Planning for Religious Purposes: An Examination of Contentious Development Proposals

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Ashley Cheong
Abstract

In light of the recent controversy surrounding development for religious purposes, the aim of this thesis is to firstly determine what development for ‘religious purposes’ actually constitutes. The changing nature of society can be perceived to influence traditional land use definitions, permissibility and assessment. Therefore, this thesis proceeds to discuss whether this has ‘stretched’ the boundaries of the planning system and has undertaken a review of how the town planning system handles development for religious purposes. Three cases studies were undertaken in Camden, Annangrove and Bass Hill. With the aid of town planning professionals that were involved in the cases, this thesis explores whether there was any misconception of the development proposal and if religious bias was apparent in the planning decision making. In particular, sections 5 and 79C of the EP&A Act 1979 have been discussed with each interviewee providing their views and experiences with how these regulations were addressed. Personal morals and ethics of planners and their effect on development assessment was raised and further developed into the discussion of political involvement. The findings of the thesis discuss whether the planning system is ‘rigid’ and what is the proper and professional way to approach planning for, and assessment of, development for religious purposes.
<table>
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<td>ABS</td>
<td>Australian Bureau of Statistics</td>
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<tr>
<td>A&amp;E</td>
<td>Access and Equity</td>
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<td>ADA</td>
<td>Anti-Discrimination Act 1977 (NSW)</td>
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<td>AEAC</td>
<td>Australiian Ethnic Affairs Council</td>
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<td>BCC</td>
<td>Bankstown City Council</td>
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<td>BHSC</td>
<td>Baulkham Hills Shire Council</td>
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<td>CC</td>
<td>Camden Council</td>
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<td>DA</td>
<td>Development Application</td>
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<td>DCP</td>
<td>Development Control Plan</td>
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<td>DOP</td>
<td>Department of Planning</td>
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<td>EP&amp;A Act</td>
<td>Environmental Planning and Assessment Act 1979</td>
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<td>ICNSW</td>
<td>Islamic Council of New South Wales</td>
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<tr>
<td>LEP</td>
<td>Local Environmental Plan</td>
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<tr>
<td>LGA</td>
<td>Local Government Area</td>
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<tr>
<td>LULU</td>
<td>Local Unwanted Land Use</td>
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<tr>
<td>NIMBY</td>
<td>Not In My Back Yard</td>
</tr>
<tr>
<td>NSW</td>
<td>New South Wales</td>
</tr>
<tr>
<td>RAG</td>
<td>Resident Action Group</td>
</tr>
<tr>
<td>REP</td>
<td>Regional Environmental Plan</td>
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<tr>
<td>SBS</td>
<td>Special Broadcasting Service</td>
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<tr>
<td>SEPP</td>
<td>State Environmental Plan</td>
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<td>SMH</td>
<td>Sydney Morning Herald</td>
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This Chapter will provide an overview of how this thesis has been approached and the main aims and objectives to be achieved. It will also outline the limitations of this thesis.

1.1. Background

There has been much controversy surrounding the issue of religion on both an international and local level for many years. More recently however, there has been much media coverage surrounding Muslims and the Islamic faith due to key international events that are not limited to development for religious purposes. However, there is clear evidence that these issues have impacted upon the way in which development for religious purposes are deemed as contentious development proposals.

This thesis has undertaken three case studies in the Baulkham Hills Shire and the Bankstown and Camden Local Government Areas. An in-depth overview of the proposed development will be provided and will be based on the relevant Council planning reports, the Land and Environment Court proceedings, media coverage and in-depth qualitative interviews.

The question to be asked is whether the town planning system allows or confines the best approach to planning for and the assessment of development for religious purposes.

1.2. Aims and Objectives

This thesis will examine how the town planning system deals with development for religious purposes. In doing so, this thesis will investigate whether development for
Planning for Religious Purposes has stretched the boundaries of the statutory planning system and will investigate any perception of religious bias in planning decision making.

This will be achieved by ‘setting the scene’ for how the town planning system handles contentious development proposals. This will take two forms:

a) In Theory
b) In Practice

The theory aspect will explore current literature regarding the principles of planning, whilst the ‘in practice’ aspect will discuss the Environmental Planning and Assessment Act 1979 and in particular, section 5 and section 79C considerations. The three case studies will provide examples of how the ‘in practice’ aspect has been applied, how they have been handled and whether there was any perception of religious bias.

A critical analysis of the subject topic will discuss the nature of the planning outcomes and comment on what is required to achieve positive planning approaches and outcomes.

1.3. Methodology

The principle purposes of research are exploration, description and explanation. Exploration involves the developing a basis for further research through the initial understanding of a particular topic. Description involves the reporting of the subject topic. Explanation is the reporting of components of the subject and how they coincide with each other (Babbie, 2001).
This thesis will explore the issue of development for religious purposes, describe how they are being handled by the town planning system and explain the implications of the process and report on planning outcomes.

In order to develop the initial understanding of the thesis topic and undertake further research, qualitative research methodology was adopted.

Qualitative interviews allow the interviewer to interact with the interviewee and observe much more than simply their answers. The tone and body language of the interviewee for example, allow for a much deeper understanding of the issue at hand and the true nature of the responses.

Given the controversial and sensitive nature of the thesis topic, a qualitative interview will enable a holistic view of the issue to be obtained. The responses are much more ‘raw’ as opposed to what would be received via a survey or questionnaire. However, in this instance, respondents may have been more cautious in their approach to answering questions to remain ‘politically correct’.

Ethical issues of social research were thus, given much consideration in the formulation of the set of questions that were asked and the manner in which they were delivered. The thesis made provisions for anonymity and confidentiality of the respondents.

The qualitative research will uncover any patterns or relationships within the data and provide a link between theory and analysis.

It is vital for the theory and analysis to be linked so that the thesis can discover any patterns or relationships.
The qualitative research was undertaken in the form of interviews with various town planning professionals. Given the recent controversy surrounding religious development in New South Wales, one of the interviewees did not wish to be identified whilst the other gave permission to be identified only as the Town Planning Coordinator of Baulkham Hills Shire Council.

A third interview had been planned and a meeting had been confirmed with the target interviewee. This interviewee had been selected given their involvement with the Camden case study development. However, as the thesis progressed, the applicants of the proposed educational establishment at Camden had decided to appeal Council’s decision at the Land and Environment Court. As such, the interviewee was not able to undertake the interview as it was deemed inappropriate given their in-depth participation with the court hearing.

The data gained from the qualitative research will be presented throughout the thesis where applicable.

1.4. Structure of Thesis

This thesis is structured as follows:

Chapter 1: Describes the background, aims and objectives, methodology, focus and limitations of the thesis.

Chapter 2: Defines “Religious Purposes” and discusses development for Religious purposes as a land use.

Chapter 3: Examines the town planning system and how development for Religious purposes is handled.
Chapters 4, 5 & 6: Provides an overview of the three chosen case study of this thesis. The case studies will provide background information as to the application and the decision. The implications of the case studies will also be discussed.

Chapter 7: Provides a conclusion that will summarise the key findings of the thesis and make recommendations accordingly.

1.5. Focus

For this thesis it is essential to define the particular focus. As mentioned above, this thesis will focus primarily on three case studies and how they were handled by the New South Wales Town Planning system. A critical review of these case studies will allow for both the positive and poor planning practice and outcomes to be exposed and discussed.

1.6. Limitations

This thesis has been prepared as a component of the Bachelor of Town Planning undergraduate degree of the University of New South Wales. A timeframe of thirteen (13) weeks was given for the completion of the project. As such, the case studies were based on the information available and aimed to be as up to date as possible. The main case study is a Muslim Prayer Hall in Annangrove that has been granted approval and is currently operational. Therefore, a full overview of the Council’s development assessment process and also the Land and Environment Court Hearing was undertaken.
The case studies in Camden and Bass Hill for the development of schools have both been refused by the respective Councils and the applicants are currently in plans to have the decisions appealed in the Land and Environment Court. Therefore, analyses of those case studies were based on their most recent status up to the date of completion of this thesis.
2. The issue: Planning for Religious Purposes

This Chapter will set the scene by defining the term ‘religious purposes’ and how this is associated as land uses. In doing so, the nature, scale and location of development for religious purposes will be discussed and will provide an overview of how these have changed over time. This will determine whether the boundaries of the statutory planning system have been ‘stretched’ based on the fact that development for religious purposes has progressed beyond traditional definitions. An example of a development whereby the definition of a church was challenged in the Land and Environment Court will be briefly discussed.

2.1 What are “Religious Purposes’?

The word ‘Religion’ itself stems from the Latin word ‘Religio’ which means to ‘bind together’. (Mitchell, 2006) Thus, religion aids in the formation of a community when worshippers are able to undertake worship or other social activities.

Religious purposes can thus be defined as activities that allow a group or individual to conduct worship and worship related activities.

2.2 Religious Purposes as a Land use

This thesis has undertaken three case studies for an Islamic Prayer Hall and two educational establishments in New South Wales.

As defined above in section 2.1, religious purposes are not strictly limited to worship, but also worship related activities. This can be applied to religious purposes as land uses as they do not have to be strictly limited to a place of worship, but a place where followers are able to undertake worship related activities.
Therefore, this thesis portrays the proposed educational establishments in the case studies as development for religious purposes as they provide the students with adequate facilities to practice their faith such as wearing garments and special meals. Thus, such educational establishments allow the students to maintain their religious values.

To date, development for religious purposes is not a term or definition that is evident in local government planning controls. Rather, development for religious purposes is defined as places of public worship, which is defined as follows under the Standard Local Environmental Plan Instrument:

“a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.” (Standard Instrument – Principal Local Environmental Plan, 2006)

The subject local government areas of the case studies and the coinciding Local Environmental Plans define places of public worship with words to the effect of that stated above.

Therefore, whilst places of public worship allow for the ancillary use of the subject site for counselling, social events, instruction or religious training, the primary use of the site would be for example, a church, mosque or the like. On the other hand and for the purpose of this thesis, development for religious purposes allow for the ancillary use of the subject as a place of worship whilst, the primary use of the site would be in this instance, an educational establishment.
As mentioned earlier, qualitative research was undertaken in the form of interviews with various town planning professionals that have been involved with development for religious purposes. Each of the interviewees was asked how they defined development for religious purposes and both provided a similar answer to that mentioned above and made note that the primary use would be worship. However, there was a clear distinction between their beliefs of what constituted ancillary activities and whether this became a ‘grey’ area.

In response to whether there were any grey areas in the definition of development for religious purposes, the Town Planning Coordinator of Baulkham Hills Shire Council stated:

“people [are required] to clearly define ancillary activities like counselling or other types of activities that aren’t a traditional church use. [The] Principal use is [to be] worship and other uses are ancillary.”

As such, the Coordinator believed there was no room for grey areas.

