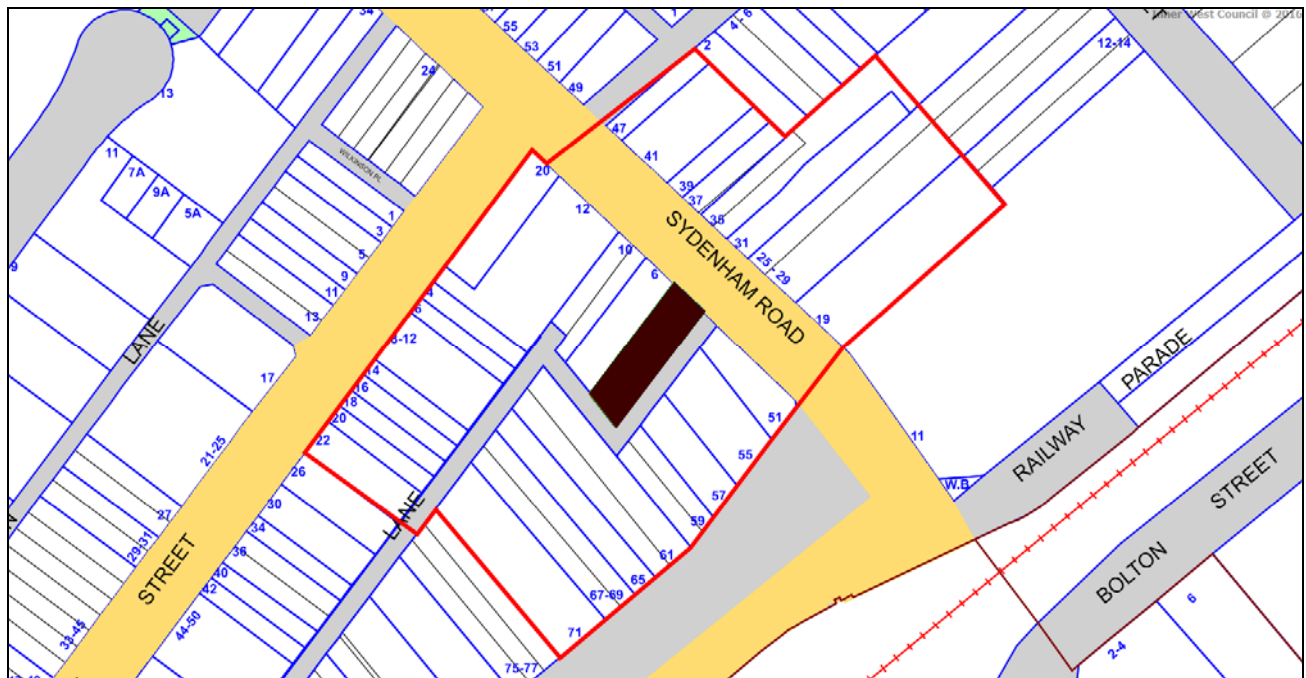







INNER WEST COUNCIL

DEVELOPMENT ASSESSMENT REPORT

Application No.	201800236
Address	2 Sydenham Road, Marrickville
Proposal	To demolish part of the premises and carry out alterations to use part of the premises as a place of public worship with associated signage and to use the rear portion of the building for the storage of light fittings and electrical components
Date of Lodgement	1 June 2018
Applicant	Oceania Revival Church Incorporated
Owner	Mr J Kosmas & Mrs T Kosmas
Number of Submissions	Nil
Value of works	\$85,000
Reason for determination at Planning Panel	The extent of the departure from the Floor Space Ratio development standard exceeds staff delegation
Main Issues	Clause 4.6 variation for Floor Space Ratio
Recommendation	Consent subject to conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development
Attachment C	Clause 4.6 Exception to Development Standards



Subject Site: 	Objectors:  (Nil)
Notified Area: 	

1. Executive Summary

This report relates to an application to demolish part of the premises and carry out alterations to use part of the premises as a place of public worship with associated signage and to use the rear portion of the building for the storage of light fittings and electrical components. The application was notified to surrounding properties and no submissions were received.

The main issues that have arisen from the assessment of the application include:

- The development proposes a FSR departure of approximately 83.3sqm under Clause 4.4 of Marrickville Local Environmental Plan (MLEP) 2011, being a 16.5% variation;
- A written submission under Clause 4.6 of MLEP 2011 in relation to FSR departure accompanied the application that is considered to be well founded and worthy of support; and
- The site provides only 50% of the off-street parking required under the provisions of MDCP 2011, however a Traffic and Parking Assessment accompanied the application demonstrating the surrounding on street car parking can accommodate the parking demand generated by the use.

Despite the non-compliances, the proposal generally complies with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable given the context of the site and the desired future character of the precinct. The application is suitable for approval subject to conditions.

2. Proposal

Approval is sought to demolish part of the premises and carry out alterations to use part of the premises as a place of public worship with associated signage and to use the rear portion of the building for the storage of light fittings and electrical components.

The application proposes to fit out and use the premises for two separately defined uses under MLEP 2011 being a place of public worship and a storage facility. A majority of the ground and first floor of the building will be associated with the church with the exception of a comparatively small area on the ground and first floor to the rear of the building which is proposed to be used as a storage facility. The proposed building works effectively result in the provision of 2 tenancies in the building.

It is proposed to operate the church between the hours of 7.30pm to 10.00pm Tuesdays with a maximum of 40 patrons and 10.00am to 12.30pm Sundays with a maximum of 80 patrons, and to operate the storage facility between the hours of 8.00am to 4.00pm Mondays to Fridays only. There is also proposed to be church events held outside of these operating hours to a maximum of 8 times per year.

The application also seeks to undertake building works to facilitate the uses including:

- Works at the ground floor to provide a separate tenancy to the rear of the building to accommodate the storage facility;

- Fit-out works to the ground floor and the northern portion of the first floor to accommodate the place of public worship including the provision of an accessible bathroom, stage area and accessible front and rear entries;
- Fit-out works to the rear at the ground floor and the southern portion of the first floor to accommodate the storage facility including a bathroom and a loading dock;
- Construction of an accessible ramp at the front entrance of the building within the front setback;
- Construction of an accessible ramp at the rear of the building accessing the car park;
- Reconfiguration of the existing car park to the rear of the building to provide 5 car parking spaces, including 1 accessible space;
- Works to the eastern elevation of the building to remove a redundant roller door which is to be replaced with a wall;
- To erect 1 illuminated wall sign measuring 2000mm by 1800mm facing Sydenham Road reading "Oceania Revival Church" and displaying the logo; and
- To erect 1 flush wall sign measuring 800mm by 600mm at the front entrance of the building displaying the street address of the building.

3. Site Description

The site is located on the western side of Sydenham Road and has a frontage of 12.242 metres to Sydenham Road. The site also presents a 44.577 metre side frontage and a 12.548 metre rear frontage to Buckley lane. The overall site area is 532sqm.

The site contains a two storey industrial warehouse building which covers the majority of the site. The existing building is constructed to the side boundaries and is setback approximately 2.385 metres from the front property boundary and 11.684 metres from the rear property boundary. The site has vehicle access at Buckley Lane to a car park at the rear of the site. The surrounding streetscape consists of low scale industrial and warehouse buildings generally two to three storeys in height. Please see the below images:



Image 1: View of the Site from Sydenham Road



Image 2: View of the eastern elevation at Buckley Lane



Image 3: View of the Site at the rear from Buckley Lane

4. Background

4(a) Site history

Permit No. 2091 dated 21 December 1959 approved an application for the erection of factory, workshop and office to be use for Electrical Contractors, Electrical Repair Workshop & Offices.

Determination No. 8072 dated 16 October 1980 approved an application to use an existing factory building for the purpose of wholesale distribution and manufacture of rubber stamps and associated products.

4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
1 August 2018	Council requested additional information and amended plans to address concerns surrounding FSR, the provision of car parking with the front setback, accessibility, fire safety and operational details of the storage facility.
22 August 2018	Amended plans and additional information were lodged addressing the concerns raised by Council in correspondence dated 1 August 2018 and are the subject of this assessment report.
14 September 2018	Additional information provided regarding hours of operation.

5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the Environmental Planning and Assessment Act 1979.

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- State Environmental Planning Policy No. 64 – Advertising and Signage
- State Environmental Planning Policy (Infrastructure) 2007; and
- Marrickville Local Environmental Plan 2011.

The following provides further discussion of the relevant issues:

5(a)(i) State Environmental Planning Policy No 64 – Advertising and Signage

The following is an assessment of the development under the relevant controls contained in State Environmental Planning Policy No. 64 - Advertising and Signage (SEPP 64). The aims and assessment criteria in SEPP 64 are generally covered by the signage controls contained in Part 2.12 of Marrickville Development Control Plan 2011 (MDCP 2011) - Signs and Advertising Structures and are considered as part of the assessment of the application presented in this report.

The application seeks consent for the erection of one (1) illuminated wall sign measuring 2000mm by 1800mm facing Sydenham Road reading “Oceania Revival Church” and displaying the logo and one (1) flush wall sign measuring 800mm by 600mm at the front entrance of the building displaying the street address of the building.

Pursuant to the definitions contained in Clause 4 of SEPP 64, the proposed sign would constitute a “*building identification sign*”.

Clause 3 of SEPP 64 specifies aims and objectives of the policy which are required to be considered for all applications involving the erection of signage. The relevant aims and objectives of the policy include the following:

- “(a) to ensure that signage (including advertising):
- (i) is compatible with the desired amenity and visual character of an area, and
 - (ii) provides effective communication in suitable locations, and
 - (iii) is of high quality design and finish, and...”

Part 2.12 of MDCP 2011 specifies Council's objectives and requirements for the erection and display of signage which are consistent with the aims and objectives of SEPP 64.

The proposed signage largely complies with the general controls for signage contained within Part 2.12 of MDCP 2011. The signs are located within an industrial area and are compatible with the architectural elements of the building. The proposed signs are of a modest size, given the scale of the existing building and surrounding development and are generally consistent with the character of the area.

Control 19 of Part 2.12 of MDCP 2011 states that the total permissible area of all signs must not exceed 1sqm of signage per 3 metres of street frontage in an industrial zone. The property has a frontage of 12.242 metres to Sydenham Road, thus allowing 4.08sqm of signage. The proposed signs measure 3.6sqm and 0.48sqm respectively, equalling 4.08sqm, and comply with this requirement.

The proposed signage is acceptable having regard to the objectives and controls relating to signage contained within Part 2.12 of MDCP 2011.

Schedule 1 of SEPP 64 specifies assessment criteria for signage relating to character of the area, special areas, views and vistas, streetscape, setting or landscaping, site and building, illumination and safety. The proposed signage is considered satisfactory having regard to the assessment criteria contained in Schedule 1 of SEPP 64.

5(a)(ii) State Environmental Planning Policy (Infrastructure) 2007

Development with frontage to classified road (Clause 101)

The site has a frontage to Sydenham Road, a classified road. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the efficiency and operation of the classified road will not be adversely affected.

Vehicular access to the property is provided from Buckley Lane and as such is provided by a road other than the classified road. It is considered that the proposed development would not affect the safety, efficiency and ongoing operation of the classified road.

5(a)(iii) Marrickville Local Environment Plan 2011 (MLEP 2011)

The application was assessed against the following relevant clauses of MLEP 2011:

- Clause 2.3 – Zone objectives and Land Use Table
- Clause 2.7 – Demolition
- Clause 4.3 – Height of buildings
- Clause 4.4 – Floor space ratio
- Clause 4.6 – Exceptions to development standards
- Clause 6.1 – Acid sulfate soils
- Clause 6.3 – Flood planning
- Clause 6.5 – Development in areas subject to aircraft noise

The following table provides an assessment of the application against the development standards:

Standard (maximum)	Proposal	% of non compliance	Compliance
Floor Space Ratio 0.95:1 505.4sqm	1.07:1 588.7sqm	16.5%	No

(vi) Land Use Table and Zone Objectives (Clause 2.3)

The property is zoned IN1 – General Industrial under the provisions of MLEP 2011. The proposal seeks to use the premises as both a “place of public worship” and a “storage facility”. The development is permissible with Council's consent under the zoning provisions applying to the land and is acceptable having regard to the objectives of the IN1 – General Industrial zone.

