

**Item 5.****Development Application: 74 Rosebery Avenue - D/2020/529**

File No.: D/2020/529

**Summary**

**Date of Submission:** 15 June 2020 (amended information received 28 October 2020; public benefit offer received 5 February 2021)

**Applicant:** Impact Group

**Architect/Designer:** Neeson Murcutt Architects

**Developer:** Sydney Catholic Schools

**Owner:** Catholic Archdiocese of Sydney

**Planning Consultant** Mersonn

**Heritage Consultant** John Oultram Heritage and Design

**Cost of Works:** \$22,596,420.00

**Zoning:** R2 Low Density Residential, which permits the proposed development.

**Proposal Summary:** The subject application is for the development of a new Catholic primary school, catering for a maximum of 420 children.

The school building will be constructed predominantly from recycled brickwork, with ceramic tiling underneath gabled forms at each end. It will curve around the southern end of the site, with the topography resulting in the highest elements of building being in its centre.

The main pedestrian entrances are from Rosebery Avenue and Dalmeny Avenue, where the building adopts a comparably lower scale.

Vehicular access will be provided via Morley Avenue, with separate driveways for incoming and outgoing traffic. In addition to staff parking, these will also service a designated kiss and drop area for students.

The development also includes the removal of 29 trees, new landscaping and an external basketball court.

Application documents have been revised to address concerns regarding remediation, building amenity, traffic arrangements, tree management, landscaping and servicing.

The proposed development does not comply with the nine metre height control prescribed under Clause 4.3 of the LEP. The applicant has submitted a Clause 4.6 variation request, which is supported.

Significant works to public infrastructure will be necessitated by the proposed development. These include upgrades to footpaths, street lighting, pedestrian crossings and stormwater drains. These works are proposed to be captured by a Voluntary Planning Agreement (VPA.)

The application was notified and advertised for 21 days between 1 July 2020 and 23 July 2020. Two submissions were received, which raised the following matters:

- insufficient eastern setback;
- acoustic impacts;
- excessive tree removal;
- inappropriate brick colour;
- design uncharacteristic of surrounding area;
- traffic impacts;
- water table pollution; and
- concern that some residents do not speak English and may not understand the notification letter.

These matters have been reviewed during the assessment and the development is generally considered to comply with all relevant planning controls. The amended proposal appropriately responds to the site's context and

environmental conditions and will help achieve the desired future character of the area, as expressed in the applicable planning policies.

The application requires determination by the Local Planning Panel due to a development standard exceedance of more than 10% and the inclusion of a Voluntary Planning Agreement (VPA).

The application is recommended for deferred commencement approval to enable execution of the VPA.

**Summary Recommendation:** The development application is recommended for deferred commencement approval.

**Development Controls:**

- (i) State Environmental Planning Policy No 55 - Remediation of Land ('SEPP 55')
- (ii) State Environmental Planning Policy (Infrastructure) 2007 ('Infrastructure SEPP')
- (iii) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP')
- (iv) State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 ('Education SEPP')
- (v) Sydney Local Environmental Plan 2012 ('LEP')
- (vi) Sydney Development Control Plan 2012 ('DCP')
- (vii) City of Sydney Development Contributions Plan 2015 ('Section 7.11 Plan')

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Clause 4.6 Variation Request
- D. Public Benefit Offer

## Recommendation

It is resolved that:

- (A) the variation requested to the LEP's building height standard in accordance with Clause 4.6 'Exceptions to development standards' be upheld; and
- (B) pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2020/529 subject to the 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 permissible with consent in the R2 Low Density Residential zone.
- (B) The applicant's written request to vary the height standard adequately addresses the matters required to be demonstrated by Clause 4.6(3) of the LEP. The applicant's request demonstrates that compliance with the building height development standard is unreasonable and unnecessary, and that there are sufficient planning grounds to justify the school building contravening Clause 4.3 of the LEP. The proposal is also in the public interest because it is consistent with the objectives of the R2 Low Density Residential zone and the building height development standard.
- (C) The proposed development complies with 0.6:1 floor space ratio control prescribed under Clause 4.4 of the LEP.
- (D) The proposed development provides an appropriate architectural outcome that is suitable in terms of its scale, built form and response to the site's context. It is consistent with the desired future character of the area, as expressed in the applicable planning policies. As such, it is considered to satisfy the design excellence provisions under Clause 6.21 of the LEP.
- (E) The proposed development satisfies the relevant objectives and provisions of the DCP.
- (F) The proposed development will not unreasonably impact the amenity of surrounding residential properties.

## Background

### The Site and Surrounding Development

1. A site inspection was undertaken by staff on 9 July 2020.
2. The wider site includes an entire street block, and has frontages of 98m to Kimberley Grove, 112m to Rosebery Avenue, 113m to Dalmeny Avenue and 100m to Morley Avenue. Vehicular access is currently provided via Kimberley Grove. The block is divided into 14 separate Torrens title lots, resulting from a historic subdivision prior to the current owner purchasing the land. The main development site consists of 4871m<sup>2</sup> in the southern portion of the block.
3. The site contains St Joseph's Catholic Church and four ancillary buildings. The church is in the north-west corner, close to the corner of Rosebery Avenue and Kimberley Grove. It is a local heritage item, being constructed during the establishment of the Rosebery Estate in 1927. It is a large, single level (with undercroft) Inter War church constructed in the Romanesque style.
4. Two demountable buildings in the north-east corner will be demolished as part of an approved child care centre. The two remaining brick buildings, both single storey, are proposed to be demolished.
5. The remainder of the site, particularly the southern area, comprises undeveloped land. The site falls from north to south by approximately 8.6m and contains clusters of trees.
6. The surrounding area contains a mix of land uses. To the north is an industrial complex, set behind a 50 metre landscaped setback. To the east and south are single storey, detached dwelling houses. There is also a strip of six shops south-east of the site, on the opposite side of the Morley Avenue and Dalmeny Avenue intersection.
7. The site adjoins the low-scale Rosebery Estate to the south and east, and the North Rosebery redevelopment precinct to the north and west (see figure overleaf). As such, development west of the site generally comprises higher density built forms. Four and five storey residential flat buildings are immediately opposite the church. Further west are more flat buildings, along with industrial uses and commercial premises.
8. Photographs and illustrations of the site and surrounds are provided overleaf.



**Figure 1:** Aerial view of wider site (outlined in red) and surrounding area



**Figure 2:** Closer aerial view of site, showing existing church, approved child care centre and existing buildings proposed for demolition



**Figure 3:** Existing lot configuration, showing wider site (street block) and the specific development site (white shading) used for LEP assessment purposes



**Figure 4:** Site viewed from Morley Avenue, showing former presbytery to be demolished



**Figure 5:** Site viewed from Rosebery Avenue



Figure 6: Site viewed from Dalmeny Avenue



Figure 7: St Joseph's Catholic Church, viewed from Rosebery Avenue



**Figure 8:** Southern portion of site, viewed from its south-west corner



**Figure 9:** Southern portion of site, viewed from its eastern boundary



**Figure 10:** Residential flat building opposite site at 12 Primrose Avenue (fronting Rosebery Avenue)



**Figure 11:** Dwelling houses on eastern side of Dalmeny Avenue



Figure 12: Commercial development on opposite corner of Dalmeny and Morley Avenues

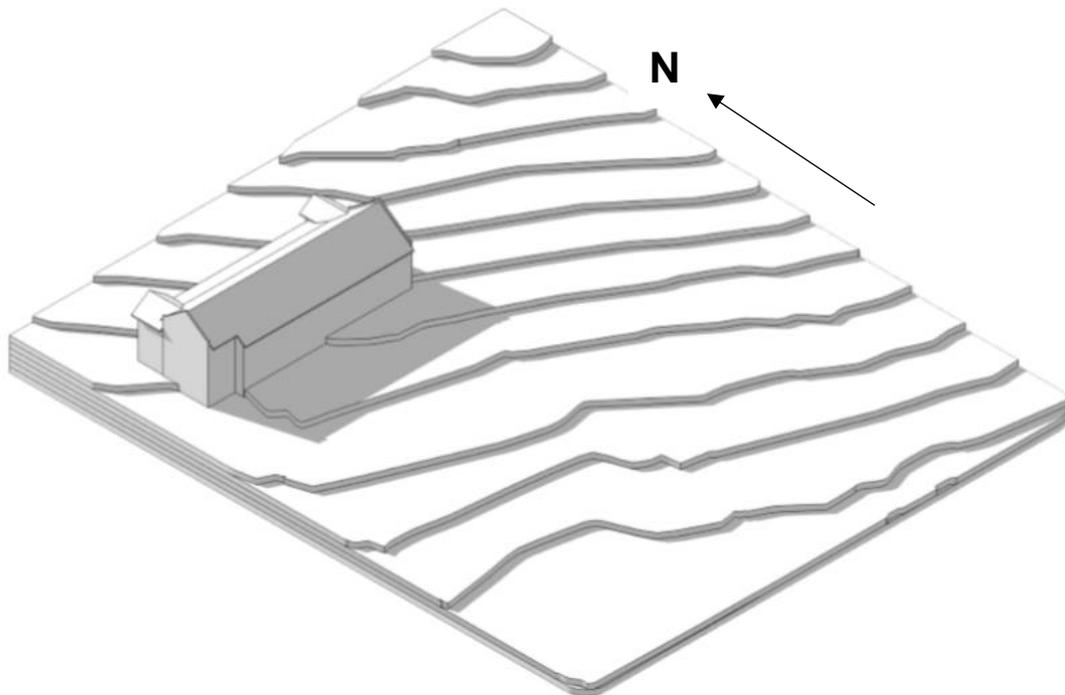


Figure 13: Existing site topography, including location of church

## History Relevant to the Development Application

### Development Applications

9. The following applications are relevant to the current proposal:
- (a) **D/2019/920** – Consent dated 17 March 2020 approved the demolition of demountable structures in the north-east corner, and the construction of a single storey child care centre. It is noted that this consent also included upgrades to the church car park, a new ramp beside the church and landscaped courtyard at the eastern end of the church.
  - (b) **D/2019/920/B** – Lodged on 6 November 2020, this modification seeks amendments to the car parking and remediation arrangements, in addition to the adjustment of an acoustic screen.
  - (c) **PDA/2020/50** – Council officers issued pre-application advice on 23 April 2020 for the construction of the proposed school. Issues raised included:
    - (i) the requirement for servicing on the site;
    - (ii) necessary public domain upgrade works;
    - (iii) car park manoeuvring constraints;
    - (iv) replacement of any tree canopy loss; and
    - (v) documentation required for acoustic impact assessment.
  - (d) **D/2020/741** – Consent dated 8 October 2020 approved alterations to the church and associated landscaping works in the north-west corner.

