

Item 3.**Development Application: 932-934 Bourke Street, Zetland****File No.:** D/2018/1138**Summary****Date of Submission:** 21 September 2018

Amended plans and additional information submitted on 1 February 2019, 7 February 2019, 24 April 2019, and 9 August 2019.

Applicant: Australian Federation of Islamic Councils**Designer:** Planshop**Owner:** Australian Federation of Islamic Councils**Zoning:** B4 Mixed Use zone. The proposed works are associated with the existing 'place of public worship' use, which is permissible with consent in the B4 Mixed Use zone.**Proposal Summary:** The application proposes the extension of the hours of operation to the existing place of public worship from 9.00am – 5.00pm, Monday to Friday to 6.00am – 10.00pm, 7 days a week. The application also seeks consent for alterations and additions including enclosing an existing covered rear car parking area on the corner of Elizabeth Street and Navins Lane, and changing its use to a prayer hall.

Additional information has been submitted over the course of this assessment up until 9 August 2019. This has been in response to concerns raised by Council officers, including amendments to architectural plans, the Acoustic Report, Traffic Reports and Plan of Management.

The application is referred to the Local Planning Panel for determination as more than 25 unique submissions were received during the exhibition periods.

The application was originally advertised and notified for a period of 21 days between 15 October 2018 and 6 November 2018. A total of 61 submissions were received objecting to the proposed development.

The application was re-notified and re-advertised for a period of 21 days between 9 May 2019 and 31 May 2019, as the application was amended to include physical works (the enclosure of the existing car parking area for use as a new prayer hall) to address potential noise impacts. A total of 45 objections and 1 submission of support were received during this notification period.

As result of the two notification periods, a total of 106 objections were received, from 69 individuals. The submissions raised concerns with regard to noise, operating hours, traffic and parking.

The proposal has been amended to include the enclosure of the car park to create a new prayer hall, and additional information including an amended Plan of Management, Acoustic Assessment and Traffic and Parking Report, has been submitted to address concerns from the proposal that was originally notified.

The amended proposal has been reviewed by Council's Environmental Health and Transport Units, and Heritage and Urban Design Specialists, with relevant issues addressed by ways of conditions of consent or during the assessment.

Subject to recommended conditions, the amended proposal is considered to be acceptable with regard to noise and traffic.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) State Environmental Planning Policy (Infrastructure) 2007
- (iii) Sydney Local Environmental Plan 2012 (Gazetted 12 December 2012, as amended)
- (iv) Sydney Development Control Plan 2012 (in force on 12 December 2012, as amended)
- (v) Green Square Affordable Housing Program

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Amended Plan of Management

Recommendation

It is resolved that consent be granted for Development Application No. D/2018/1138 subject to conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with Section 4.15 of the Environmental Planning and Assessment Act 1979, in that it achieves the objectives of the planning provisions for the site and does not result in any unreasonable environmental impacts for the reasons outlined in the report.
- (B) The development is consistent with the objectives of B4 Mixed Use zone pursuant to the Sydney Local Environmental Plan 2012, in that it will regularise and appropriately manage the existing place of public worship, and therefore will maintain a use that supports the viability of the centre and will encourage public transport use, walking and cycling.
- (C) The development is generally consistent with the objectives and controls that apply to the site under the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (D) For the reasons above and as outlined in this report, the proposed development is in the public interest, subject to conditions.

Background

The Site and Surrounding Development

1. A site visit was carried out by staff on 8 March 2019.
2. The subject site is known as Nos. 932-934 Bourke Street, Zetland. It contains one allotment, legally described as Lot 1 DP 74133.
3. The site is square in shape with an area of approximately 915 square metres. It has a primary frontage of 30.2m to Bourke Street, with a secondary street frontage of 30.3m to Elizabeth Street. The site has rear lane access from Navins Lane.
4. The site currently contains a two-storey building, which is used for a 'place of public worship' and associated activities. Vehicular access to the site is currently from both Elizabeth Street to an undercover car parking area/outdoor prayer area in the south-western portion of the site, and from Navins Lane to the open car park located in the north-eastern side of the site.
5. Surrounding land uses are a mix of commercial and residential:
 - Directly to the south-west, east and south-east of the site are residential dwellings along Elizabeth Street, Bourke Street, Navins Lane and McPherson Lane. The closest residential properties are at 930 Elizabeth Street, which adjoins the site along its north-eastern boundary, and 876 Elizabeth Street and 1 McPherson Lane, which are located approximately 6m to the south and south-east across Navins Lane. The housing typology of the area is predominately two storey terrace dwellings with rear access car parking where available.
 - The land directly to the north-east is currently used for residential uses and is located within the B4 – Mixed Use zone.
 - To the north, on the opposite side of Bourke Street, is a car dealership (motor vehicle showroom).
 - To the north-west, sites are used for a range of small commercial uses.
 - To the south-west, on the opposite side of Elizabeth Street, is a pub known as the 'Zetland Hotel'.
6. The subject site is a heritage item of local significance (Item number I2202 – Former fire station, including interior) and is also located within the Zetland Estate Heritage Conservation Area (C73).
7. The site is located approximately 400 metres from the Green Square Town Centre.

8. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and surrounding area.



Figure 2: Site viewed from Bourke Street facing south-west.



Figure 3: View of the existing building and car park on site, looking southwest along Bourke Street towards the Green Square Town Centre.



Figure 4: View of existing carpark area located along the north-eastern portion of the site, as viewed from Bourke Street.



Figure 5: Site viewed from Elizabeth Street facing north.



Figure 6: The existing covered car parking/proposed prayer area at south-west portion of the site, as viewed from Navins Lane.



Figure 7: Site viewed from Navins Lane facing west.



Figure 8: Site viewed from Navins Lane, with residential dwellings located on both sides of Navins Lane.