(vii) Demolition (Clause 2.7)

Clause 2.7 of MLEP 2011 states that the demolition of a building or work may be carried out only with development consent. The application seeks consent for demolition works.

Council's standard conditions relating to demolition works are included in the recommendation.

(viii) Height (Clause 4.3)

There is no maximum building height applying to the property on the Height of Buildings Map that accompanies MLEP 2011. The proposal maintains the existing building height and building envelope. The height of the development is acceptable.

(ix) Floor Space Ratio (Clause 4.4)

A maximum floor space ratio (FSR) of 0.95:1 applies to the land as indicated on the Floor Space Ratio Map that accompanies MLEP 2011. The development has a gross floor area (GFA) of 588.7sqm which equates to a FSR of 1.07:1 on the 532sqm site and does not comply with the FSR development standard.

The development exceeds the maximum floor space ratio development standard prescribed under Clause 4.4 of MLEP 2011. The application was accompanied by a written submission in relation to the contravention of the development standard in accordance with Clause 4.6 of MLEP 2011.

(x) Exceptions to Development Standards (Clause 4.6)

As outlined above, the proposal results in a breach of the following development standard:

- Floor Space Ratio – Clause 4.4 of MLEP 2011

The applicant seeks a variation to the floor space ratio development standard under Clause 4.4 of the applicable local environmental plan by 16.5% (83.3sqm).

Clause 4.6 allows Council to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes.

In order to demonstrate whether strict numeric compliance is unreasonable and unnecessary in this instance, the proposed exception to the development standard has been assessed against the objectives and provisions of Clause 4.6 of the Marrickville Local Environmental Plan 2011.

A written request has been submitted to Council in accordance with Clause 4.6(4)(a)(i) of the applicable local environmental plan justifying the proposed contravention of the development standard which is summarised as follows:

- The additional FSR generated by the proposal is due to the incorporation of the existing loading areas into the usable floor space within the building rather than additional floor space resulting from new construction;
- The proposal maintains the established bulk and scale of the building and therefore does not result in any change to the amenity of the area or presentation to the public domain and it would be unreasonable to require the building to be reduced in size to comply with the allowable FSR;
- The underlying purpose of the development standard is to control bulk and scale and the proposal does not alter the existing bulk and scale of the building; and
- Given the above, the proposal is consistent with the objectives of Clause 4.4 of MLEP 2011 in that the established bulk and scale is maintained and the proposal does not result in environmental impacts to adjoining properties and the public domain.

The applicant's written rationale adequately demonstrates 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 development standard.

It is considered the development is in the public interest because it is consistent with the objectives of the IN1 – General Industrial zone, in accordance with Clause 4.6(4)(a)(ii) of the applicable local environmental plan for the following reasons:

- The proposal provides an industrial land use as a result of the storage facility and provides employment opportunities;
- The proposed place of public worship minimises adverse impacts to the industrial lands uses by operating generally outside of the hours of operation of surrounding industrial uses; and
- The proposed place of public worship largely maintains the existing warehouse building and could be used again in the future for an industrial use thereby protecting the industrial land.

It is considered the development is in the public interest because it is consistent with the objectives of the floor space ratio development standard, in accordance with Clause 4.6(4)(a)(ii) of Marrickville Local Environmental Plan 2011 for the following reasons:

- The proposal maintains the existing bulk and scale of the building in relation to the site area as the proposed breach to the floor space ratio is as a result of the incorporation of areas used previously as loading docks into the calculation of GFA in accordance with the requirements of MLEP 2011;
- The proposal maintains the existing industrial building which is consistent with the desired future character of the area; and
- The proposal will not result in adverse environmental impacts on the adjoining properties or public domain as a result of the floor space ratio proposed, as discussed throughout this report.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. Council may assume the concurrence of the Director-General under the Planning Circular PS 18-003 issued in February 2018 in accordance with Clause 4.6(4)(b) of the applicable local environmental plan.

The proposal thereby accords with the objective in Clause 4.6(1)(b) and requirements of Clause 4.6(3)(b) of the applicable local environmental plan. For the reasons outlined above, there are sufficient planning grounds to justify the departure from floor space ratio and it is recommended the Clause 4.6 exception be granted.

(xi) Acid Sulfate Soils (Clause 6.1)

The property is identified as land being affected by Class 2 acid sulfate soils on the MLEP 2011 Acid Sulfate Soils Map. The development is not considered to involve work at or below the ground water level and will not lower the ground water table. As such the development is acceptable having regard to acid sulfate soils.

(xii) Flood Planning (Clause 6.3)

The property is identified as land that is shown as "Flood planning area" on the Flood Planning Area Map contained within the Marrickville Development Control Plan 2011.

The application was referred to Council's Development Engineer who provided the following comments:

“The site has been identified as being subject to flooding during a 1 in 100 year storm event in the Marrickville Valley Flood Study. The 1 in 100 year flood level has been determined to be RL 2.35m AHD. The 1 in 100 year flood planning level for the site is set at RL 2.85m AHD (500 free board). Appropriate flood protection measures shall be taken as listed in the referral including a flood emergency response plan.”

Council’s Development Engineer supports the proposal with regard to flood management subject to the submission of a Flood Emergency Response Plan in accordance with Part 2.22 of MDCP 2011 prior to the issue of a Construction Certificate. Appropriate conditions are included in Attachment A accordingly.

(xiii) Development in areas subject to Aircraft Noise (Clause 6.5)

The property is located within the 30-35 Australian Noise Exposure Forecast (2033) Contour.

The existing industrial building on the site is not noise attenuated and the proposed change of use will result in an increase of people affected by aircraft noise due to the use as a place of public worship. However, the place of public worship will produce a reasonable amount of noise itself through music and singing. Additionally, patrons of the uses will spend relatively short amounts of time on site, particularly given the minimal hours of operation proposed.

The proposal includes limited building work so as to comply with the Building Code of Australia and the Access to Premises Standards with the main body of the building being largely unchanged. Given the limited building works proposed coupled with the nature of the use and relatively limited operating hours it is considered onerous to require the development to be noise attenuated for aircraft noise in the circumstances.

5(b) Draft Environmental Planning Instruments

Draft Marrickville Local Environmental Plan 2011 (Amendment 4) (the Draft LEP Amendment) was placed on public exhibition commencing on 3 April 2018 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The amended provisions contained in the Draft LEP Amendment are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft LEP Amendment.

5(c) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of MDCP 2011.

Part of MDCP 2011	Compliance
Part 2.5 – Equity of Access and Mobility	Yes – subject to conditions
Part 2.6 – Acoustic and Visual Privacy	Yes – subject to conditions
Part 2.9 – Community Safety	Yes
Part 2.10 – Parking	No but acceptable – see below
Part 2.12 – Signage and Advertising Structures	Yes – see Section 5(a)(i) of report
Part 2.16 – Energy Efficiency	Yes

Part of MDCP 2011	Compliance
Part 2.21 – Site Facilities and Waste Management	Yes
Part 2.22 – Flood Management	Yes
Part 2.23 – Acid Sulfate Soils	Yes
Part 2.24 – Contaminated Land	Yes
Part 2.25 – Stormwater Management	Yes
Part 6 – Industrial Development	Yes – subject to conditions
Part 9 – Strategic Context	Yes

The following section provides discussion of the relevant issues:

(i) Equity of Access and Mobility (Part 2.5)

Part 2.5 of MDCP 2011 requires consideration to be given to accessibility before granting development consent.

For industrial developments Part 2.5 of MDCP 2011 requires:

- Appropriate access for all persons through the principal entrance of a building and a continuous accessible path of travel (CAPT), designed in accordance with the National Construction Code (Building Code of Australia) and relevant Australian Standards; and
- General access for all persons to appropriate sanitary facilities and other common facilities including kitchens, lunch room, shower facilities and outdoor recreational facilities; and
- In a car parking area containing 10 or more car spaces, a minimum of 1 accessible car parking space being provided for every 10 car spaces or part thereof.

The proposal provides access via the principal entrance of the building and the rear of the building. An accessible bathroom is located on the ground floor and an accessible car parking space is provided within the rear car park. The first floor of the premises containing an office is not accessible.

While the first floor of the building is not accessible, the proposal provides on the ground level a CAPT, accessible facilities and an accessible car parking space to the place of public worship and generally complies with the requirements of Part 2.5 of MDCP 2011. Furthermore, an Access Report completed by Code Performance P/L was provided with the application demonstrating general compliance with the BCA and Access to Premises Standards and providing solutions for any non-compliance. The application was referred to Council's Building Surveyor who raised no objection to the proposal having regard to BCA and Access to Premises Standards requirements subject to the imposition of conditions. A condition is included in the recommendation requiring adherence to the recommendations of this submitted Access report.

(ii) Visual and Acoustic Privacy (Part 2.6)

Part 2.6 of MDCP 2011 contains objectives and controls relating to general acoustic privacy.

The proposed use has the potential to result in adverse acoustic impacts. As such, the applicant has submitted a Noise Impact Assessment Report prepared by a qualified Acoustic Engineer. The report determines that the predicted noise levels emitted from the premises are acceptable with regard to the requirements of the Environmental Protection Authority (EPA) and the NSW Industrial Noise Policy.

The site is located within a primarily industrial area which is less sensitive to acoustic impacts and surrounding properties are unlikely to be adversely impacted by the predicted noise emissions from the site, particularly as there aren't many industrial premises operating in the evening or Sundays within the vicinity of the site. The nearest residential accommodation is approximately 170 metres from the site, at Burrows Avenue on the opposite side of the nearby railway corridor.

Appropriate conditions of consent are recommended in Attachment A to ensure the development adheres to the relevant acoustic criteria and protect the ongoing amenity of the locality. Additionally, the proposed hours of operation are very modest and any increase in operation would require further consideration of the acoustic impacts by Council. The issue of operating hours is discussed in more detail under the heading "Hours of Operation (Part 6.2.4)" below.

Subject to the above, the proposed development is considered reasonable having regard to the objectives and controls relating to visual and acoustic privacy as contained in Part 2.6 of MDCP 2011.

(iii) Parking (Part 2.10)

The site is located in Parking Area 1 under Part 2.10 of MDCP 2011. The following table summarises the car, bicycle and motorcycle parking requirements for the development:

Table 1: Car, Bicycle and Motorcycle Parking Control Compliance Table

Component	Control	Required	Proposed	Complies?
Car Parking				
Place of Public Worship	1 space per 50sqm GFA for customers those purposes	459.1sqm GFA = 9 spaces	5 spaces	No
Storage Facility	1 space per 300sqm GFA for those purposes	132sqm GFA = 1 spaces	0 spaces	No
Bicycle Parking				
Place of Public Worship	1 bicycle parking space per 20 staff 1 bicycle parking space per 20 patrons	26 staff = 1 spaces 80 patrons = 4 spaces Total= 5 spaces	0 spaces	No
Storage Facility	1 bicycle parking space per 150sqm	1 space		
Motorcycle Parking				
Motorcycle Parking	5% of the total car parking requirement	9 car parking spaces required = 0 spaces	0 spaces	N/A

As demonstrated above, the development requires 10 car parking spaces and 6 bicycle parking space on site to support the proposed use. However, the proposal only provides 5 on-site car parking spaces and no bicycle parking and therefore does not comply with the relevant controls.

The site currently requires 2 car parking spaces for the existing warehouse use under Part 2.10 of MDCP 2011. However, Determination No. 8072 dated 16 October 1980 required the provision of 5 car parking spaces at the site, which are accommodated within the existing rear car park. As such, the site currently presents an excess of 3 car parking spaces, with regard to the current car parking provisions.

It is noted that whilst the storage facility generates a demand for 1 space, having regard to its use, and that the site is to be used solely for the purpose of storage (which is used in conjunction with another premises for an electrical contractor), it is unlikely that the shortfall in parking will impact surrounding development and is unlikely to conflict with the limited hours of operation of the place of worship and that loading of goods by a utility vehicle or van can occur wholly within the site. As such a shortfall for this use is considered acceptable having regard to the circumstances of the site.

The proposed change of use to a place of public worship generates demand for a substantial increase in car parking, due to the non-industrial nature of the use. As such, the proposal would result in a shortfall of car parking at the site of 5 spaces.