### Compliance Action

10. The site is not subject to current compliance action.

### Subject Application History

11. The subject application was lodged on 15 June 2020. The proposal was notified and advertised for 21 days between 1 July 2020 and 23 July 2020.
12. Following an initial planning assessment, a letter requested the applicant provide further information on:
- (a) ventilation requirements of the school hall;
  - (b) traffic arrangements and parking;
  - (c) servicing arrangements;
  - (d) tree protection and replanting;

- (e) landscaping specifications;
  - (f) waste management calculations; and
  - (g) site remediation.
13. Suitable information was provided by the applicant on 28 October 2020.
14. It was also requested that the applicant enter into a Voluntary Planning Agreement to ensure the delivery of necessary public domain works. After a series of revisions, the final Public Benefit Offer was provided to Council on 5 February 2021. A deferred commencement consent is recommended to ensure execution of the VPA prior to activation of the consent.

## **Proposal**

### **Built Form**

15. The application seeks consent for the demolition of existing structures and the construction of a new primary school in the southern portion of the block, on the 4871sqm area that comprises seven allotments.
16. The school will be adjacent to the existing church and a recently approved child care centre. External finishes will mostly comprise recycled brick and ceramic tiles, with elements of steel framing and a corrugated metal roof. At its highest central point, the visible car parking level will result in a three storey appearance. However, the topography of the site will produce a lower scale form near the eastern and western street frontages.
17. The built form will include:
- (a) Parking Level**
    - (i) 13 car parking spaces
    - (ii) 10 bicycle parking spaces;
    - (iii) 1 motorcycle parking space;
    - (iv) kiss and drop area;
    - (v) garbage room;
    - (vi) storage and plant equipment;
    - (vii) two driveways to Morley Avenue; and
    - (viii) pedestrian access to Rosebery Avenue and Morley Avenue.

**(b) Ground Floor**

- (i) school hall;
- (ii) after school care kitchen and store;
- (iii) 7 indoor learning rooms;
- (iv) 3 outdoor learning areas;
- (v) office and staff facilities;
- (vi) sick bay;
- (vii) toilet facilities;
- (viii) pedestrian access to Rosebery Avenue and Dalmeny Avenue; and
- (ix) 21 bicycle parking spaces.

**(c) First Floor**

- (i) 9 indoor learning spaces;
- (ii) 2 outdoor learning areas;
- (iii) staff room; and
- (iv) toilet facilities.

## 18. Works to the wider area will also include:

- (a) removal of 29 trees;
- (b) landscaping works to perimeter and internal play area;
- (c) planting of 8 trees;
- (d) installation of hard surface basketball court/ multi-purpose space;
- (e) provision of 21 bicycle racks for students; and
- (f) installation of kiosk substation to Morley Avenue.

**Operations**

19. The school building is proposed to accommodate 420 students and approximately 25 staff.
20. As the school facilities will be made available for use by the Parish and wider community on occasion, the hours of operation will be subject to variability. For the purpose of assessing noise impacts, the Acoustic Report nominates hours of operation between 7.00am – 10.00pm.
21. The development will include out of school hours (OOSH) care, however this service will be restricted to enrolled school children only.
22. The site will not be serviced by a private bus operator, with children intended to arrive via public buses, private car, walking and cycling. A designated kiss and drop area for cars will be accessed by Morley Avenue, with the primary pedestrian entrances on Rosebery Avenue and Dalmeny Avenue.
23. The amended proposal includes a centralised garbage room in the parking level. This will be serviced by private collection trucks, which can enter and leave in a forward direction.

**Supporting Infrastructure Works**

24. Given the student capacity of the school, the surrounding public domain will require significant upgrades to ensure the safe passage of children and vehicles. These will include new raised pedestrian crossings, traffic calming measures, lighting augmentation and footpath upgrades, including kerb extensions and improvements to meet RMS standards.
25. These works are included in the submitted site plan and are to be delivered by the proponent. It is proposed that they be secured through a VPA, as detailed under the Discussion section.
26. Photomontages and drawings of the proposal are provided below.