History Relevant to the Development Application

9. Council's records indicate that the site has been in the ownership of the Australian Federation of Islamic Council (AFIC) and has been in use as a place for 'religious instruction' since 1987.
10. The following applications are of relevance to the subject application:
 - (a) **DU/44/87/0189** - On 20 February 1987, consent was granted for "use the existing facilities as a church for religious instruction and the promotion of the Muslim faith, and associated offices". Condition 9 of this consent restricted the hours of operation to between 9:00am to 5:00pm, Monday to Friday. This consent was limited to a period of 2 years.
 - (b) **DU/1990/27** - On 12 January 1990, consent was granted "to use existing buildings as a church for religious instruction, and associated offices" with the hours of Monday to Friday 9:00am to 5:00pm imposed under Condition 1.
 - (c) **D/2008/616** - On 26 May 2008, consent was granted for the construction of a permanent awning over the western car parking area. This consent included a condition stating that the use of this area for anything other than car parking will require separate consent.
 - (d) **Compliance history** - A review of Council's files notes that the site has a compliance history dating back to 2008, with concerns raised regarding the use of the courtyard for prayers, illegal parking, the noise generated from the site and operation outside their approved hours.

There have been several compliance investigations that have resulted in the issuing of warning letters (under HBC/2016/14 and HBC/2017/74) regarding the use of the courtyard for prayers. In order to address this compliance issue, it was recommended that development consent be sought to regularise the unauthorised use of this courtyard and the hours of operation of the place of public worship.

- (e) **DU/1990/27/A** - On 27 June 2017, Section 4.55 application DU/1990/27/A was lodged seeking to modify the approved hours of the place of public worship to 5:00am to 9:00pm, Monday to Sunday.

This application was notified and advertised for 21 days, with 139 submissions received during this notification period.

During the assessment of this application Council requested more detailed floor plans, a Traffic and Parking Impact Study, an Acoustic Report, and a Plan of Management.

During the assessment of the application, the applicant requested to amend their application to further extend the hours of use to 10:00pm.

As a result of the need to prepare further documentation, the applicant subsequently withdrew their application on 17 October 2017. It was the intention that a new application would be lodged once all required information had been prepared.

- (f) **DU/1990/27/B** - On 18 October 2017, a Section 4.55 application DU/1990/27/B was lodged seeking consent to modify the approved hours of use of the place of public worship to 5.00am to 10.00pm, Monday to Sunday.

This application was notified and advertised for 38 days with 116 unique submissions received during this notification period.

On 14 February 2018, the modification application was refused for the following reasons:

- It was not considered to be 'substantially the same' as the development for which consent was originally granted, with regard to the use of the western car park as a place of public worship.
- Although a change of use was not sought with the application, Council considered that the submitted floor plans and site observations indicated that the proposal was reliant on the use of the approved car parking area for prayers. The use of this area increases the capacity of the premises from that originally approved, and also reduces the availability of on-site car parking associated with the use.
- As such, Council considered that it not to be orderly development to consider an increase to operating hours when the overall operation and capacity of the premises is not adequately covered by the existing consent.
- Inadequate documentation was submitted as part of the application to permit an adequate assessment of the potential impacts of the proposal, with regard to noise and traffic.
- For the above reasons, Council indicated that a new DA was required for the proposal. As a result, the subject development application has been lodged.

Proposal

11. The subject development application (as amended) seeks consent for:

- (a) regularisation of the use of a covered courtyard area previously approved for car parking (to the southwest of the existing building) as an extension to the prayer hall;
- (b) alterations and additions to the premises to enclose the existing covered courtyard, including new walls and glazing along the southern and western elevations. This will create a new enclosed prayer hall; and
- (c) extension of the hours of use of the existing place of public worship from the currently approved 9.00am – 5.00pm, Monday to Friday to 6.00am – 10.00pm, 7 days a week. This will accommodate the following prayer times and number of worshippers:

Prayer name	Commencement	Conclusion	No. of worshippers	Occurrence
Fajr	6.00am	7.30am	5-20	Everyday
Dhuhr	11.30am	1.00pm	5-20	Everyday
Jumaa	1.15pm	1.50pm	100-150	Every Friday (replaces Dhuhr)
Asr	3.00pm	4.00pm	5-20	Everyday
Maghreb	6.30pm	7.30pm	5-20	Everyday
Ishaa	6.45pm	9.00pm	5-20	Everyday
Taraweeh	9.00pm	10.00pm	100-150	Every day during the month of Ramadan
Eid Al Fitr	7.30am	8.30am	100-150	One day after the month of Ramadan
Eid Al Adha	7.30am	8.00am	100-150	One day that occurs two months and ten days after Eid Al Fitr