Notwithstanding, the proposal provides 5 car parking spaces within the existing car park at the rear of the site and there is limited ability to provide further on-site car parking outside of the existing car park, largely due to the existing building footprint which occupies a majority of the site. Therefore, the provision of further on-site car parking would require the demolition of a significant portion of the building which is not feasible, particularly given this application seeks a change of use to the existing building and includes very limited building work.

The application was supported by a Traffic Impact Assessment Report which identifies the streets surrounding the premises have a capacity to accommodate the additional traffic and parking generated by the use during the hours of operation proposed. The report concludes that 50 on street car parking spaces would remain available in the area surrounding the site at times of peak demand, despite the additional car parking and traffic generated by the use.

The application was referred to Council's Development Engineer who reviewed the application and the Traffic Impact Assessment Report submitted and provided the following comments:

"It is noted that the site can only provide 5 legal car spaces at the rear and the requirement in accordance with the section 2.10 of DCP (Generic Provisions Parking) is 10 car spaces (Parking Area 1). As such there is a short fall of 5 car spaces. However, given that the hours of operations will either be on Sundays afternoons or Tuesday evenings, it is determined that adequate street parking may be available in the off peak hours. It is however recommended that patrons use public transportation (Sydenham Station) or car pool to ensure reduced parking pressure."

Council's Development Engineer is supportive of the proposal a variation to the car parking requirements of the MDCP 2011 subject to the imposition of appropriate conditions which are included in the recommendation.

Given the above, the findings of this report are considered reasonable, particularly given the proposed operating hours are limited to weeknights and weekends which are generally outside of traditional operating hours of industrial premises, resulting in on street car parking being more readily available. It is also noted that the site is within close proximity to a number of public transport routes including buses along Sydenham Road, Victoria Road and Marrickville Road and Sydenham Railway Station.

As such, a variation to the car parking requirements of Part 2.10 of MDCP 2011 is considered acceptable and worthy of support given the circumstances.

With regard to bicycle parking, the 4 spaces required by Part 2.10 could reasonably be accommodated on site within the premises or within the front or rear setback of the site. A condition is included in the recommendation requiring the provision of bicycle parking.

Vehicle Service and Delivery Areas

The proposed place of public worship does not require a dedicated service or delivery area and given that limited deliveries and goods are required, it is considered acceptable for loading and unloading to take place at the front or rear of the premises in a manner that does not inconvenience the public.

The proposed storage facility requires the provision of a loading dock, which is provided on the ground floor. The dock is accessible from Buckley Lane and has minimum dimensions of 7.5 metres by 3 metres which complies with the requirements of Part 2.10 of MDCP 2011.

PART 6 - INDUSTRIAL DEVELOPMENT

Part 6.2 – Industrial/Residential Interface

(i) Plan of Management (Part 6.2.1)

Part 6.2.1 of MDCP contains controls relating to a Plan of Management (PoM) for industrial development.

The applicant has submitted a PoM that outlines how the place of public worship will be managed and addresses the following:

- Hours of operation;
- The maximum number of patrons;
- Accessibility;
- Signage; and
- The rear storage facility tenancy.

The PoM submitted is suitable with regard to the operation of the premises. The operational requirements outlined in the PoM are considered reasonable to mitigate potential amenity impacts to the surrounding locality. Conditions are included in the recommendation to ensure the premises operates in accordance with the PoM at all times.

(ii) Hours of Operation (Part 6.2.4)

Part 6.2.4 of MDCP 2011 contains controls relating to the hours of operation of industrial development. The proposed hours of operation are as follows:

Place of Public Worship

Tuesdays: 7.30pm to 10.00pm

Sundays: 10.00am to 12.30pm

Storage Facility

Mondays to Fridays: 8.00am to 4.00pm

The table below indicates the operating hours of surrounding premises in immediate proximity to the development:

Table 2: Surrounding Hours of Operation

Address	Determination No.	Date of Approval	Approved Use	Trading hours
51 Railway Parade	51/76	9 February 1976	Manufacturing	7.00am to 4.30pm Mondays to Fridays
51 Railway Parade (2A Sydenham Road)	11943	2 November 1988	Takeaway food and drink premises	6.00am to 2.30pm Mondays to Fridays
57 Railway Parade	16481	4 March 1996	Manufacturing	8.00am to 5.00pm Mondays to Fridays and 8.00am to 12.00pm Saturdays
6 Sydenham Road	8568	15 March 1982	Warehousing and distribution centre	8.00am to 5.00pm Mondays to Fridays and 8.00am to 12.00pm Saturdays
10 Sydenham Road	200300390	20 August 2003	Car repair station	8.00am to 6.00pm Mondays to Fridays and 8.00am to 12.00pm Saturdays
12 Sydenham Road	200200821	2 November 2007	Warehousing and distribution centre	7.00am to 5.00pm Mondays to Saturdays
20 Sydenham Road	9822	7 March 2085	Food processing and wholesale distribution	8.00am to 5.00pm Mondays to Fridays and 8.00am to 12.00pm Saturdays
31 Sydenham Road	6992	23 June 1977	Manufacturing and storage	8.00am to 10.00pm Mondays to Saturdays
35 Sydenham Road	8262	26 June 1981	Storage and distribution	7.00am to 6.00pm Mondays to Fridays and 7.00am to 12.00pm Saturdays.
37 Sydenham Road	200000180	24 July 2000	Manufacturing, warehousing and distribution	8.00am to 6.00pm Mondays to Saturdays and 10.00am to 4.00pm Sundays
39 Sydenham Road	12297	16 May 1989	Manufacturing	7.00am to 4.30pm Mondays to Fridays and 7.00am to 3.00pm Saturdays

It is evident from the table above that the hours of operation proposed for the storage facility are generally consistent with operation of surrounding industrial uses. However, the hours of operation of the place of public worship are generally inconsistent with the operating hours of other industrial businesses in the immediate vicinity of the site. This is primarily due to the industrial nature of surrounding uses.

While the hours of operation proposed are not consistent with the surrounding traditional industrial uses, the hours proposed are considered preferable in the circumstances to avoid conflict with these surrounding uses that generally operate during weekdays. Furthermore, given the site is not within close proximity to residential uses, the extended operating hours are unlikely to result in adverse amenity impacts and are generally acceptable subject to the

imposition of appropriate conditions to manage potential noise impacts as discussed above under the heading “Visual and Acoustic Privacy (Part 2.6)”.

The proposal also includes some use of premises outside of the core operating hours for events associated with the place of public worship. The PoM submitted with the application describes these events as follows:

“We also hold random events or meeting such as vigils, fast day meetings which are scheduled at the beginning of every year as part of our church extra activities. These usually held on weekends as well.”

On 14 September 2018, the applicant provided further details on these events confirming that events outside of the core hours of operation are held approximately 8 times per year outside of traditional business hours, being on weekends or after 7.30pm on weeknights. The frequency of these events is considered low and suitable given the proposed use as a place of public worship. The minimal frequency of these events and the proposed time of these events would not result in adverse impacts on noise, traffic or parking and are considered acceptable as being outside traditional business hours, to avoid conflict with surrounding commercial/industrial uses.

Given the above, the proposed house of operation are acceptable as the proposed operating hours for storage facility are consistent with the operation of surrounding businesses, the proposed hours of operation of the place of public worship are modest; the proposal is not within close proximity to residential uses, and conditions to manage noise will be imposed on any consent granted. Appropriate conditions are included in Attachment A to ensure adherence to the hours of operation requested.

5(d) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

5(e) The suitability of the site for the development

The site is zoned IN1 – General Industrial under MLEP 2011. Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(f) Any submissions

The application was advertised, an on-site notice displayed on the property and resident/property owners in the vicinity of the property were notified in accordance with Council’s Notification Policy. No submissions were received.

5(g) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed. The proposal is not contrary to the public interest.

6 Referrals

The application was referred to the following internal specialists:

- Council's Development Engineer; and
- Council's Building Surveyor.

All internal Council Officers are generally supportive of the application subject to the imposition of appropriate conditions which are included in the recommendation.

7. Section 7.11/7.12 Contributions

No Section 7.11 or Section 7.12 Contributions are applicable to this development.

8. Conclusion

Despite the non-compliances to the development standards relating to FSR, the proposal generally complies with the aims, objectives and design parameters contained in the relevant State Environmental Planning Policies (SEPPs), Marrickville Local Environmental Plan 2011 (MLEP 2011) and Marrickville Development Control Plan 2011 (MDCP 2011).

The development will not result in any significant impacts on the amenity of adjoining premises and the streetscape.

The application is suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. That the Inner West Local Planning Panel approve a variation to the Floor Space Ratio prescribed by clause 4.4 of the Marrickville Local Environmental Plan 2011, as it is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development would be in the public interest because it is consistent with the objectives of that particular standard and objectives for development within the zone
- B. That the Inner West Local Planning Panel exercising the functions of the Council, as the consent authority pursuant to s4.16 of the Environmental Planning and Assessment Act 1979, grant consent to Development Application No. 201800234 to demolish part of the premises and carry out alterations to use part of the premises as a place of public worship with associated signage and to use the rear portion of the building for the storage of light fittings and electrical components subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

GENERAL

1. The development must be carried out in accordance with plans and details listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by	Date Submitted
DA-101 Issue B	Ground Floor Plan	21.08.2018	NTArch P/L	22.08.2018
DA-102 Issue B	First Floor Plan	21.08.2018	NTArch P/L	22.08.2018
DA-201 Issue B	Elevations	21.08.2018	NTArch P/L	22.08.2018
DA-202 Issue B	Elevation and Section	21.08.2018	NTArch P/L	22.08.2018
-	BCA Compliance Assessment	01.02.2018	BCA Vision	01.06.2018
-	Plan of Management	2018	Oceania Revival Church	01.06.2018
-	Acoustic Assessment - Noise Emission and Intrusion	May 2018	GHD	01.06.2018
-	Access Report	August 2018	Code Performance	22.08.2018
-	Fire Engineering Report	22.08.2018	Code Performance	22.08.2018

and details submitted to Council on 1 June 2018 and 22 August 2018 with the application for development consent and as amended by the following conditions.

2. The operation of the premises complying at all times with the approved Plan of Management. The Plan of Management as approved is not to be amended without the prior written approval of Inner West Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency.
3. Where any plans and/or information forming part of a Construction Certificate issued in relation to this consent are inconsistent with:
- the plans and/or information approved under this consent; or
 - any relevant requirements of this consent,

the plans, information and/or requirements of this consent (as the case may be) shall prevail to the extent of the inconsistency.

All development approved under this consent shall be carried out in accordance with the plans, information and/or requirements of this consent taken to prevail by virtue of this condition.

4. The area to be used for storage facility must be restricted to the tenancy at the rear of the building.
5. No retailing must be carried out from the premises.
6. The north most tenancy, being the place of worship shall have not more than 80 patrons being on the premises at any time without the prior approval of Council.
7. The northernmost tenancy (place of worship) and southernmost tenancy (storage facility) must be used as single occupancies for the use approved in this development consent with the first floor areas being used exclusively in association with the approved use and not being sublet or used for any other purpose.