**Figure 14:** North-east photomontage from Dalmeny Avenue, including pedestrian access point



**Figure 15:** South-west photomontage from corner of Rosebery Avenue and Morley Avenue



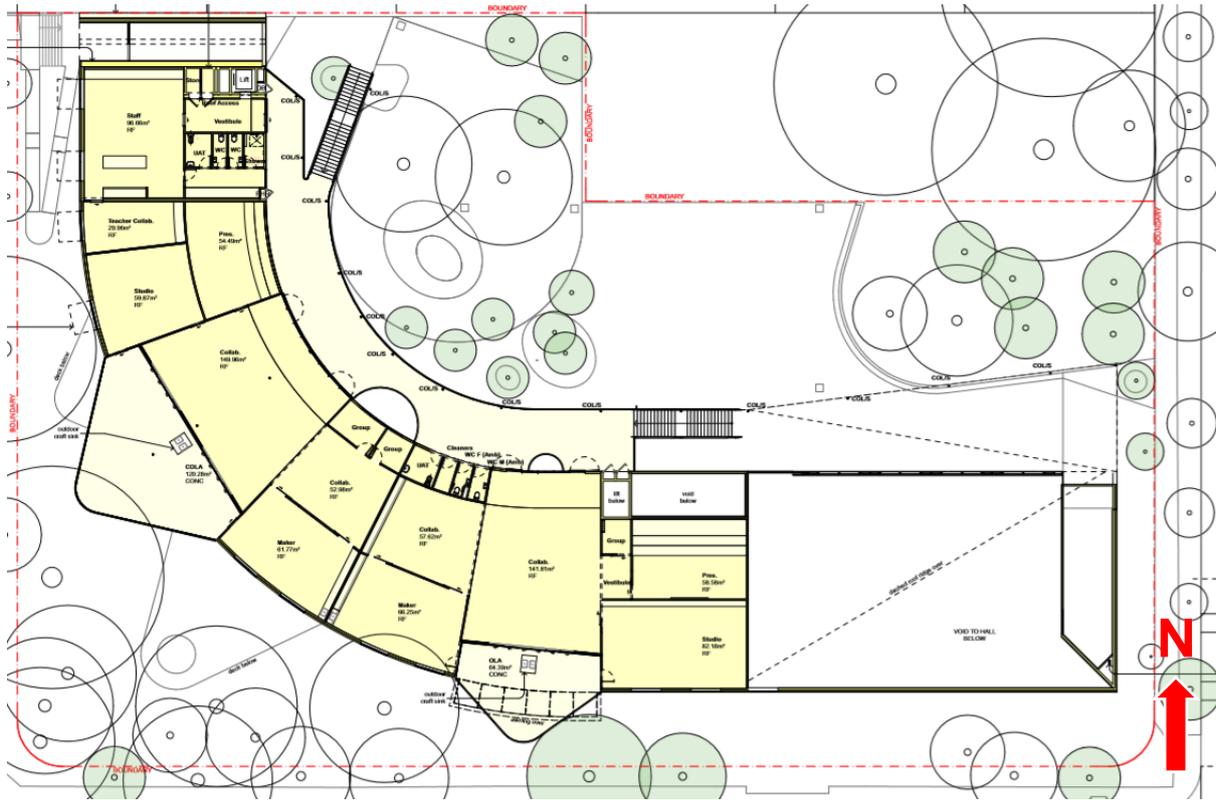


Figure 18: Proposed first floor plan

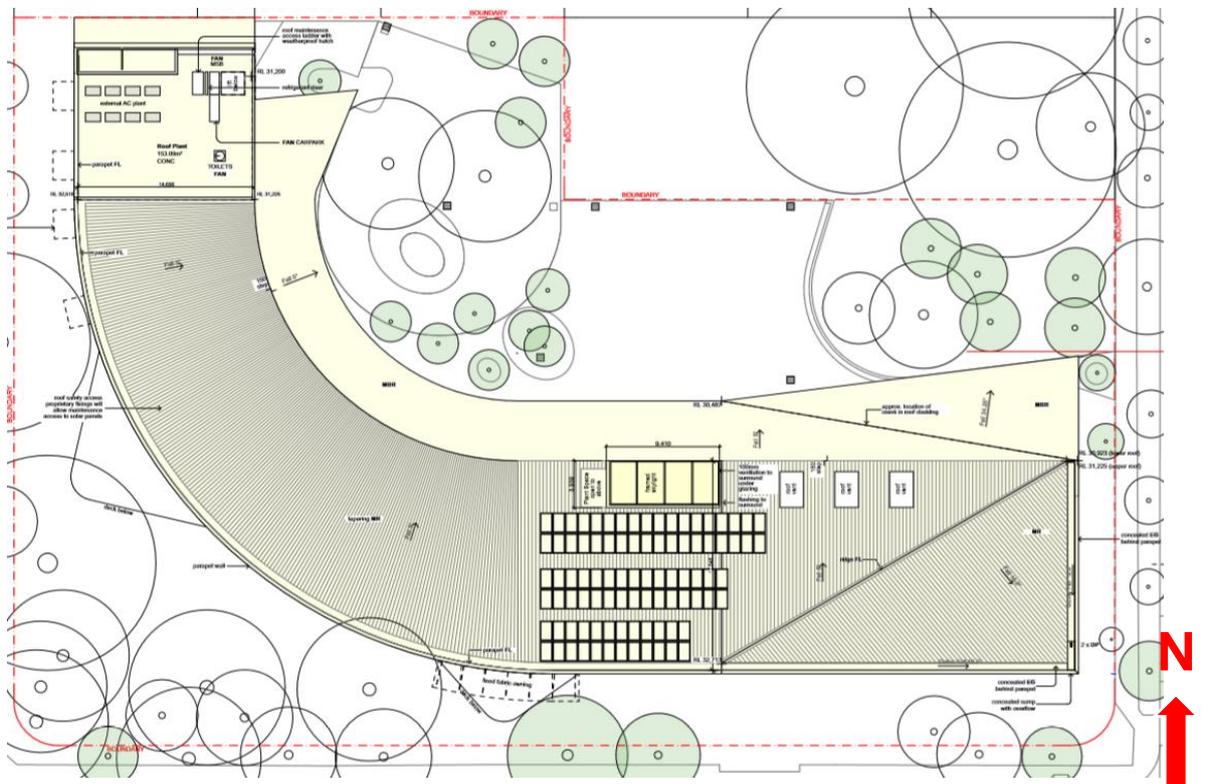


Figure 19: Proposed roof plan



Figure 20: Proposed south elevation (Morley Avenue)

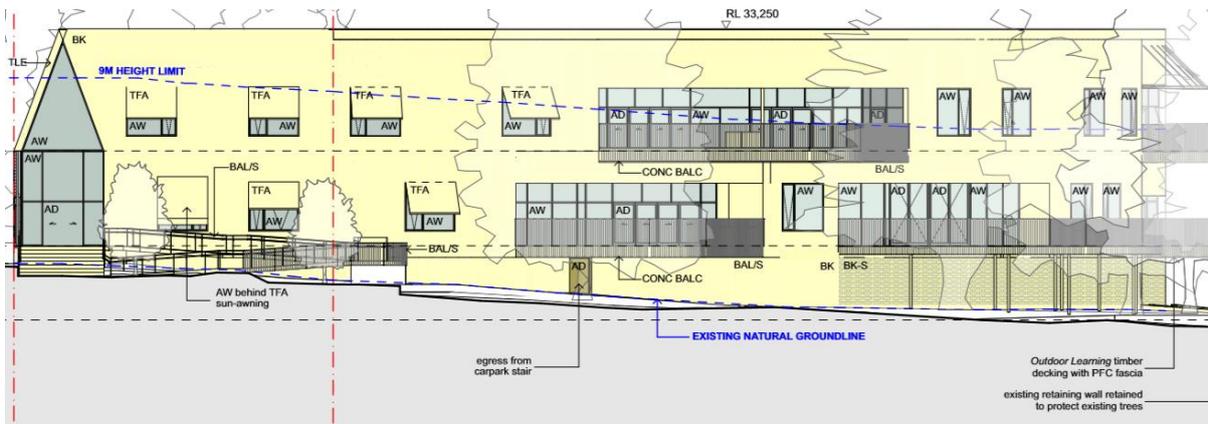


Figure 21: Proposed west elevation (Rosebery Avenue)

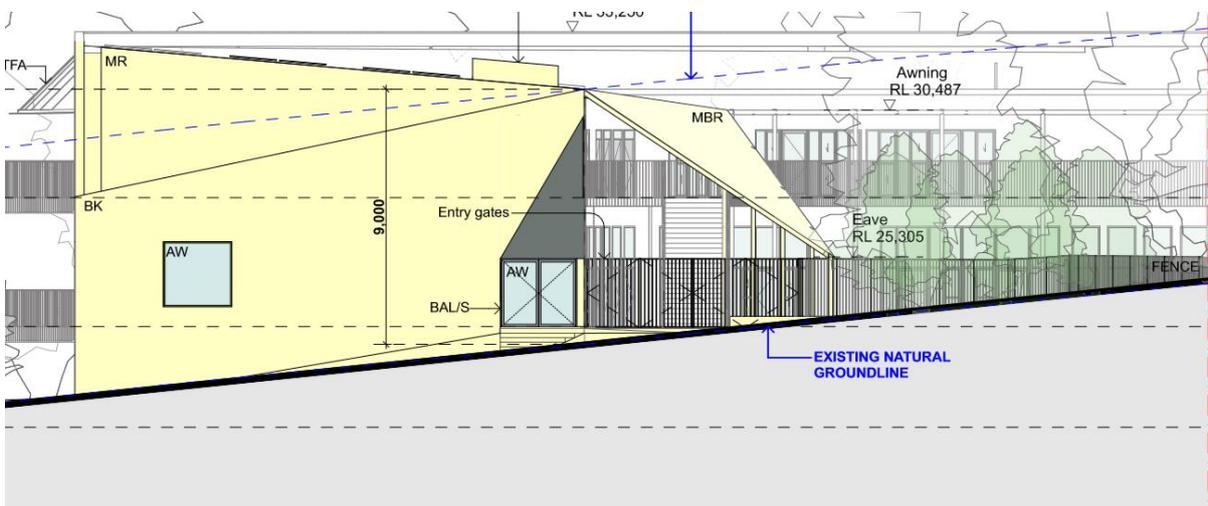
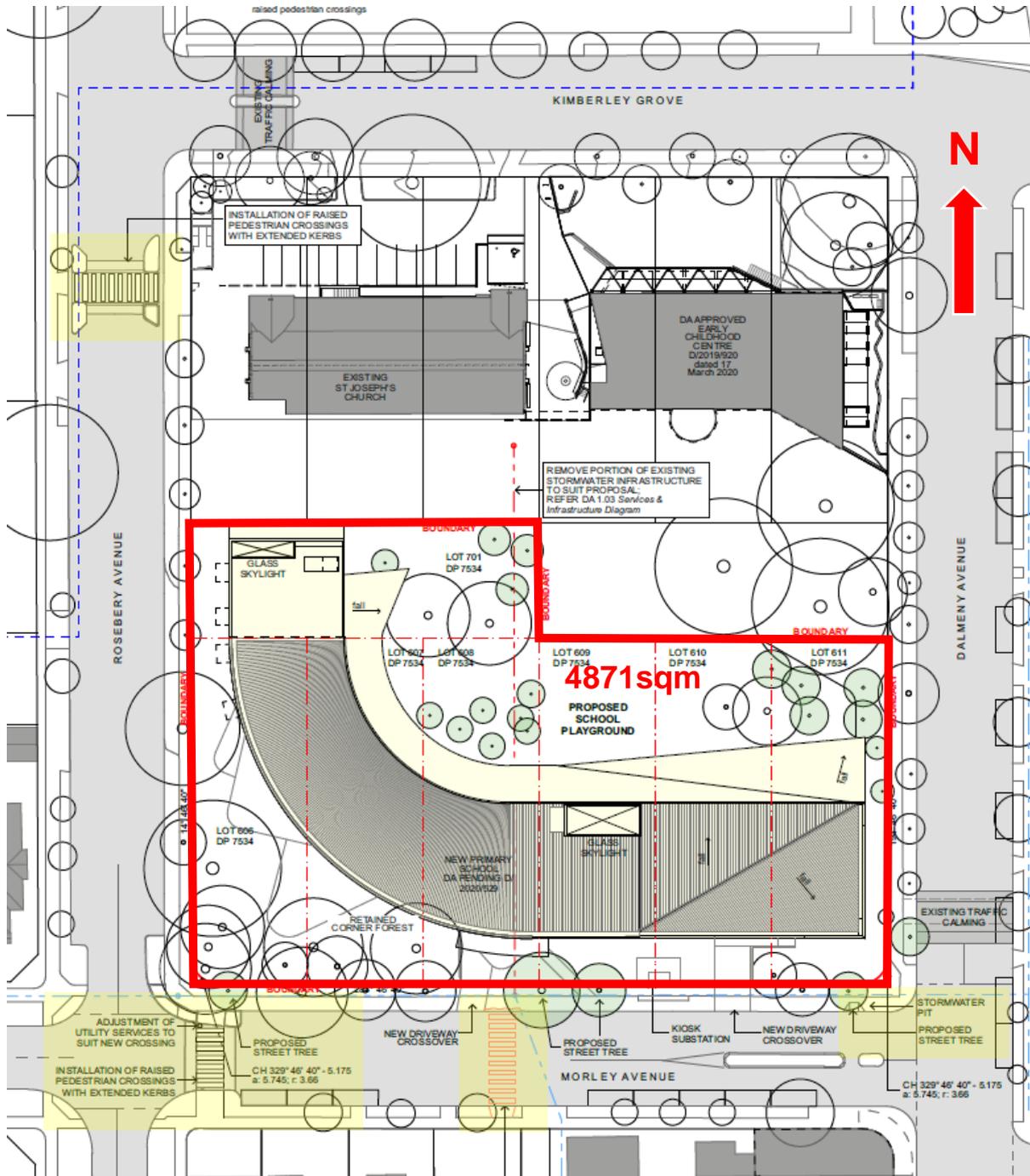


Figure 22: Proposed east elevation (Dalmeny Avenue)

27. The site plan below indicates the main public domain works, and shows the boundary of the seven lots considered to form the 'site area' for FSR calculation purposes. In accordance with Clause 4.5 of the LEP, these are the lots that include significant development works.