The other interviewee stated the following in response to the same question:

“... [it] does get a little bit murky... I know that for example, the Islamic mosque in Lakemba... they had a lot of associated development, they had community centres, welfare centres... so they have sort of really started to mushroom and.. therein might lay a problem...”
2.2.1 Nature

Groups or communities can be identified by stereotypical characteristics which will have often been the basis of community fear against development for religious purposes as will be observed throughout this thesis. However, groups can also be identified through their cultural features, including religious activities (Dunn et al, 2006).

As such, the religious activities of a group can define an area in regards to built form and formation of communities.

The case studies will portray that the communities in opposition to the developments have a common fear of change stemming from the misunderstanding and misinterpretation of the nature of the use.

The Town Planning Coordinator of Baulkham Hills Shire Council stated:

“People perceive a bigger impact than it might be. Activities are usually low key and small groups for ancillary uses.”

The main concerns from the submissions were based on the fact that the nature of the proposed uses was very much different to that of a Christian denomination. One of the interviewees agreed and added:

“...I know with Islamic mosques they [the community] have certain concern about the course of prayer because the Islamic [faith]... the imaan calls the people to prayer 5 times a day”
The misunderstanding surrounding the prayer proceedings was further reiterated in the Annangrove case study development whereby a Councillor had based his opposition to the proposal after he had viewed a television program of the Lakemba Mosque and its loudspeakers on the bell tower. However, the proposed development made no provisions for any loudspeakers.

Media coverage provides mixed representations of development for religious purposes. The coverage may not be specifically concerning a development proposal however, as evident in the many public submissions for all three case studies undertaken; objectors based much of their fear and arguments on other events involving those of the Muslim faith.

However, media coverage relating to development for religious purposes has been guilty of sparking debate whether in support or in opposition of the subject development.

A newspaper headline in 2002 of the Sydney Morning Herald read “Media add oil to the fire over Muslim prayer hall”. This article allowed readers to provide their views as a community debate on the proposal.

A prime example where the nature of development for religious purposes was debated, occurred in 1998 when Bankstown Council did not allow the continuing use of a former Presbyterian Church as an Islamic Mosque, as the original consent issued in 1954 was for the ‘erection of brick church and office’ (House of Peace Pty Ltd v Bankstown City Council, 2000).
“Both mosques and churches are places of public worship, but they have different characteristics and different environmental impacts. They are used by worshippers in a different way on different days, in different numbers, and at different times, and, because of washing and overflow crowds, a mosque use may require the use of different parts of the subject land from a church use.” (House of Peace Pty Ltd v Bankstown City Council, 2000:24).

Justice Terry Sheahan thus ruled that he was satisfied that both a Presbyterian church and an Islamic mosque are places of public worship. However, the approval was for a church and after much research of the definition of ‘church’ under various dictionaries, is only for the use by Christian denominations.

Mr Beasley, group manager of Bankstown Council argued that a mosque operates differently from a Christian church in regards to the hours of operation. Concern was also raised about car parking and noise generation (Marsh, 1998). Again, the nature of the proposed use may not have been conveyed sufficiently and resulted in a misinterpretation of operational procedures of the Mosque. Concerns surrounding car parking, noise impacts and hours of operation can be addressed through conditions of consent.

If the use of the former Church as an Islamic Mosque was allowed, the original conditions of consent would have to be adhered to. If the Mosque could satisfy those conditions, why would the impact upon the community be any different to that of the Church?

Perhaps more focus should have been placed on the impacts of the Mosque against the former Presbyterian Church rather than the definition itself. This would have resulted in
a better planning outcome and created a precedent whereby a development application is assessed on its merits. As will be discussed in Chapter 3, land use definitions can often prohibit land use diversity and this case has been a prime example.

Following the decision by the Court, the then chairman of the Islamic Council of NSW stated:

“It is a very significant ruling. Every council all over Australia will use that ruling... If we are talking about multiculturalism and we are not being able to practice our religion freely, what’s the use of having multiculturalism in a place?” (Marsh, 1998:6).

The president of the Bangladesh Islamic Centre said:

“The community is very upset, very resentful. I have lived in England and the US and these problems have got sorted out. Sydney has to come to terms with this.” (Marsh, 1998:6).

These statements outline the rigidity of the town planning system in that the changing nature of development for religious purposes has gone beyond traditional definitions. This case illustrates forward planning not being implemented.

“...the council’s administrative decision could be direct religious discrimination, that is still not covered by the NSW Anti-Discrimination Act.” (Jopson, 1998:8)
2.2.2 Location

The localities of Camden and Annangrove boast very little in the way of cultural diversity. As such, the case studies will outline the issue of location in the submissions.

Whilst Section 79C of the EP&A Act requires the ‘suitability of the site’ to be considered with respect to the other provisions, the public submissions would ask for example, ‘Why Annangrove?’

In the Annangrove case study, the applicant was asked by the opposing residents to locate the proposed use in Lakemba and Auburn (Horin, 2002).

The President of the Annangrove Progress Association stated:

“The proposed development offers no benefit to the community of Annangrove because the congregation lives outside of Annangrove.” (Wells, 2002:15)

This statement has been made regardless of the fact that there exist some 35 families that reside in the Baulkham Hills Shire.

There is strong evidence throughout the communities of all three case studies, that there is a mentality of NIMBY and LULU. The interviewees were asked what their perceptions of these mentalities were. The Town Planning Coordinator commented:

“As long as they don’t have to hear it, its far away, [and it] won’t affect parking etc. [It should be fine]... The residents look at their background and the people that are in the area and want a catchment of people to go to the church.
We find that people are not concerned about it after its’ been built.”

The other interviewee stated:

“It just depends where these things are... there are some areas where there is much greater tolerance in difference and diversity”

This statement coincides with the studies of Professor Kevin Dunn, whose theoretical work is evident throughout this thesis. Dunn discusses that more culturally diverse areas would be more willing to accept a development application for a Muslim prayer hall.

As a result, the case study developments have received much opposition based on the argument that the proposals are not consistent with the existing character of the locality.

As stated above, the religious activities of a community can dictate the built form of their community. In order to do so, there needs to be equality within the implementation and use of planning laws.

“the degree to which cultural diversity is permitted and visibly constituted in space, whether in the public realm or the private, varies immensely, not simply according to social and political pressures and the existence of planning laws and building codes but also in the enthusiasm and equality with which they are enforced”(King, 1995:224).
2.2.3 Change over time

Since 1945, Australia has experienced significant levels of immigration with approximately 25% of Australia’s current population being born overseas. This has allowed Australia to experience a high level of cultural and religious diversity. (Carr, 2007 and Thompson, 2004) Therefore, in order to cater for the needs of religious worshippers, places of public worship and development for religious purposes mirror the changing nature of society.

For migrants in particular, religion represents a variety of social functions. It enables communities to unite around an institution or place of public worship and is a way for immigrants to retain their identity when they are part of a religious minority group. Developments for religious purposes allow ancillary activities that further contribute to maintaining tradition and culture in the form of education and leisure. (Germain et al, 2003)

It was not until 1998 that the government came to the realisation of the growing multi-faith communities in our local areas. As such NSW planning laws were modified so that the term “places of public worship” became valid to all religions instead of being restricted to Christian churches. (Skenner, 2005)

One interviewee had discussed the increased levels of cultural and religious diversity and how this impacted upon traditional land use definitions:

“the changing nature of society, I mean what we were talking about is a classic case in terms of public worship... we probably didn’t talk about places of public worship, we talked about churches”
This was further evident in Council’s planning controls in that period as they were often based on Christian churches.

The Town Planning Coordinator of Baulkham Hills Shire Council, in response to the same discussion, stated that there has been no change to the definition and interpretation of a place of worship or church.
This Chapter will provide an overview of the town planning system in New South Wales and examine how development for religious purposes is catered for and dealt with in regards to plan making and development control.

Specifically, the objectives of the Environmental Planning and Assessment Act 1979, plan making and development control will be explored.

In doing so, this will allow for a critique of the NSW town planning system and to determine whether there is a degree of rigidity in regards to regulating the development of land.

### 3.1 About the Town Planning System

The Town Planning system in New South Wales is centred on from the Environmental Planning and Assessment Act 1979 (EP&A Act 1979). It provides a legal framework for the statutory planning and comprises key provisions regarding the objects of the Act, and requirements for plan making and development control.

### 3.1.1 Objectives

Section 5 of the Environmental Planning and Assessment Act 1979 refers to the objectives of the Act and reads as follows:
“(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land,

(iii) the protection, provision and co-ordination of communication and utility services,

(iv) the provision of land for public purposes,

(v) the provision and co-ordination of community services and facilities, and

(vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and

(vii) ecologically sustainable development, and

(viii) the provision and maintenance of affordable housing, and

(b) to promote the sharing of the responsibility for environmental planning between the different levels of government in the State, and
(c) to provide increased opportunity for public involvement and participation in environmental planning and assessment.” (EP&A Act 1979)

Paragraph a) addresses the social welfare of the community, public services and orderly development of land. A theme which will be explored is how these objectives and other planning controls are interpreted. The social welfare of the community can be interpreted in various ways and may be influenced by the personal morals and ethics of the planning authority and public opinion.

Paragraph c) of Section 5 refers to public involvement and participation in environmental planning and assessment. What needs to be considered is whether public involvement and participation results in ‘positive planning’ outcomes when dealing with contentious development proposals, and what role public opinion has in relation to development for religious purposes. This will be further discussed with the use of a case study and qualitative research.

3.1.2 Plan-making

The methods by which local plans are created will be explored in order to examine whether development for religious purposes can be adequately catered for, and whether there is enough scope for a sense of ‘flexibility’ to provide for contentious development proposals.

The case studies that have been undertaken have received wide criticism for both the nature of the proposed development and also how the relevant planning authority undertook the development assessment process. Therefore, there needs to further exploration into how the planning controls are formed and determine whether any issues stem from this initial base.
a) State Environmental Planning Policies and Regional Environmental Plans

State Environmental Planning Policies (SEPPs) and Regional Environmental Plans (REPs) are concerned with matters of environmental planning significance for the state or for a region respectively. SEPP 1 objections, for example, deal with varying development standards. This allows more flexibility when dealing with development proposals that should ultimately be assessed on merit. Furthermore, other SEPPs and REPs are able to override or take precedence over a Local Environmental Plan (LEP). This ensures that if there is conflict or contradiction between the objectives or development controls in the Environmental Planning Instruments, we are able to determine which is to be utilised and appropriately addressed.

b) Section 117s Directions and Department of Planning Circulars

In the process of plan making, there exists Section 71 and 117(2) of the Act that allow the Minister of Planning to make a determination on the form and content of Local Environmental Plans (LEP).

Section 71 of the Act was previously used to allow the Minister to make a determination on the ‘format, structure and subject matter’ of LEP’s. Previously, it had been utilised to encourage planning flexibility and avoid complex LEPs. In reference to land use permissibility, Section 71 aimed to address land use zoning and focused on the objectives of the subject zone to ensure that prohibited uses were distinguished appropriately. This in turn, reduced the need for the rezoning of land to allow for prohibited uses. (Farrier and Stein, 2006) Section 71 has since been dropped in favour of Section 117 Directions and also through the creation of the Standard LEP Template.

