

Draft Submission to Proposed State Significant Development

(SSD 9210)

Proposed Primary School
17-19 Kosovich Place, Cecil Park

5 December 2018

Contents

	Page
Council Resolution (4 December 2018)	3
Proposed Development	4
Relationship to adjoining Church at 32-40 Kosovich Place	4
Basis for Council's Objections	5
A. Planning	6
B. Traffic and Transport	7
C. Catchment Management	8
D. Development Engineering	9
E. Environmental Management	10
F. Community Health	11
Conclusion	11
Attachment – Land and Environment Court Judgment October 2018 (Adjoining Church Site)	

COUNCIL RESOLUTION

Council at its meeting of 4 December 2018, endorsed a draft submission to the proposed State Significant Development Application (SSD 9210) in relation to a proposed primary school at 17-19 Kosovich Place, Cecil Park as follows.

1. Council advise the NSW Department of Planning and Environment (DPE) it **objects** to the proposed primary school at 17-19 Kosovich Place Cecil Park based on the following reasons:
 - 1.1 The built form, proposed scale and degree of site development of the proposed school (with capacity for 665 students and staff) is excessive and inappropriate to the existing character of the area and capacity of Kosovich Place.
 - 1.2 The level of traffic generated by the proposed School will result in unacceptable impacts on traffic safety levels in Kosovich Place and Wallgrove Road.
 - 1.3 Council does not support the proposal to prohibit right hand turns from Wallgrove Road into Kosovich Place as this is an unreasonable restriction on existing residents of Kosovich Place. This proposal will also have an adverse impact on traffic flow along Wallgrove Road including the intersection between Wallgrove Road/Villiers Road.
 - 1.4 The proponent has not submitted necessary traffic modelling to determine the impacts of the development on the broader road network and critical intersections in Horsley Park and Cecil Park.
 - 1.5 The proponent has not submitted required flood modelling and information required under the Secretary's Environmental Assessment Requirements to determine whether the site is suitable for the proposed school in relation to flooding matters.
 - 1.6 Insufficient/inadequate information has been submitted in relation to remediation of site contamination, noise impacts, sedimentation and erosion controls to determine the suitability of the site for the proposed school.
 - 1.7 The site is subject to a restriction on title that prohibits further development until unauthorised fill, potential contamination and flooding issues have been determined and resolved to Council's satisfaction. These matters remain outstanding and the information/technical reports submitted with the proposal in relation to dealing with site contamination and flooding issues are considered inadequate.
2. Council also resolved to indicate its willingness to work with the proponent and the DPE to seek to address the issues raised and identified by Council in this draft Submission.

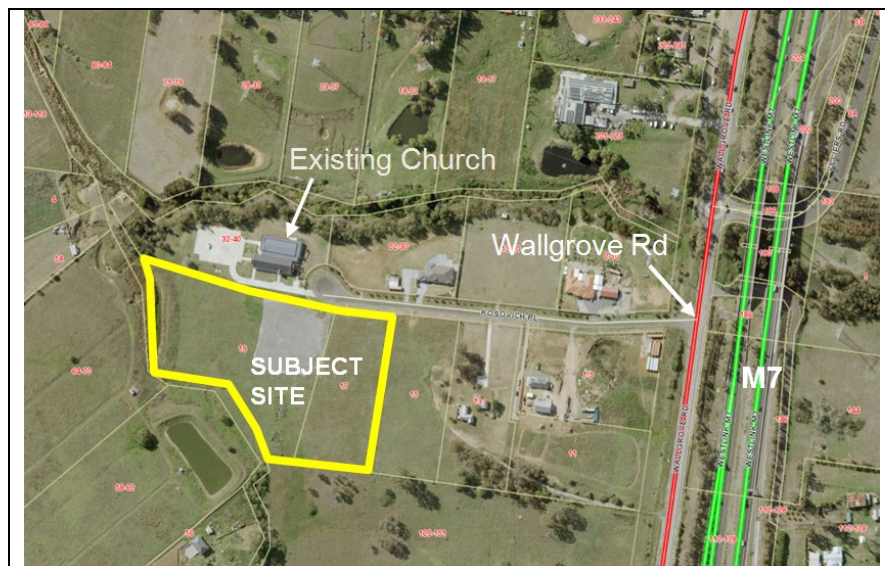
PROPOSED DEVELOPMENT

Under the State Environmental Planning Policy (Education Establishments & Child Care Facilities), all applications for new schools in NSW constitute State Significant Development, meaning the NSW DPE is the relevant consent authority.

The proposed development for the Saint Peter and Paul Assyrian Primary School at 17-19 Kosovich Place, Cecil Park therefore constitutes a State Significant Development Application (DA SSD 9210).

The proposal is proposed to be constructed in stages with eventual capacity of 665 students and staff.

The subject site at 17-19 Kosovich Place (see image below) is currently a vacant parcel of land. It has a total area of approximately 2.94 ha and is located at the head of the cul-de-sac of Kosovich Place with direct vehicular access from Wallgrove Rd, Cecil Park.