**Figure 23:** Proposed site plan showing key infrastructure works, existing lot boundaries and 'development site' area used for LEP assessment purposes

## Assessment

28. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

## State Environmental Planning Policies

### State Environmental Planning Policy No 55 - Remediation of Land

29. The aim of SEPP 55 is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
30. A Detailed Environmental Site Investigation (DESI) identified asbestos in 2 of the 20 soil samples acquired in the development site. This appears to originate from the ground surface, rather than sub-surface soil, and is likely the result of a building demolition that occurred in the 1980s.
31. A Remedial Action Plan (RAP) was submitted with the application. The plan's preferred remediation strategy is the removal of asbestos fragments and excavation of topsoil within the central eastern portion of the site. The soil will be disposed at a licensed offsite location.
32. On the request of Council officers, the RAP was accompanied by a letter from an NSW accredited site auditor, who was satisfied the site could be made suitable for the proposed use. Council's Environmental Health Specialist endorsed these recommendations and provided appropriate conditions to be satisfied prior to works.

### State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

33. The development includes school-based child care, as opposed to a centre-based child care facility. As such, the development is not subject to the Child Care Planning Guideline or concurrence requirements under the Education and Care Services National Regulations.
34. As the development is for the purpose of a school, Part 4 (Schools – Specific Development Standards) of the SEPP applies to this proposal.
35. The development is permissible under Clause 35(1), which nominates R2 Low Density Residential zone as a prescribed zone.
36. Clause 35(6)(a) requires that the proposal be assessed against the design quality principles outlined in Schedule 4 of the SEPP. These are summarised below:

Principle 1 – Context, Built Form and Landscape

- (a) The site has a parkland quality, containing many mature trees. As discussed later, the development will retain most of these trees and is capable of providing new specimens to restore lost canopy cover. The proposed indigenous plant species can also be utilised to teach students to learn about Aboriginal country and tradition.
- (b) There is a 10 metre fall across the site. The proposal responds to this slope appropriately, organising the building along the contours, and separating the vehicle entry (on Morley Avenue) from pedestrian access points (on Rosebery Avenue and Dalmeny Avenue). This strategy minimises cut and fill, while also managing site hydrology constraints.

Principle 2 — Sustainable, Efficient and Durable

- (a) The proposal maximises passive sun protection through its siting, orientation and form. The building allows natural light to filter from the courtyard into the classrooms, while also providing passive protection from the walkway to the north, fixed awning sunshades to the west and sun shading louvres to the north-facing entry.
- (b) Designed as a mixed mode building, natural ventilation opportunities are also provided throughout the development. The school hall, the largest of the internal spaces, has been provided with operable louvres to allow for passive cooling. The power consumption of supplementary active systems will be offset by 92 roof-mounted solar panels, which will produce 25.76 kW of energy.
- (c) The roof cladding is proposed to be Colorbond 'Shale Grey', which has a low solar absorbance rate, resulting in better thermal performance. Insulation throughout the building will further manage heat absorption. Both strategies will reduce energy demand for active cooling.
- (d) Onsite water storage will also allow for collected rainwater to be used for the irrigation of gardens and landscaped areas.
- (e) Flexibility is built into the design, with floor to floor heights that allow for different uses of the proposed spaces. For example, the car park has been designed with a floor to floor height of 3550mm, allowing for it to be used for an alternative purpose if operational needs change (subject to a further application). This flexibility extends the life span of the building, meaning large-scale demolition works may not be required if the school program changes significantly.

Principle 3 — Accessible and Inclusive

- (a) The proposal establishes a well-resolved circulation and wayfinding strategy, with pedestrian entries at both ends of the building and vehicle access via Morley Avenue. Circulation within the school will be along the covered courtyard edge, via the main quadrangle.
- (b) Equal access is available from Rosebery Avenue and Morley Avenue, through a series of compliant ramps. Dalmeny Avenue has a fall greater than 1:10 and therefore does not support wheelchair access. Two lift cores facilitate good accessibility within the site.

Principle 4 — Health and Safety

- (a) The school building provides a boundary to the site, preventing any intrusive fencing along its southern and western perimeters. The fencing on the eastern boundary of the site will be upgraded, replacing the hurricane-style mesh with a contemporary metal design.
- (b) The outdoor learning areas and associated glazing will provide passive surveillance over the public domain, while the consolidated playground will allow unobstructed supervision of the children.

Principle 5 — Amenity

- (a) The proposed school will provide pleasant and engaging spaces that are accessible for a range of educational activities, while also considering the amenity of nearby properties.
- (b) Generous room heights and raked ceilings will provide suitable internal amenity in each classroom. They will allow for the deeper penetration of daylight to minimise reliance on artificial lighting, while also creating an inviting learning and teaching environment. These will be complemented by the landscaping on all sides of the building, providing a pleasant outlook from the internal spaces.
- (c) A play area ratio of 6.4sqm per student (including nominated indoor spaces) allows for a sufficient play space over a variety of outdoor, semi-outdoor and indoor spaces during break times.
- (d) An Acoustic Report submitted with the application has demonstrated that residential properties will not be affected by offensive noise, as addressed in the Discussion section.

Principle 6 — Whole of Life, Flexible and Adaptative

- (a) The applicant engaged educational space planners New Learning Environments to develop a design that would meet the future needs of schools. The school has been organised into four learning hubs (kindergarten, stage 1, stage 2, stage 3), which contain facilities necessary for each learning stage.

- (b) This process is intended to reduce the number of changes required over the life cycle of the school building, helping future-proof the design.
- (c) The learning resources centre and school hall have been designed for multiple uses. They will both be utilised by students during morning tea and lunchtime as an extended play area. The learning resources centre can also accommodate a music rehearsal room, as it is acoustically treated. The multi-purpose hall is scaled for indoor sports and can hold a whole school gathering if necessary. These spaces make the development adaptable and ensure an efficient usage of floor area.

#### Principle 7 — Aesthetics

- (a) The school building and its landscape setting appropriately respond to the site's context.
  - (b) The tall gable of the building at its northern end visually communicates with the adjacent pitched roof of the church. The school hall presents a lower, single storey gabled form opposite residences on Dalmeny Avenue. Its flatter pitch speaks to the recently approved child care centre, and to the pitched roof bungalows in the local area.
  - (c) The materials selection also responds to the context, taking cues from the brick and tile composition of nearby Interwar properties. The outer face of the school is recycled brick, while both ends of the school use teal-coloured tiles, picking up on the colour of the child care centre's shade structures.
37. Additionally, Clause 35(6)(b) requires the consent authority to consider whether the school's facilities can be made available for the use of the community. The submitted Statement of Environmental Effects states that the multi-purpose hall and associated facilities will be made available for use by the parish and wider community. This undertaking will be reflected in a condition of consent, requiring that a facilities management plan be developed and implemented for making the spaces available to the community.
38. Clause 57(2) requires the consent authority to give Roads and Maritime Services (RMS) written notice of the proposal. Following a period of 21 days, RMS advised that no objection was held, provided recommended conditions were imposed. These conditions are included in the conditions of consent.
39. Clause 57(3) also requires consideration of:
- (a) accessibility to the site, including the efficiency of the movement of people and freight;
  - (b) the potential to minimise the need for travel by car; and
  - (c) any potential traffic safety, road congestion or parking implications of the development.

40. The development minimises onsite parking, and provides facilities that encourage alternative forms of transportation. These matters are further discussed under the 'Discussion' section.

#### **State Environmental Planning Policy (Infrastructure) 2007**

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

#### **Division 5, Subdivision 2: Development likely to affect an electricity transmission or distribution network**

##### Clause 45 Determination of development applications – other development

42. The application is subject to Clause 45 of the SEPP as the development involves work near existing network assets.
43. As such, the application was referred to Ausgrid for a period of 21 days and no objection was raised.

#### **State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

44. The aim of this SEPP is to protect the biodiversity values and amenity of non-rural areas of the state through the preservation of trees and other vegetation.
45. The proposal will necessitate the removal of 29 trees. This is acceptable as 90% of these trees to be removed have a low to medium retention value, and will be suitably offset with new replacement planting.
46. These matters are further discussed under the Discussion section.

### **Local Environmental Plans**

#### **Sydney Local Environmental Plan 2012**

47. The site is located within the R2 Low Density Residential zone. The proposed school is permissible in the zone.
48. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

**Part 4 Principal development standards**

Provision	Compliance	Comment
4.3 Height of buildings	No	<p>A maximum building height of 9m is permitted.</p> <p>A maximum height of 13.91m is proposed.</p> <p>The proposed development does not comply with the maximum height of buildings development standard.</p> <p>A request to vary the height of buildings development standard in accordance with Clause 4.6 has been submitted. See further details in the Discussion section below.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 0.6:1 is permitted.</p> <p>A floor space ratio of 0.54:1 is proposed.</p> <p>The proposed development complies with the maximum floor space ratio development standard.</p>
4.6 Exceptions to development standards	Yes	<p>The proposal seeks to vary the building height development standard prescribed under Clause 4.3.</p> <p>This variation is supported, as discussed under the Discussion section.</p>

**Part 5 Miscellaneous provisions**

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site contains a local heritage item, which will not be adversely affected by the development.</p> <p>The siting and scale of the proposed school is sympathetic to the church. It is sufficiently setback to preserve the church's visual setting, and protect key view corridors from the public domain. Sitting below the church at the southern end of the site, the school will also appear less visually dominant from Rosebery Avenue.</p> <p>The school will be constructed from recycled brick, taking a cue from the masonry character of the church and wider Rosebery Estate.</p> <p>The site is not within a heritage conservation area.</p>

**Part 6 Local provisions – height and floor space**

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development achieves a high standard of architectural design, and will contribute the quality of the public domain.
(d)(i) the suitability of the land for development	Yes	The land is considered suitable for the proposed development. The topography and dimensions of the site will provide suitable room for the building envelope, and will facilitate appropriate servicing arrangements.
(d) (ii) the existing and proposed uses and use mix,	Yes	The proposed land use will provide an essential service to the surrounding residential area, and is in keeping with its established character.