Section 117(2) of the Act comprises directions which place restrictions on Councils that are developing an LEP. In order to do so, the Minister is able to require a Council to
prepare a draft LEP in accordance with principles that have been set. (Farrier and Stein, 2006)

In 1997, Section 117(2) directions were reviewed to ensure that only relevant directions were implemented and also to address matters such as Aboriginal Heritage (Farrier and Stein, 2006). What is interesting to note is that these directions can be applied to all LGA’s but can also be implemented to a varying degree depending on the locality. This represents an initiative to reduce the rigidity of the planning system. A theme which had been raised in discussions with the interviewees is that some local government areas would be more accommodating for specific types of development. In reference to the case studies, and the concerned religious developments, it was believed that more culturally diverse areas were seen to be more accepting of religious diversity and religious developments. This issue will be discussed in further detail within the case study findings which will proceed to explore the responsiveness of the planning system to the changing nature of society.

There has been evidence of Section 117(2) directions being utilised to address issues being faced in society such as housing demand and employment opportunities. Thus, this does not preclude these directions being used to address the increase in religious diversity in a community. This is further reflected by the use of the model provisions by Council’s controls as required by Section 117(2). The definitions contained within the model provisions are largely used by Council when relevant to the locality. Therefore, this allows Councils to depart from these model provisions to suit their individual needs of the community. However, the Standard LEP Template for which Council’s must create a new LEP to conform to, will include anew suite of standard definitions.

Departmental circulars are utilised by the Department of Planning to provide guidelines on interpretation and appropriate implementation of legislation. This reiterates the theme mentioned above, in regards to Section 5 of the act, that much of the planning
system is open to interpretation. How the planning system appropriately governs and how interpretation varies is very much a grey area. What also needs to be considered is what affects the interpretation of planning standards and controls by a town planning professional.

c) Local Environmental Plans

Local Environmental Plans are Environmental Planning Instruments that are legally binding. They are designed to be used in conjunction with the relevant SEPPs, REPs and section 117 directions. (Farrier and Stein, 2006) An attempt to create a more flexible planning system has seen LEPs reduce the list of prohibited land uses to a specific few and have placed more emphasis on the zoning objectives. In doing so, this reduces the possibility of any arguments concerning how a proposed land use is defined and puts more consideration onto the impact of the proposal.

The New South Wales Government gazetted a Standard Instrument for preparing new LEPs on the 31st March 2006. All councils are required to prepare a new LEP for their local government area in accordance with the standard template by 2011. In doing so, there will be uniformity between the planning controls of all NSW local government areas, and of the planning language used. Therefore, the misinterpretation of local plans across varying LGAs will be reduced.

When an LEP and REP is first made, environmental studies are undertaken and discuss the interrelationship between a variety of land uses. The issues that are taken into account include:

- The socioeconomic and physical make-up of the area
- The relationship between the plan and people’s needs
- Protection of the natural environment
• The available options and possible trade-offs, with the implications for various groups in the area.

This also allows Council to include public participation and gain an insight into the ‘real’ needs and views of the public. (Farrier and Stein, 2006) This point was further raised by the interviewees that planners must be able to associate themselves with the area in which they are working in to appropriately exercise empathic planning.

*Land use zoning*

The main mechanism used in LEPs is land use zoning. The purpose of land use zoning is to invest an area or a district with a certain predominant character and to protect it from avoidable invasion or erosion of that character. A zone aggregates uses of land that have a common form or function (Stein, 2008). This can inhibit development in various ways.

Zoning objectives are used to state the purposes of the zone. This will in part reflect the existing qualities in the area, which qualities are to be maintained and what changes are to occur (Stein, 2008). What is interesting to note is that these objectives are to be addressed by the developer and it is at the discretion of the planning authority to determine whether these objectives are complied with. As will be discussed in further detail later, personal morals and ethics, contentious issues and a significant amount of public involvement can affect the interpretation of these objectives, much like any planning control or requirement.

*Development for Religious Purposes*

The zoning of land is a lengthy process and thus is not able to cater for the changing nature of society on a frequent basis. The increase in the level of religious diversity has meant that development for religious purposes often comprise ancillary uses to allow
for religious worship. As such, they can be defined in ways that can be interpreted as both permissible and/or prohibited depending on the nature of the ancillary uses.

Spot-rezoning can be undertaken to change the zone of a specific site to allow the proposed use however, it is a costly and lengthy process that local Councils are reluctant to undertake. It can be seen as a way of making adjustments to a plan to take account circumstances not envisaged when it was first made (Farrier and Stein, 2006). Spot-rezoning therefore suggests that the planning controls have not been forward thinking and we can observe the greater need for responsiveness of the planning system to the community’s needs. Stein questions how preserving an existing character of a locality is seen as ‘forward planning’ and how an area can be improved if the planning controls are intent on retaining the existing character and status quo.

Therefore, zoning can be seen to inhibit land use diversity

*Development Standards*

Development standards can also be used to achieve an objective. They govern the extent of development for example, maximum floor space ratio, building height limitations and car parking requirements. This can create a sense of rigidity if we apply development standards to diverse land uses. It was raised in the interviews that some Council’s had previously adopted development standards that would only cater for a specific aspect of a defined land use. In the case of development for religious purposes, a Council measured parking standards for a place of worship based on the number of pews. This is a strong indication that places of public worship were seen as being Christian churches and did not make provisions for religious diversity.
Legal Definitions

The final key element of LEPs are legal definitions. To ensure there is consistency in land use definitions across the planning system, model provisions were devised and are a set of definitions that most EPI’s have adopted. The current model provisions are known as the Environmental Planning and Assessment Model Provisions 1980. As mentioned above, the new LEP standard instrument that is to be utilised by all Councils in their preparation of their new LEPs introduces standard definitions across the State.

In reference to development for religious purposes, it was not until 1998 that the government came to realise the growing multi-faith communities in local areas. As such, NSW planning laws were modified so that the term “places of public worship” applied to all religions instead of being restricted to Christian churches (Skenner, 2005). One interviewee had discussed that prior to the increased levels of cultural and religious diversity, “places of worship were seen as Christian churches”.

The standard LEP instrument and the Environmental Planning and Assessment Model Provisions 1980 define a place of public worship as:

‘a building or place used for the purpose of religious worship by a congregation or religious group, whether or not the building or place is also used for counselling, social events, instruction or religious training.’

The LEPs for the case study Local Government Areas, being Bankstown, Baulkham Hills Shire and Camden, also similarly define places of public worship.
Ancillary Uses

As discussed in Chapter 2, development for religious purposes often involves ancillary uses to provide for education and leisure activities associated with the development. This can very much become a grey area given that there are now multiple uses of the site. Both current literature and the interviewees state that planners must look at each use individually and determine its permissibility within the subject site.

d) Development Control Plans

Whilst an LEP and the planning controls within it are legally binding, Development Control Plans (DCPs) are more of a detailed guideline for development and contain more specific matters to take into account when assessing a development.

DCPs must be consistent with the relevant EPI’s however, given that the development controls and objectives are not legally binding, the increased use of DCPs in development assessment allows increased flexibility in land use. Given that the new standard LEP instrument will create uniformity between Council’s interpretation of controls, this will also impact upon the relevant DCP’s.

DCPs can be created and implemented by land use categories. For example, Bankstown Council’s DCP has made a specific section to address ‘Places of Public Worship’. However, DCPs can also address a place, for example, a town centre or village.

As we can observe, there are methods by which religious diversity and the changing nature of society can be addressed at the plan-making stage. How these may have been considered, utilised and/or ignored will be explored in the case study findings.
3.1.3 At the Development Assessment Stage

The three key stages in the Development Assessment Process are public notification, assessment stage and appeals to the Land and Environment Court. These stages will be analysed with reference to the case studies undertaken.

a) Public Notification

Planning legislation requires development applications to be publicly notified to adjoining and surrounding land owners and depending on the nature and scale of the development, the length of the notification period and the amount of properties informed, can vary. This allows for any submissions to be made from the public, either in support or opposition to a development proposal.

The purpose of notification is to alert a person who has an interest in a particular development and/or a particular site and to invite them to further investigate the detail of the proposal, as only the main details of the application are notified (Stein, 2008). However, the legislation empowers Council to utilise Development Control Plans to determine the required notification period and process, for the vast majority of Development Applications such as the case studies that will be explored.

This paper will provide an overview of three case studies whereby, the development applications received a considerable amount of submissions from the local residents, and will comment on how the notification process was undertaken and the effects it may have had on public opinion and participation. It will also seek to discuss the impact that a significant number of submissions received has upon development assessment, as it can be seen that there may be increased pressure put forth on planners to consider amenity and public interest.
Community consultation is a process of exchanging views on a topic with people of a community. It generally involves distributing information and discussing reactions and responses (Menzies, 1993:38).

The most common themes that were raised in the interviews and also by the applicant for the Annangrove Case Study were that there was much misinterpretation and misunderstanding of the proposed development at the notification stage.

b) Assessment Stage

Another key stage in the Development Assessment (DA) process is formal assessment. Section 79C(1) of the Act requires the planning authorities to take into account the heads of consideration when dealing with development assessment. These factors to be considered are as follows:

“(a) the provisions of:

(i) any environmental planning instrument, and

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

(iii) any development control plan, and

(iiiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F, and
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

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

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

(c) the suitability of the site for the development,

(d) any submissions made in accordance with this Act or the regulations,

(e) the public interest.“(EP&A Act 1979)

As stated above, Section 79C of the Act sets out matters that a council must consider in all cases before granting consent to development. These include the likely impact of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. (Farrier and Stein, 2006) This thesis will outline how these ‘likely’ impacts are interpreted and have been dealt with on a discretion basis with the aid of the case studies.

The applicant and/or developer should address each of the heads of consideration as listed under Section 79C(1). The planning authority must determine whether these have been complied with. More often than not, development applications do not satisfy all of the heads of consideration, and in a case whereby there would be both, compliances
and non-compliances, the planning authority must use their discretion to determine whether the application is to be given or refused consent. Therefore, certain heads of considerations may be of more importance than others in a particular circumstance. This again raises the issue relating to decisions being made at the discretion of the planning authority and how an application is assessed on its merits. Given that the planning system is somewhat rigid, in that it does not cater for or take into account a diverse range of land uses, the exercise of discretion is an important aspect of decision making. However, as will be discussed through the findings of the interviews, exercising discretion varies between individuals and areas and there are many factors which impact upon it.

Furthermore, given that much of the town planning system is subject to interpretation by property developers and planning authorities alike, this further impacts upon the use of discretion, in that planning objectives, controls and heads of consideration will be given varying degrees of importance.