In summary the proposal comprises:

- Site preparation works, bulk earthworks and soil remediation
- Construction of a two-storey primary school in 6 stages comprising 21 classrooms, library, canteen, multi-purpose hall, administration offices and staff facilities with capacity for 665 students and staff
- Construction of outdoor open play areas and sports courts and sports fields
- Car parking for 37 vehicles, driveways and 30 vehicle pick-up/drop-off area
- Associated landscaping works and signage.

RELATIONSHIP TO ADJOINING CHURCH AT 32 - 40 KOSOVICH PLACE

In 2010, Council granted development consent to the establishment of the Holy Apostolic Catholic Assyrian Church of the East at 32-40 Kosovich Place, directly to the north of the proposed school.

Conditions of consent were applied to the approval limiting the number of parishioners attending the church at one time to 80 people. It was also stipulated by a condition of consent that the church and assembly hall could not be used concurrently.

In 2018, the Church submitted a request for modification to increase the number of permitted parishioners attending the site at any one time to 595 people. In July 2018, the Church submitted an appeal (based on a deemed refusal of the application) in the NSW Land and Environment (L&E) Court.

On the 5 October 2018 the L&E Court issued its Judgement (**Attached**), dismissing the appeal and proposed modification, based on the following (as summarised) points:

- Adverse impacts on the amenity of the nearby residents in Kosovich Place
- Adverse impacts arising from the development in terms of the number of attendees, related traffic and off street parking
- A plan of management to minimise the impacts of traffic from Church events was considered to be inadequate and unworkable
- The Court was not confident that the proposed onsite sewerage treatment system would be able to cope with the numbers of attendees in any seven-day period
- Approval of the DA was not considered to be in the public interest

The above reasons listed by the L&E Court for rejecting expansion of the church at 32-40 Kosovich are considered relevant to Council's submission to the State Significant DA for the primary school at 17-19 Kosovich Place in regard to:

- The proposed number of students and staff (665) utilising the school and potential impacts on adjoining neighbours amenity
- Potential adverse impacts on traffic and parking
- Suitability of the site for the proposed scale of development proposed
- Suitability of the onsite sewer treatment system to cope with the scale of development proposed on the site.

BASIS FOR COUNCIL'S OBJECTIONS

Council's primary objection to the proposal is that the proposed scale of development exceeds the capacity of the site and will result in unacceptable impacts on traffic safety/parking in Kosovich Place/Wallgrove Rd and amenity of adjoining residential properties.

In addition, a range of technical information required to assess the proposal has not been submitted with the application.

In this regard, the project is flawed in being able to demonstrate that adequate measures and safeguards will be provided to minimise impacts on adjoining properties and the surrounding environment.

Various relevant Council Departments have reviewed the proposed Development Application and associated Environmental Impact Statement (EIS). The following comments form the basis of Council's objection to the proposal.

A. Planning

Under the provisions of Fairfield Local Environmental Plan 2013, the subject site is zoned RU4 Primary Production Small Lots. The proposal seeks to provide a single building mass located towards the eastern portion of the site for the purposes of a primary school.

Concern is raised that the proposed building design being a single mass, located in close proximity to the eastern boundary, is not considered to be in character with the rural locality. It is noted that the eastern elevation of the building is approximately 74.8m in length which is vastly different from the other built forms within the area. Accordingly, the proposal would be inconsistent with the objectives of the zone, particularly "To ensure that development is sympathetic to the rural environment and minimises risks from natural and man-made hazards".

In addition, the following concerns are raised regarding the building design:

- The proposal seeks to breach the maximum building height development standard within the FLEP 2013 by approximately 3.8m or 42.2%. Accordingly, an assessment of the breach indicates that it is not considered that there are sufficient environmental planning grounds to support a variation proposed and therefore it is not considered that the proposal would be in the public interest.
- The proposed development results in significant cut and fill particularly within the eastern portion of the site. The architectural plans show approximately 4.4m level difference between the eastern neighbour and the subject site which is significant. This is not considered in character with the rural area. This is a concern that was expressed by the Design Review Panel.
- Within the front setback to Kosovich Place is the open play area for the kindergarden. This is not considered appropriate as the front setback should be used solely for landscaping purposes in order to assist in maintaining the character of the rural area.
- Given the above points, the proposed built form is considered inconsistent with the character of the rural locality given its size, scale and location on the subject site.
- The 20 metre eastern setback proposes 30 kiss and drop of point spaces, additional car parking for staff and outdoor learning areas. The location of the spaces, drop off points and outdoor learning areas is likely to result in unacceptable amenity impacts to the eastern neighbouring property.

The eastern boundary provides minimal landscaping given the internal car parking and learning spaces and this is not considered in character with the rural area.