8. 5 off-street car parking space must be provided, paved and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.
9. 4 bicycle parking spaces must be provided and maintained at all times in accordance with the standards contained within Part 2.10 of Marrickville Development Control Plan 2011 - Parking.
10. All parking spaces and turning area thereto must be provided in accordance with the design requirements set out within Part 2.10 of Marrickville Development Control Plan 2011 - Parking, and must be used exclusively for parking and not for storage or any other purpose.
11. No injury must be caused to the amenity of the neighbourhood by the emission of noise, smoke, smell, vibration, gases, vapours, odours, dust, particular matter, or other impurities which are a nuisance or injurious or dangerous or prejudicial to health, the exposure to view of any unsightly matter or otherwise.
12. The use of the premises, including any plant and equipment, must not give rise to:
 - a) transmission of unacceptable vibration to any place of different occupancy;
 - b) a sound pressure level at any affected premises that exceeds the background (LA90) noise level in the absence of the noise under consideration by more than 5dB(A). The source noise level must be assessed as an LAeq,15min and adjusted in accordance with Environment Protection Authority guidelines for tonality, frequency weighting, impulsive characteristics, fluctuations and temporal content as described in the NSW Environment Protection Authority's Environmental Noise Control Manual and Industrial Noise Policy 2000 and The Protection of the Environment Operations Act 1997 (NSW).
13. The operation of the premises complying at all times with the recommendations identified in the Acoustic Assessment - Noise Emission and Intrusion prepared GHD dated May 2018.
14. A separate application must be submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures other than the signage approved in this consent.
15. The advertising structure(s) and associated advertisement(s) must be properly and safely maintained at all times.
16. Any advertisement to be displayed must be only to identify the premises, the occupier of the site, the activity conducted thereon or the goods and services available on the premises associated with the use approved in this development consent.
17. The signage must:
 - a) not flash, move, be animated, or be decorated with rotating or flashing lights at any time;
 - b) not have any apparatus attached to it which will provide sound of any description whether associated with the sign or other object or activity;
 - c) be neatly affixed to the building and any damage to the building caused to the exterior of the building by the erection of the advertising structure must be promptly repaired with materials to match those of the existing building;
 - d) comply with the Advertising Code of Ethics; and
 - e) comply with the requirements of the Roads and Maritime Services Authority.
18. No storage of goods or equipment external to any building on the site is permitted.

19. No signs or goods must be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.
20. All loading and unloading in connection with the storage facility must be carried out from the loading dock within the premises. Such dock must be maintained at all times for the loading and unloading of goods and must be used exclusively for that purpose and not for storage or any other purpose and used only during approved hours of operation.
21. All loading and unloading in connection with the place of public worship must be carried out in such a manner as not to cause inconvenience to the public.
22. All machinery must be installed in accordance with the manufacturer's specifications and must be maintained at all times if in use.
23. Not more than 26 persons must be employed in connection with the place of public worship being on the premises at any one time without the prior approval of Council.
24.
 - a) The hours of operation of the place of public worship must be restricted to between the hours of 7.30pm to 10.00pm Tuesdays and 10.00am to 12.30pm Sundays.
 - b) The premises may be used outside of the core hours of operation prescribed by (a) above for the place of public worship for the purposes of special events subject to adherence to the following:
 - i) All events must be associated with the place of public worship and only involve activities typical to the use of the place of public worship;
 - ii) The events must be restricted to a maximum of 10 occurrences in a 12 month period;
 - iii) The events must be held between the hours of 7.30pm to 10.00pm Mondays to Fridays and/or 9.00am to 5.00pm Saturdays, Sundays and Public Holidays; and
 - iv) All events must adhere to all conditions of this consent, with the exception of (a) above.
25. The hours of operation of the storage facility must be restricted to between the hours of 8.00am to 4.00pm Mondays to Fridays with no operation on Saturdays, Sundays and Public Holidays.
26. The developer must liaise with the Sydney Water Corporation, Ausgrid, AGL and Telstra concerning the provision of water and sewerage, electricity, natural gas and telephones respectively to the property.
27. All building work must be carried out in accordance with the provisions of the National Construction Code (Building Code of Australia).

BEFORE COMMENCING DEMOLITION, EXCAVATION AND/OR BUILDING WORK

28. No work must commence until:
 - a) A PCA has been appointed. Where an Accredited Certifier is the appointed, Council must be notified within 2 days of the appointment; and
 - b) A minimum of 2 days written notice must be given to Council of the intention to commence work.
29. A Construction Certificate must be obtained before commencing building work. Building work means any physical activity involved in the construction of a building. This definition includes the installation of fire safety measures.

30. Sanitary facilities must be provided at or in the vicinity of the work site in accordance with the WorkCover Authority of NSW, Code of Practice 'Amenities for Construction'. Each toilet must be connected to the sewer, septic or portable chemical toilet before work commences.
- Facilities must be located so that they will not cause a nuisance.
31. All demolition work must:
- Be carried out in accordance with the requirements of Australian Standard AS 2601 'The demolition of structures' and the Occupational Health and Safety Act and Regulations; and
 - Where asbestos is to be removed it must be done in accordance with the requirements of the WorkCover Authority of NSW and disposed of in accordance with requirements of the Department of Environment, Climate Change and Water.
32. Where any loading, unloading or construction is to occur from a public place, Council must be contacted to determine if any permits or traffic management plans are required to be obtained from Council before work commences.
33. All services in the building being demolished must be disconnected in accordance with the requirements of the responsible authorities before work commences.
34. A waste management plan must be prepared in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and must be submitted to and accepted by the PCA before work commences.
35. The site must be enclosed with suitable fencing to prohibit unauthorised access. The fencing must be erected as a barrier between the public place and any neighbouring property, before work commences.
36. A rigid and durable sign must be erected in a prominent position on the site, before work commences. The sign must be maintained at all times until all work has been completed. The sign must include:
- The name, address and telephone number of the PCA;
 - A telephone number on which Principal Contractor (if any) can be contacted outside working hours; and
 - A statement advising: 'Unauthorised Entry To The Work Site Is Prohibited'.
37. A Soil and Water Management Plan must be prepared in accordance with Landcom Soils and Construction, Volume 1, Managing Urban Stormwater (Particular reference is made to Chapter 9, "Urban Construction Sites") and must be submitted to and accepted by the PCA. A copy of the Plan must be submitted to and accepted by PCA before work commences. The plan must indicate:
- Where the builder's materials and waste are to be stored;
 - Where the sediment fences are to be installed on the site;
 - What facilities are to be provided to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way; and
 - How access to the site will be provided.
- All devices must be constructed and maintained on site while work is carried out.
38. Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure
- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

39. The person acting on this consent shall submit to the Principal Certifying Authority a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site before the issue of a Construction Certificate.
40. Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

41. Before the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction addressing the applicable requirements The Disability (Access to Premises – buildings) Standards 2010 (the Premises Standards).
42. Before the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction indicating the recommendations within the BCA Compliance Assessment dated 1 February 2018 by BCA Vision being incorporated into the development.
43. Before the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction indicating the recommendations within the Access Report dated August 2018 by Code Performance being incorporated into the development.
44. Before the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction indicating the recommendations within the Fire Engineering Report dated 22 August 2018 by Code Performance being incorporated into the development.
45. Before the issue of a Construction Certificate an amended plan shall be submitted to the Certifying Authority's satisfaction clearly indicating that the eastern and southern internal walls immediately adjacent to the principal entrance to the building on the ground floor contain doorways/openings of an appropriate size to allow suitable egress of occupants from the place of public worship via the principal entrance in the event of an emergency.

46. Evidence of payment of the building and construction industry Long Service Leave Scheme, must be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate. (The required payment can be made at the Council Offices).

NOTE: The required payment is based on the estimated cost of building and construction works and the long service levy rate, set by the Long Service Payments Corporation. The rate set by the Long Service Payments Corporation is currently of 0.35% of the cost of the building and construction work.

For more information on how to calculate the amount payable and where payments can be made contact the Long Services Payments Corporation.

http://www.lspc.nsw.gov.au/levy_information/?levy_information/levy_calculator.stm

47. Prior to the commencement of demolition works or a Construction Certificate being issued for works approved by this development consent (whichever occurs first), a security deposit and inspection fee must be paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

Security Deposit	\$11,960.65
Inspection fee	\$230.65

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

Requirements of this condition are to be met prior to works commencing or prior to release of a Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

48. As identified in the Marrickville Valley Flood Study the site is subject to flooding during a 1 in 100 year storm event to a height of RL 2.35m AHD. The following flood protection measures shall be undertaken as follows:
- i. All new structures below RL 2.85m AHD (500mm freeboard) shall be constructed from flood compatible materials;
 - ii. All new electrical equipment and wiring shall be waterproofed or installed at or above RL 2.85m AHD; and

- iii. A flood impact and risk assessment for the site which addresses the relevant flood controls in Section 2.22 of Marrickville DCP 2011 shall be submitted. As the proposed habitable floor level is set below RL 2.85m AHD, an emergency management and evacuation plan for the site shall be developed and provided.

Detailed plans and specification complying with the above requirements shall be submitted to and approved by Council before the issue of a Construction Certificate.

SITE WORKS

49. Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:
 - a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
 - b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
 - c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

"Continuous" means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

50. The area surrounding the building work must be reinstated to Council's satisfaction upon completion of the work.
51. The placing of any materials on Council's footpath or roadway is prohibited, without the consent of Council. The placement of waste storage containers in a public place requires Council approval and must comply with Council's Policy - 'Placement of Waste Storage Containers in a Public Place'.

52. All demolition work must be carried out in accordance with the following:
- a) compliance with the requirements of Australian Standard AS 2601 'The demolition of structures' with specific reference to health and safety of the public, health and safety of the site personnel, protection of adjoining buildings and protection of the immediate environment;
 - b) all works involving the demolition, removal, transport and disposal of asbestos cement must be carried out in accordance with the 'Worksafe Code of Practice for Removal of Asbestos' and the requirements of the WorkCover Authority of NSW and the Department of Environment, Climate Change and Water;
 - c) all building materials arising from the demolition must be disposed of in an approved manner in accordance with Part 2.21 of Marrickville Development Control Plan 2011 – Site Facilities and Waste Management and any applicable requirements of the Department of Environment, Climate Change and Water;
 - d) sanitary drainage, stormwater drainage, water, electricity and telecommunications must be disconnected in accordance with the requirements of the responsible authorities;
 - e) the generation of dust and noise on the site must be controlled;
 - f) the site must be secured to prohibit unauthorised entry;
 - g) suitable provision must be made to clean the wheels and bodies of all vehicles leaving the site to prevent the tracking of debris and soil onto the public way;
 - h) all trucks and vehicles associated with the demolition, including those delivering to or removing material from the site, must only have access to the site during work hours nominated by Council and all loads must be covered;
 - i) all vehicles taking materials from the site must be loaded wholly within the property unless otherwise permitted by Council;
 - j) no waste collection skips, spoil, excavation or demolition material from the site must be deposited on the public road, footpath, public place or Council owned property without the approval of Council; and
 - k) the person acting on this consent must ensure that all contractors and sub-contractors associated with the demolition are fully aware of these requirements.
53. The works are required to be inspected at critical stages of construction, by the PCA or if the PCA agrees, by another certifying authority. The last inspection can only be carried out by the PCA. The critical stages of construction are:
- a) At the commencement of the building work;
 - b) For Class 2, 3 and 4 buildings, prior to covering waterproofing in any wet areas (a minimum of 10% of wet areas within a building);
 - c) Prior to covering any stormwater drainage connections, and after the building work has been completed and prior to any occupation certificate being issued in relation to the building; and
 - d) After the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- You are advised to liaise with your PCA to establish if any additional inspections are required.
54. All vehicles carrying materials to, or from the site must have their loads covered with tarpaulins or similar covers.
55. A clear unobstructed path of travel of not less than 1,000mm is to be provided to all exits and paths of travel to exits.
56. Fixtures for bathroom and kitchen taps, showerheads, dishwashers, toilet cisterns and urinals must have a minimum 3 Star WELS rating.
- NOTE:** Information on the star rating scheme, and all 'star' rated products are available to view at the Water Efficiency Labelling and Standards (WELS) website: www.waterrating.gov.au.

57. New or replacement toilets must have a minimum 3 Star WELS rating and be 6/3 litre dual flush or more efficient.
NOTE: Information on the star rating scheme, and all 'star' rated products are available to view at the Water Efficiency Labelling and Standards (WELS) website: www.waterrating.gov.au.
58. Alignment levels for the site at all pedestrian and vehicular access locations shall match the existing back of footpath levels at the boundary.

Note: This may require the internal site levels to be adjusted locally at the boundary to ensure that they match the above alignment levels. Failure to comply with this condition will result in vehicular access being denied.
59. To provide for adequate site drainage all roof and surface stormwater from the site and any catchment external to the site that presently drains to it, shall be collected in a system of pits and pipelines/channels and major storm event surface flow paths and being discharged to a stormwater drainage system in accordance with the requirements of Marrickville Council Stormwater and On Site Detention Code. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled.