However, it is important to recognise that prior to utilising discretion in development assessment, there must be consideration of the legal permissibility of the proposal. This can somewhat be a grey area when a land use can be defined under more than one definitions.

What should be further noted is that a development is consistent with the objectives of a zone if it does not conflict with them. (Farrier and Stein, 2006) Therefore, when addressing Section 79C, including the relevant EPI’s, a proposed development does not need to explain that it promotes or is compatible with the objectives. This was a precedent set by the court ruling regarding the Annangrove Case Study.

Section 79C(1)(b) refers to the likely impacts on both the natural and built environment of a development. This includes by definition, what can affect an individual or the
community as a whole. Particularly in respect to surrounding properties of a development proposal, issues such as privacy, overshadowing and consistency with the existing streetscape are taken into account.

Section 79C(1)(b) also refers to the likely social and economic impacts in the locality of a development. This includes antisocial behaviour as a result of a specific development, or if a development such as a shopping centre compromises the business of the existing local shops.

With contentious planning uses, it has often been argued that the developments do not ‘fit in’ with the existing community. However, as will be identified in the case studies, the Courts need to find that there is clear evidence of fear or offensiveness to be able to refuse an application on these grounds.

Justice McClelland stated in Dennis v Parramatta City Council (1981, 43 LGRA 71) that ‘This Court is not a court of morals and its decision in a matter such as this must be based solely on planning and environmental considerations.’

Therefore, consideration cannot be given to broader economic and social aspects of the development, such as whether or not the community as a whole ‘needs’ the products of a particular industry. (Farrier and Stein, 2006) The regulatory system is not able to do so as these social matters are difficult to measure. However, as social impacts are required to be considered, it can be seen that they often have varying levels of significance in development assessment. This issue was raised in the case studies whereby the local community stated that the area did not have a need for an Islamic development. Further social issues raised will be explored in the case studies, Chapter 4.

The ‘Social Impact Assessment: Provisions for Local Government’ guidelines refer to key points from various Land & Environment Court judgements including:
‘Fears and moral arguments have been unsuccessful and generally have not been regarded as social effects;

Broader public interest issues do not take precedence over the merits of the development; and

An application should not be rejected only on the grounds of public submissions opposing it’ (Baulkham Hills Council, 2002)

The Act has made provisions for greater public involvement and participation and in doing so, has made **public interest and submissions** heads of consideration under Section 79C(1)(d) and 79C(1)(e). Therefore, if an application receives a large amount of submissions opposing it, it can be seen that it is not in the public’s interest to approve the subject application. However, the planning authority must attempt to resolve the issues raised in the submissions. Community consultation and dispute resolution can be employed. There must be a clear distinction between planning matters and non-planning matters. Sugarman J in Ampol Petroleum Ltd v Warringah Shire Council stated:

‘It is difficult to express the precise definition between what considerations may fall within the scope of and object of the subject legislation and what considerations fall outside it... probably the true distinction... is that between what has been referred to in some of the decisions as ‘town planning considerations’ and, on the other hand, social or economic considerations of a general character, not specifically related to town planning...’

Non-planning based submissions are evident in the case studies and how these were dealt with by the planning authority will be discussed in greater detail.
Planning law commentator Malcom Grant once stated:

“Planning Law prescribes the procedures – it sets the battle lines – for the resolution of conflicts over land use between the interests of private property and the prevailing ‘public’ or ‘community interests’. (Stein, 2008:12)”

The case studies that will be explored later in this thesis are prime examples of what Grant had discussed. In the case studies there was evidence to suggest that the community feared for their wellbeing and that of their surrounds if the subject development proposals were approved. More often than not, these were racial and religious based arguments. As will be discussed in the case studies, there is little evidence as to how the planning authority is able to deal with the community protests regarding non-planning matters.

The extensive public opposition to the proposal created many disputes. However, there are alternative methods of which to resolve an application rather than appealing to the Courts. These include mediation, neutral evaluation and conciliation conferences. These will be explored in further detail in the case study discussions so as to examine the application of such resolution methods.

c) Appeals to the Court

As will be portrayed in the case studies, planning decisions by the planning authority can be appealed to the Land and Environment Court. Initial appeals often take the form of a merit appeal and subsequent appeals restricted to points of law. The development proposal is presented to the Land and Environment Court and the Court then exercises its discretion in place of the original planning authority (Farrier and Stein, 2006).
Lawyers and judges are more concerned with the legal documents rather than policies and the planning theories that they are based upon. Thus, there is limited conceptual and theoretical analysis of such theories in judicial decisions (Stein, 2008).

As mentioned above, much of the planning system is open to interpretation and in the instance where development proposals are appealed to the Courts, the subject policies are critically analysed by the applicant appealing the decision and allow them to argue that the development is the best planning outcome to their ‘interpretation’ of the policies.
4. Annangrove Prayer Hall - Case Study One

This Chapter will provide an overview of the main case study of the thesis, being a development of a Muslim prayer hall in Annangrove, New South Wales. Qualitative research was undertaken to gain insight into the views of planning professionals that were involved in the case study. The subject site is located in the Local Government Area of Baulkham Hills Shire Council.

4.1 Background

The Annangrove case was chosen as it was met with much public opposition and was widely portrayed in the media with varying opinions. What is most interesting and one major factor, for which it was selected as a case study, is that the development proposal was recommended for approval by Council’s planner but was refused by the elected Council. The application was then appealed in the Land and Environment Court and was later approved. This then allows the paper to discuss the impact of political involvement and public participation in the development assessment process.

Annangrove is a suburb situated in the North West of Sydney and is located within the Baulkham Hill Shire Local Government Area.

Annangrove is a largely Christian community with very little evidence of cultural diversity. (Thompson, 2004)

This fact was portrayed heavily throughout the public submissions and the basis of much opposition to the development questioning the need for the prayer hall.
The following table outlines the religious affiliation of the residents in Annangrove.

<table>
<thead>
<tr>
<th>RELIGIOUS AFFILIATION</th>
<th>MAIN RESPONSES IN</th>
<th>% of total persons in Region</th>
<th>% of total persons in Australia</th>
</tr>
</thead>
<tbody>
<tr>
<td>Catholic</td>
<td>381</td>
<td>36.7%</td>
<td>5,126,882</td>
</tr>
<tr>
<td>Anglican</td>
<td>236</td>
<td>22.7%</td>
<td>3,718,248</td>
</tr>
<tr>
<td>No Religion</td>
<td>124</td>
<td>11.9%</td>
<td>3,706,557</td>
</tr>
<tr>
<td>Uniting Church</td>
<td>75</td>
<td>7.2%</td>
<td>1,135,422</td>
</tr>
<tr>
<td>Pentecostal</td>
<td>38</td>
<td>3.7%</td>
<td>219,686</td>
</tr>
</tbody>
</table>

*(Australian Bureau of Statistics, 2007)*

### 4.2 The Application

A development application for a proposed place of worship was lodged with Baulkham Hills Shire Council on 1 October 2002. The proposed development included the demolition of the existing dwelling located on the subject site and the erection of a single storey building, comprising 3 hall areas, amenities and associated ancillary rooms/offices.

The applicant had provided a schedule of the typical use of the facility that would have a maximum of 250 persons on site at any given time. However, there would be only 3 occasions throughout the year whereby the site would be utilised for the maximum capacity of 250 persons. The schedule outlined indicative details of the type of activity, timeframe for usage of the building, and an approximation of the number of persons attending the site during opening hours.
The applicant had indicated that the facility would serve the worship and community needs of 35 families in the Baulkham Hills Shire and 14 families outside the Shire. Given that the application was lodged in 2002, the Australian Bureau of Statistic Census 2001 figures were referred to in Council’s planning report, citing that within the Baulkham Hills Local Government Area there is a total of 2090 who indicated a religious affiliation with the Islamic faith. (Baulkham Hills Council, 2002)

The development application was notified to adjoining residents; however the statutory 14-day notification period was extended a further 14 days following a request from the Annangrove Progress Association. The Annangrove Progress Association being a very anti-development organisation and the major force behind the opposition to the proposed development.

Council had received 5181 submissions from a total of 532 households; only 11 of these were in support of the proposal. Given the large number of submissions and public opinion, a Conciliation Conference was held on the 27 November 2002. This conference is a form of a mediation process and allowed 3 speakers to outline the main matters of concern on behalf of the objectors. The summary of the matters read as follows:

- “Adequacy of the written Statement of Environmental Effects and details;

- Permissibility of the use and compatibility with objectives of zone;

- Carparking and traffic issues;

- Incompatibility with the amenity and rural nature of area;
• Need for the facility in the area and impact on Annangrove Park;

• Location of the site and potential for expansion;

• Potential for undesirable elements to be attracted to the area and potential for building to be vandalised.” (Baulkham Hills Council, 2002)

The conciliation conference allowed the applicant to consider the issues raised and make appropriate changes to the proposal. In doing so, a revised plan addressing increased car parking provisions and improved car park location, on-site sewage management details, a landscape plan and a revised schedule of colours and finishes were submitted to Council.

Following the conciliation conference, a site inspection was held and allowed the Mayor, Deputy Mayor, Councillors and residents to take part. This provided an opportunity for the applicant to discuss the proposed use with both the Councillors and the residents. Approximately 100 residents attended the site inspection with intention to voice their concerns with the Mayor and Councillors rather than to utilise this opportunity for mediation. This raises the issue of public participation and the influence of politics on the decision making process.

The subject site is located within the Rural 1(c) Zone and the proposed development is permissible with the consent of Council. The proposal was assessed and considered to be in compliance with:
Baulkham Hills Local Environmental Plan 1991, which has since been replaced by Baulkham Hills Local Environmental Plan 2005.

Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River (SREP No.20).

Development Control Plan No. 1 – Rural 1(a), 1(b) and 1(c).

Development Control Plan No. 102 – Car parking.

Development Control Plan No. 107 – Landscaping.


The objectives of the Rural 1(c) Zone are as follows:

a) “To accommodate rural-residential development that is sympathetic with the environment and minimises risks from natural hazards, and

b) To provide for a range of activities which are compatible with the rural residential character of the locality; and

c) To ensure that development in the area does not unreasonably increase demand for public services and public facilities; and
d) To encourage the preservation of suitable areas for open space purposes.” (Baulkham Hills Local Environmental Plan 2005)

The subject site is identified as being bushfire prone under the Baulkham Hills Local Environmental Plan 2005 however; the Rural Fire Service NSW had assessed the proposed development and did not raise any issues therefore, satisfying objective (a).

The proposed development is defined as a place of worship under the LEP. The definition of a place of worship is as follows:

“a place used for the purposes of public religious worship, whether or not the building or place is also used for counselling, social events or religious training by a congregation or religious group.”

A place of worship is permissible under the LEP and was not considered to be obtrusive given the single storey built form and the external finishes. The adjoining land uses comprise Annangrove Park, local shops, service station, retail plant nursery and rural residential development. This locality is known as Annangrove Village and thus, a place of worship was not considered to be out of character with this locality, therefore, satisfying objective (b).