12. Plans of the proposed development are provided below.

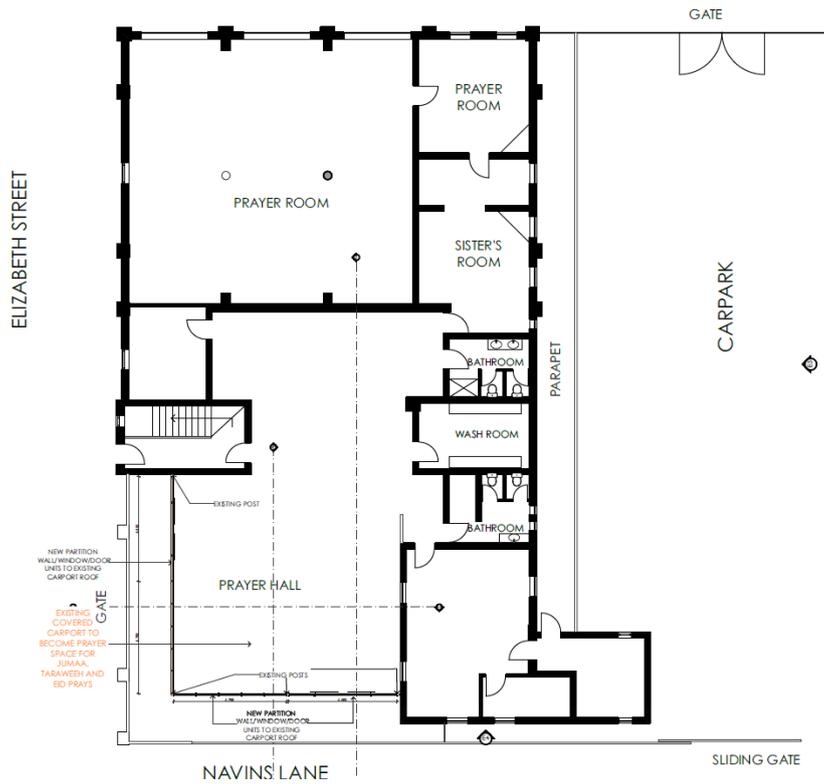


Figure 9: Proposed ground floor plan

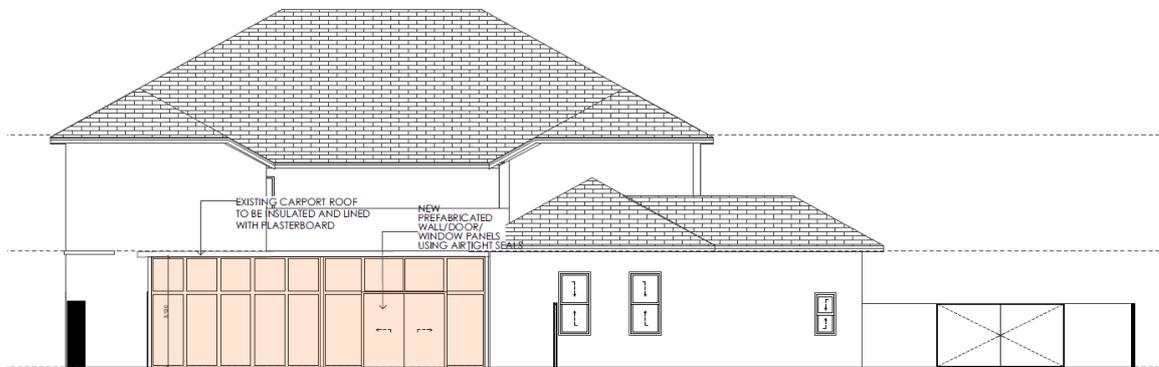


Figure 10: Proposed south elevation

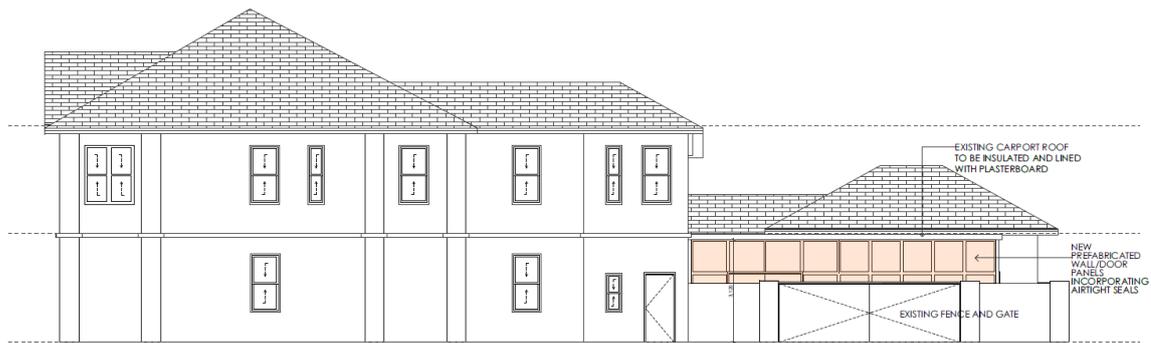


Figure 11: Proposed west elevation

History of the Subject Development Application

13. The subject application was lodged on 21 September 2018.
14. On 13 December 2018, Council issued a letter requesting that additional information be submitted in order to complete the assessment, as follows:
 - An amended Acoustic Report was required as the assessment was based on the prayer hall being an enclosed structure, not an open structure as per the original proposal. The amended report was required to reflect noise level predictions with the use of the courtyard in its existing open form, as well as represent the accurate size of attendance for each prayer and potential noise breakout from the use of amplified equipment. It was suggested that robust noise control measures were required to address any potential significant exceedances of the relevant acoustic criteria.
 - Detailed amended architectural drawings, if the outcome of the revised Acoustic Report was that physical noise attenuation works were required for the proposed prayer hall to meet prescribed noise levels.
 - A Plan of Management (POM) was required to address the management of noise, traffic and parking, particularly during the larger occasions including Eid, Taraweeh, Friday Jumma prayers. The POM was to also include a communication and distribution strategy, and all behavioural and management recommendations made in the amended Acoustic Report.
 - As the proposal involves an intensification of the existing use, it was required that bicycle car parking spaces be provided within parking plan, and a revised Traffic Report to address the service vehicle parking requirements of the site.
 - A Transport Access Guide (TAG) including information on drop-off/pick-up locations, taxi zones, public transport options, pedestrian access, bicycle and cycleway networks etc., for worshippers.

15. On 1 February and 7 February 2019, in response, the applicant submitted the following additional information:
 - Plans showing the enclosure of the parking area for a prayer hall.
 - An Addendum to the original Noise, Traffic and Parking Management Plan, which provided more information on communication and distribution strategies and service vehicle requirements. It is noted that the applicant advised that an amended Acoustic Report was not necessary as the proposal had been amended to enclose the parking area.
 - A Transport Access Guide (TAG).
16. As a result of the application being amended to include physical works to address potential noise impacts, the application was re-notified and re-advertised for a period of 21 days between 9 May 2019 and 31 May 2019.
17. On 27 March 2019, Council advised that the additional information submitted had not adequately addressed matters raised in Council's original correspondence, dated December 2018, as follows:
 - The amended Acoustic Report made an assessment based on the new prayer hall being an enclosed structure with double brick masonry walls, however the amended plans submitted showed that the structure will comprise prefabricated wall/door/window panels.