Provision	Compliance	Comment
(d) (iii) any heritage issues and streetscape constraints	Yes	<p>As previously discussed, the proposal satisfies relevant heritage provisions.</p> <p>The surrounding streetscape, particularly within the Rosebery Estate, features generous landscaped setbacks that contribute to the character of the area. The proposal includes setbacks of 5m to the east, 6m to the south and 3m to the west. These provide opportunities for substantial landscaping works, which will ensure the development is compatible with the existing streetscape.</p>
(d) (v) the bulk, massing and modulation of buildings	Yes	<p>The proposed form appropriately responds to the characteristics of the site. As the land falls from north to south, the building longitudinally wraps around the slope. This results in the bulkiest section of the building, the south-west corner, being located furthest from the public domain. This reduces the bulk perceived from the streetscape, and ensures an appropriate response to the site's context.</p> <p>The car parking is provided in a semi-basement level, meaning its contribution to the scale of the building is minimised.</p>
(d) (vi) street frontage heights	Yes	<p>No specific street frontages heights are prescribed under any environmental planning instrument.</p> <p>The most prominent street frontages, namely those that contain the public entries from Rosebery and Morley Avenues, adopt heights between 9m and 11m. These are less than the 13.9m height close to the middle of the site, meaning that the building does not have an overbearing impact on the streetscape.</p>

Provision	Compliance	Comment
(d) (vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,	Yes	The proposal will not result in any unreasonable impacts to environmental amenity. This is further discussed under the Discussion section.
(d) (viii) the achievement of the principles of ecologically sustainable development	Yes	<p>The design of the building allows for passive cooling and protection from excessive heat. These characteristics were improved during the course of the assessment, with the addition of acoustically-treated louvres to the school hall.</p> <p>The application was also accompanied by a Section J Part J1 Statement of Compliance, confirming the environmental performance of the proposed building.</p>
(d) (ix) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,	Yes	The amended proposal includes two access driveways, which will service onsite parking and garbage collection requirements. Bicycle parking is also proposed to encourage active forms of transportation. Refer to Discussion section for further details.
(d) (x) the impact on, and any proposed improvements to, the public domain,	Yes	<p>The proposal will necessitate significant upgrades to the public domain.</p> <p>Refer to Discussion section for further details.</p>
(d) (xiii) excellence and integration of landscape design.	Yes	The proposal includes significant landscaping works across the site, including the embellishment of road frontages and the planting of new trees. Landscape design and canopy management are detailed within the Discussion section of this report.

## Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
7.9 Other Land Uses	Yes	<p>The LEP does not specify maximum car parking rates for schools.</p> <p>The proposal includes 13 car parking spaces, which is considered reasonable for the scale and nature of the use proposed. Refer to Discussion section for further details.</p>
Division 3 Affordable housing		
7.13 Contribution for the Purpose of Affordable Housing	Yes	The site is not within the Green Square or Southern Employment Lands localities, and an affordable housing contribution is not required.
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site contains Class 5 Acid Sulfate Soils. Due to the depth of excavation proposed, the Remedial Action Plan did not anticipate that any such soils to be exposed. This view was endorsed by Council's Environmental Health Officer.
7.15 Flood planning	Yes	<p>The site is not subject to flooding, however the surrounding streets are subject to minor inundation during a 1% AEP storm event.</p> <p>The application was reviewed by Council's Stormwater Engineer, who confirmed the levels were compliant with the City's Interim Floodplain Management Policy.</p>
7.16 Airspace operations	Yes	The proposed development is below the 15.24m height requiring the approval of the Civil Aviation Safety Authority.
7.17 Development in areas subject to airport noise	Yes	The subject site is under ANEF contour zone 15. As such, this clause does not apply.

Provision	Compliance	Comment
7.20 Development requiring or authorising preparation of a development control plan	Yes	The site has an area of less than 5000sqm. As such, a site-specific development control plan is not required.

**Development Control Plans**

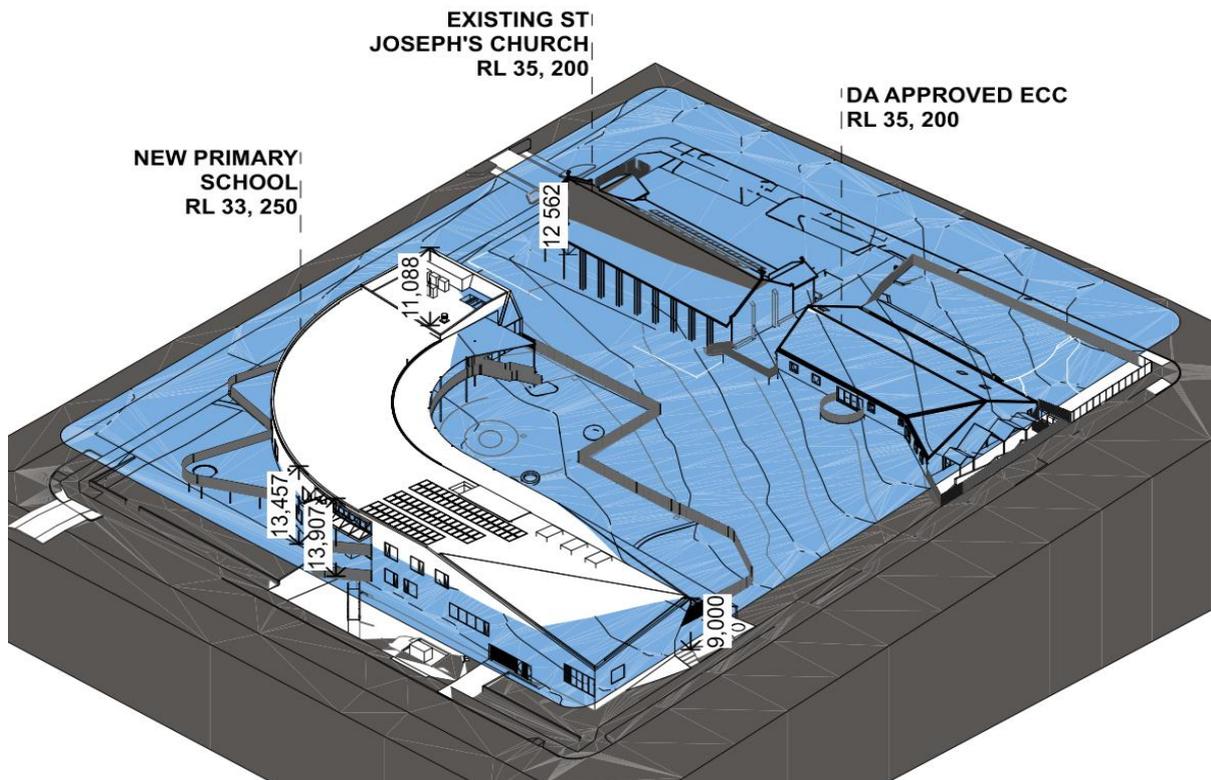
49. Pursuant to Clause 35(9) of the Education SEPP, the provisions of any development control plan do not apply to this proposal.

**Discussion**

**Clause 4.6 request to vary a development standard**

50. The site is subject to a maximum building height control of 9m. The proposed development has a building height of 13.91m, which varies the control by 54.56%.

51. As illustrated in the figure below, the eastern side of the building has a compliant height of 9m, which increases to a non-compliant height of 11.09m on the western side. The centre of the building has the largest non-compliance of 13.91m.



**Figure 24:** Proposed variation of building height (LEP height plane shown in blue)

52. A written request has been submitted to Council in accordance with Clause 4.6(3)(a) and (b) of the Sydney LEP 2012 seeking to justify the contravention of the development standard by demonstrating:
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case; and
  - (b) that there are sufficient environmental planning grounds to justify contravening the standard.
53. A copy of the applicant's written request is attached to this report.

Applicant's Written Request - Clause 4.6(3)(a) and (b)

54. The applicant seeks to justify the contravention of the building height development standard on the following basis:
- (a) That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case:
    - (i) the development is able to satisfy the objectives of the R2 Low Density Residential Zone and the objectives of the building height development standard; and
    - (ii) the submitted drawings and solar diagrams demonstrate that no significant overshadowing, privacy, view or bulk impacts arise from the proposal.
  - (b) That there are sufficient environmental planning grounds to justify contravening the standard:
    - (i) The development provides accessible entry points to all levels of the building. This is achieved by observing the flood planning levels and limiting the building footprint. A lower building with a larger envelope would compromise the accessible paths of travel provided at the different entries.
    - (ii) The application will not result in significant impacts to the residential amenity of nearby properties, by way of overshadowing, overlooking or excessive bulk issues.
    - (iii) A concentrated development footprint will allow for more generous site landscaping and the retention of more trees, particularly in the south-west corner of the site.
    - (iv) The topography of the site is better suited to a consolidated building form, which extends across the slope and minimises additional fill requirements.