Site services and facilities were being addressed by Council with several issues being implemented within the recommended deferred commencement consent therefore, satisfying objective (c).

The proposed development was not considered to impact upon Annangrove Park as it did not encroach upon the park grounds. This addressed concerns raised in submissions
that the proposal may restrict activities or impact upon Annangrove Park, therefore, satisfying objective (d).

Thus, the proposed development was in accordance with the objectives of the Rural 1(c) Zone.

The proposed development had been considered with respect to the provisions of Section 79C of the EP&A Act 1979. The proposal was found to be in accordance with Council’s relevant planning controls, not obtrusive in its built form and did not result in any adverse economic impacts. A social impact assessment was undertaken and will be further detailed below.

Given the proposal received a significant number of submissions, the issues raised were summarised and addressed in detail. Furthermore, legal advice was sought by Council as to determine the weight given to the submissions.

Council’s solicitors advised:

“...In our opinion, while the number of objections received may be an important indicator of the merits of those objections, numbers alone will not be sufficient cause to refuse an application. The test must, in our view, be whether the proposed development, when fully and properly considered, is likely to give rise to the types of impacts raised in the letters of objection.

...a rational fear or one having a real basis, is a matter for consideration.” (Baulkham Hills Council, 2002, 83)
“Further, in terms of considerations of social impacts in the locality, it must be born in mind that Section 79C requires consideration of the ‘likely’ impacts in the locality. The test is now whether the social impacts are possible or conceivable, but whether they are ‘likely’ to occur. Council will therefore need to consider whether the particular fears and impacts raised in the letters of objection are ‘likely’ to occur, and particular evidence might be required in order for Council to be in a position to reach that conclusion.”

(Baulkham Hills Council, 2002, 83)

The solicitors had acknowledged that all submissions received must be considered by Council in accordance with the EP&A Act. However, they also formed the opinion that Council must be able to agree with the types of matters raised in the submissions in order to determine whether their rationality.

The numbers alone will not be sufficient to warrant refusal of the application unless any issues raised cannot be addressed through the implementation of conditional approval.

The resident concerns outlined in the submissions were categorised due to the large number of submissions received during notification, the conciliation conference and the site meeting. The issues raised that were based on planning grounds were assessed accordingly and made reference to the implementation of relevant conditions of consent. Those issues that were not based on planning grounds were addressed through a social impact assessment that will be detailed below. This allowed the Council to determine the weight each factor should be given and whether they would warrant refusal of the application.
4.3 The Decision

Despite compliance with the relevant planning controls, recommendation for deferred commencement consent from Council’s planning department and advice from Council’s solicitors, the development application was refused at the council meeting on the 17th December 2002. The application was motioned by Councillors to be refused on the following grounds:

1. “The subject application does not satisfactorily meet the objectives of the Rural 1(c) zone specifically, objectives (a), (b) and (c) given that the development does not comprise that which is sympathetic and compatible with the Rural Residential area and will require additional services and facilities.

2. The subject application is incomplete as unsatisfactory arrangements are contained in the application for the treatment of sewage and, in particular, pre-treated wastewater details and system details and the calculations of nutrient and organic matter balances and monthly water balances arising from the use of the facility.

3. Based on the number of submissions received and legal advice obtained, it is not in the public interest.

4. The subject application is not considered to be in accordance with the shared beliefs, customs and values of the local community and, if approved, will result in a change in the character and amenity of the area.
5. **The expression of fear in many of the submissions from objectors, which has been identified by the Courts as follows:** “A rational fear, or one of having a real basis, is a matter for consideration”. (Baulkham Hills Council, 2002, 3)

The motion objects to the use requiring additional services and facilities, however the definition clearly states that ancillary uses to the place of religious worship are permitted. Furthermore, a common theme within the objections was that the proposed development would entice others from outside the community to frequent the site. If we observe the surrounding land uses in the locality such as the plant nurseries, this motion is a contradiction as these large commercial nurseries also provide ancillary uses such as cafés and restaurants and attract a large customer base outside of the locality.

However, both interviewees were of the view that the ancillary uses had to be looked at carefully so as to determine what the dominant use of the site is. In doing so, the needs of the religious group need to be understood and considered.

What was interesting to note was that when the town planning coordinator was asked how she defined religious purposes, she stated the definition of a place of worship as per the LEP but also added that it be open to any member of the public.

As mentioned above, the Council undertook a social impact assessment with regard to the provisions of ‘Social Impact Assessment: Provisions for Local Government 1995.’ Social impact is defined as follows:

- People’s way of life – how they live, work, play and interact with one another on a day-to-day basis;
Their culture – shared beliefs, customs and values; and

Their community – its cohesion, stability, character, services and facilities

This document was an initiative of the NSW Government’s Office on Social Policy and the Local Government and Shires Association of NSW. ‘Large cultural or religious centres’ are identified as land uses that may cause significant social impact. The document provides states that the nature of public opinion towards a development can be an indication of the likely social impacts of a development. It further outlined how conditions of consent can or should be implemented to address such issues.

The social impact assessment took into account:

1. Demographic change
   a. Changing community needs and expectations
   b. Significant population changes

2. Accommodation and housing
   a. Low-income housing
   b. Affordable housing
   c. Housing for special needs groups
   d. Housing for older people and people with a disability
   e. Servicing and management of housing for older people and people with a disability

3. Needs of older people
   a. Access issues
   b. Availability of support services
4. Needs of people with a disability
   a. Access issues
   b. Signs
   c. Availability of support services

5. Needs of younger people
   a. Child care issues
   b. Children’s needs
   c. Youth

6. Health impacts
   a. Health effects of water and air quality
   b. Toxic wastes and hazardous materials

7. Cultural issues
   a. Needs of people of non-English speaking background
   b. Aboriginal issues
   c. Religious needs
   d. Other cultural issues

8. Neighbourhood and community
   a. Neighbourhood safety
   b. Community identity
   c. Community severance
   d. Community cohesion
9. Facility requirements
   a. Need for community services and facilities
   b. Recreation needs
   c. State Government provided facilities – education and health

10. Economic issues
    a. Redundant facilities and possible reuse
    b. Effects of similar types of developments in the locality

11. Cumulative impacts
    a. Redundant facilities and possible reuse
    b. Effects of similar types of developments in the locality

In doing so, the proposal was assessed on its individual merits as there were concerns based on fear surrounding events occurring elsewhere. The proposal was considered not to have any adverse social impact on the locality.

The Social Impact Assessment guidelines included past judgements made in the Land and Environment Court relating to fears, moral arguments, public interest and public submissions.

Fears and moral arguments have been previously unsuccessful as a basis for issues regarding the adverse social impacts of a development. Public interest issues were considered to not take precedence over the merits of a development. Furthermore, a significant amount of public submissions in opposition to a proposed development does not warrant refusal of the application.

Baulkham Hills Council had adopted Social Plan 2000-2005 which outlines Council’s requirements in regards to the cultural and linguistic diversity of the community. It
further states that social justice and community harmony is to be promoted through the tolerance of all religious beliefs and practices (Baulkham Hills Council, 2002).

The NSW Department of Local Government required Councils to adopt an Access and Equity Policy with reference being made to Council’s Ethnic Affairs Priorities Statement, the objectives of which are:

1. “to ensure that all Council services and programs are responsive to the needs of people from culturally and linguistically diverse backgrounds;

2. to foster the expression, maintenance and acceptance of diverse cultures in Baulkham Hills Shire;

3. to ensure that Council communicates effectively with all residents, particularly with people from culturally and linguistically diverse backgrounds; and

4. to ensure that the services provided to people from culturally and linguistically diverse backgrounds are delivered in a consistent manner across all divisions of Council.” (Baulkham Hills Council, 2002: 90)

As mentioned above, there is evidence of development for religious purposes in the locality for the Christian faith. With opposition to the development often basing arguments on the fact that the services provided by the proposal are not needed by the community, this is in direct conflict to objective 4.

There seems to be little evidence of the weight in which this Social Plan and the Access and Equity Policy was given in regards to the Council’s decision to refuse the application.
The assessing officer at Council had recommended the application for deferred commencement consent, meaning there were various planning issues that needed to be resolved before given final approval. However, as mentioned above, the Council had gone against the advice of the planning department and refused the application.

Following the refusal of the application by Council, the applicant appealed the decision to the Land and Environment Court and had the appeal upheld on the 30 July 2003.

The proposed development was found to be compatible with the rural residential character of the area and would not have an adverse impact upon the amenity of the locality. The large community opposition to the proposal were based on social impacts and fear and were acknowledged but were adjudged to require foundation and a rational basis, of which were not provided. Therefore, the conditions of consent were deemed be adequate to address any concerns and adverse impacts raised during the development assessment process. Those that gave evidence to the Court comprised a planner acting on behalf of Council, a planner, a social and environmental planner acting on behalf of the applicant, and a number of residents.

The issues raised in the court hearing will be outlined below.

1) That the proposed development was inconsistent with the objectives of the Rural 1(c) zone.

The opposition to the proposal argued that the prayer hall did not comply with the zone given that it is not ‘rural residential’ development. However, it was raised in the appeal that Clause 9(2) of the Baulkham Hill Local Environmental Plan 1991 only required consistency with one or more of the zone’s objectives, of which the proposed development achieved.
Note that the Council have since gazetted a more recent LEP and the coinciding Clause is now numbered 13(2). Whilst Council have retained this Clause following the successful appeal of the prayer hall, there have been two new objectives added to the subject zone as mentioned above. These new objectives can be seen as safeguards for Council in similar future applications. Again, this is an indication of the perceived rigidity of the town planning system and how ‘forward planning’ has not been undertaken.

One of the objectives of the case studies was to explore whether there was any perceived level of religious bias. An argument that was put forward to the Court was that there was evidence of existing places of worship within the Rural 1(c) zone. These included a Catholic Church, a Zoroastrian house of worship and Catholic high school and primary school. These uses coexisted harmoniously with the community and were not of concern to the residents, yet a similar use of an Islamic faith was seen to not be ‘consistent’ with these uses.

Furthering, the notion that much of the town planning system is open to interpretation, the term ‘consistent’ was explored in the hearing and found that in application to zone objectives, the development simply not be contradictory to the objectives.

2) That the proposed development was not in accordance with the shared beliefs, customs and values of the local community and would have adversely impacted upon the amenity of the area.
Those in opposition to the Prayer Hall stated that:

“the ‘presence’ of an activity that is unrelated to the community in which it sits”. (New Century Developments Pty Limited v Baulkham Hills Shire Council [2003] NSWLEC 15).

The large concern raised that the prayer hall would invite people outside of the shire to the locality prompted examples given of the adjoining plant nursery, cafés and businesses that each boasted a clientele located outside of the shire.