It was requested that a revised Acoustic Report be provided with predictions of noise impact based upon the predicted attenuation of the proposed structure as shown in the submitted drawings, as well as include more robust noise control measures and provide an assessment against the accurate size of attendance for each different prayer.
 - A revised and comprehensive Plan of Management (POM) was required to reflect all updated recommendations contained within the revised Acoustic Report and Traffic Report.
 - The submitted car parking layout did not meet Australian Standards, and concern was raised regarding the use of the north-eastern car park for drop off and pick up areas as identified within the submitted Addendum to the original Noise, Traffic and Parking Management Plan and not addressed in the Traffic Report.
 - The submitted Transport Access Guide (TAG) was considered to be insufficient.
18. On 24 April 2019, the applicant provided the following additional information:
 - Amended plans.
 - A POM containing a revised Acoustic Assessment and Traffic and Parking Report.
 - A revised TAG with a Transport Access Map.

19. On 10 July 2019, Council advised that insufficient documentation has been submitted as part of the application to permit an adequate assessment of the potential noise impacts of the proposal, with amendments to the acoustic report and more robust noise control measures for the proposal required. Further clarification was provided during a telephone conference on 16 July 2019 and with written correspondence on 17 July 2019.
20. On 9 August 2019, the Applicant submitted an amended Acoustic Assessment and Plan of Management.

Economic/Social/Environmental Impacts

21. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:
 - (a) Environmental Planning Instruments and DCPs.

State Environmental Planning Policy (Infrastructure) 2007

The provisions of SEPP (Infrastructure) 2007 have been considered in the assessment of the development application.

Clause 101 - Development with a frontage to a classified road

22. The application was referred to NSW Roads Maritime and Services (RMS) for comment on 15 October 2018 on the assumption that this section of Bourke Street was a classified road. To date, no response has been received from the RMS and it has been clarified that this section of Bourke Street is not a State classified road.
23. Notwithstanding that the site is not a State classified road, it is a regional road, and as such, consideration has been given to the provisions of Clause 101 of the SEPP.
24. Pursuant to Clause 101, the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
 - (a) safe vehicle access is provided (other than from the classified road);
 - (b) the development will not affect the safety, efficiency and ongoing operation of the classified road; and
 - (c) the development is not of a type that is sensitive to traffic noise or vehicle emissions, and has been appropriately designed to ameliorate any such issues.
25. The proposed development is considered to be satisfactory when considered against these objectives, noting that the use will not adversely affect the safety, efficiency and ongoing operation of Bourke Street. The premises will utilise Navins Lane as an entry point to the existing car park, and exit in a forward direction only with egress to Bourke Street.

Clause 104 - Traffic generating development

26. The application is not subject to Clause 104 of the SEPP, as it is not identified as traffic generating development because it will not result in an additional 200 or more motor vehicles per hour on site.

Sydney LEP 2012

27. The site is located within the B4 Mixed Use zone. The proposed use is defined as 'place of public worship', which is permissible in the zone.
28. Subject to conditions, the proposed development is considered to be consistent with the objectives of the B4 Mixed Use zone in that:
- (a) it will regularise and appropriately manage the existing place of public worship;
 - (b) it will maintain a use that supports the viability of the centre; and
 - (c) it will encourage public transport use, walking and cycling.
29. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	<p>A maximum height of 9m is permitted.</p> <p>There is no change to the existing maximum building height proposed, with the new partition walls, doors and windows located beneath the existing covered carpark roof.</p> <p>A maximum height for new structures is approximately 3m, which complies with Clause 4.3.</p>
4.4 Floor Space Ratio 6.14 Community infrastructure floor space at Green Square	Yes	<p>The site has a base FSR of 1.5:1 permitted. An additional FSR of 0.5:1 is also permitted, subject to the community infrastructure floor space in Green Square provisions pursuant to Clause 6.14.</p> <p>The proposed development will result in the creation of an additional 155sqm of GFA with the enclosure and use of the existing car parking area for a new prayer hall.</p> <p>This will increase the total GFA of the building to approximately 776sqm. This equates to a FSR of 0.85:1. The site is compliant with the base FSR development standard for the site.</p>

Development Control	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a heritage item of local significance - No. '112202', a former fire station including interiors. The site is also located in the Zetland Estate heritage conservation area.</p> <p>Council's Heritage Specialist has reviewed the proposal and raises no objection to the proposed works. It is considered that the bulk of the addition is located behind a high fence and therefore not readily visible from the street, and the proposed works to enclose an existing structure are reversible and will have no impact to the original fabric of the building.</p> <p>Therefore, the proposal is not considered to result in adverse impact on the significance of the heritage item nor character of the conservation area.</p>

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
6.21 Design excellence	Yes	<p>As the proposal involves external alterations and additions to an existing building, the design excellence provisions of this clause apply.</p> <p>Pursuant to the provisions of clause 6.21(3) of the Sydney LEP 2012, development consent must not be granted to development unless the consent authority is satisfied that the proposal exhibits design excellence.</p> <p>The proposed building works are minor and will not significantly alter the appearance of the site nor will it impact upon the heritage fabric of the existing building. Subject to the imposition of appropriate conditions, the proposed development will not result in adverse environmental impacts to surrounding development.</p>
7.9 Car Parking - Other land uses	Yes	The maximum number of car parking spaces for a building used for the purposes of a place of public worship is 1 space for every 10 seats or 1 space for every 30sqm of GFA.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
		<p>This equates to a maximum of 26 parking spaces permitted on site.</p> <p>The proposal provides for 11 car parking spaces, which complies with the maximum permissible under the Sydney LEP 2012.</p>
7.13 Contribution for purpose of affordable housing		<p>As the proposed development results in the creation of an additional 155sqm of GFA, it is subject to an affordable housing contribution.</p> <p>It is noted that a place of public worship is not identified as a form of excluded development under clause 7.13(6) of the Sydney LEP 2012.</p> <p>It is noted that community facilities are a form of excluded development for the purposes of affordable housing contributions. However, the Sydney LEP 2012 dictionary definition of a community facility specifically states that it does not include a place of public worship.</p> <p>As such, with the proposal increasing the Total Floor Area (TFA) by 156sqm, an affordable housing contribution of \$12,155.52 is therefore required (current contribution rate for non-residential is \$77.92 per sqm of the total non-residential floor area). An appropriate condition of consent is proposed requiring the contribution to be paid prior to the issue of a construction certificate.</p>
7.15 Flood planning	Yes	The site is not identified as being flood affected.