- The proposed 30 kiss and drop off spaces is unlikely to be sufficient in order to accommodate up to 665 school children and staff onsite. This will likely result in unacceptable queuing and parking within Kosovich Place.
- The proposed bus zone is located within the road reserve and potentially will leave insufficient space for cars and or other vehicles to manoeuvre in Kosovich Place. The proposed bus zone will also likely impact on sight distances for vehicles entering and exiting the site as well hinder pedestrian movement.
- The subject site is located within a cul-de-sac and the noise and traffic generated from the size and scale of the development is not in keeping with the character and scale of the road and locality.
- There appears to be no consideration of the cumulative impacts of the proposed school development with the church activities within the locality. The combined activities of both the church and the proposed school will likely have significant amenity impacts to the residential dwellings of Kosovich Place.

In conclusion, it is considered that the proposed built form, constraints relevant to the site, traffic generated as a result of the use (including associated noise impacts) would not render the site to be a suitable location for the purpose of a school catering for up to 665 children and staff.

B. Traffic and Transport

The traffic generated by the school will have significant impacts on the residents of Kosovich Place.

As per the traffic report submitted for the application, estimated traffic generation for Stage 1 during morning and afternoon peak will be 239 trips. The final development will generate 579 trips during morning and afternoon peak.

This traffic generation has been estimated based on car occupancy rate of 1.85 children. The proposed development will be in a cul-de-sac and have to rely on Wallgrove Road for entry and exit. Based on the traffic generation levels, the development is not supported.

The impact by the proposed school and the church must be considered concurrently. There are issues associated with the operation of the current Church impacting the amenity of the residents.

The car occupancy rate of 1.85 children is adopted for the development based on car occupancy for St Hermizd Primary School in Greenfield Park.

This needs to be justified as St Hermizd Primary School is located in an urban area where the options for student travel to school (i.e. cycle, walk, additional bus services) is far broader and less restricted than the subject site.

With the traffic generation associated with the proposal there will be adverse impact on safety at the intersection of Wallgrove Road/Kosovich Place. The applicant is proposing to restrict right turn movement from Kosovich Place into Wallgrove Road. This will restrict current right turn movements undertaken by the residents in Kosovich Place.

The proposed “Right Turn” restriction at the intersection of Wallgrove Road and Kosovich Place would require motorists exiting Kosovich Place and wanting to travel southbound in Wallgrove Road, to undertake U-turn movements at the roundabout at Wallgrove Road/Villiers Road.

Considering the volume of traffic using Wallgrove Road and the lane arrangement in Wallgrove Road (one lane in each direction), there is a significant detrimental impact on traffic safety at the intersection of Wallgrove Road/Villiers Road with the proposed development.

The applicant is proposing buses to service the development. The proposed bus services will not benefit other stakeholders. Therefore, the bus parking on Kosovich Place is not justified. It is unclear whether the proposed bus services will be public or private.

The applicant has not provided SIDRA modelling for existing and proposed conditions for the intersections of:

- Elizabeth Drive/ Wallgrove Road;
- Wallgrove Road/ The Horsley Drive;
- Wallgrove Road/ Kosovich Place; and
- Wallgrove Road/ Villiers Road.

C. Catchment Management

The rear boundary of the subject property borders Ropes Creek, with all of No.19 Kosovich Place (predominantly where the playing fields for the school area proposed) comprising flood liable land.

Council's Catchment Branch advises that the technical reports submitted by the proponent in relation to the proposal are deficient and do not address the assessment requirements (in relation to flooding issues) specified by the NSW DPE to determine whether the development is suitable for the site.

The deficient information comprises:

- The impact of the proposal (including earthworks) on existing flood behaviour for a full range of flood events as specified under part 18 of the Secretary's Environmental Assessment Requirements (SEARs) issued by the Department of Planning and Environment;

- The impact of the proposal on flood behaviour resulting in detrimental changes in potential flood affection of other properties, assets or infrastructure. This may include redirection of flow, flow velocities, flood levels, and hazards;
- Whether appropriate mitigation measures are required to offset potential flood impacts.
- Council's established TUFLOW model established as part of the Rural Area Flood Study (2013) has not been relied on to model existing and proposed scenarios.
- Information has not been provided to determine whether or not there are increases in flood effects outside of the proposed site, with a tolerance of 10mm in depth to the existing flood scenario.
- The application does not address the following matters specified in the DPE SEARS:
 - The 1 in 200 and 1 in 500 year flood events as proxies for assessing sensitivity to an increase in rainfall intensity of flood producing rainfall events due to climate change.
 - compatibility with the flood hazard of the land;
 - compatibility with the hydraulic functions of flow conveyance in floodway and storage in flood storage areas of the land;
 - whether there will be adverse effect to beneficial inundation of the floodplain environment, on, adjacent to or downstream of the site;
 - any impacts the development may have upon existing community emergency management arrangements for flooding. These matters are to be discussed with the SES and Council.

D. Development Engineering

The applicant has indicated there will be a need to upgrade Kosovich Place and the intersections of Kosovich Place & Wallgrove Road and Wallgrove Road & Elizabeth Drive (RMS approval required).