Those in opposition to the Prayer Hall also believed that:

“the proposal, because it has no material connection with the local community, will adversely affect the character of amenity of the area” (New Century Developments Pty Limited v Baulkham Hills Shire Council [2003] NSWLEC 15)

The residents had described their community as being close knit, with common interests and shared activities that bind them together. What is interesting to note and as discussed in Chapter 2, the definition of religion itself, mirrors the resident’s description of their community. The word ‘Religion’ itself stems from the Latin word ‘Religio’ which means to ‘bind together’.

As mentioned above, Solicitor Jeremy Bingham represented the applicants of the prayer hall and questioned how the Council defined ‘shared beliefs’.

The social and environmental planner involved with the Court hearing undertook a study based on the evidence shown from a social survey conducted in the Baulkham
Hills Shire and found that the ‘shared beliefs and attitudes’ between the applicants and the local community were very similar.

The applicant stated:

“We have same values as a family; we have same values as wanting best for children, good education, good life, (and) good upbringing. This is what the hills district is all about and that is why we are here.” (SBS)

It was adjudged that there was no evidence that could indicate that the adverse impacts on the social wellbeing and amenity of the area were ‘likely’ to occur.

It was simple to implement conditions of consent that could govern issues such as noise impacts and hours of operation however, the concept of ‘amenity’ was acknowledged to be wide and flexible and used previous Court cases such as Broad v Brisbane City Council & Anor (1986) 59 LGRA 296 and Broad v Brisbane City Council & Anor (1986) 59 LGRA 296 which stated:

“The wide-ranging concept of amenity contains many aspects that may be very difficult to articulate. Some aspects are practical and tangible such as traffic generation, noise, nuisance, appearance, and even the way of life of the neighbourhood. Other concepts are more elusive such as the standard or class of the neighbourhood, and the reasonable expectations of a neighbourhood.”

(Broad v Brisbane City Council & Anor (1986) 59 LGRA 296)
These cases further argued that the interpretation of amenity can be influenced by the type of development concerned. This reiterates how the provisions of Section 79C of the EP&A Act 1979 are open to interpretation and it is evident that in order to govern how this is undertaken, Court cases and pre-judgements that lay precedence for such issues are referred to. This can somewhat be seen as an inefficient method to which the town planning system handles contentious development applications.

3) **Whether the large amount of submissions in opposition to the proposed development and whether the proposal was in the public interest warrants refusal.**

The weight given to the submissions was argued in the Court by both parties. Those that opposed the application believed that:

“the number of objections is a significant consideration in itself, and one that in practice would see any development the subject of those objections being refused.” (New Century Developments Pty Limited v Baulkham Hills Shire Council [2003] NSWLEC 15).

Given that 5181 submissions were received from a total of only 532 households, it was argued that weight should be given to the issues raised within the submissions rather than the amount. The issues addressed above prompted the statement:

“A fear or concern without rational or justified foundation is not a matter which, by itself, can be considered as an amenity or social impact pursuant to s 79C(1) of the EP&A Act.” (New Century Developments Pty Limited v Baulkham Hills Shire Council [2003] NSWLEC 15).
Section 116 of the Constitution of the Commonwealth of Australia was referred to in the judgement and more specifically the statement: “the Commonwealth shall not make any law... for prohibiting the free exercise of any religion.”

The social context of Annangrove can be seen as a ‘bible belt’ given that there is little public display of both cultural and religious diversity. Large Christian churches that comprised ancillary leisure activities seemed suggest a double standard held by those opposed to the prayer hall (Thompson, 2004).

The judge made clear that there was not to be religious bias in the decision making and that the planning system could only consider the physical building and the likely impacts on the environment and the amenity of the local area. This was a response and further reiteration of the fact that there was evidence of places of worship within the locality and the subject zone that were of a different faith and received little to no objections.

4.4 Implications

The first interviewee shared the view of the applicant that there are perhaps more similarities than there are differences between the Islamic faith and the predominant Christian faith.

“Muslims believe in the Bible, Jesus, Abraham, Moses and all the way back to Adam. We have same values as a family; we have same values as wanting best for children, good education, good life, and good upbringing. This is what the hills district is all about and that is why we are here. “ (SBS, 2003)
More often than not, cultural minority groups are seen as ‘un-Australian’ if they did not make any attempt to assimilate into the ‘Australian’ culture and were somewhat condemned if they had formed exclusive cultural groups and/or areas. However, this is an example of how minority groups are also condemned if they do attempt to assimilate. The proposed development would have classes undertaken in both Arabic and English.

As mentioned above, the Council believed that the proposed development was not in conjunction with the shared beliefs, customs and values of the community. This is perhaps where the principles of Australian multiculturalism are being ignored and is a reflection of the fact that multicultural policy has yet to be developed to accommodate the changing nature of society. The principles of Australian multiculturalism being:

1. Civic Duty - Obliges all Australians to support those basic structures and principles of Australian society which guarantee us our freedom and equality and enable diversity in our society to flourish.

2. Cultural Respect - Subject to the law, gives all Australians the right to express their own culture and beliefs and obliges them to accept the right of others to do the same.

3. Social Equity - Entitles all Australians to equality of treatment and opportunity so that they are able to contribute to the social, political and economic life of Australia, free from discrimination, including on the grounds of race, culture, religion, language, location, gender or place of birth.
4. Productive Diversity - Maximises for all Australians the significant cultural, social and economic dividends arising from the diversity of our population. (Thompson, 2004)

Jeremy Bingham, former mayor of Sydney City Council and the solicitor that represented the applicant and the proposed development asked how the Council defined ‘shared beliefs’. He said:

“I thought that shared beliefs, as Australians, would mean Tolerance, multiculturalism, acceptance that people are not equal or the same as us, and good Australians even if they came from a different country.” (SBS)

This further reiterates that much of the statutory planning controls contained within section 5 and section 79C of the EP&A Act are interpreted by the planning authority involved and the extent to which the personal morals and ethics of the town planning professionals affect their interpretation is difficult to govern.

Planning ideology states that the personal morals and ethics of a planner should not affect their decision making process. Both interviewees had stated that a planners personal morals and ethics should never impede their assessment of an application and that if a planner does find that they can not ‘step back’ from the application and their own beliefs, it is their responsibility to speak to their seniors and have the development applications delegated to another planner. However, one of the interviewees had suggested that we can never fully depart from our own morals and ethics as they define who we are, both as people and as planners.
This is not to say that the assessment of the Annangrove prayer hall was affected by the personal morals and ethics of the planner. However, the planner involved stated:

“When the application is taken out of the hands of the council officer and into the council forum, those councillors represent the people within their shire and they need to take those comments on board and weigh them up – planning legislation vs impact upon residents.”

The assessing officer had recommended the application for deferred commencement consent, meaning there were various planning issues that needed to be resolved before given final approval. However, as mentioned above, the Council had gone against the advice of the planning department and refused the application.

This not only reiterated the issue of personal morals and ethics of the Councillors but also the impact of public participation in the planning process and thus, politics. Furthermore, it raises the question as to whether planners are affected by the political process and in turn make recommendations against their professional judgement.

Developments for non Christian places of worship are more likely to receive objection given the misinterpretation of the Islam faith (Dunn, 2000) – a point that the applicant repeatedly states in a SBS television program:

“Bali bombings, 911, gang rapes, drive by shooting at Lakemba police station. People are scared; media have played up the fact that the terrorists around the worlds are Islamic.”
“Not to judge us all at once, but look at us individually and look at what we are doing.”

An editor of the local newspaper blamed local politics for the misinterpretation of the Islam faith and by raising fear in the community. He stated that ‘Individual councillors try to make a political point and NIMBY syndrome residents’. The mayor stated that ‘I have no fear, I have no problem with it, it seems like the women of our community have a problem with it’ and seemingly suggests that the women in the community should fear for their safety if the development was approved. It was not only the applicant who had responded to such statements by labelling them offensive, but one of only two of the Councillors who supported the application also said ‘people who had always seemed nice were saying things that reminded me of film clips from pre-war Nazi Germany.’ (SBS, 2003)

The community feared that if the application was approved, they would face the same issues that were being faced in Sydney’s south western suburbs at the time. Councillor Les Shaw had been influenced by a television program about a mosque that had loudspeakers that would operate during prayer time and instantly was objected to the proposed development. However, the proposed application did not make provisions for any loudspeakers. This portrays the misunderstanding and misinformation of the proposed application and this issue will be discussed in further detail below. Members of the Muslim community were in disbelief at such comments and fear, and stated that there would be no other reason for them to attend a place of worship other than to pray, not to cause trouble, and questioned why the community believed that they would want to pray loudly to purposely annoy them. (SBS, 2003)

What is interesting to note is that since the Islamic prayer hall had been approved, the Baulkham Hills Council had adopted a new LEP in 2005 and had included two additional zone objectives in the Rural 1(c) zone. These being:
“(d) to ensure that development is designed and carried out having regard to adjoining land uses and the natural environment, and

(e) to ensure that development is designed and carried out having regard to the rural and heritage character of the surrounding area, and”

This further demonstrates a restriction on diverse development in the area given the additional objectives that they must achieve, and perhaps also reflects upon the rigidity of the planning system.

We are able to observe that a significant amount of public participation and opinion can influence the decision making process to varying degrees. Councils such as Liverpool Council, have implemented a Submissions Policy whereby all submissions made are considered however, only one submission per household and those that are received within the 14-day notification period are attributed to the official submission numbers. This policy could perhaps be required by the EP&A Act and into the new standard template for all local government LEPs, as a measure to determine the extent to which public participation and public involvement influence the decision making process.

As discussed above, the purpose of notification is to alert the community of a particular development proposal and provide them with only the main details of the development. Those who would like to object to an application can research the more in-depth detail provided at Council within that notification period before making a submission. However, those who do not have any background knowledge of the planning system may not realise this fact and will judge the proposed development on the minimal detail that is provided during notification. This then allows the issue of misunderstanding to occur.
The applicant stated that "Once people started coming in and having a look around, talking to us and sharing a cup of coffee - their attitudes changed," (Vallejo, 2007). This was further reiterated by both interviewees who had discussed the issue of misunderstanding and/or misinformation and stated that only objections to a development are heard – rarely do those in support of a development application make a submission to Council.

The town planning coordinator of Baulkham Hills Council also stated that once the prayer hall had been constructed, there were few objections or complaints from the residents. Thompson illustrates that this is often related to fear of difference and an apprehension about change. Planners need to be able to counter ill-founded community protests based on misunderstanding, stereotyping and racism. However, this is made difficult as the planners will often embody values of the dominant culture (Thompson, 2003).

The NSW Land and Environment Court has stated that matters which are outside the planning sphere and based on political or other philosophical grounds, however well based, are in their view, not appropriate matters which the Council is entitled to rely upon and to take into account when considering applications which it deals with in its capacity as the consent authority under the legislation (Stein, 2008).