BEFORE OCCUPATION OF THE BUILDING

60. You must obtain an Occupation Certificate from your PCA before you occupy or use the building. The PCA must notify the Council of the determination of the Occupation Certificate and forward the following documents to Council within 2 days of the date of the Certificate being determined:
- a) A copy of the determination;
 - b) Copies of any documents that were lodged with the Occupation Certificate application;
 - c) A copy of Occupation Certificate, if it was issued;
 - d) A copy of the record of all critical stage inspections and any other inspection required by the PCA;
 - e) A copy of any missed inspections; and
 - f) A copy of any compliance certificate and any other documentary evidence relied upon in issuing the Occupation Certificate.
61. Occupation of the building must not be permitted until such time as:
- a) All preconditions to the issue of an Occupation Certificate specified in this development consent have been met;
 - b) The building owner obtains a Final Fire Safety Certificate certifying that the fire safety measures have been installed in the building and perform to the performance standards listed in the Fire Safety Schedule; and
 - c) An Occupation Certificate has been issued.
62. The owner of the premises, as soon as practicable after the Final Fire Safety Certificate is issued, must:
- a) Forward a copy of the Final Safety Certificate and the current Fire Safety Schedule to the Commissioner of Fire and Rescue New South Wales and the Council; and
 - b) Display a copy of the Final Safety Certificate and Fire Safety Schedule in a prominent position in the building (i.e. adjacent the entry or any fire indicator panel).

Every 12 months after the Final Fire Safety Certificate is issued the owner must obtain an Annual Fire Safety Certificate for each of the Fire Safety Measures listed in the Schedule. The Annual Fire Safety Certificate must be forwarded to the Commissioner and the Council and displayed in a prominent position in the building.

63. All works required to be carried out in connection with drainage, crossings, alterations to kerb and guttering, footpaths and roads resulting from the development shall be completed before the issue of an Occupation Certificate. Works shall be in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications".
64. Encroachments onto Council's road or footpath of any service pipes, sewer vents, boundary traps, downpipes, gutters, stairs, doors, gates, garage tilt up panel doors or any structure whatsoever shall not be permitted. Any encroachments on to Council road or footpath resulting from the building works will be required to be removed before the issue of the Occupation Certificate.
65. The existing damaged or otherwise defective kerb, gutter and/or footpath adjacent to the site (front, side and rear frontage) shall be restored in accordance with Council's Standard crossing and footpath specifications and AUS-SPEC#2-"Roadworks Specifications" to Council's satisfaction, at no cost to Council and before the issue of the Occupation Certificate.
66. You are advised that Council has not undertaken a search of existing or proposed utility services adjacent to the site in determining this application. Any adjustment or augmentation of any public utility services including Gas, Water, Sewer, Electricity, Street lighting and Telecommunications required as a result of the development shall be at no cost to Council and undertaken before the issue of an Occupation Certificate.
67. The existing stone kerb adjacent to the site is of local heritage value and is to be preserved at no cost to Council. Any damage to the stone kerb will require the replacement of the damaged individual stone units before the issue of the Occupation Certificate. Please note any stormwater outlets through sandstone kerbs must be carefully core drilled. Non-compliance with this condition will result in loss of your security deposit.
68. Prior to issue of the Occupation Certificate the person acting on this consent shall obtain from Council a compliance Certificate(s) stating that all Road, Footpath and Public Domain Works on Council property required to be undertaken as a result of this development have been completed satisfactorily and in accordance with Council approved plans and specifications.

ADVISORY NOTES

- The Disability Discrimination Act 1992 (Commonwealth) and the Anti-Discrimination Act 1977 (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.
- A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out.
- The vehicular crossing and/or footpath works are required to be constructed by your own contractor. You or your contractor must complete an application for 'Construction of Vehicle Crossing and Public Domain Works' form, lodge a bond for the works, pay the appropriate fees and provide evidence of adequate public liability insurance, before commencement of works.
- Contact "Dial Before You Dig" before commencing any building activity on the site.

- Useful Contacts

BASIX Information	☎ 1300 650 908 weekdays 2:00pm - 5:00pm www.basix.nsw.gov.au
Department of Fair Trading	☎ 13 32 20 www.fairtrading.nsw.gov.au Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Before You Dig	☎ 1100 www.dialbeforeyoudig.com.au
Landcom	☎ 9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Payments Corporation	☎ 131441 www.lspc.nsw.gov.au
NSW Food Authority	☎ 1300 552 406 www.foodnotify.nsw.gov.au
NSW Government	www.nsw.gov.au/fibro www.diySAFE.nsw.gov.au Information on asbestos and safe work practices.
NSW Office of Environment and Heritage	☎ 131 555 www.environment.nsw.gov.au
Sydney Water	☎ 13 20 92 www.sydneywater.com.au
Waste Service - SITA Environmental Solutions	☎ 1300 651 116 www.wasteservice.nsw.gov.au
Water Efficiency Labelling and Standards (WELS)	www.waterrating.gov.au
WorkCover Authority of NSW	☎ 13 10 50 www.workcover.nsw.gov.au Enquiries relating to work safety and asbestos removal and disposal.

THAT the Department of Planning and Environment be advised, as part of the quarterly review of the monitoring of Clause 4.6 of Marrickville Local Environmental Plan 2011 - Exceptions to Development Standards, that Council has agreed to the variation of the following development standard:

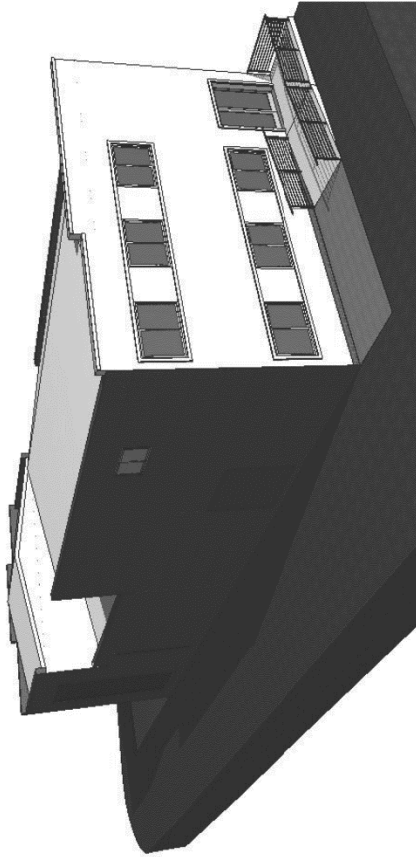
<u>Premises:</u>	2 Sydenham Road Marrickville
<u>Applicant:</u>	Oceania Revival Church Incorporated
<u>Proposal:</u>	To demolish part of the premises and carry out alterations to use part of the premises as a place of public worship with associated signage and to use the rear portion of the building for the storage of light fittings and electrical components

<u>Determination:</u>	Consent subject to conditions
<u>DA No:</u>	201800236
<u>Lot and DP:</u>	Lot 1 DP511792
<u>Category of Development:</u>	14 – Other
<u>Environmental Planning Instrument:</u>	Marrickville Local Environmental Plan 2011
<u>Zoning of Land:</u>	IN1 – General Industrial
<u>Development Standard(s) varied:</u>	Clause 4.4 – Floor Space Ratio
<u>Justification of variation:</u>	The existing building breaches the development standard and the additional breach resulting from the proposal is due to the incorporation of loading docks into the GFA and the bulk and scale of the building remains unchanged.
<u>Extent of variation:</u>	16.5%
<u>Concurring Authority:</u>	Council under assumed concurrence of the Secretary of the Department of Planning and Environment
<u>Date of Determination:</u>	

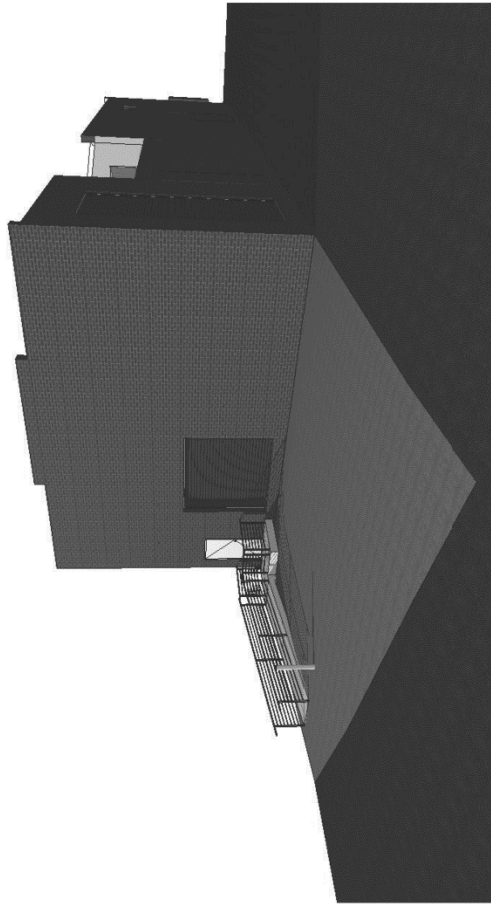
Attachment B – Plans of proposed development



OCEANIA REVIVAL CHURCH



overview



REAR VIEW



FRONT VIEW

SCHEDULE OF DRAWINGS

Issue	Amendment	Description	Date
A		COUNCIL AMENDMENTS	20/06/2018
B			21/08/18

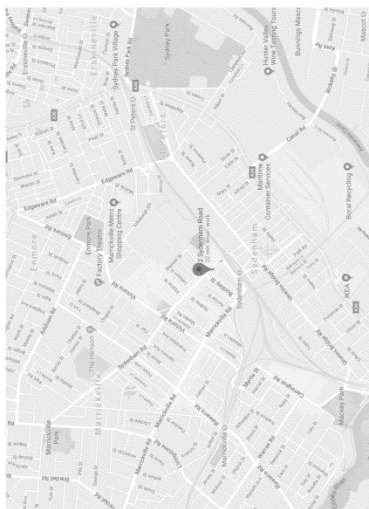
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DEVELOPMENT APPLICATION	
PROJECT 2 SYDENHAM ROAD MARRICKVILLE	project no 18-010
CLIENT OCEANIA REVIVAL CHURCH	scale AS-B/CMV @ A4 date 21/08/18
DRAWING COVER PAGE	drawn NT checked NT issue B

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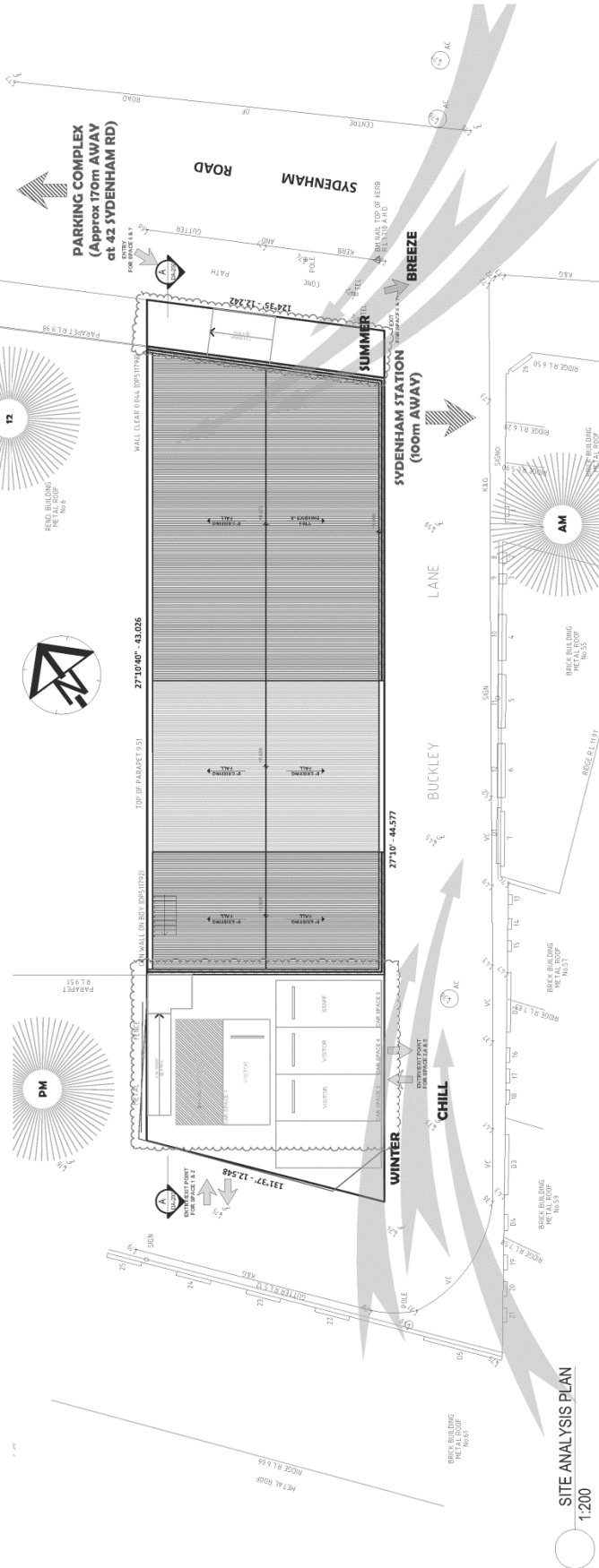
drawing no DA-001



