flood planning (Cl 6.3) |  |  | Yes/No |
| Stormwater Management (Cl 6.4) |  |  | Yes/No |
| [Insert] |  |  |  |

The proposal is considered to be generally consistent/ inconsistent with the LEP.

*Clause 4.6 Request* [Delete if no Cl 4.6]

*The Development Standard to be varied and extent of the variation*

[Outline the development standard, its exceedance, diagram (height plane diagram, section plan etc). Do not cut and paste large expanses of the applicant’s reasons – summarise and provide the salient points of the Clause 4.6]

*Preconditions to be satisfied*

Clause 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Cl 4.6(4)(a) – this includes matters under Cl 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (Cl 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to Cl 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant’s Clause 4.6 request

[Outline the applicant’s justification – salient points and how, if at all, the preconditions are met – use subheadings]

1. **Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

* *Draft XXXX Local Environmental Plan YYYY*
* *Draft Remediation of Land SEPP*
* *Design and Place SEPP*
* *Draft SEPP (Environment)*

These proposed instruments are considered below:

[Insert consideration of any proposed instruments]

The proposal is generally consistent with these proposed instruments.

1. **Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The following Development Control Plan is relevant to this application:

* *[NAME] Development Control Plan [YEAR]* (‘the DCP’)

Summarise the most important controls, list non-compliances/issues/discuss

Detailed tables are to be provided as attachments.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

* *[NAME] S7.11 Development Contributions Plan [YEAR]*

This Contributions Plan has been considered and included the recommended draft consent conditions [Provide information on whether it is applicable etc].

1. **Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

The following planning agreement/s has been entered into under Section 7.4 of the EP&A Act:

* **XXXX**

[Clearly outline the status of any relevant planning agreements – ie adopted/advertised etc]

The applicant has offered to enter into following draft planning agreement/s under Section 7.4 of the EP&A Act:

* **XXXX**

**Or**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

The proposal is consistent/inconsistent with this Planning Agreement as discussed in this report.

1. **Section 4.15(1)(a)(iv) - Provisions of Regulations**

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

* If demolition of a building proposed - provisions of AS 2601;
* If on land subject to subdivision order under Schedule 7, provisions of that order and any development plan;
* Dark Sky Planning Guideline if applicable;
* *Low Rise Housing Diversity Design Guide for Development Applications* (July 2020) if for manor house or multi dwelling housing (terraces);
* If a building for residential purposes on land in Penrith City Centreis proposed, the *Penrith City Centre Development Assessment Guideline: An Adaptive Response to Flood Risk Management for Residential Development in the Penrith City Centre;*
* Development on land to which Wagga Wagga LEP 2010 applies, the*Wagga Wagga Special Activation Precinct Master Plan*(DPE, May 2021);
* Development on land to which Moree Plains LEP 2011 applies, the *Moree Plains Special Activation Precinct Master Plan (DPE,* January 2022).

Section 62 (consideration of fire safety) and Section 64 (consent authority may require upgrade of buildings) of the 2021 EP&A Regulation are [INSERT relevant/not relevant] to the proposal.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

* 1. **Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

* Note – consideration of impacts needs to include those off-site that directly relate to the DA e.g., provision of infrastructure which may require additional vegetation removal or retaining walls on the boundary etc.
* Note – where conditions of consent are recommended to address impacts, these should be cross referenced in this section of the report.
* Note – any technical / specialist reports that are being relied upon should be summarised and the key findings described and conclusions critically analysed in this part of the report. Do not cut and paste large sections of consultant’s reports with no discussion.