Both interviewees had also stated that any submissions that were not based on planning grounds must not be considered and discussed the submissions that were based on race and religion rather than planning issues. However, both recognised that it is simple to ‘say’ that a planner can disregard non-planning issue but once it has been bought to their attention it is hard to ‘forget’ what has been read or heard. In this regard, how are we to control the extent to which these non-planning issues affect our judgement? The town planning coordinator admitted that it was very difficult to deal with such submissions.
Interestingly, the Judge closed the hearing by stating:

“Finally, lest there be any conjecture I disclose for the record my personal affiliation. I am a practising Christian, an active member and occasional lay preacher in my local church, and a member of the Synod of the Anglican Diocese of Sydney. (New Century Developments Pty Limited v Baulkham Hills Shire “Council [2003] NSWLEC 15).
5. **Bass Hill Private School - Case Study Two**

This Chapter will provide an overview of a case study, being a development of an educational establishment in Bass Hill, New South Wales. Qualitative research was undertaken to gain insight into the views of planning professionals that have had experience in similar cases and the issue at hand. The subject site is located in the Local Government Area of Bankstown City Council.

### 5.1 Background

The Bass Hill case study was chosen as Council received a significant number of submissions in regards to the proposed development. In contrast to the Annangrove Prayer Hall, the proposed development did have non-compliances with Council’s planning controls and was recommended for refusal by Council’s town planning department. The applicants have yet to appeal Council’s refusal to the Land and Environment Court. To date, there have been media reports stating that the applicants are currently preparing an appeal to the Courts with suggestions a hearing will not be undertaken until December. Furthermore, it is a more recent case study that will portray whether the approach to the assessment of the application is similar to the Annangrove prayer hall.

The subject site adjoins the Bass High School to the east. Residential properties are located to the west of the site and a retail plant nursery adjoins the site to the north. The subject site was formerly part of the adjoining Bass High School.

The subject site was rezoned in March 2006 from Special Uses – Educational Purposes and Nursery to 2(a) – Residential A. The proposed use is defined as an educational establishment and is permissible in the 2(a) zone under the Bankstown Local Environmental Plan 2001.
5.2 The Application

A development application for the construction of a private school was lodged with Bankstown City Council on the 22 June 2007. The proposed development comprises a 600 student primary school, a 600 student secondary school, a reception/convention centre, a sports hall and an indoor pool building, a 30 place childcare centre with two attached caretaker dwellings. The proposal also includes internal road works, car parking for 324 cars and landscaping. Therefore, a total of eight new buildings will be constructed and will accommodate a total of 1,200 students.

The application was publicly exhibited from the 4th July 2007 to the 15th August 2007. Council had received 2,478 submissions including 1,829 letters of objection and 649 letters of support. The main concerns raised in the submissions related to traffic and car parking, the scale and size of the school, noise generation, and tree removal, built form of the proposal and amenity impacts (Bankstown City Council, 2007).

5.3 The Decision

The proposed development was refused on the 4 December 2007 at the Development Committee meeting.

The proposed development was not considered to be in compliance with the objectives of the Bankstown Local Environmental Plan 2001 due to urban design issues, removal of native vegetation and an inadequate traffic analysis undertaken by the applicants.

The traffic issues raised were based around the fact that the Council considered that the proposed student population was underestimated and thus, an appropriate analysis was not undertaken.
Furthermore, the proposed caretaker dwellings were deemed to be defined as a ‘residential flat building’ given their configuration and street presentation. As such, residential flat buildings are prohibited development in the 2(a) Residential Zone and thus, the proposal was deemed to be non-compliant with the objectives of the zone.

This again raises the issue regarding ancillary development and what is the primary proposed use of the subject site.

The proposal was considered to be non-compliant with the Clause 44(e) – the objectives of the residential zones and Clause 45(1) – general restrictions on development. Specifically:

“(e) to allow for some non-residential use that would not adversely affect the living environment or amenity of the area, and...”

“(1) Consent may be granted for a building on land within Zone 2 (a) or 2 (b) only if it would be compatible with the character and amenity of existing and likely future buildings on adjoining land...” (Bankstown Local Environmental Plan 2001)

The reasoning provided in the Council report outlines that the density and the capacity of the proposed school were underestimated and thus, likely impacts of the proposed development have not been able to be assessed accordingly. The proposal outlined that the development would provide for 1,200 students however, the Department of Education and Council have come to the view that the scale of the proposal could provide for 2,000 students. This was based on the amount of classrooms required for a new Government school for 1,200 students. It was acknowledged that these conversion rates were not applicable for the proposed development given it was for a private school however; the town planning officer of Bankstown Council considered these
calculations would provide an adequate ‘benchmark’ of which to assess the application. Does this question the notion of each application being assessed on its merits?

Concern was raised in regards to the operational features of the proposed development. The applicant had outlined that one of the proposed buildings would be utilised as a convention hall. There was a sense of fear within the submissions that the applicant would undertake large prayer sessions late at night. As outlined in the Annangrove prayer hall case study, fear without rationality does not warrant refusal. In doing so, the Council simply stated that the applicant had to provide greater detail of the proposed uses before an appropriate assessment of the application could be processed.

5.4 Implications

There were discussions between the applicant and Council regarding concerns with the proposed development. However, following amendments and two new designs, Council was of the view that the applicant had not addressed their main concerns after 20 weeks from when the application was lodged with Council. As such, the application would be assessed on the information already submitted with Council. This may have occurred due to poor communication between both parties as to what was required by Council and how the applicant believed they had addressed the issue. This can often become an issue whereby applicants may not be familiar with planning jargon. There is little evidence of guidelines or training seminars or the like, to educate Council planners of how to deal with applicants and residents who do not understand much of the planning system and language used. Whilst the standard LEP instrument aims at being able to standardise the interpretation of the planning language and controls, there needs to be marked improvement in the communication between Council and those dealing with Council applications.
In the case where Council is dealing with a contentious land use, increased dialogue with the applicant and those concerned with the proposed development will aid in reducing the misinterpretation of the proposal.

In contrast to how the submissions to Council regarding the Annangrove Prayer Hall was dealt with, Bankstown Council addressed each submission made by the key stakeholders separately and made summaries of other submissions made by others. This approach of addressing each submission indicates that more weight was given to arguments based on who submitted them rather than the issues within. A more appropriate method would have been to group the issues raised by relevance and addressing them accordingly.

The development application was amended twice in response to Council’s feedback however, after 20 weeks the Council considered that the applicant was unable to address the Councils major concerns. This is an indication that the communication between the Council and the applicant was not adequate.

The proposed school currently operates campuses in both Liverpool and Bankstown. He shared the view that poor communication was the main reason behind the debacle:

"The way that we see it, Bankstown Council could have saved the ratepayers' money and the community money and sat down and resolved the issue," (Lucchinelli, 2008:1).

Misunderstanding and misinterpretation of the development proposals and also the lack of communication between the Council and the applicant were big issues that were raised throughout the qualitative research.

The Annangrove case study has seemed to create precedence in the manner in which the community has opposed the proposed development at Bass Hill.
Similarly to the Annangrove Progress Association, the Bass Hill Residents Committee and the Bass Hill and Georges Hall Residents Action Group have been the large driving force behind the community uproar and have ‘masked’ their fear or concerns with planning issues. As will be discussed, the use of traffic generation, noise generation and the public interest are the main planning aspects utilised to give them a genuine basis of argument.

These issues however, are able to be addressed through the implementation of conditions of consent.

Vem Falconer of the Bass Hill Resident Action Group stated that:

“the school is exclusive and should be rejected on social grounds as much as planning concerns.” (Lucchinelli, 2008:1)

The Bass Hill Resident Action Group further stated that there may be friction between the proposed school and the existing adjoining school. From these statements, it seems that Christian schools in the area are allowed to retain their exclusivity and provide their students with the facilities to undertake their worship needs, yet Muslim children are not given that chance.

The Council stated that a Social Impact Assessment had been requested but had not been received by the applicant. As discussed earlier, it is incumbent on planners to devise a method of which to achieve the best planning outcome. Council should make provisions in their assessment stage to undertake a Social Impact Assessment. With the Standard LEP instrument now governing the LEPs of all LGAs, perhaps provisions for such an assessment can be implemented so that it can be required across the board.
Former Mayor Max Parker suggested that:

"I think that most people that live in the area have got a fear of Muslims in the world as they are today moving into that area, and I think that's a lot of the problem," (Lucchinelli, 2008:1)

This reiterates the fact that there is a misrepresentation of the Muslim community and again, it is incumbent on the planners to educate those who have a genuine fear and to allay those concerns. The same fear has occurred in regards to the Annangrove prayer hall. Even though the prayer hall now receives little to none objections to their operations, the lesson has not been learnt that there are far more similarities than there are differences.

What is interesting to note is that, more culturally diverse areas were thought to be more accepting of such development. The Bankstown LGA boasts a high level of cultural diversity, in stark contrast to that of Camden and Annangrove, yet there was still a paramount of fear being portrayed through the submissions and little evidence of acceptance.

The statutory framework of the planning system makes provisions for public involvement in the development assessment stage. The Residents Action Group have made note that the organised public meetings have attracted over 300 people and believes that this is evidence enough that it is not needed in the community. The views of the residents were that ‘they’ should assimilate and be more aware of ‘our’ culture. This statement is a contradiction in itself and the fact that the community needs to be made aware of the changing nature of society and the increasing levels of cultural diversity.
Whilst the matter may be finalised in Court proceedings, there is no doubt that the damage has already been done. Professor Kevin Dunn stated:

"... [the development application] should have [reached a conclusion] without the disastrous impact for community relations in the local area." (Lucchinelli, 2008:1)
This Chapter will provide an overview of a case study, being a development of an educational establishment in Cawdor, New South Wales. Qualitative research was undertaken to gain insight into the views of planning professionals that have had experience in similar cases and the issue at hand. The subject site is located in the Local Government Area of Camden Council and thus, will be referred to as the Camden case study.

6.1 Background

The Camden case study was chosen as Council received a significant number of submissions in regards to the proposed development, similarly to the other case studies. However, this case study has been very much in the public eye. Whilst this is not dissimilar to the other case studies and their portrayal in the media, it can stem from the reason that multicultural diversity and racial tension has formed into a much more sensitive topic in recent years. At the time of this thesis being written, there were several key international events that involved those from a Muslim background and raised discussion amongst the general population, these being, Barack Obama’s United States of America presidential election and the execution of the Bali Bombers. Whether these events had an impact upon the representation of the Muslim faith and the misinterpretation of the faith by the general public has yet to be seen. However, the media representation of the Muslim faith in regards to the case studies will be explored.

The local government area of Camden has an approximate population of 50,000 people. The community, similarly to that of Annangrove, is largely Anglo-Christian with only 8% of the community identified as being Culturally and Linguistically Diverse Persons (CALD). Furthermore, more than 70% of the residents in the Local Government Area
identified themselves as religiously affiliated with a mainstream denomination, being Catholic or Protestant (ABS, 2006 and Bugg, 2008).