Sydney DCP 2012

30. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

2. Locality Statements – Mary O'Brien Park

The subject site is located in the Mary O'Brien Park locality.

2. Locality Statements – Mary O'Brien Park

The Character Statement for this locality makes reference to the character of the area being influenced by the existing residential neighbourhood. The application has been amended to ensure that the proposed development will not result in adverse impacts on surrounding residential properties, as discussed further in the Issues Section below.

The proposal also responds to the heritage building and conservation area, with a ground floor addition that does not impact upon the original fabric of the building and is not dominant when viewed from the street.

3. General Provisions	Compliance	Comment
3.9 Heritage	Yes	As discussed above, the proposed development will not adversely impact on the significance of the heritage item or the conservation area.
3.11 Transport and Parking 3.11.1 Managing transport demand 3.11.3 Bike parking and associated facilities 3.11.7 Motorbike parking 3.11.14 Parking area design	Yes	<p>The proposal has been amended during the course of the assessment to ensure that it generally complies with the relevant provisions of Section 3.11 of the Sydney DCP 2012 relating to transport and parking. Please refer to the Issues Section for detailed discussion.</p> <p>With regard to vehicle parking, the proposal provides for 11 car parking spaces, which complies with the maximum permissible parking under the Sydney LEP 2012.</p> <p>Regarding accessible parking, 1 accessible space is provided which is in accordance with the requirements of Sections 3.11.9 and 7.8.5 of the Sydney DCP 2012, with 1 accessible space per 20 parking spaces required.</p> <p>With regard to bicycle parking, Section 3.11.3 requires that for places of public worship, 1 bicycle space is required for every 15 seats. With a maximum of 150 worshippers, 10 bicycle spaces are required. The proposed development includes 10 bicycle parking spaces and these are provided in the north-eastern car parking area.</p> <p>Section 7.8.4 of the Sydney DCP 2012 also requires that in all buildings that provide onsite parking, 1 motorcycle</p>

3. General Provisions	Compliance	Comment
		parking space for every 12 car parking spaces is to be provided. As the proposal contains 11 car parking spaces only, no motorcycle parking is required.
3.12 Accessible design	Yes	A condition is recommended to be included in the consent, to ensure that the proposed addition is designed and constructed to provide access and facilities for people with a disability in accordance with the Building Code of Australia.
3.14 Waste	Yes	A condition has been recommended for the construction and operation of the proposed development to comply with the relevant provisions of the City of Sydney Code for Guidelines for Waste Management in New Developments.
3.15 Late Night Trading	Yes	<p>Although the proposed development is not a "late night" use as it is not proposed to operate beyond 10.00pm, consideration has been given to the provisions within this Section as they are of some relevance to the proposed increase of hours.</p> <p>Please refer to the Issues Section for discussion.</p>

4. Development Types 4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3 Amenity 4.2.3.11 Acoustic privacy	Yes	<p><i>It is noted that the following objectives and provisions apply to residential flat, commercial and mixed use developments only, however, have been used to appropriately address amenity requirements that are considered relevant to the proposed development.</i></p> <p>This section requires that a Noise Impact Assessment prepared by a suitably qualified acoustic consultant be submitted for uses which may affect the acoustic privacy of adjacent residential uses, and the development is to incorporate measures that reduce the entry of noise from external sources into dwellings.</p> <p>The proposed development and accompanying Acoustic Report have been amended during the assessment process to ensure that the proposal maintains adequate acoustic amenity for surrounding residential properties. Refer to the Issues Section for discussion.</p>
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	<p>This section requires that in granting consent for non-residential development on sites within proximity to residential uses within the B4 Mixed Uses zone, the consent authority must have regard to potential impacts on the amenity of existing residential uses, including noise impacts.</p> <p>As discussed in the Issues Section below, the proposed intensification of the use of the place of public worship with the use of an additional prayer hall, is not considered to result in adverse noise impacts to surrounding residential properties, subject to recommended conditions.</p>

5. Specific Areas 5.2 Green Square	Compliance	Comment
5.2.2 Objectives for Green Square	Yes	The proposed development is consistent with the objectives for Green Square. The proposal seeks to regularise and appropriately manage the use of the existing place of public worship, and in doing so contributes towards ensuring that the centres throughout Green Square support the Town Centre and serve the worker, resident, and visitor population in accessible locations.
5.2.9 Building Design	Yes	Although these controls largely cater to new developments, it is considered that the proposed enclosure of the current carport to a new prayer hall is consistent with the requirements of this section in that will not impact on the existing heritage fabric of the building, nor its overall appearance within the conservation area.
5.2.10 Setbacks	Yes	The proposed enclosure aligns with existing setbacks on site.
5.2.12 Above Ground Parking Spaces and Adaptable Car Parking Spaces	Yes	Although the proposal does not comprise additional above ground parking, it is noted that the existing car parking area that is to be retained on the north-eastern side of the site, is screened with existing fences along its street frontages to Bourke Street and Navins Lane.