The consideration of impacts on the natural and built environments includes the following:

* Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed #### is appropriate as a result of ……regional and local context, scenic qualities?? Character and amenity of the locality and streetscape, scale, mass, form, character etc of surrounding development, potential impacts on adjoining properties (discussed in key issues if significant), previous and existing land uses.
* Access and traffic – The proposed #### ……... traffic and travel demand, public transport options??, parking spaces, traffic generation and capacity of road network?
* Public Domain – does the proposal impact on, and/or improve the public domain?? Is there public open space in the area?? Pedestrian linkages in the area?
* Utilities – are all utilities available at the site??, agency comments (if significant, should be in key issues)
* Heritage – does the site contain or adjoin a heritage item?? Heritage conservation area? State heritage item?? Impacts on heritage values (if significant, should be in key issues)?
* Other land resources – water catchment, mining, agricultural land??
* Water/air/soils impacts - Contamination?
* Flora and fauna impacts - tree and vegetation removal? Threatened species? Biodiversity?
* Natural environment – Any significant changes to the natural contours of the site?
* Noise and vibration – construction and operational impacts? Mitigated with conditions?
* Natural hazards – is the site affected by any natural hazards such as flooding, bushfire and has the hazard been adequately addressed by the proposal (consultant reports and GTAs etc)
* Safety, security and crime prevention – CPTED Principles
* Social impact – health and safety of the community, sense of place, community facilities, interactions between the new development and the community;
* Economic impact – employment generation, existing/future businesses, economic benefits, business investment, anything dedicated to Council that would assist the community (car parking etc)
* Site design and internal design – is the proposal set out appropriately on the site to mitigate potential impacts?
* Construction – have the potential impacts from construction been adequately mitigated in conditions? Are special hours of construction or demolition methods etc warranted for the site?
* Cumulative impacts – will the proposal result in any adverse cumulative impacts? Is it generally consistent with the planning controls etc that it will not result in an adverse cumulative impact?

Accordingly, it is considered that the proposal will/will not result in any significant adverse impacts in the locality as outlined above.

* 1. **Section 4.15(1)(c) - Suitability of the site**
* Does the proposal fit within the locality?
* Is there adequate services, transport infrastructure and open space in the vicinity?
* Is the site affected by any natural hazards (bushfire, flooding, coastal hazards, climate change, land slip) which have not been addressed in the application?
* Are the site attributes conducive to the development?
* Are there any adjoining uses prohibitive of the proposal?
	1. **Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

* 1. **Section 4.15(1)(e) - Public interest**

Is or is not in the public interest?

Potential impacts are mitigated?

Consistency with planning controls

How will the health and safety of the public be affected?

Will provide economic or social benefits?

Is consistent with the regional strategy

Consistency with the *Greater Sydney Region Plan: A Metropolis of Three Cities*

Consistent with the principles of Ecologically sustainable development

Climate change

Om balance the proposal is consistent/contrary to the public interest?

1. **REFERRALS AND SUBMISSIONS**
	1. **Agency Referrals and Concurrence**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

The outstanding issues raised by Agencies are considered in the Key Issues section of this report OR

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 5: Concurrence and Referrals to agencies**

|  |  |  |  |
| --- | --- | --- | --- |
| **Agency** | **Concurrence/****referral trigger** | **Comments** **(Issue, resolution, conditions)** | **Resolved** |
| Concurrence Requirements (s4.13 of EP&A Act) (if none – N/A – to show consideration) |
| Environment Agency Head (Environment, Energy & Science Group within DPIE) | S7.12(2) - *Biodiversity Conservation Act 2016* | The proposal is likely to significantly affect threatened species and accordingly, the proposal has provided a biodiversity development assessment report. This report concluded…… Concurrence has not/has been granted.  | Y/N |
| Rail authority for the rail corridor  | Section 2.98(3) - *State Environmental Planning Policy (Transport and Infrastructure) 2021* | The proposal involves the excavation of ground to a depth of at least 2m below ground level (existing) on land within, below or above a rail corridor. Concurrence has not/has been granted. | Y/N |
| Referral/Consultation Agencies (if none – N/A – to show consideration) |
| RFS | S4.14 – EP&A ActDevelopment on bushfire prone land |  | Y/N |
| Electricity supply authority | Section 2.48 – *State Environmental Planning Policy (Transport and Infrastructure) 2021*Development near electrical infrastructure |   | Y/N |
| Rail authority | Section 2.97 – *State Environmental Planning Policy (Transport and Infrastructure) 2021*Development land that is in or adjacent to a rail corridor. |  | Y/N |
| Transport for NSW | Section 2.121 – *State Environmental Planning Policy (Transport and Infrastructure) 2021*Development that is deemed to be traffic generating development in Schedule 3. |  | Y/N |
| Design Review Panel  | Cl 28(2)(a) – SEPP 65Advice of the Design Review Panel (‘DRP’) | The advice of the DRP has been considered in the proposal and is further discussed in the SEPP 65 assessment and the Key Issues section of this report. | Y/N |
| Integrated Development (S 4.46 of the EP&A Act) (if none – N/A – to show consideration) |
| RFS | S100B - *Rural Fires Act 1997*bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes |  | Y/N |
| Natural Resources Access Regulator | S89-91 – *Water Management Act 2000*water use approval, water management work approval or activity approval under Part 3 of Chapter 3 |  |  |