Council's Development Engineer has raised the following concerns in relation to the above as well as other additional issues associated with the proposal as discussed below:

- The proposal to upgrade Kosovich Place would need to include kerb and gutter and associated drainage system, however inadequate information is provided on where the drainage system would be connected.
- The Road would need to be upgraded to asphaltic concrete, however no plans have been provided for the proposed upgrade road works

- The Flood Management Assessment regards the playing fields as recreational however due to the intended use for the site as a School (sensitive use) the category 'recreation' chosen under Chapter 11 of Council's City Wide DCP is in error. In this regard the proposal cannot meet the prescriptive controls of the City Wide DCP.

For these reasons the application cannot be supported.

E. Environmental Management

According to both Detailed Site Investigations (DSI), soil sampling of the site indicates that fill on the western portion of 19 Kosovich Place includes fragments of asbestos containing fibre cement sheet. The later DSI gives an indicative area for the suspected filling. On viewing Councils 1999 aerial photograph of the premises, a wider area of filling is indicated.

According to the Remedial Action Plan (RAP), further sampling is required to determine the extent and depth of the fill area. It states that 'adequate' shallow test pits will be dug to determine the extent of the required remediation works.

The RAP does not state the number or location of these test pits. Given that a RAP is meant to outline the extent of any required remediation works, the extent of the remediation area would need to be established prior to the RAP.

The Noise Assessment Report adequately addresses most noise issues with the exception of noise from playgrounds and traffic noise generated by the development. The report gives a range of building requirements to meet internal noise levels and to prevent noise emissions.

The report argues that the impacts of playground noise cannot be assessed against the NSW EPA Noise Policy for Industry (NPI).

While playground noise cannot be assessed in the same manner as industrial noise, the NPI provides guidance in assessing amenity and intrusiveness impacts. Such guidance has been incorporated into the Association of Australian Acoustical Consultants 'Guideline for Child Care Centre Acoustic Assessment' (GCCCAA). In this regard the proposal does not provide adequate analysis of noise impact.

As a traffic generating development, the assessment of noise impacts from traffic servicing the site has also not been submitted.

A Sediment and Erosion Control Plan for the proposal is included as an appendix. Image resolution of this plan is poor and no details can be discerned.

In summary, a number of the technical reports submitted for the project are deficient in clearly describing/analyzing the potential impacts of the proposal and measures to mitigate them. In this regard, the application cannot be supported.

F. Community Health

A Wastewater Assessment, prepared by Martens Consulting Engineers, dated September 2018, Ref: P1705798JR05V03 was submitted as part of the supporting information accompanying the development application.

Given the complexity of the sewage management system and the constraints that exist where the sewer disposal systems is located (i.e. flood liable land, proximity to Ropes Creek, salinity and water table issues), an independent wastewater treatment consultant should be required to conduct a peer review of the abovementioned wastewater assessment report.

It is noted that a peer review of the Wastewater Assessment Report was previously required for the following similar Development Applications within a close proximity to the subject site:

- St Narsai Assyrian Christian College College 217 Horsley Road Horsley park;
- Holy Apostolic Catholic Assyrian Church - 32-40 Kosovich Place Cecil Park.

Given the range of other concerns regarding the suitability of the site for the proposed degree of site development referred to previously in this report, this review is not warranted at this stage.

CONCLUSION

Council considers that the proposed primary school at 17-19 Kosovich Place, Cecil Park (with capacity for up to 665 students and staff) is excessive and beyond the capacity of the site for the proposed scale of development.

The proposal will result in unacceptable impacts on traffic safety and parking in Kosovic Place and Wallgrove Road as well as on the acoustic amenity of adjoining rural residential properties.

The application is also flawed as a result of deficiencies in a number of technical reports submitted with the application in relation to traffic, flooding/stormwater management, site contamination and noise impacts. As a result, it is unclear whether the proposed measures to mitigate impacts of the development on the surrounding natural and built environments are adequate.

Therefore under this draft Submission Council advises the NSW DPE that it **objects** to the proposal.

Attachment - Land and Environment Court Judgment October 2018 - Adjoining Church Site



Land and Environment Court

New South Wales

Case Name:	Holy Apostolic Catholic Assyrian Church Of The East Property Trust v Fairfield City Council
Medium Neutral Citation:	[2018] NSWLEC 1521
Hearing Date(s):	5 – 6, 13 September 2018
Date of Orders:	5 October 2018
Decision Date:	5 October 2018
Jurisdiction:	Class 1
Before:	Dixon SC
Decision:	The orders of the Court are: (1) The appeal is dismissed; (2) That the exhibits be returned, except for Exhibits B and 3.
Catchwords:	APPEAL – development application for place of worship – AMENITY IMPACTS – Rural Residential zone – control of the number of attendees at scheduled services – PLAN OF MANAGEMENT – adequacy of POM – complexity of operational controls – suitability of a pre-registration requirement for attendance at any particular service – use of a Church APP – refusal of entry to attendees – queuing and traffic impacts
Legislation Cited:	Environmental Planning and Assessment Act 1979 Fairfield Local Environmental Plan 2013
Cases Cited:	Jonah Pty Ltd v Pittwater Council (2006) 144 LGERA 408
Category:	Principal judgment
Parties:	Holy Apostolic Catholic Assyrian Church of The East Property Trust (Applicant)