Issues

Hours of Use

31. Under the existing development consent DU/1990/27, the place of public worship has consent for use between 9.00am and 5.00pm, Monday to Friday.
32. The subject application seeks consent to extend the hours of use to between 6.00am and 10.00pm, 7 days a week. The proposal also seeks consent to convert the approved rear car park to an enclosed prayer hall to be able to accommodate all worshippers for the religious holidays and prayer times.

33. Section 3.15 of the Sydney DCP 2012 includes provisions to address late night trading. Whilst the proposed development is not a "late night" use as it is not proposed to operate beyond 10.00pm, the provisions are still of some relevance to the proposed development.
34. The provisions identify categories of use (A, B and C) and establish base hours of operation that are considered appropriate within particular areas for each type of use beyond which hours of operation are subject to restrictions. Base hours are defined as the standard range of trading hours that a late night trading premises is entitled to if an application is approved. The subject use would most appropriately be identified as a Category C premises.
35. Section 3.15.1 (3) of the DCP clarifies that the provisions do not apply to Category C premises that do not operate beyond 10.00pm.
36. Section 3.15.1 (4) of the DCP states that "Generally standard trading hours between 7am and 10pm will apply in business zones". The site is located in a B4 Mixed Use zone. It is located in an area that would allow base hours of 10.00am to 10.00pm for a Category A premises, 7.00am to 10.00pm for a Category B premises and 7.00am to midnight for a Category C premises with hours outside of these, up to midnight, being subject to trial periods etc.
37. The increased hours are supported as they are consistent with Council's controls, subject to those hours outside base hours being subject of a trial period.
38. The hours of 6.00am to 7.00 am (outside of base hours) are required to allow the Fajr prayer to take place. As it is anticipated that this prayer will only attract up to 20 worshippers, it is considered reasonable that the extended hours outside of base hours be allowed on a trial basis.
39. A condition of consent is recommended permitting base hours of 7.00am to 10.00pm, 7 days a week (consistent with the base hours permitted for indoor areas under Section 3.15.4 of the Sydney DCP 2012), with extended hours permitted between 6.00am and 7.00am, 7 days a week, subject to a trial period of 12 months. A further application may be lodged to continue the extended hours prior to the expiry of the trial period.
40. It is considered that granting consent for the above base and extended hours is appropriate within the context of the City's trading hours controls. These controls assist in allowing trading hours to meet the social and cultural needs of the community, while managing the effects of these uses on the neighbourhoods in which they are located.

Noise Impact

41. As a result of the increase in hours and the intensification of use, a key concern throughout the assessment of the application has been potential noise, particularly emission from the use of the new prayer hall and associated noise from increased persons entering and leaving the site and its impact on surrounding land uses.
42. At the time of lodgement of the application in September 2018, the proposal only involved the change of use of the existing covered car parking area to a new prayer space (i.e. change of use of the area with no physical works proposed).

43. Following a preliminary assessment of the application, concerns were raised by City staff in December 2018 and additional acoustic assessment and amended plans to incorporate attenuation works were requested to ensure that the proposed use could operate and comply with relevant noise criteria. The proposal was amended by the applicant in February 2019 to enclose this new prayer hall area in an effort to minimise noise transmission and mitigate impacts on neighbours.
44. A review of the revised acoustic assessment and amended proposal enclosing the prayer hall by City staff noted an inconsistency between documentation, notably the materiality of the new external walls and its acoustic attenuation, and the need for more robust noise control measures based on an accurate size of attendance for each of the different prayer times.
45. Amended documentation was submitted by the applicant in April and August 2019 to address the above concerns.
46. The final revised Acoustic Report and Plan of Management (POM) submitted in August 2019 has been reviewed by the City's Environmental Health Specialist, and it has been concluded that the proposal is acceptable.
47. It has been assessed that the amended Acoustic Report demonstrates that the proposed use can meet the appropriate acoustic assessment criteria, and the noise emission from the new prayer hall and associated increase in persons entering and leaving the site will not adversely impact upon the acoustic amenity of nearby residences, subject to the implementation of recommendations within the report. These recommendations are addressed by conditions of consent, and include the following:
 - (a) General:
 - (i) Provide education to staff on noise management responsibilities.
 - (ii) Encourage worshippers accessing and egressing the site via a vehicle, to do so in a quiet and orderly manner.
 - (iii) Ensure that the carpark is closed prior to 8.00am, to minimise noise impacts.
 - (iv) The provision of signs to be mounted on walls of the carpark and in the prayer hall, to remind worshippers to respect the amenity of surrounding residential properties.
 - (v) Ensure that management encourage worshippers to enter and disperse in an orderly manner, and that they do not congregate in the courtyard or surrounding area.
 - (vi) Management to ensure that no disturbance occurs or emanates from the site which would be likely to cause a nuisance to surrounding sites or cause detriment to the amenity of the area.
 - (vii) Encourage worshippers to only use enclosed rooms for discussions and meetings with fully closed doors.
 - (viii) Ensure that no external sound amplification equipment or loud speaker(s) are to be used.

- (b) Community consultation:
 - (i) Inform surrounding properties about the nature of measures in place to minimise noise impact.
 - (ii) Provide early notice to surrounding properties of special event prayers (Jumaa, Eid and Taraweeh), describing the activities and likely duration.
 - (iii) Appoint a principal contact person for community queries.
 - (iv) Provide 24-hour contact details through letters and site signage.
 - (v) Record complaints and follow a complaint response procedure suitable to the scale of events. The procedure should include the following information:
 - (i) Time and date of complaint received, and relevant information about the reason for the complaint, including the time and date of the event that caused disturbance.
 - (ii) Contact details for the complainant.
 - (iii) Details of when and how the complaint was addressed.
 - (iv) Details of follow-up with the complainant, including the time and date of any meetings, phone calls and emails. A record of the response should also be kept.

48. It is considered that the implementation of the above noise management recommendations will assist in ameliorating adverse acoustic impacts on surrounding residential properties.