Consideration of Applicant's Written Request - Clause 4.6(4) (a) (i) and (ii)

55. Development consent must not be granted unless the consent authority is satisfied that:
- (a) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3 of Clause 4.6 being that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the standard; and
  - (b) the proposed development will be in the public interest because it is consistent with the objectives of the standard and the objectives for development within the zone in which the development is proposed to be carried out.

Does the written request adequately address those issues at Clause 4.6(3)(a)?

56. The applicant has adequately established that compliance with the standard is unreasonable and unnecessary in the circumstances of the case. The objectives of the building height development standard are still achieved, notwithstanding the non-compliance proposed. An assessment against the objectives of Clause 4.3 are provided in the paragraphs that follow.

Does the written request adequately address those issues at clause 4.6(3)(b)?

57. The applicant has established adequate environmental planning grounds for varying the standard.
58. The Rosebery Estate is characterised by generous landscaped setbacks and established canopy coverage, particularly near road reserves. The height non-compliance essentially results from the consolidation of the building envelope in the central area of the site. This configuration allows for landscaped verges to all sides, and the retention of many high-value trees near the site boundaries. This helps the development respond to the character of the existing area, while also improving site amenity.
59. The boundary setbacks and curvature of the building also result in its highest part being within the central area of the site, further from the surrounding streetscape. This manages the visual bulk of the proposal, and ensures it does not result in significant overshadowing, visual privacy or overbearing impacts on the public domain or surrounding properties.
60. It is further noted that the Education SEPP provides that no development control plan applies to the proposal. As such, the one storey height recommended for the Rosebery Estate under the DCP is not relevant to this assessment.

Is the development in the public interest?

61. The development is in the public interest, as it accords with the objectives of the R2 Low Density Residential zone and the building height development standard.

62. The proposal addresses the zone objectives as follows:
- (a) The proposed development improves the provision of facilities and services to meet the day to day needs of residents without compromising amenity of the surrounding area.
  - (b) The proposal is consistent with the desired pattern of land use and achieves a development that responds to the site's landscaped setting.
63. The proposal addresses the development standard objectives as follows:
- (a) The variation will still result in a development that is appropriate to the site and its context, particularly as the intact site levels will enable the retention of much existing vegetation.
  - (b) The proposal will not affect any view sharing arrangements.
  - (c) The overall height transition between the Green Square Town Centre and adjoining areas will not be affected.
  - (d) The proposed built form will not affect the amenity of the public domain, and will contribute to the physical definition of the street network.
  - (e) The development will not affect height transitions to any heritage items. The proposed building is located on the southern section of the site and sits below the heritage listed church. This will ensure the heritage item retains greater prominence within the context.

#### Conclusion (Building Height)

64. For the reasons provided above the requested variation to the building height standard is supported as the applicant's written request has adequately addressed the matters required to be addressed by clause 4.6 of the Sydney Local Environmental Plan 2012 and the proposed development would be in the public interest because it is consistent with the objectives of standard and the zone.

#### Lot Consolidation

65. The wider subject site was originally subdivided into 14 lots and intended for residential use. The southern portion consists of seven lots. The site was subsequently purchased by the Catholic Church, who have since operated the whole street block under one ownership. These lots are treated as one address and have one rating boundary. However, they still technically comprise separate Torrens title lots.
66. Due to the significant works being undertaken, Council's Specialist Surveyor has advised that it would be appropriate to consolidate the site into one lot. This removes BCA fire-rating issues for the northern facade of the school building, and prevents the sale of separate site portions that are important for servicing and circulation.
67. As such, a condition of consent will require the lots to be consolidated. The applicant was consulted on this issue and is agreeable to the condition.

### Traffic and Parking

68. The site is located on the boundary of the Rosebery Estate and North Rosebery localities. The former is an established residential area, while the latter is in the Green Square growth area. This has resulted in significant redevelopment, substantially increasing North Rosebery's residential population. The planning controls for these localities also identify Rosebery Avenue has a future transport corridor, intended to service the growing population of the area.
69. As such, the school is located between two significant residential areas, and directly fronts a future transport corridor. This results in it being well placed to attract students from the local area, who can more heavily rely on active forms of transportation.
70. Sydney Catholic Schools also identified these characteristics and undertook community consultation work prior to submitting the application. The research indicated the need for a new primary school that met the needs of the growing local population. As such, there is an opportunity to reduce car reliance if the site appropriately caters to local pedestrians and cyclists.

### Pedestrian Access

71. It is expected that a significant number of children will access the site on foot, either as part of their journey or as a primary means of travel. The current public domain infrastructure is not appropriate for primary school with 420 children. As such, the following upgrades are required
  - (a) installation of two raised pedestrian crossings with extended kerbs on Rosebery Avenue and Morley Avenue;
  - (b) removal of existing at-grade crossing, including associated signage and kerbs on Morley Avenue;
  - (c) provision of traffic calming measures where necessary and lighting augmentation to address Australian Standard requirements;
  - (d) adjustment of utility services, including augmentation of stormwater infrastructure as required; and
  - (e) public domain (including footpath) improvements in response to RMS standards for pedestrian crossings.
72. These upgrades will improve pedestrian links to the site and make the surrounding public domain safer for school children. They will be complemented by the multiple accessible entries to the site.

73. The proponent has incorporated the above works into their proposed site plan. The works are required as a direct consequence of the school development and are proposed to be secured via a Voluntary Planning Agreement (VPA). The applicant has submitted a Public Benefit Offer to the Council, accompanied by a quantity surveyor's estimate of the cost of works. This offer has been reviewed by Council's internal specialists and accepted by the Chief Executive Officer.
74. A deferred commencement condition will require the proponent to enter into a Voluntary Planning Agreement with Council. This will be separately drafted, exhibited for a period of 28 days and endorsed under delegation once the terms have been agreed.
75. This process will ensure the works are completely funded by the developer and delivered prior to the use commencing.

#### Bicycle Facilities

76. The site is connected to established cycle routes via a lane that extends down Dalmeny Avenue. This will be expanded in future, with another cycle lane planned for Rosebery Avenue under the City's Cycling Strategy and Action Plan. As such, it is important that the development has facilities to support this infrastructure.
77. The proposal includes 10 bicycle spaces in a dedicated storage room, with end of trip facilities available for staff members. This room has ample space and could be fitted with additional spaces if demand increases over time. A further 21 bicycle racks are provided in the playground for the use of students. The number of proposed spaces is supported by Council's Transport Planner, who has recommended conditions that will ensure they comply with AS 2890.3.

#### Vehicular Access

78. The proposal includes 13 car parking spaces on the lower level. This is considered reasonable for the proposed use, given staff may occasionally bring bulky educational materials on their commute. The proposed number of spaces was also supported by Council's Transport Planner, who was satisfied that this number would not unnecessarily encourage car-based commuting. A designated manoeuvring area will ensure the vehicles can exit the site in a forward direction. A boom gate will also restrict access to the car park, ensuring that only authorised vehicles can park at the site.
79. The proposal includes a kiss and drop area within the site. This will allow children arriving by private car to be deposited off the street, instead of encouraging adults to double-park or stop in unauthorised areas. It will comprise four car bays, and one-way traffic loop that will always allow vehicles to move in a forward direction. This strategy will reduce load on the local road network and was again supported by Council's Transport Planner.
80. The architectural drawings reference changes to street parking conditions, particularly in terms of the size and number of car parking spaces. It is noted that any changes to

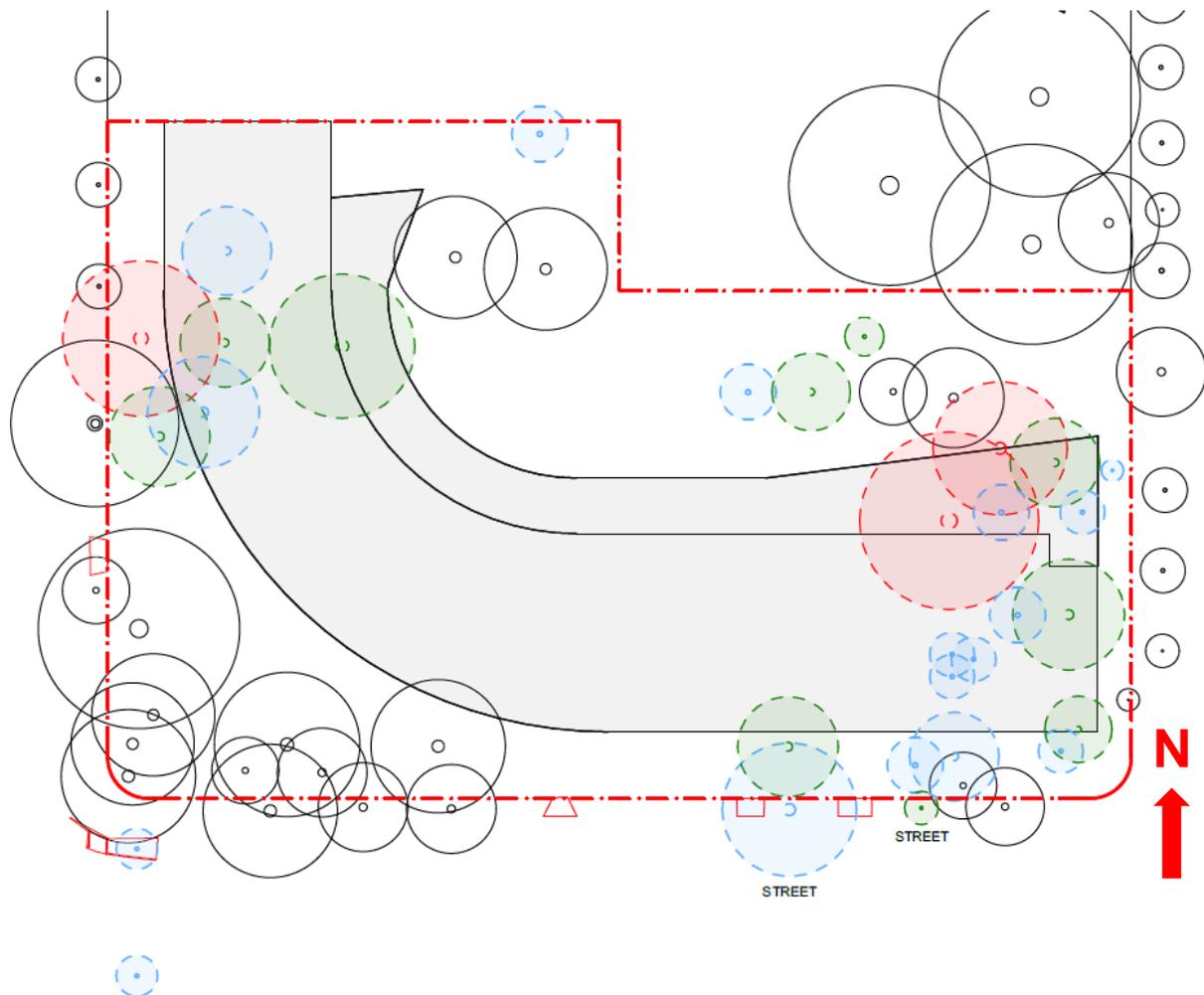
parking or traffic infrastructure must be endorsed by the Local Pedestrian, Cycling and Traffic Calming Committee prior to implementation. This will be specified in a condition of consent.