Fairfield City Council (Respondent)

Representation:

Counsel:

P McEwen SC with S Nash (Applicant)

Solicitors:

David Legal (Applicant)

A Seton, Marsdens Law Group (Respondent)

File Number(s):

2017/186578

Publication Restriction:

No

JUDGMENT

Background

- 1 At the head of the cul-de-sac of Kosovich Close, Cecil Park at Lot 2134 DP 1133688 is the St Peter and Paul Parish Church (the Church). It is one of four Parish Churches in western Sydney which belong to the Holy Apostolic Catholic Assyrian Church of the East. The Church and its associated Assembly hall were built in 2011 pursuant to a conditional development consent (DA No 776.1/2009) granted by the Fairfield City Council on 16 March 2010.
- 2 When first proposed, it was expected that the Church would accommodate a relatively small number of parishioners. Therefore, the original development consent issued by the Council in 2010 included a condition which limited the number of parishioners attending the Church at one time to 80 people. It was also stipulated by a condition of the consent that the Church and Assembly hall could not be used concurrently.
- 3 In the seven years following, the Church's membership and attendees have grown significantly. Under its current onsite parking configuration, the Church cannot accommodate the parking demands which arise when all of the Church's parishioners attend Mass at the same time. The Church concedes that this has led to an untenable situation where extensive parking has occurred in Kosovich Place and has resulted in unreasonable interference with the rural residential environment within which the Church is located.
- 4 In an effort to address this situation, the Church has lodged a new development application seeking the concurrent use of the Church and the

Assembly hall (in association with a single activity i.e. only Sunday Mass or wedding / baptism) to accommodate the increase in parishioner numbers. The background to the application, the statutory controls and the issues are set out in the Council's Statement of Facts and Contentions filed in this Class 1 appeal on 24 July 2018. I do not propose to repeat that detail, which I have read, save to note that the contentions identified have been reduced to a dispute about the applicant's ability to control the number of attendees to the site and the associated car parking through a Plan of Management (POM) - albeit one that incorporates a pre-registration system via a Church APP.

Conclusion

- 5 For the reasons that follow, I have decided to refuse the development application and dismiss the appeal. I formed this view because I am not satisfied that the POM filed with the Court on 13 September 2018 will control the number of people attempting to enter this site or park in the street. Nor am I satisfied as to how the site will be operated in order to ensure that there will be no more than 595 people at the site in any consecutive seven-day period. After a consideration of evidence, in the light of the objectives of the RU4 Primary Production Small Lots zone and the concerns expressed by Mr Grech, I do not believe that that an approval of this proposal is in the public interest.

The Proposal

- 6 The application seeks consent to increase the parishioner numbers at the site to 216 for Mass services or "Regular events", and up to 240 people (up to eight (8) times each year) for "Special events". To achieve these Mass attendances will be evenly split over multiple Mass services (morning and afternoon) for regular Sundays and three mass services on Christmas and Easter.
- 7 "Regular events" include regular and re-occurring activities associated with the church and include but are not limited to:
- regular weekly Sunday Mass;
 - Sacrament such as Confession, Baptism and Marriage;
 - Fellowship meetings;
 - Bible study groups;
 - Youth group meetings; and

- Prayer group meetings.

- 8 “Special events” include large, pre-organised events and are proposed to be limited to eight (8) times a year. They include special religious celebrations such as Christmas and Easter, as well as, talks and/or mass being given by local or international dignitaries. Apart from the Christmas and Easter services, when the services will occur during the night until 2am, the other special events are required to comply with the hours of operation as nominated in the draft condition 208 of the agreed conditions of consent. Condition 208 reads as follows:

“Hours of Operation

The approved hours of operation for the church building and assembly hall are:

Date	Time
Monday to Thursday	6:00pm to 9:30pm
Friday	8:00am to 9:30pm
Saturday	9:00am to 9:30pm
Sunday	8:00am to 9:30pm

- Notwithstanding the above, church activities are permitted on the site for the observance of Christmas and Easter. These services shall be completed and the site vacated by 2:00am.
- All staff and clergy members must vacate the premises and the immediate vicinity of the premises by 10:00pm.”

Pre-registration system

- 9 To distribute the increase in attendees over the various services, the Church proposes to introduce a pre-registration system (including via a Church APP) to manage the maximum number of parishioners permitted on the site at any one time. The pre-registration system is outlined in a POM which is to be

incorporated as a condition of consent. The workability of this arrangement is clearly dependent upon strict compliance with the terms of the POM and the pre-registration system therein.