LOCATION MAP - SOURCED FROM GOOGLE MAPS

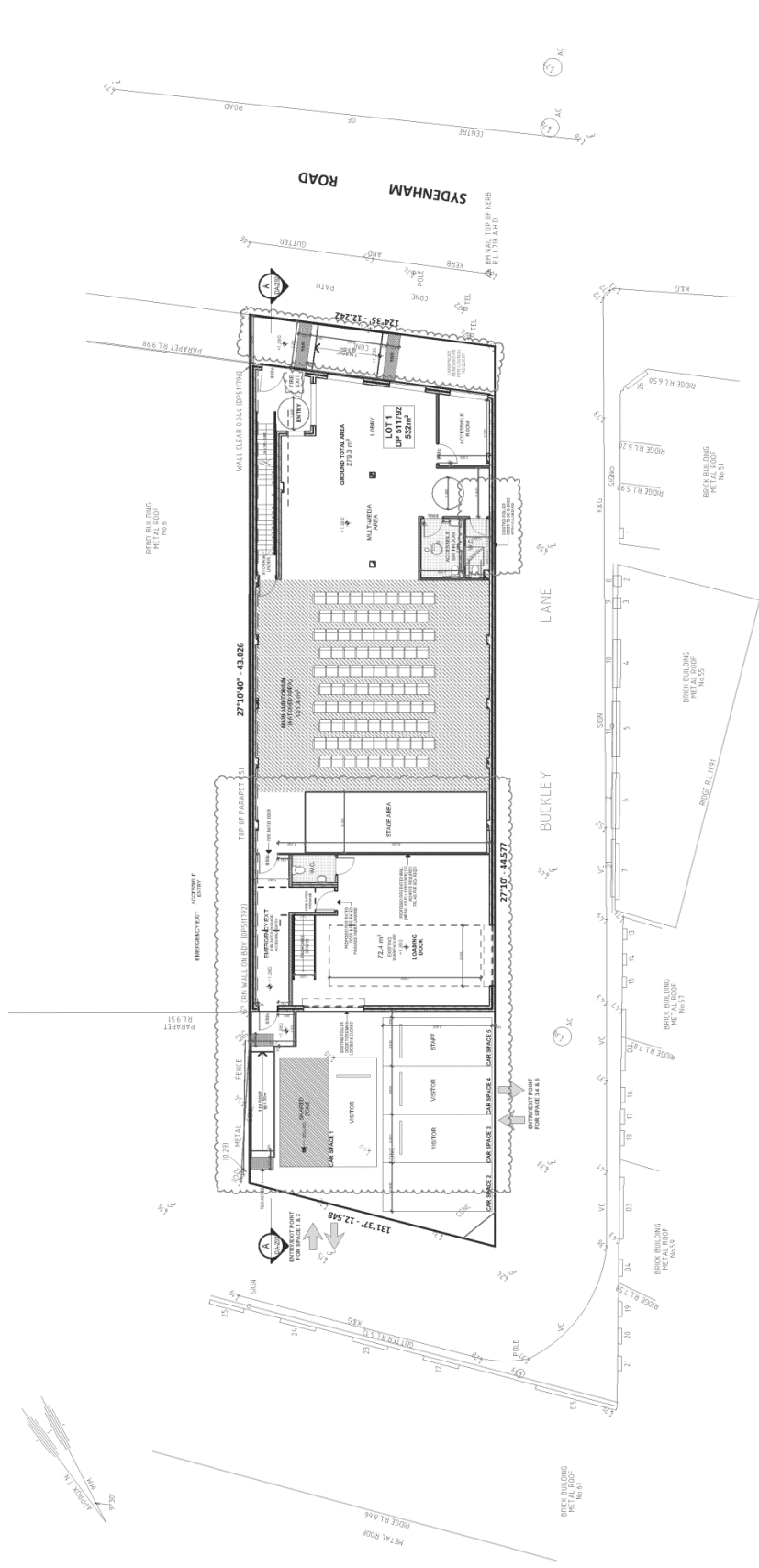


LOCATION MAP - SOURCED FROM SIX MAPS



SITE ANALYSIS PLAN
1:200

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<p>0477 77 55 75 NICOLAS TOUBI ARCHITECT WWW.NTARCH.COM.AU</p>		<p>PROJECT no 18-010 SCALE AS SHOWN ON AS DATE 21/08/18 DRAWN NT CHECKED NT ISSUE B</p>										



GROUND FLOOR PLAN
1:200

LEGEND

- EXISTING WALLS
- PROPOSED WALLS

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SCHEDULE OF DRAWINGS

Issue	Amendment	Description	Date
B	1	COUNCIL AMENDMENTS	21/08/2018

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DEVELOPMENT APPLICATION

PROJECT 2, SYDENHAM ROAD, HUNTERVILLE

CLIENT OCEANIA REVIVAL CHURCH

DRAWING GROUND FLOOR PLAN

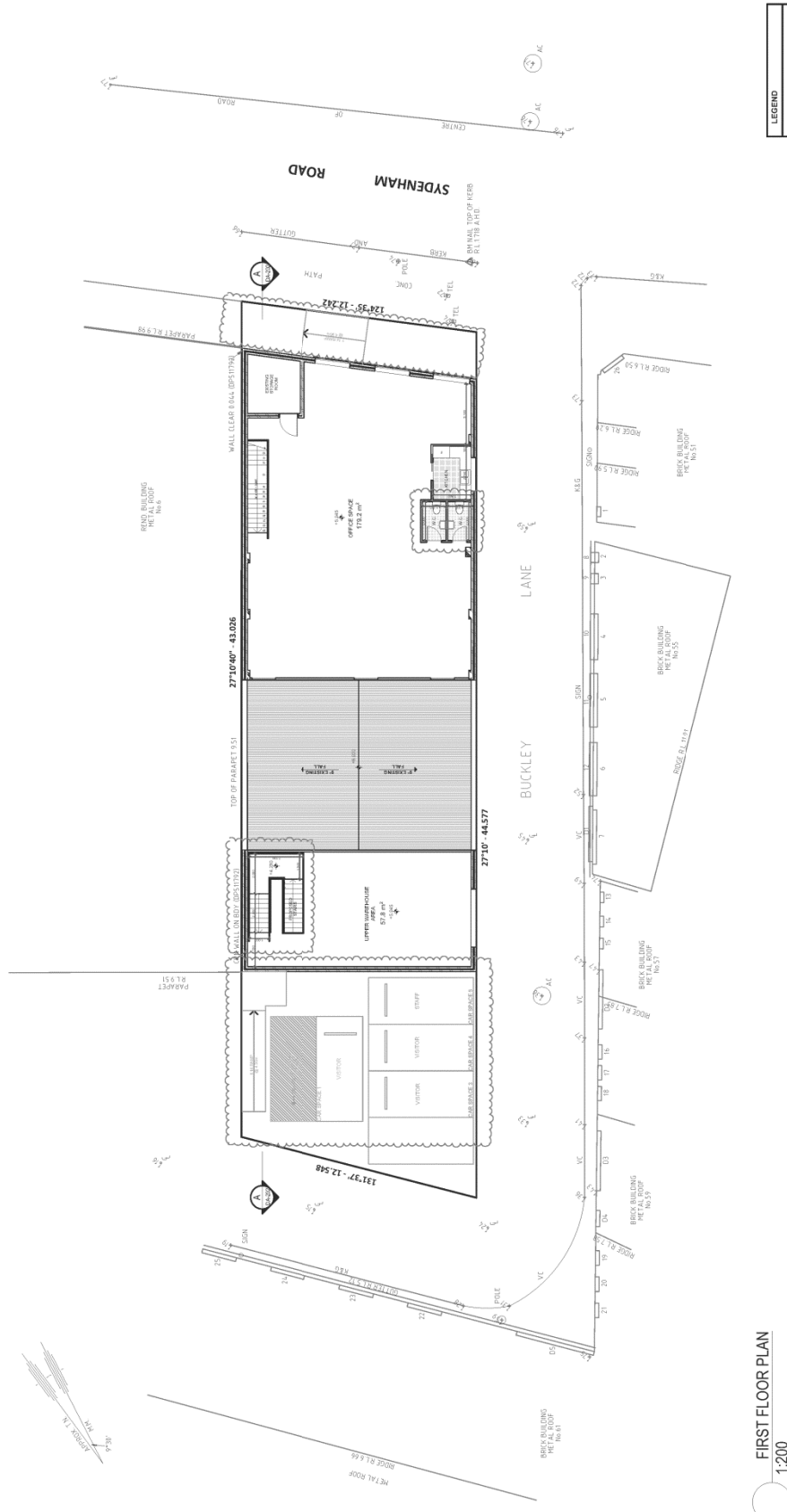
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FIRST FLOOR PLAN
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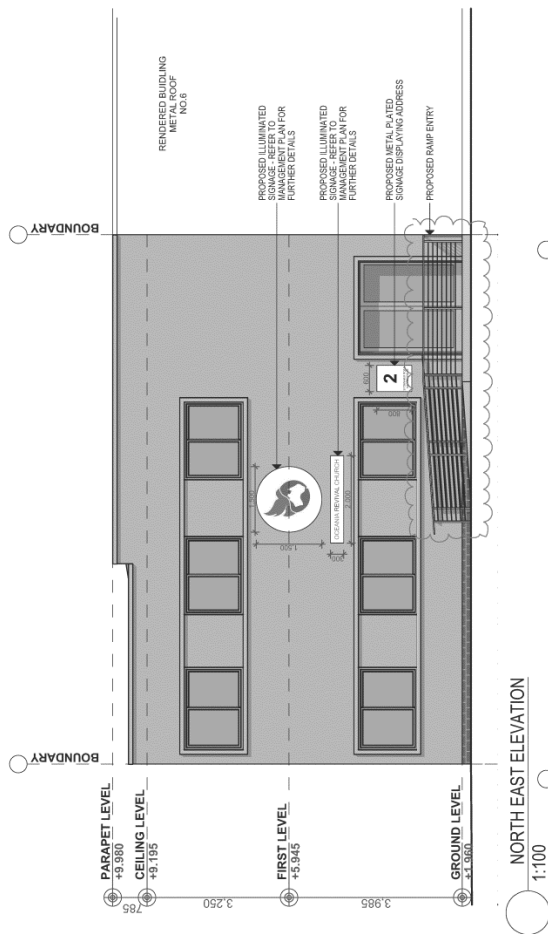
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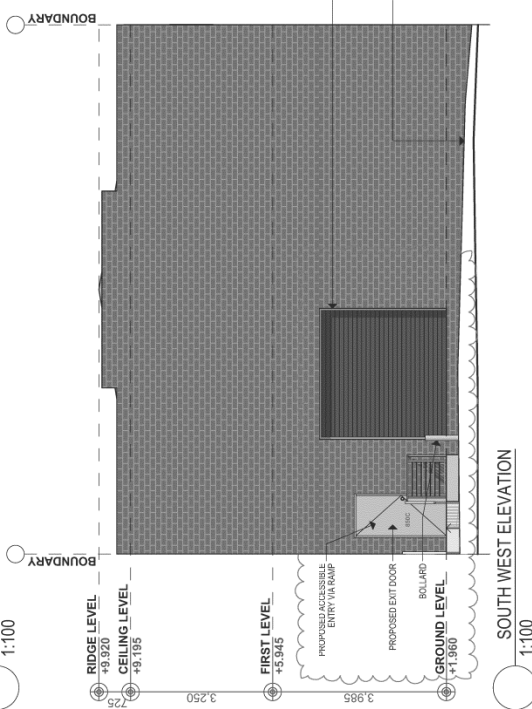
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NO.	DATE
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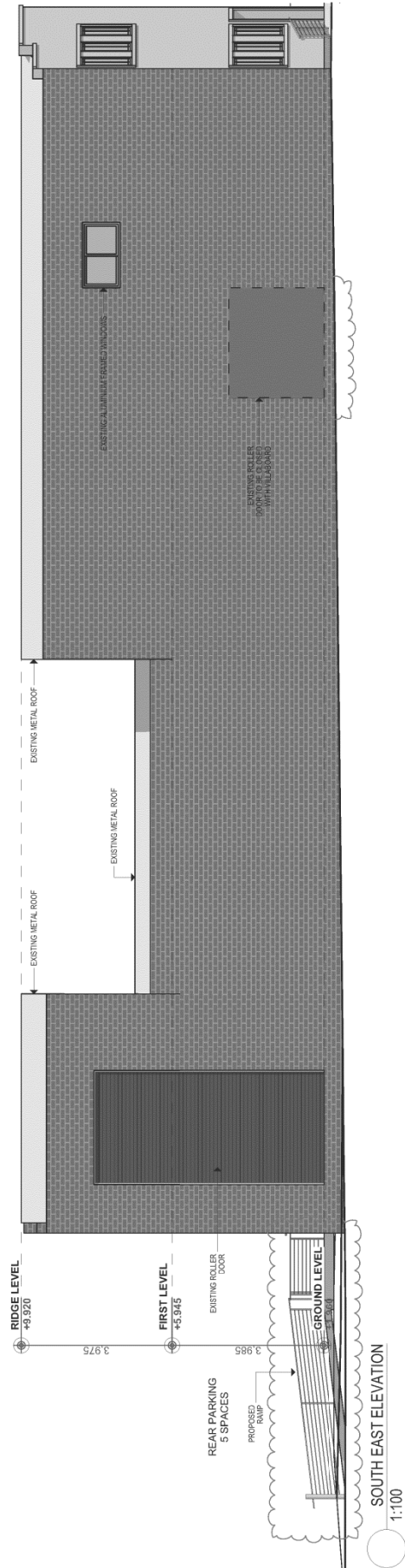
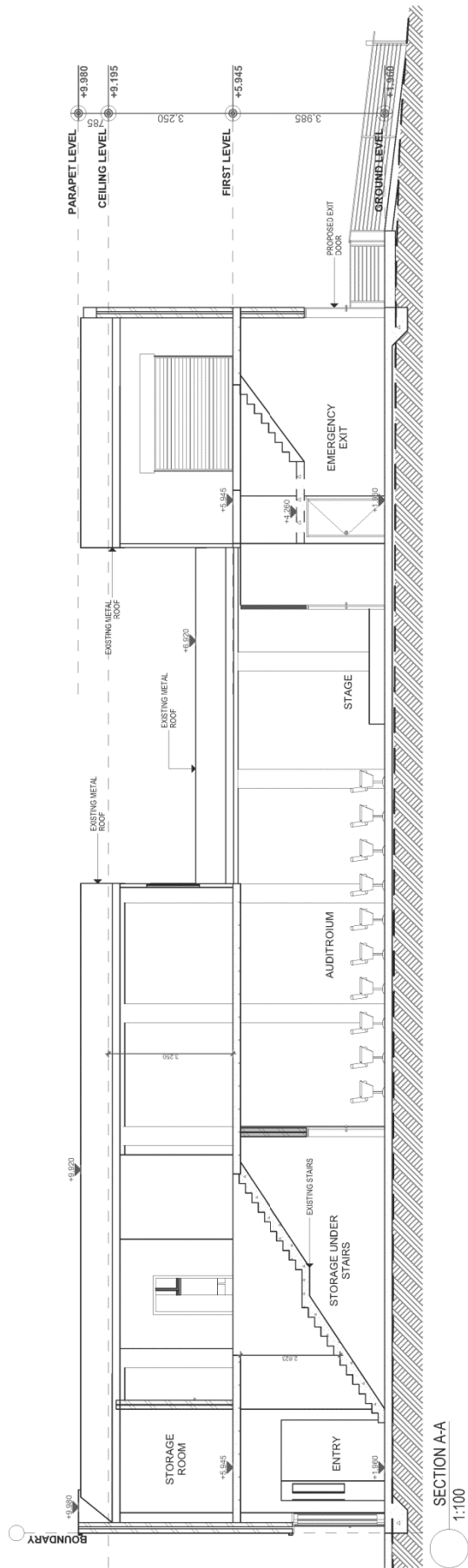