#### Traffic Generation

81. The serviceability of the local road network will not be adversely impacted by the development. Traffic modelling was undertaken by TEF Consulting, using trip generation rates from the RMS Guide to Traffic Generating Developments and a case study of the Pittwater House School. It is noted that this school is located on Sydney's northern beaches, and not located near any mass transit routes. The study also assumed that 80% of staff would drive, which is considered to be the maximum on any one day.
82. The study concluded that the level of service offered by the four surrounding intersections will remain as class 'A', with no notable delays envisaged in the future commuter peaks. As such, the traffic generation rates are acceptable.

#### Tree Management

83. The site and surrounding public domain contain 63 existing trees, resulting in well-established tree canopy.
84. The submitted Arborist Report indicates that 29 trees will be removed for the development, including 16 with a low / very low retention value, 10 with a moderate retention value and three with a high retention value.
85. Of the above trees, 15 are larger enough to make a substantial contribution to canopy coverage, measuring at least 7m in height with commensurate canopy spreads.
86. The distribution of trees proposed for removal is shown in the figure below.



**Figure 25:** Tree removal plan: red markers indicate high value trees (3), green markers indicate moderate value trees (10) and blue markers indicate low / very low value trees (16)

87. Following a review of this report and a subsequent site inspection, Council officers requested further information to rectify the following issues:
- (a) Tree Protection Zone (TPZ) encroachments;
  - (b) insufficient replacement planting to offset large trees removed;
  - (c) species selection; and
  - (d) further clarification of level changes near eight trees to be retained.
88. The applicant amended the design of ramps within the landscaped area to rectify the TPZ encroachments. It was also confirmed that the existing retaining wall near the eight trees would be kept, resulting in no level changes.

89. However, the replanting within the updated landscape plan was not deemed sufficient. It proposed to offset the removed trees with only eight specimens. Of these, only three would have grown to 20 metres at maturity. This outcome would not have adequately replaced the canopy coverage lost through the development.
90. As such, recommended conditions will require 15 large trees to be planted. These can be accommodated in the vacant area north of the school, indicated in the below figure.

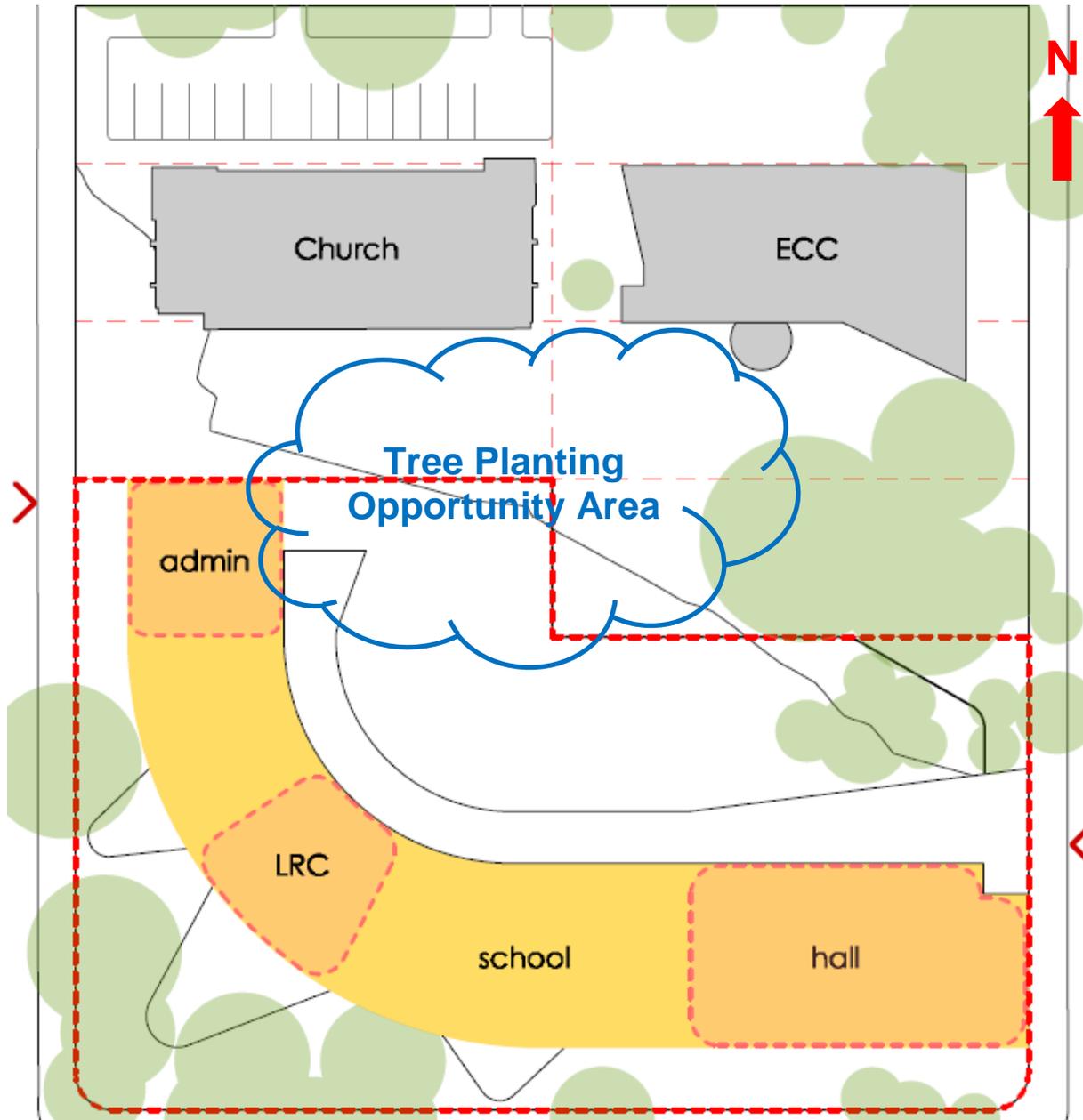


Figure 26: Tree planting opportunity area

91. As the replacement planting can be addressed, the proposed scope of tree removal can be otherwise supported. The development makes a meaningful effort to reduce impacts on existing higher value trees, particularly by retaining the significant cluster near the corner of Morley and Rosebery Avenues. Most trees to be removed are lower value, and do not contribute as significantly to the environmental amenity and habitat availability of the site.
92. The outstanding matters regarding species selection (for both site trees and street trees) have not been resolved during the assessment and will be required through public domain and landscaping conditions of consent.
93. The remaining trees will be protected by standard conditions.
94. Having regard to the above matters, the development is considered to result in acceptable tree management outcomes.

### **Landscaping**

95. The proposal includes significant landscaping works. The perimeter of the site is proposed to contain new trees and shrubs, set amongst pedestrian links to the building. The internal area will feature a concrete basketball court, soft landscaping, shades structures and outdoor furniture.
96. Following an initial assessment of the application, Council officers requested further information on:
  - (a) opportunities to increase water infiltration in sealed areas, such as through permeable paving laid on a flexible sand base; and
  - (b) details on the new fencing, walls and landscape features.
97. The revised proposal increased permeable areas and included revised drainage treatments. The additional details on other features confirmed the broader landscape design could be supported in principle, however further details are required to determine the suitability of the playground design and soil levels. These will be addressed by a recommended condition, requiring detailed landscape plans to be prepared prior to construction commencing.