- 10 In simple terms, under the pre-registration system, parishioners will be presented with three ways to register, being:
 - (1) assisted electronic registration at the church;
 - (2) electronic registration by a free app available on iOS and android platforms; and
 - (3) Internet/Website registration.
- 11 According to the POM, registration may occur for Mass services up to, but not greater than, three weeks in advance and up to, but not less than, one hour in advance. Protocols and other requirements concerning pre-registration are set out in the POM. The POM is structured to provide separate requirements for certain defined events, as earlier outlined and referred to as “Regular events” and “Special events”.
- 12 The final draft of the POM was submitted to the Court on 13 September 2018 and after the conclusion of the hearing. I allowed this because it was apparent that the earlier versions of the POMs referred to at the hearing were deficient of detail and unworkable. And, in order not to prejudice the Council, I allowed it to respond to the applicant’s final version of the POM, which they did by the submission of additional written submissions dated 7 September 2018. (I will deal with the Council’s response shortly but later).

Car parking

- 13 Assuming that the number of attendees at the Church events can be limited to a maximum of 240 people, the parties’ traffic experts agree that this will generate a parking requirement of approximately 109 onsite car parking spaces.
- 14 Onsite parking at the property is presently limited to 59 spaces. The proposal is for the construction of an additional 50 car parking spaces onsite. This will result in a total of 107 on-site car parking spaces on the grounds of the Church. Eleven (11) of these car parking spaces will be in a stacked arrangement. The proposed parking layout can be understood from the plan, Figure 1, in the Joint

Stacked Parking Spaces to be Linemarked and Signposted in Accordance with Clause 2.5.3

A

B

FOR LANDSCAPE WORKS OUTSIDE PROPOSED NEW WORKS REFER TO LPDA 09-366 /IC

EXISTING CARPARK

TURF

MAIN ENTRY

existing church

PROPOSED CARPARK

ALTERED DRIVEWAY PLANTING TO INCLUDE:

- 12 Murray
- 3 Westringia
- 8 D. 'Tas Red'

FRONT ENTRY PLANTING TO INCLUDE:

- 2 Fraxinus
- 4 Pyrus
- 5 Murray
- 18 Westringia
- 15 Cornus
- 16 D. 'Tas Red'
- 45 D. 'Little Jess'
- 25 Trachelospermum

ALTERED DRIVEWAY PLANTING TO INCLUDE:

- 3 Westringia
- 3 Cornus
- 9 D. 'Tas Red'

KOSOVICH PLACE

GATE

FOR LANDSCAPE WORKS OUTSIDE

10"

Onsite Sewerage management system

15 The number of parishioners attending the Mass services and Special events is also constrained by the onsite sewerage infrastructure. While there is no issue about the acceptability of the proposed waste water management system, it is agreed that there is no opportunity to extend the existing irrigation area beyond 700m. The infrastructure area is constrained by the requirement for a 40m buffer to the adjoining Ropes Creek to the north and west and the southern boundary defined by an open swale. To overcome this, the parties' waste water experts have agreed in the joint report, subject to the installation of a 10,000L balancing tank with flow metering (in accord with the Harris Environmental Consulting Report 2017), that the site can accommodate 595 people each 7 days' cycle. This restriction of use then feeds into the number of events held at

the site within any seven-day period. Again, the management and restriction of the number of attendees at any one time, associated with the use and the limitation of the proposed sewerage infrastructure is dependent upon the terms and workability of the POM.

The Council's position

16 The Council is unwavering in its assessment that the POM cannot control how many people attempt to enter the site or park in the street. In support of its case the Council identifies the following deficiencies with the version of the POM now relied upon and dated 13 September 2018:

- (1) The reference to Section 11 of the last sentence of Section 4 is incorrect;
- (2) The reference to 495 people in Section 6 is incorrect. It shall be not exceed 595 people;
- (3) Section 7 outlines how the pre-registration requirements will be communicated to the parishioners; however, there is no information about how these requirements will be communicated to those attending special events, such as weddings, baptisms etc;
- (4) Section 8 outlines the technical requirements to the pre-registration system – however, the system outlined is very complicated. For example, if a person does not have a mobile phone the POM invites them to register via a friend's or relative's mobile phone. However, it is unclear how this person will be able to confirm at the site that they have pre-registered to attend the church service/event when they do not have the mobile phone with them. It is likely to cause delays at the entry point and exacerbate queuing into the street;
- (5) Section 10.2 – does not include operating hours for the Assembly hall ;
- (6) Section 10.4.1 proposes that a designated person is to conduct a head count of parishioners once they are seated. However, it is unclear why this would occur within the church and not before. This requirement is only proposed for the Sunday mass service and no other event;
- (7) Section 10.51 – the parking attendants are to rely on lists of people that have pre-registered. The process of identifying and confirming the pre-registered or non-pre-registered people is likely to be a lengthy process (the 216 people during normal events, the 240 people during special events) and is likely to impact on the amenity of neighbours. Commencement of the parking attendants' responsibilities and activities 60 minutes before the commencement of regular Mass services is insufficient;
- (8) Section 10.5.1 – Appendix 2 sets out the location of checking points by parking attendants on the public road, the pre-registration parishioners. This activity will be on a public road and is likely that they will require a