Traffic and Parking

49. The existing place of public worship has 15 car parking spaces, with 4 spaces contained within the south-western car park, and 11 spaces provided in the north-eastern car park. The application seeks a reduction of 4 car parking spaces, with the conversion of the south-western car park to a new enclosed prayer hall.
50. Under the Sydney LEP 2012, the maximum number of car parking spaces permitted for a building used for the purposes of a place of public worship is 1 space for every 10 seats or 1 space for every 30sqm of GFA. This equates to a maximum of 26 parking spaces permitted on site. The proposal provides for 11 car parking spaces, which complies with the maximum requirement.
51. The proposed loss of 4 on-site car parking spaces is acceptable given that the maintenance of 11 spaces complies with the above maximum amount, and that the proposal is benefited by being accessible to public transport (within 350m of Green Square train station and less than 75m from bus stops on Elizabeth Street). As detailed further below, staff and worshippers will be encouraged to utilise more sustainable modes of transport.

52. The proposal will increase the floor space on the site, therefore allowing for an increased internal capacity of the approved use on site. It is noted that the existing consent for the site (DU/1990/27) does not restrict the capacity of the site, and that the covered car parking area, which is to be enclosed to create a prayer hall, has been used for the purpose of prayers. The enclosure of this space is to accommodate the current use of the site rather than allow for further expansion.
53. The perceived increase in persons, in addition to an increase in hours, has given rise to concerns being raised in submissions regarding increased traffic and congestion, and associated off-street parking impacts.
54. Following a preliminary assessment of the application, transport issues were raised by City staff in December 2019. Specifically, it was required that:
 - (a) a Plan of Management (POM) be prepared to address the management of noise, traffic and parking, particularly during the larger occasions;
 - (b) the proposal include the provision of bicycle parking spaces in association with the intensification of the existing use;
 - (c) a revised Traffic Report be prepared to address the service vehicle parking requirements of the site; and
 - (d) a Transport Access Guide (TAG) be prepared to provide information on drop-off/pick-up locations, public transport options, pedestrian access and cycleway networks, for worshippers.
55. In response, in February 2019, an Addendum to the original Noise, Traffic and Parking Management Plan was submitted which provided more information on distribution strategies and service vehicle requirements, as well as a Transport Access Guide (TAG).
56. Following assessment of the additional information, City staff requested further amendments in March 2019. These included that the car parking layout meet the Australian Standards, that all documentation be consistent regarding transport and a more detailed TAG be submitted. It is noted a condition is included in recommendation to ensure that the parking design demonstrates compliance with the Australian Standards.
57. The final Traffic and Parking Report, TAG and accompanying Transport Access Map, submitted in April 2019, has been reviewed by the City's Transport Unit. It is considered that the proposal, as accompanied by this documentation, is acceptable with regard to traffic and parking impacts, for the following reasons:
 - (a) For majority of the week, the number of worshippers in the prayer hall is not expected to be more than 20 people. During special events whereby there is an increase in worshipper numbers, these either do not occur during the morning or afternoon/evening peak hours (Jumaa to occur only on Fridays at midday and Taraweeh to only occur for one month of the year in the evening), or only occur twice a year (for the Eid prayers).

- (b) The proposal is not considered likely to result in excessive traffic generation, with worshippers and visitors encouraged to walk, cycle, use public transport, or car-pool. The amended proposal includes the provision of bicycle parking spaces. The amended TAG provides for detailed information on accessing the site, and distribution of the TAG through various forms of communication is recommended to be imposed as a condition of consent.
 - (c) The proposal will not adversely affect the efficiency and ongoing operation of the existing street network, with the estimated traffic generation considered to be low, and the premises to utilise Navins Lane as an entry point to the existing car park and exit in a forward direction only with egress to Bourke Street.
 - (d) The final POM and Traffic and Parking Report include a number of measures to manage the traffic circulation within the site and any associated traffic impacts. These measures are recommended to be implemented via conditions of consent requiring compliance with the reports, and include:
 - (i) on-site management and security are to manage the number of vehicles entering the car park at any one time, to avoid queueing in Navins Lane;
 - (ii) on-site management and security are to enforce a no parking area in the aisle of the car park;
 - (iii) during special events, 5 staff members or volunteers are to be appointed and located at exit points to ensure patrons exit the premises in an orderly manner;
 - (iv) staff to be trained to effectively disperse crowds; and
 - (v) prior to special events, worshippers are to be encouraged to encourage use public transport.
58. It is considered that implementation of the above measures will help minimise adverse traffic impacts on surrounding residential properties.

Internal Referrals

- 59. The application was discussed with Council's Environment Health Unit Heritage, Urban Design Specialists, Building Services Unit, and Transport and Access Unit who advised that the proposal is acceptable subject to the recommended conditions.
- 60. The conditions of other sections of Council have been included in the proposed conditions.

External Referrals

Notification, Advertising and Delegation

- 61. In accordance with Schedule 1 of the Sydney DCP 2012, the proposed development is required to be notified and advertised. The application was notified and advertised for a period of 21 days between 15 October 2019 and 6 July 2019. The application was re-notified and re-advertised for a period of 21 days between 9 May 2019 and 31 May 2019.

62. As a result of both notification periods, there were 106 unique objections received. It is noted that of the 106 objections received, these were from 69 individuals and 34 were a preform letter with some additional comments.
63. For ease of reference, the matters raised in the objections have been put together into like topics.

(a) *Use of the site*

- The use of existing car parking area as prayer hall is not appropriate with regard to negative impacts on surrounding development.
- The proposed intensification of the use is not consistent with character of the residential area.
- Currently the existing car parking area is used unlawfully as a prayer hall.
- There is a difference between a prayer hall and place of public worship.

Response - The proposed development application is seeking consent for the conversion of the existing covered car parking area to an enclosed prayer hall (effectively regularising the previously identified unauthorised use of this parking area as an extension of the prayer hall) which is in association with the existing use on site, a place of public worship.