* 1. **Council Officer Referrals**

The development application has been referred to various Council officers for technical review as outlined **Table 6.**

**Table 6: Consideration of Council Referrals**

|  |  |  |
| --- | --- | --- |
| **Officer** | **Comments** | **Resolved**  |
| Engineering  | Council’s Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.  | Y/N |
| Traffic  | Council’s Traffic Engineering Officer reviewed the proposal and raised concerns in relation to traffic generation and car parking. These issues are considered in more detail in the Key Issues section of this report.  | Refer to key Issues |
| Building |  |  |
| Health |  |  |
| Waste |  |  |
| Public Domain/Assets |  |  |
| Heritage  | Council’s Heritage Officer/Consultant reviewed the submitted Heritage Impact Statement (‘HIS’) prepared for the applicant and concurred with the conclusion of the HIS that there would not be any adverse impacts on heritage values arising from the proposal. It was also recommended that conditions are to be imposed on any consent issued regarding the salvage of materials and building elements, the retention of the commemorative plaques, provision of a photographic archival recording and a Heritage Interpretation Strategy to be prepared. Standard heritage discovery conditions were also recommended. Outcome: Satisfactory subject to standard conditions being imposed on any consent granted (refer to Schedule 1).  | Yes (conditions) |

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

* 1. **Community Consultation**

The proposal was notified in accordance with the DCP/Council’s Community Participation Plan from Select Date until Select Date. The notification included the following:

* An advertisement in the local newspaper [name of publication] (where applicable);
* A sign placed on the site;
* Notification on a website;
* Notification letters sent to adjoining and adjacent properties (a rough estimate of the number of letters sent);
* Notification on the Council’s website.

The Council received a total of ### unique submissions, comprising ## objections and ## submissions in favour of the proposal. The issues raised in these submissions are considered in **Table #** [Table to include issues/themes raised and not individual submissions, indicate whether is/is not a planning consideration and why, submitters list provided as required as an attachment].

**Table 7: Community Submissions**

|  |  |  |
| --- | --- | --- |
| **Issue** | **No of submissions** | **Council Comments** |
| Flooding and stormwaterSubmissions raised concern the development will adversely impact flooding within the locality. | 59 | The application proposes an appropriate stormwater management network which will capture and control discharge of stormwater to the watercourse in the southern portion of the site. Stormwater modelling has been submitted to demonstrate the proposed stormwater management chain, including discharge to watercourse, and will not have negative impacts on downstream properties in peak storm events.Council’s Development Engineer has reviewed the proposal and raises no objections to the proposed stormwater management arrangements.Outcome: This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Schedule 1).  |
|  |  |  |

1. **KEY ISSUES**

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

* 1. **XXXX**

Describe the issue, the reports/plans considered (i.e. Acoustic report), and how it was resolved

Resolution: The issue has been resolved through recommended conditions of consent Note – where specific conditions of consent are recommended to address impacts these should be cross referenced in this section of the report.