### **Waste Management**

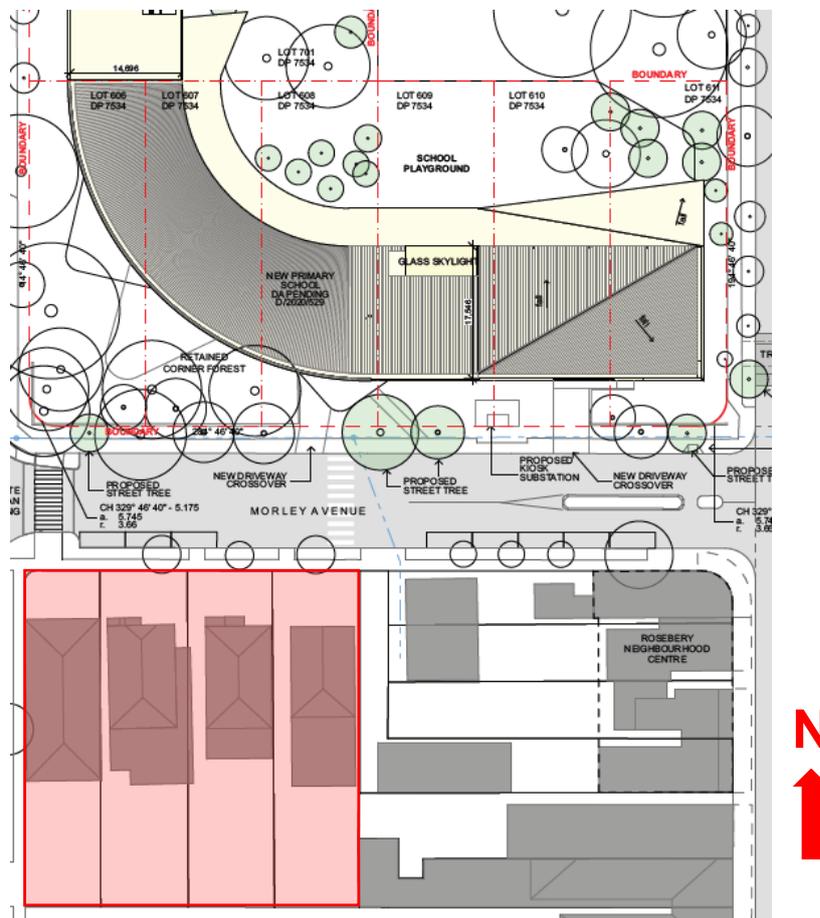
98. The original proposal included a designated on-street loading area. This would have put unnecessary pressure on the surrounding street network and was not supported by Council officers. The amended scheme reconfigured the driveways and parking level to accommodate for a 6.4 metre waste truck. This truck will enter and exit the site in a forward direction, and collect the waste from a designated room. Swept paths were provided to Council, and demonstrated this arrangement is feasible.

- 99. The original Waste Management Plan also did not accommodate the waste generation envisaged within relevant EPA guidelines. It was revised during the assessment, which necessitated changes to the layout of the garbage room. Council’s Waste Management Unit are now satisfied the garbage room is large enough to accommodate for the school’s waste and is capable of being serviced by a licensed contractor.

**Residential Amenity**

**Solar Access**

- 100. The proposed development will maintain reasonable amounts of sunlight accessing surrounding residential properties.
- 101. The only dwellings impacted by the proposal are located to the south, on the opposite side of Morley Avenue. These include 2, 4, 6 and 8 Morley Avenue, all of which are detached dwelling houses with their private open space behind the primary built form.



**Figure 27:** Positioning and layout of affected residential properties (outlined in red)

102. Hourly view from the sun diagrams indicate that their front windows will be partially overshadowed between 9.00am – 9.30pm on the winter solstice, but will be unaffected for the remainder of the day. As such, the impact is considered very minor, and not unreasonable given the height and siting of the building otherwise respond appropriately to site constraints. The private open space of each dwelling is at the rear, meaning these sections of the properties will be unaffected by the proposal.

### **Acoustic Privacy**

103. An Acoustic Report was submitted with the application. It assessed noise impacts to other site uses and the nearest residential receivers, particularly dwellings to the east, west and south of the property. Particular attention was paid to the staff car park, playground and school hall, which were considered to be the most likely producers of noise. Other outdoor areas of the school were also assessed, including the covered outdoor learning areas fronting Morley Avenue.
104. Council officers requested the report be amended to identify the internal noise criteria referenced under the child care centre's approval (D/2020/920). This was necessary to ensure the school will not exceed the internal noise limits established in the Acoustic Report for this application.
105. The amended report demonstrated the development could comply with noise criteria relevant to the site and surrounding properties, subject to recommendations concerning the specification of materials and mechanical equipment, and a restriction on the use of outdoor play areas after 7.00pm. These recommendations are captured in the conditions of consent.

### **Internal Referrals**

106. The application was discussed with following internal units of Council:
- (a) Environmental Health;
  - (b) Heritage and Urban Design;
  - (c) Surveying;
  - (d) Transport Planning;
  - (e) Traffic Operations;
  - (f) Public Domain;
  - (g) Landscaping;
  - (h) Safe City; and
  - (i) Trees Management.

107. Issues raised in referrals are addressed, where relevant, in this report.

### External Referrals

108. As previously discussed, the application was referred to Ausgrid and Roads and Maritime Services in accordance with statutory requirements.

109. The application was also referred to Sydney Water for comment. A response was received, indicating that no objections were held.

### Advertising and Notification

110. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 21 days between 1 July 2020 and 23 July 2020. A total of 910 properties were notified and two submissions were received.

111. The submissions raised the following issues:

- (a) The proposed building is uncharacteristic of the surrounding area.

**Response** – As previously discussed, the bulk, scale and design of the proposed school building are supported. It is considered to relate appropriately to the surrounding area.

- (b) The proposal will increase traffic congestion and demand for parking.

**Response** – The positioning and design of the development will minimise additional demand on the street network, through encouraging alternative forms of transportation. The transport strategy associated with the development is well resolved, and will help safeguard the surrounding area against unreasonable impacts.

- (c) The school will have acoustic impacts on nearby properties.

**Response** – Council's Environmental Health Unit, who have reviewed the design and supporting acoustic information, are satisfied that no nearby residences will experience noise levels above relevant criteria.

- (d) The excavation works will cause damage and pollution to the water table.

**Response** – The Geotechnical Investigation submitted with the application estimated the water table to be 4.5m below the car park's floor level. Additionally, no element of the proposed use is likely to produce pollution.

- (e) The proposed hours of operation are unacceptable.

**Response** – The proposed hours of operation are considered reasonable for a school, which also serves community functions. Detailed acoustic information has demonstrated these hours will not result in unreasonable noise impacts to the neighbourhood.

- (f) The kiss and drop area should not be accessed from Morley Avenue. It has higher traffic volumes and may result in safety issues for children.

**Response** - The proposed vehicular crossing is best suited to the site's topography and existing tree canopy cover. Council's Traffic Operations Unit has reviewed the proposed design, and recommended substantial upgrades to the public domain. These upgrades will make the surrounding area safer for pedestrians.

- (g) The notification letters may be difficult for non-English speakers to interpret.

**Response** – The City of Sydney's website contains information on an interpreting service for non-English speaking residents. This can be utilised to obtain further information on any correspondence issued by the City.

- (h) The eastern side setback is not appropriate to the context.

**Response** – The application has been amended to provide a greater eastern setback.

- (i) The scope of tree removal is unacceptable. Additionally, the height of the trees shown on the plans appears inaccurate.

**Response** – The arboricultural information was reviewed by Council's Tree Management Unit and deemed suitable for assessment. The proposal retains most high-value trees, which add to the environmental amenity and aesthetic of the site. Trees that could not reasonably be maintained will be replaced with new specimens.

- (j) The eastern side of the development should have an acoustic wall to mitigate noise impacts.

**Response** – As previously discussed, the development is capable of complying with relevant noise criteria. An additional wall is therefore not required.

- (k) The school should have a brick colour similar to the church, as this is more characteristic of the area.

**Response** – The proposed facebrick respects the masonry character of the church, while also distinguishing the school as a modern addition to the site. For these reasons, the proposed brick is supported in principle. A condition will require physical samples to be reviewed by Council officers prior to construction, again ensuring its suitability to the site.

## Financial Contributions

### Contribution under Section 7.11 of the EP&A Act 1979

112. The development is subject of a S7.11 contribution under the provisions of the City of Sydney Development Contributions Plan 2015. This contribution is calculated based on the development's net increase in resident, worker and/or visitor populations.
113. The subject portion of the site contains a convent and presbytery, which will be demolished as part of the works. The convent has been previously used to accommodate religious staff in a group living setting and has been credited with the equivalent of nine boarding rooms. The presbytery has also been used for accommodation, however it is configured as a single dwelling. As such, it has been credited the equivalent of a three bedroom dwelling house.
114. The following monetary contribution is therefore required towards the cost of public amenities:

(a) Open Space	-\$32,520.86
(b) Community Facilities	-\$8,475.81
(c) Traffic and Transport	\$38,273.73
(d) Stormwater Drainage	\$15,134.38
Total	<b>\$12,411.44</b>

115. A condition of consent will require payment of the contribution prior to the issue of a Construction Certificate.

## Conclusion

116. The proposal seeks approval for the construction of a three storey primary school, including associated landscaping and site access points.
117. The proposal has been amended during the assessment to address issues of ventilation, transport planning, tree management, landscaping, remediation and site servicing.
118. The proposed development produces a land use intensity envisaged in the LEP, complying the FSR control for the site. While the primary form exceeds the building height control, it allows the school to be consolidated on a smaller area, improving the tree retention prospects and the landscape aesthetic. It also responds appropriately to site topography, ensuring that bulkier sections of the building are further from the public domain.

119. The development meets the design principles of the Education SEPP, resulting in a school building with high amenity that can positively contribute to the educational outcomes of future students. The development, through recommended conditions of consent, will also provide for substantial public domain upgrades in the surrounding street network. These will improve pedestrian safety, and allow local students to access the site through active forms of transportation.
120. Subject to the implementation of conditions, as detailed in the report and Attachment A, the proposal generally complies with relevant planning controls and can be supported subject to deferred commencement approval

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