Roads Act approval. Secondly, cars are likely to be queuing along the road whilst waiting to be checked. Thirdly, other road users and not associated with the church activity will be prevented from using the public road. Conducting this activity within a cul-de-sac area is not considered acceptable for these reasons;

- (9) Section 10.52 allows on the spot registration – how will this encourage parishioners to pre-register? If the parking area is full this may encourage parishioners to park on the street.
- (10) Section 10.5.4 – proposed corrective action and enforcement measures for on – street parking does not propose any effective measures to discourage on street parking.
- (11) Notably, the POM fails to provide for any acceptable method to regulate the number of persons attending for weddings or other events such as baptisms;
- (12) Under Section 10 – subsection numbering is incorrect. This needs to be fixed and updated as some of the sections are referred to in Section 11.4 and in Section 11.7;
- (13) The reference to “habitual exceedance” in the second paragraph of Section 10.6 is not certain in terms of application or enforcement of the POM;
- (14) Section 11.5 proposes a neighbour contact officer to be nominated under the special events requirements. This should be a general requirement of the POM for all activities on-site and not just special events;
- (15) Section 11.10.1.1 does not provide any effective measures to prevent parishioners from parking on the street;
- (16) Section 12 does not propose an effective complaints handling process. There is no information of who or at what radius letters will be sent to residents, how often this will occur, no details of timeframes of when complaints will be addressed, how complaints will be resolved, who will be in charge of dealing with complaints and no follow-up procedures;
- (17) Section 13 foreshadows potential measures to deal with the operation and amenity of residents as part of the review of the POM however it is unclear what the purpose of this is. Further, the POM review process and Section 13 does not seem to contemplate approval being sought from the Council for any change to the operation or details in the POM. It is essential that the POM is not changed without the approval of the Council;
- (18) Appendix 3 the sample advisory letter to be sent to residents refers to the operation of a “Temple” and not a church. It also asserts that:

“in the event that an issue cannot be directly resolved, we will keep a record of your concerns and send details to Council so that further assistance might be given in satisfactorily resolving the issue.”

Requiring Council to assist in resolving concerns is not an acceptable or satisfactory arrangement to manage the operations of the site;

- (19) There are no details about how the operation of the site will not go beyond 595 parishioners in any consecutive seven-day period and how this restriction will be enforced, having regard to all other measures proposed in the POM.
- 17 Relying on the evidence of its planner, Mr Karl Berzins, the Council submits that the pre-registration system as proposed is unlikely to effectively restrict and manage the maximum number of parishioners permitted on the site. In that regard, it submits that the complexity of the system will make it difficult to administer and implement. Furthermore, no examples were given of where this arrangement has been successfully implemented for a place of public worship. It is not unreasonable to assume that those people who are not aware of the pre-registration arrangements, in particular, special events such as weddings and baptisms are likely to park on the street once the car park is full. The POM does not provide any satisfactory measures to prevent this from occurring to avoid amenity impacts in this rural residential area.
- 18 The pre-registration system will require checking points by parking attendants standing on the public road which is not only unsafe but ultimately externalises the operation of the use and the impacts on the amenity of the adjoining neighbours. There is no satisfactory evidence before the Court to counter the proposition that the use of checking points to manage access to the site will not result in queuing on the street, or prevent other road users from accessing the public road during this time. Put simply the arrangement is unworkable. The prospect of the additional parishioners seeking to access the site after having been denied entry trying to leave the cul de sac will be to say the least difficult – guided by traffic devices such as “witches’ hats” in order to avoid parked cars and other vehicles is not acceptable traffic management or the basis to grant consent.
- 19 Furthermore, the POM does not provide a proper complaint handling process or procedures to effectively deal with any issues that may arise by neighbours regarding the operation of the site. In short, there are no details about how the complaints will be dealt with, timeframes to deal with these issues or any

follow-up procedures. Requiring Council to assist resolve concerns is just not acceptable or a satisfactory basis for the approval of the operation and management of this proposal.