NORTH EAST ELEVATION
1:100



SOUTH WEST ELEVATION
1:100

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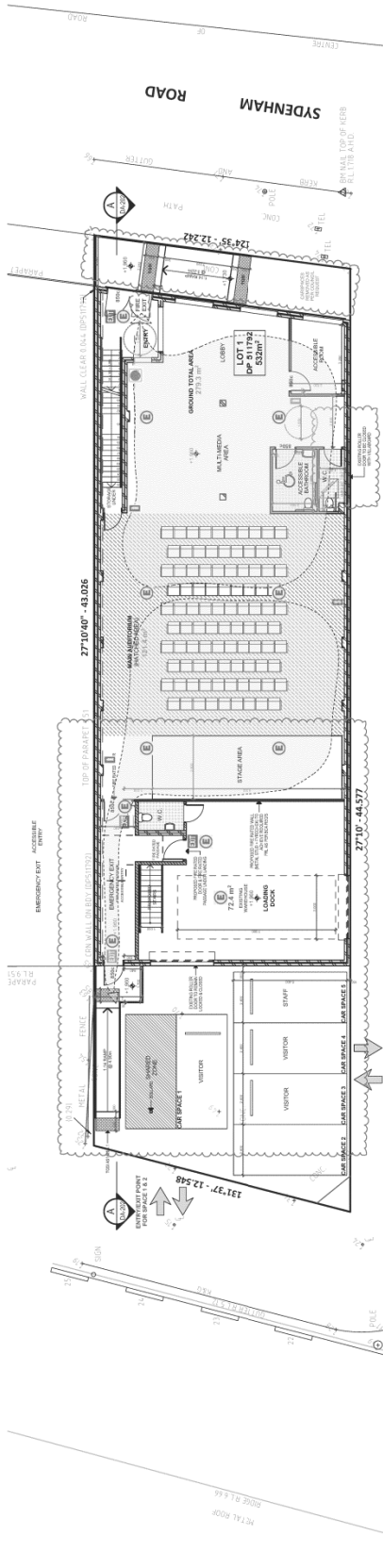
Issue	Amendment	CONCISELY EXPLAINING REVISIONS/CHANGES	Date
A			20/05/2018
B			21/08/18

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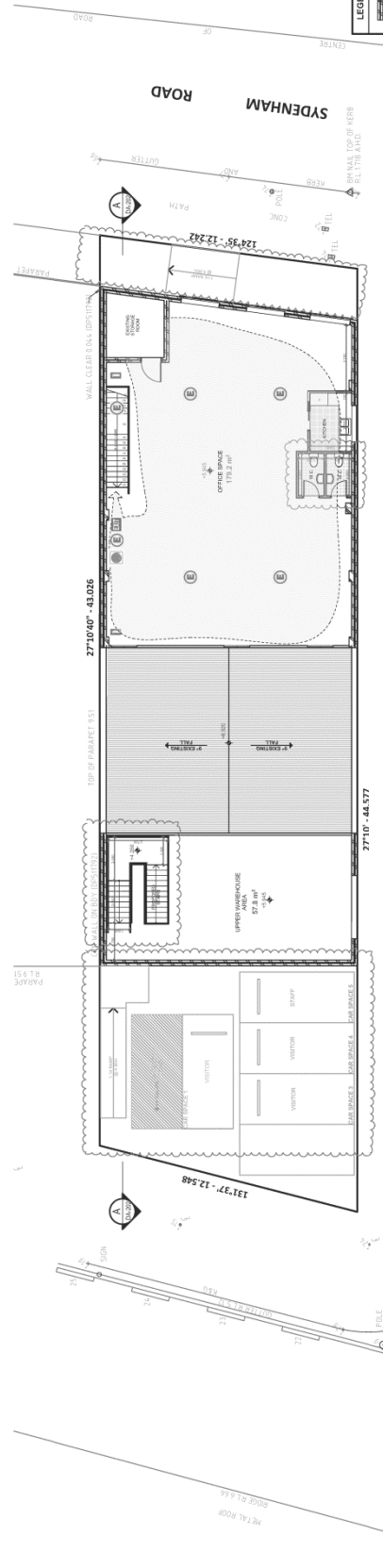
DEVELOPMENT APPLICATION
PROJECT 2 SYDENHAM ROAD MARRICKVILLE
CLIENT OCEANIA REVIVAL CHURCH
DRAWING SOUTH EAST ELEVATION & SECTION

project no 18-010
scale AS SP-OWN @ A1
date 21/08/18
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drawing no DA-202
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issue B



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		<p>0497 77 55 75 NICOLAS TORRALBA ARCHITECT NICOLAS TORRALBA ARCHITECT NICOLAS TORRALBA ARCHITECT</p> <p>torralba.nicolas@gmail.com www.ntarch.com.au</p>										
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<p>DEVELOPMENT APPLICATION</p> <p>PROJECT: 2 SYDENHAM ROAD MARRICKVILLE</p> <p>CLIENT: OCEANIA REVIVAL CHURCH</p> <p>DRAWING: EVACUATION PLANS</p>		<p>PROJECT no: 18-010</p> <p>SCALE: AS SHOWN (A3)</p> <p>TITLE: 21/08/18</p> <p>DRAWN: NT</p> <p>CHECKED: NT</p> <p>ISSUE: B</p>										

Attachment C – Clause 4.6 Exception to Development Standards



21 August 2018

The General Manager
Inner West Council
PO Box 14
PETERSHAM NSW 2049

Attention: Town Planning

Dear Sir/Madam,

RE: DA201800236 – SECTION 4.55(2) APPLICATION FOR 2 SYDENHAM ROAD, MARRICKVILLE

This letter seeks a variation to Clause 4.4 of the Marrickville Local Environmental Plan 2013 (MLEP2011), which relates to the floor space ratio (FSR) control.

This submission has been prepared in relation to a development application seeking to demolish part of the premises and carry out alterations and additions to use part of the premises as a place of public worship with associated signage and to use the rear portion of the building for storage of light fittings and electrical components at 2 Sydenham Road, Marrickville.

As detailed in this letter, the proposed development meets the requirements prescribed under Clause 4.6 of the MLEP2011.

1. Introduction

This submission follows a letter from Inner West Council dated 1 August 2018 seeking additional information with respect to the application (DA201800236). Point 1 of the letter requires the submission of a Clause 4.6 submission to justify a proposed variation to the FSR development standard.

It is important to note that this proposal does not include any physical additional floor area, however the existing building contains two loading docks which as allowed by the definition of gross floor area, did not form part of the FSR calculation. However as part of this proposal, one of the existing loading docks, namely the forward ground floor loading dock, will be converted to useable floor space and as a result the proposal results in a technical increase to the FSR at the site.

This submission is made under Clause 4.6 of the MLEP2011 – Exceptions to development standards. Clause 4.6 states the following:

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Suite 15, Level 1
469-475 Parramatta Rd
Leichhardt NSW 2040

■ **Brisbane Office**
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West End QLD 4101

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f. 02 9569 1103
e. gat@gatassoc.com.au
w. www.gatassoc.com.au

TOWN PLANNERS ■ BASIX/ENERGY ASSESSORS

4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for a development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks 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 development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note.** *When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2*

Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.

- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following:*
- (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4*
 - (ca) clause 6.17 or 6.18."*

Clause 4.6 – Exceptions to development standards, establishes the framework for varying development standards applying under a LEP. Subclause 4.6(3)(a) and 4.6(3)(b) requires that a consent authority must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating that:

- 4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- 4.6(3)(b) that there is sufficient environmental planning grounds to justify contravening the development standard.*

In addition, 4.6(4)(a)(i) and (ii) requires that development consent must not be granted to a development that contravenes a development standard unless the:

- (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

The Environmental Planning Instrument to which these variations relate to is the MLEP2011.