A place of public worship is permissible with consent in the B4 Mixed Use zone, and is defined as *a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.*

(b) *Noise impacts*

- The proposed prayer hall is in close proximity to residential properties leads and will lead to adverse noise and acoustic privacy issues.
- The acoustic assessment is based off invalid assumptions, to give a misleading representation of the actual use and impacts.

Response - The application has been amended during the assessment process to enclose the prayer hall in order to acoustically attenuate this area and minimise noise transmission to neighbouring properties.

The proposal has been assessed by Council's Environmental Health unit, who are satisfied that the use of the premises is able to meet the relevant noise assessment criteria, and will not result in adverse noise impacts to nearby residential uses, subject to conditions.

(c) *Hours of operation*

- The extension of hours will have a negative impact on the area with traffic, congestion, noise and parking.
- The extended hours (prior to 9am and beyond 5pm) are not appropriate within a residential area.

- The extended hours will also result in sleep disturbance, which will impact on the health and wellbeing of residents.

Response - The hours of operation have been assessed with regard to potential noise and traffic impacts. As discussed in the Issues Section of this report, a maximum number of 20 persons for majority of the day is expected. During special events whereby there are increased worshippers, these occur on Fridays at midday (Jumaa), for a one month duration in Ramadan (Taraweeh), and only twice a year (Eid Prayers).

Conditions of consent are recommended to mitigate any noise and traffic impacts during the extended hours. As discussed above, base hours are permitted as well extended hours in accordance with Section 3.15 of the Sydney DCP 2012. The extended hours are recommended to be approved on a 12-month trial basis.

(d) *Traffic and parking impacts*

- The use of the existing parking area as a prayer hall will decrease the amount of on-site parking available and increase the reliance on on-street parking.
- Increase in pedestrian and vehicle congestion.
- Increase in illegal parking along Navins Lane, McPherson Lane and Cook Lane and grass area of Cook Lane.
- Traffic assessment is inaccurate, and is carried out at times and managed so as to give a misleading representation of the actual use and impacts.
- Proposed parking provision does not comply with the relevant requirements.
- Patrons will not utilise public transport and continue to rely on taxis.
- The light from vehicles in the early morning and evening will have a negative impact on surrounding residential properties.

Response - A full assessment of the application against the relevant Council controls is provided above. As discussed above, Council's Transport Unit are satisfied with the submitted traffic assessment.

It is noted that several transport related conditions are recommended to be included in the consent, to ensure that the proposed parking, access and loading arrangements are properly implemented and managed.

(e) *Capacity*

- The site is not large enough to accommodate an increased number of patrons.
- The documentation submitted states a maximum capacity of between 100-150 patrons for special events such as Jumaa and Taraweeh, which is not accurate.
- Queries regarding the existing capacity.

Response - The subject application and accompanying documentation have been assessed against the number of worshippers expected for specific times throughout the day, and have been assessed as acceptable.

It is recommended that the development operate strictly in accordance with the submitted Plan of Management (POM), by way of a condition of consent. The POM nominates a maximum capacity of 150 worshippers, during special events only.

(f) *Existing roof and proposed enclosure*

- There is no evidence for the approval of the existing roof, and associated heritage impacts.
- The proposed enclosure will detract from the appearance and heritage significance of the building.

Response - Development Consent No. D/2008/616 granted consent for the construction of a permanent awning over the western car parking area.

As discussed above, the proposal is not considered to result in adverse impact on the significance of the heritage item nor character of the conservation area, give the bulk of the addition is not readily visible from the street.

(g) *Safety*

- Concerns regarding large congregations of people.
- Crime increase.

Response - There is no evidence to suggest that the proposed development will result in increased crime. With regards to the safety of residents, if matters of safety are a concern these should be raised with the NSW Police to investigate.

(h) *Development application process*

- Concerns regarding how many times an application can be lodged.
- Concerns regarding notification process.

Response - A development application can be lodged if a proposal is permissible. Council is required to consider a proposal based on its merits and assess it against the relevant controls which apply.

The proposal has been notified and advertised in accordance with Schedule 2.1 of the Sydney DCP 2012 on two occasions.

(i) *Pollution*

- Increased capacity will result in further rubbish and litter on the street.

Response - There is reason to expect that the proposed development will result in significant increased rubbish and litter on the street.

64. There was also 1 submission of support. The submission stated that the hours of operation should not be restricted, and that the prayer is quiet and will not disturb local residents.

Public Interest

65. The proposed development relates to an appropriate and lawful use within the mixed use zone. It is considered that the development will have no significant adverse effect on the public interest, subject to appropriate conditions being proposed.

S7.11 Contribution

66. The proposed development is not subject to a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015, as it relates to a place of public worship, which is excluded from the need to pay a contribution under Section 1.3 of the plan.

Affordable Housing Contribution

67. Pursuant to Clause 7.13 of Sydney LEP 2012 and the Green Square affordable housing program, the development is subject to affordable housing contributions (to be indexed at the time of payment) of \$12,155.52. This figure is calculated based on the additional floor area of approximately 156 square metres.

Relevant Legislation

68. The Environmental Planning and Assessment Act 1979.

Conclusion

69. The subject application seeks consent for:
- (a) the regularisation of the use of a covered courtyard area previously approved for car parking as an extension to the prayer hall,
 - (b) alterations and additions to the premises to enclose the existing covered courtyard, including new walls and glazing along the southern and western elevations to create a new enclosed prayer hall, and
 - (c) extension of the hours of use of the existing place of public worship from the currently approved 9.00am – 5.00pm, Monday to Friday to 6.00am – 10.00pm, 7 days a week.
70. The proposal has been amended during the course of the assessment to address concerns relating to noise and traffic impacts.

71. Subject to the implementation of conditions, it is considered that the proposed development is generally compliant with the relevant planning controls for the site contained within the Sydney LEP 2012 and Sydney DCP 2012.
72. The development is recommended to be granted for approval, subject to recommended conditions included in Attachment A.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

Mia Music, Planner