OR

The issue has not been resolved and accordingly, warrants refusal of the application.

* 1. **Urban Design**

The proposed building form presents an unsympathetic response to the streetscape and is of an excessive bulk and scale that does not positively contribute to the desired future character of the area. The parallel building alignment to street frontages with insufficient setbacks and facade articulation to ### Road and side boundaries further exacerbates its perceived bulk and scale and is incompatible with the existing residential streetscape character, which comprises a low density residential area.

The design of the proposed facades to both the side and rear boundaries are considered unacceptable as the proposal presents a 3 storey continuous wall of development, with an approximate facade length of 39 metres to ### and nearly 52 metres to the eastern side boundary with limited changes in alignment. This does not present a harmonious fit to the context and is considered excessive in its current form.

There is no setting back of upper levels and the proposed vehicle entry from ### Road, with a width of 6.58 metres and height of up to 5.4 metres closer to the street boundary, exacerbates this bulk and scale and is considered to be a non-contributory element to the existing residential streetscape character.

A design which is more compatible with the low density residential environment is recommended, with increased setbacks and deeper/wider vertical indentations to building facades to achieve a more ‘pavilion’ style development with increased opportunity for pockets of landscaping to break up the form and its visual bulk.

The proposed use of a mansard roof form as an ‘attic style’ third storey to mitigate the visual appearance of the proposal fails to achieve this objective. The continuous roof form exhibits inadequate articulation, setbacks and variations making it appear as a normal habitable floor level, contributing to the excessive form. A considerable reduction in its footprint area is required to create an appropriate roof profile that will moderate the proposed form, i.e. increased setbacks, breakups in the roof form etc.

The applicant has not addressed this issue satisfactorily with amended plans and accordingly, this issue remains outstanding. The lack of an appropriate urban design outcome warrants refusal of the application.

Resolution: The issue has not been resolved and accordingly, warrants refusal of the application

* 1. **Noise and vibration Assessment**

The potential for noise and vibration to impact on adjoining properties is an important consideration given the extent of demolition proposed and the demolition methods likely to be utilised. The application was accompanied by a Demolition Noise and Vibration Assessment prepared by Wilkinson Murray, dated July 2018 (‘Noise and Vibration Report’) which considered this issue.

The Noise and Vibration Report considered the noise and vibration impacts arising from the proposed demolition of the buildings on the site. The report concluded that construction noise levels at nearby receivers are likely to exceed the noise management levels and, in some instances, could exceed the construction noise level of 75dB(A). Similarly, the use of a hydraulic hammer was identified as having the potential to cause exceedance of vibration criteria. Alternative work methods and vibration monitoring were recommended to manage the impacts from vibration intensive plant.

The report concluded that the works could proceed if a Construction Noise and Vibration Management Plan to reduce the likelihood of noise impacts due to construction activity are prepared. Council has considered this report and following a detailed assessment, concluded the report was satisfactory notwithstanding the likely noise exceedance which could be addressed in recommended conditions of consent, which is supported.

Resolution: The issue has been resolved through recommended conditions of consent as outlined in **Attachment A**.

1. **CONCLUSION**

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can/cannot be supported.

Include a short summary of key issues, whether the site is suitable and whether the proposal is compatible with the locality etc.

It is considered that the key issues as outlined in Section 6 [have or have not] been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

1. **RECOMMENDATION**

That the Development Application [DA No ##/####] for [insert description] at [address] be APPROVED/REFUSED pursuant to Section 4.16(1)(a) or (b) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent / reasons for refusal attached to this report at Attachment A.

The following attachments are provided:

* Attachment A: Draft Conditions of consent/reasons for refusal
* Attachment B: Approval from the Crown (applicant) for imposition of Conditions
* Attachment C: Tables of Compliance
* Attachment D: Architectural Plans
* Attachment E: Clause 4.6 Request