The development standard to which this variation relates to is Clause 4.4 – Floor Space Ratio, which reads as follows:

- "(1) The objectives of this clause are as follows:*
- (a) to establish the maximum floor space ratio,*
 - (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
 - (c) to minimise adverse environmental effects on adjoining properties and the public domain.*

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

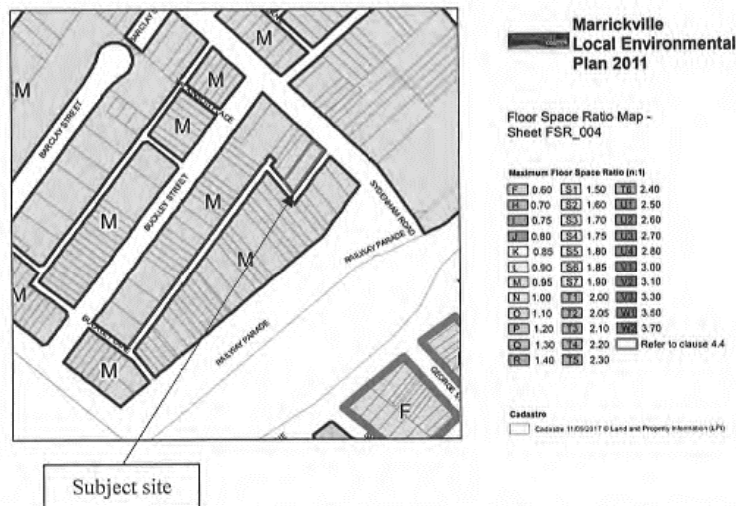
(2A) Despite subclause (2), development for the purposes of attached dwellings, bed and breakfast accommodation, dwelling houses and semi-detached dwellings on land labelled “F” on the Floor Space Ratio Map is not to exceed the relevant floor space ratio determined in accordance with the Table to this subclause.

Site area	Maximum floor space ratio
≤ 150 square metres	1.1:1
> 150 ≤ 200 square metres	1:1
> 200 ≤ 250 square metres	0.9:1
> 250 ≤ 300 square metres	0.8:1
> 300 ≤ 350 square metres	0.7:1
> 350 ≤ 400 square metres	0.6:1
> 400 square metres	0.5:1

(2B) Despite subclause (2), development for the purposes of residential flat buildings on land identified with a thick red line and labelled “F” on the Floor Space Ratio Map may exceed the maximum floor space ratio shown for the land on the Floor Space Ratio Map by no more than 0.25:1.

As demonstrated in Figure 1 below, the subject site is prescribed a maximum FSR of 0.95:1.

Figure 1: Floor Space Ratio Map



The proposed modification application will increase the gross floor area of the site to 588.7m², being an FSR of 1.07:1. A variation of 83.3m² (16.5%) is therefore proposed.

A written justification is therefore required for the proposed variation to the maximum FSR development standard, in accordance with Clause 4.6 of the MLEP2011.

2. Extent of Non-Compliance

As noted above Clause 4.4 of the MLEP11 states that the maximum FSR available to the site is 0.95:1.

Based on a site area of 532m², the maximum gross floor area permitted under MLEP controls would be 505.4m².

This Section 4.55(2) Application seeks to increase the GFA of the development to a total of 588.7m², being an FSR of 1.07:1. A variation of 83.3m² (16.5%) is proposed.

It is noted that the additional floor space will not result in any additional bulk or scale and is contained within the existing building through the conversion of an existing loading dock into useable floor space.

3. Is Compliance with the Development Standard Unreasonable or Unnecessary in the Circumstances of the Case?

At the time of writing, the following case law is considered to be relevant in the preparation of this Clause 4.6 variation request:

- *Wehbe v Pittwater Council [2007] NSWLEC 827*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009*
- *Micaul Holdings Pty Ltd v Randwick City Council [2015] NSWLEC 1386*
- *Moskovich v Waverley Council [2016] NSWLEC 1015*
- *Zhang and anor v Council of the City Ryde [2016] NSWLEC 1179*

The findings and principles established by these cases have been considered in the preparation of this Clause 4.6 variation request as detailed in the paragraphs below.

The proposed variation from the development standard is assessed against the accepted "5 Part Test" for the assessment of a development standard variation established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council (2007) NSWLEC 827*.

In the matter of *Four2Five Pty Ltd v Ashfield Council (2015) NSWLEC 1009*, the Commissioner stated within the judgement the following, in reference to a variation:

"...the case law developed in relation to the application of SEPP 1 may be of assistance in applying Clause 4.6. While Wehbe concerned an objection under SEPP 1, in my view the analysis is equally applicable to a variation under Clause 4.6 where Clause 4.6 (3)(a) uses the same language as Clause 6 of SEPP 1."

It is therefore our submission that the Wehbe test is of relevance in the consideration of a standard to determine whether or not it is unreasonable or unnecessary in the circumstances of the case and it is evident through the Four2Five matter, the above test is relevant.

In the decision of *Wehbe vs Pittwater Council (2007) LEC 827*, Chief Justice Preston expressed the view that there are five (5) different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy.

This attributes to determining whether compliance with the standard is unreasonable or unnecessary in the circumstances of the case as set out below:

First	<i>The most commonly invoked way is to establish that compliance with the development standards is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. If the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary and unreasonable. (applicable)</i>
Second	<i>A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary. (applicable)</i>
Third	<i>A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable. (applicable)</i>
Fourth	<i>A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable. (not applicable)</i>
Fifth	<i>A fifth way is to establish that "the zoning of particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land" and that "compliance with the standard in that case would also be unreasonable or unnecessary. (not applicable)</i>

In respect of the FSR development standard and the circumstances of this case, the first, second and third methods are invoked.

With regards to the first method, the objectives supporting the floor space ratio control identified in Clause 4.4 are discussed below. Consistency with these objectives and the absence of any environmental impacts, would demonstrate that strict compliance with the standards would be both unreasonable and unnecessary in this instance.

The discussion provided below demonstrates how the proposal is consistent with the objectives of Clause 4.4.

- “(1) The objectives of this clause are as follows:*
- (a) to establish the maximum floor space ratio,*
 - (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different areas,*
 - (c) to minimise adverse environmental impacts on adjoining properties and the public domain.*

Objective (a), it is merely an explanation of the development standard. The proposed development is not in opposition with this objective.

In terms of objective (b), it is worth recognising that while there is an increase in the overall gross floor area it is all captured within the existing building footprint. Therefore there is no change to the existing building bulk nor is there any change to the streetscape character.

Finally, regarding objective (c), as outlined above the approved building envelope will not be modified as a result of the proposed works. With the built form retained in its current form, it is considered that there are no adverse environmental impacts generated by the additional gross floor area.

With respect to the second method, the underlying objectives of the development standard are not considered relevant to the proposal. The objectives outlined under Clause 4.4 seek to control building density and bulk however the current proposal will not alter the approved building envelope. The additional floor area is achieved through the conversion of an existing internal loading dock being converted into useable floor space. This area was formerly excluded from the FSR calculation by virtue of the gross floor area development standard.

The objectives further seek to minimise adverse environmental impacts to adjoining properties and the public domain however in view of the retention of the existing building in its current form the status quo is retained. Any potential environmental impact would have been considered as part of the original approval on the site and remains relevant given there is no change proposed to the presentation of the building. Compliance with the development standard is therefore considered unnecessary.

In terms of the third method, it is considered that the underlying objective or purpose of the development standard would be defeated if compliance was required as the approved massing of the building will not change through the current application. To require compliance is considered unreasonable as it would require the part removal of a building footprint which has already been approved and constructed.

As demonstrated in the comments above, compliance with the development standard is considered to be unreasonable and unnecessary given the circumstances of the case.

4. Are there Sufficient Environmental Planning Grounds?

The assessment above has shown that the resultant environmental impacts of the proposal will be satisfactory, as the development remains as being substantially the same.

The proposal has addressed the relevant objectives of both the FSR development standard and of the zone. The proposal will not result in any unreasonable amenity of environmental impacts.

We respectfully submit that the proposal will result in a better planning outcome as the application involves the adaptive reuse of part of the existing building as a place of public worship. While the numerical departure from the standard equals 83.3m² (16.5%), the additional floor space has been captured within the approved building envelope as the existing loading dock will be converted to a WC, accessible WC and circulation area to be used as part of the place of public worship.

The proposal does not result in any additional bulk and scale, amenity impacts or the like. The development will remain consistent with the existing streetscape.

In this case, strict compliance with the development standard for floor space ratio in the MLEP11 is unnecessary and unreasonable.

5. Is the Variation in the Public Interest?

Clause 4.6 states that the development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public

interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is to be carried out.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard under Part 4.

The development as proposed will be in the public interest as it is consistent with the objectives of Clause 4.4. The retention of the existing building will also ensure a consistent streetscape is maintained.

Furthermore, it is important to also consider the objectives of the IN1 General Industrial zone in relation to the development, which are as follows:

IN1 General Industrial

Objectives of zone

- *To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To protect industrial land in proximity to Sydney Airport and Port Botany.*
- *To enable a purpose built dwelling house to be used in certain circumstances as a dwelling house.*

In response to the above the following is provided:

Although not an industrial land use, a place of public worship is permissible within the IN1 General Industrial zone. As the objectives specifically relate to industrial development or purpose built dwelling houses, they are not considered relevant in this instance.

As detailed in this submission the proposal however will not alter the character of the area in terms of building form nor will it impact upon the amenity of surrounding sites.

It is considered that this submission provides sufficient environmental planning grounds to justify contravening the development standard, noting the development will be in the public interest.

6. Public Benefit of Maintaining the Standard

It is considered that there is no benefit to the public or the community in maintaining the standard, but rather there is a benefit in maintaining a degree of flexibility in this scenario. The proposed works will allow for the use of part of the existing building as place of public worship. The proposed works are generally of an internal nature and as such will not detract from the established streetscape presentation of the building.

It is not considered that the variation sought raises any matter of significance for State or regional planning.

The departure from the FSR control within the MLEP2011 allows for the orderly and economic use of the site in a manner which achieves the outcomes and objectives of the relevant planning controls.

7. Is the Variation Well Founded?

It is considered that this has been adequately addressed in Parts 4 and 5 of this submission. In summary, this Clause 4.6 Variation is well founded as required by Clause 4.6 of the MLEP11 in that:

- Compliance with the development standards would be unreasonable and unnecessary in the circumstances of the development;
- There are sufficient environmental planning grounds to justify the departure from the standard;
- The development meets the objectives of the standard to be varied (FSR);
- The proposed development is in the public interest and there is no public benefit in maintaining the standard;
- The breach does not raise any matter of State of Regional Significance; and
- The proposal does not change the approved building footprint.

Based on the above, the variation is considered to be well founded.

8. General

Clause 4.6 also states that:

“(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

***Note.** When this Plan was made it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.*

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant’s written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building*

to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
(c) clause 5.4,
(ca) clause 6.17 and 6.18."

This variation does not relate to the subdivision of land. The variation sought is thus not contrary to subclause (6).

Should the exception to the development standard sought under this submission be supported by Council, the Council must retain a record of the assessment of this submission.

The development proposed is not complying development.

As there is no residential component proposed, a BASIX Certificate is not required in this instance.

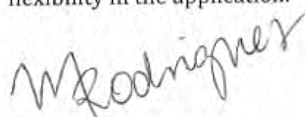
Clauses 5.4, 6.17 and 6.18 of the MLEP11 do not apply to the proposal.

9. Conclusion

The proposal does not strictly comply with the maximum FSR controls as prescribed by Clause 4.4 of the MLEP11. Having evaluated the likely affects arising from this non-compliance, we are satisfied that the objectives of Clause 4.6 of the MLEP11 are satisfied as the breach to the controls does not create any adverse environmental impacts.

Consequently, strict compliance with this development standard is unreasonable and unnecessary in this particular instance and that the use of Clause 4.6 of the MLEP11 to vary this development controls appropriate in this instance.

Based on the above, it is sensible to conclude that strict compliance with the maximum FSR is not necessary and that a better outcome is achieved for this development by allowing flexibility in the application.



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