- 20 Furthermore, the POM simply does not contemplate or demonstrate how the number of persons attending the site will be managed or restricted to ensure that the on-site sewage management system capacity of 595 people in any consecutive seven-day period is not exceeded.
- 21 Although permissible with consent in the RU4 Primary Production Small Lots zone, the Council contends on the evidence that the traffic impacts generated by this proposal, on the adjoining residential properties will be problematic, particularly for the most affected property at 22 - 30 Kosovich Place (adjoining at the east). And, while sufficient parking was made available onsite for the 80 approved parishioners, when that number is exceeded, experience has demonstrated that the parking overflows onto the street and, more often than not, results in the whole street parked up with cars which have been identified as being connected with the church use. Mr Grech, the adjoining neighbour, confirmed as much during his evidence at the commencement of the hearing when he voiced his continuing frustration with the current practice of Church associated parking outside his property and within the Council verge. Whilst past breaches of a development consent are not relevant considerations in this appeal (*Jonah Pty Limited v Pittwater Council* (2006) 144 LGERA 408), the impacts of past breaches are able to be considered. In that regard, the photographs tendered and the evidence by Mr Grech demonstrate the unacceptable impact of on street parking on his family's residential amenity from the use of the site as a place of worship where the number of attendees exceed 240 people and traffic is not managed properly.
- 22 For all these reasons, the Council submits that the application (as amended) has failed to satisfactorily demonstrate that the use of the site as a place of public worship, in the manner proposed, is appropriate for this site, having regard to the zone objectives and other relevant considerations under s 4.15 of the *Environmental Planning and Assessment Act 1979* (EPA Act). The POM cannot control how many people attend the site or park in the street. Moreover,

it places an unrealistic operational regime on the operators of the Church which raises doubts about the ongoing implementation of the POM.

The applicant's position

- 23 The applicant is confident that its POM is workable and will satisfactorily control the number of attendees to the site. The applicant relies on the oral and written evidence of its planner, Mr David Haskew who drafted the POM. It also relies on the traffic evidence of Mr Thomas Heal given in Court and in the joint report (Exhibit 9).
- 24 Whilst novel, the Applicant contends that the APP will work and that the terms of the POM will be adhered to strictly because the Church will ensure compliance. Despite large numbers to the site the sewerage system has worked and with the new tank will no doubt continue to service the numbers proposed in this application.

Consideration

- 25 The site is located within the RU4 Primary Production Small Lots zone under the Fairfield Local Environmental Plan 2013. It is surrounded by development which consists of larger lot rural residential properties. And, despite the Church's current ownership of several parcels of adjoining land, it was apparent at the Court view that there are still residential uses proximate to the proposed use which must be considered in my assessment of this DA.
- 26 In undertaking that weighted assessment in accord with the EPA Act, the objectives of the zone are a relevant consideration. They provide:
- To enable sustainable primary industry and other compatible land uses.
 - To encourage and promote diversity and employment opportunities in relation to primary industry enterprises, particularly those that require smaller lots or that are more intensive in nature.
 - To minimise conflict between land uses within this zone and land uses within adjoining zones.
 - To ensure that development is sympathetic to the rural environment and minimises risks from natural and man-made hazards.
- 27 With those objectives in mind, and based on my observations at the site view and the other evidence, I am very concerned about the adverse impacts of this application on the amenity of the residents nearby, particularly Mr Grech.

Appreciating the problems with the latest version of the POM, as identified by the Council and outlined above, I cannot accept that the impacts arising from the development in terms of the number of attendees, related traffic and off street parking will be satisfactorily controlled. While the POM discusses the management of car parking, including stacked spaces within the parking Area A, associated with Sunday masses and special events, the management of these events is not clear to me. I accept Council's criticisms of the terms of the POM. It is complicated and places an unrealistic burden on the Church leaders. Needless to say my concern is heightened when I think about the potential chaos which may reign for the eight (8) scheduled larger events when there is a substantial increase in attendance and increased parking demands.

- 28 The POM refers to the introduction of a shuttle bus service or expanding the car park and effluent disposal capabilities of the Church into the adjoining land in the future – if the measures as presently outlined are not effective (POM p27). However, an approval of this DA is not a test run. I must be satisfied before the issue of development consent that the POM can control the number of attendees in accord with the terms of the conditions and satisfactorily address any anticipated adverse traffic and amenity impacts for neighbouring properties. Based on the evidence, I am not confident of that outcome.
- 29 Accordingly, it is my considered opinion that the POM is inadequate and unworkable in its present form. I do not believe that it will satisfactorily address the likely adverse impacts on the adjoining residents' amenity. Furthermore, I find the development is contrary to the zone objectives in that it does not “minimise conflict between land uses within this zone” which, as I said, is a relevant consideration and, therefore an approval of this DA is not in the public interest.
- 30 Additionally, I am not confident that the proposed onsite sewerage treatment system will be able to cope with the numbers of attendees in any seven-day period, as I am unclear as to how the use of the site will be restricted, as required, to the 595 people in any seven-day period. While the applicant says that the existing sewerage system has worked effectively to date despite large

numbers of attendees – that appears to have been no more than good fortune and clearly cannot be basis on which to approve this DA.

Orders

31 The orders of the Court are:

- (1) The appeal is dismissed;
- (2) That the exhibits be returned, except for Exhibits B and 3.

.....

S Dixon

Senior Commissioner of the Court

Amendments

10 October 2018 - Correction to representation.

DISCLAIMER - Every effort has been made to comply with suppression orders or statutory provisions prohibiting publication that may apply to this judgment or decision. The onus remains on any person using material in the judgment or decision to ensure that the intended use of that material does not breach any such order or provision. Further enquiries may be directed to the Registry of the Court or Tribunal in which it was generated.