The proposed development was recommended for refusal by Councils town planning department at the Ordinary Council Meeting and refused accordingly. The applicants will be appealing Council’s decision in the Land and Environment Court and have to date, received a ‘call over’ outlining the details of the hearing.

6.2 The Application

A development application for an educational establishment was lodged with Camden Council on 26 September. The proposed development catered for a total of 1200 students and 120 staff members.

The proposal comprised a primary school for 600 students, a secondary school for 600 students, a multi purpose hall, a caretaker’s dwelling and other site works including roadwork’s, bus bays, lighting, fencing etc.

Both the primary school and the secondary school also made provisions for ancillary development such as an administration area, library, open space areas for recreation, amenities, staff rooms and the like.

The development application has designated the hours of operation of the school facilities between 8:00am and 4:00pm, Monday to Friday only. The site was not to be used outside these hours for any other purposes except for speech and awards events. This fact was conveyed heavily to reiterate the use of the site as an educational establishment and to allay fears and concerns from both the community and the Council that the site would be used for other purposes not associated with the primary proposed use.
The development application was publicly notified between the 17 October and 14 November, 2007 for a period of four weeks (Camden Council, 2007). Details of the proposed development and copies of the development application were made available in the Council administration centres, local libraries and also in the local newspaper.

Camden Council received a total of 3083 public submissions regarding the proposed development comprising, 3042 submissions in objection to the proposal, 23 in support and 18 considered to be of neutral stance (Camden, 2007).

6.3 The Decision

The proposal is defined as an educational establishment and reads:

“a building used as a school, college, technical college, academy, lecture hall, gallery or museum, but does not include a building used wholly or principally as an institution or child care centre.” (Camden Council, 2008:5)

The use is permissible with the consent of Council in the Rural 1(a) Zone. However, the proposal was deemed to not satisfy the objectives of the zone in that the subject site is more suitable for rural resource land use, the proposal was not consistent with the rural character of the locality and it is considered that there would be an unreasonable and uneconomic demand on both the community and the operators of the school.
The proposal was recommended for refusal and refused accordingly based on the following reasons:

- The proposal is not consistent with the objectives of the zone and the Camden LEP No. 48.
- The proposal is not consistent with objectives and controls of the Camden DCP 2006.
- The development is likely to impact on the natural, built and economic environment of the locality
- The site is not suitable for development.
- Non Compliances with relevant SEPPs, REPs and draft planning instruments.

6.4 Implications

Media reports of a proposed Catholic School in the area aided further community debate suggesting that the Council had given religious bias to the proposed Catholic School. These were only media reports and have not been confirmed. However, the issue of religious bias had already been a sensitive topic following the before mentioned cases of development in this thesis. The nature in which the planning report was written was very cautious in the tone of language and how it addressed non-planning issues.

It was interesting to note that the planning instruments and controls were described and their planning ideology used to form a basis for the report, however, these should have been better relayed to the community as an educational exercise.

Council believed that there would be an unreasonable and uneconomic demand on both the community and the operators of the school. There were fears raised that the proposed development would ‘only be the start’ and make way for further development
of Muslim businesses. Council would make a short statement that population growth was expected and mentioned the South West Growth Centre however, there needs to be clear education as to why the demographics of the community may change in the coming years. A short statement is interpreted as a way to simply ignore the issue at hand.

During the notification process there was no evidence of any community consultation or mediation process. This is clearly not an example of forward planning. Much of this thesis has spoke of the misunderstanding and misinterpretation of the subject developments as the community firstly do not understand the planning system and the jargon used, and secondly, that there are preconceptions and stereotypes made of the Muslim community.

Security was a major basis for much of the planning submissions. The Council stated that criminal behaviour is not linked to a particular culture and occurs in all areas of NSW regardless of the cultural composition. However given the community response to the development, it is necessary to consider the safety of the students and the community’s perceived risk of crime. This development has the potential to negatively impact on community perception of crime in the local area.

Should the number of submissions alone cause the perception that there will be adverse impacts upon the safety of the community? Weight should be placed upon the merits of the application rather than the number of submissions. Ironically, during the notification period, there was a severe and grotesque level of graffiti undertaken on the site by those who opposed the development. Yet these may be the same people who argued that the proposal would invite more crime into the locality.

The Southwest Growth Centre Strategy has identified the area for growth and this has been minimally explained to the community. The report merely states that there is an
expected increase in population yet, does not provide the planning ideology governing it.

The question to be asked is why the subject site is zoned to permit educational establishments when the Council wish to retain the site for rural use? Land use planning must be more flexible to allow the changing nature of society.

Camden’s strategic plan, Camden 2025, does aim to “ensure language, literacy and cultural diversity are not barriers to accessing Council’s information and services, and seeks to “ensure all members of the community have equitable access to facilities and services” (Strategic Plan, 1999, p. 10-11 and Bugg, 2008)

As mentioned in Chapter two, religious schools allows the children to maintain their religious identity and undertake the required rituals. By denying the proposed development, they are essentially denied the right to undertake their religion. It should be noted that the school was proposed to be open to enrolment to all students and thus refuting claims that there would be no benefit to the existing community. An initiative of assimilation perhaps?

Many of the issues such as traffic, tree removal and pollution can be solved through a mediation process or conditions of consent, the former of which was not undertaken.

It was interesting to note that some of the submissions had called for a referendum to take the decision making power away from Council. This is an indication that poor planning practice has been undertaken and that the community are unhappy with the less than informative methods that Council have utilised.

Similarly to the other two case studies, there was a large amount of public involvement, particularly by a resident named Kate McCulloch who has been the driving force behind
the opposition to the development. Her comments mirrored that of controversial former Parliamentary member, Pauline Hanson who sought a more ‘Anglo-Australia’.

As yet there has not been any clear evidence of religious bias in the decision making process and the report makes note that religious issues are not of planning concern. However, what remains to be seen is how the submissions surrounding religious issues would affect the development assessment officer. It is quite simple for a statement of irrelevance to be written, but to what extent would the comments have on personal morals. As discussed before, we are not able to ever fully detach ourselves from our morals as they encompass who we are as an individual. Given that planners undertake empathic planning methods to deal with concerns with the community, do they themselves take on board those fears and non-planning issues surrounding religion? From the information available, it is difficult to examine the extent to which reflective planning practice has been undertaken however, this could be implemented in an educational course with the community to address any misconceptions and misunderstanding.

“Local Governments have an important role in facilitating social engagement as the conveners, collaborators and observers of their communities.” (Bugg, 2008:1)
7. Conclusion

It is difficult to discuss the issue of religious bias in planning. However, the case studies have certainly portrayed the perception of religious bias in the town planning system. The interviewees outlined how the planning system had previously only considered places of worship as Christian churches and this was evident in the development control plans whereby parking standards were based on the amount of pews. It is also difficult to grasp the full extent of personal morals and ethics in planning. However, it can be seen that there is little education and/or guidelines within the workplace and the education system that governs how planners should be addressing such an issue. It was outlined heavily in the interviews that whilst, morals and ethics should have no place in planning assessment and decision making, it is impossible to fully retract from them and, given that much of the planning system is open to interpretation and discretion, it is vital to acknowledge their potential impact on planning. One interviewee discussed:

“...I think planners need to do more personal work in understanding. More reflection... Umm we don’t do much of that [reflection] I think as planners. In thinking that how [are] my personal views impacting on how I’m assessing this, how I’m interpreting the public input... the whole way that I am dealing with this particular proposal and all the input into the decision making.”

The best practice approach to planning for religious purposes is very much a grey area. However, what was consistent with both interviewees is that, in the case of contentious development such as the case studies, it is important to ensure that there is no misunderstanding or misinformation. A conciliation conference was undertaken in the Annangrove case, however, one interviewee also spoke of ‘interfaith dialogue’ and conferences that were held between religious leaders. This led to the conclusion that
planners should engage more with residents on a face-to-face basis rather than a letter whereby the community may not understand the planning jargon as stated by an interviewee:

“often planners only pay lip service to advertising an application”

Perhaps policies regarding the notification process should be reviewed to implement a more comprehensive system. There is clearly the need for an education program that assists Council to efficiently convey planning issues in a manner that can be understood by those who do not have a town planning background. Professionalism is the tendency to specialisation of occupation, exclusive jurisdiction and the attitude of doing your job well. Planners have the exclusive knowledge of how to achieve best planning outcomes and it is incumbent on planners to do so. The most important characteristic of professionalism in relation to this thesis is the devotion to higher ideals.

With much of the planning system being open to interpretation and the issue of discretion being largely discussed, a statement has been made:

‘[There is a] distinction between legitimate town planning or other local government considerations and those of a general economic or social nature that go beyond town planning and are more appropriate to be dealt with by the central legislative body’ (Stein 2008).

Given that social, economic and amenity impacts vary between different areas, as discussed with the interviewees, different areas may be more ‘accepting’ of an Islamic prayer hall for example, discretion cannot be restricted and will vary depending on each circumstance. Thus, reiterating the fact that merit based planning decisions must be undertaken, if planning was simply to be a matter of assessing a development
application against a checklist and ticking boxes, anyone can be a planner. What makes planning a profession, is that planners are able to use their professional education and their discretion and determine the best planning outcome.

As shown in the case studies, there are many issues associated with the exercise of discretion, including unethical behaviour in regards to Councillors striking fear into the community and utilising this to gain popularity amongst the community, poor administrative practice, inconsistent performance as indicated with the perception of religious bias and piecemeal variation to standards.

As discussed in Chapter 3, the relationship between planning ideology and the town planning system does not always align and planning principles may not be appropriately supported by legal instruments. Therefore, it can be seen that there is a sense of rigidity in the town planning system that prohibits land use diversity.

“Religion is no longer marginal to international politics”

(Sacks, 2002).

The Annangrove case study in particular, portrayed how councillors take little consideration into the planning advice provided by their own planning department. There is evidence to suggest that political power is of top priority. However, more often than not, Councillors do not have planning knowledge and are not able to fully grasp the issue at hand and the planning ideology behind planning documents.

Therefore, the manner in which those in opposition to a development can readily speak to Councillors needs to be governed. Meanwhile, it is difficult to measure the use of the media to gain support for these resident action groups. It is further more difficult to govern the nature of what is being written as there is evidence of internet websites being utilised to further gain members in opposition to such development. The extent to
which racial vilification laws are adhered to can not be seen. Anti-discrimination laws and multicultural policies need to be implemented in guidelines or Environmental Planning Instruments so that planners are able to determine the weight of consideration given to them.

There was much community opposition to each of the proposed developments and the formation of groups against the developments seemed to be more concerned with power and often used politics to gain support. In regards to the NIMBY and LULU mentality and how to address each, an interviewee from the qualitative research undertaken for this thesis stated that:

“... people are very passionate about wherever we live and they get concerned about change, about change in their area, and that’s where perhaps there has to be education to say alright well yes this is going to change our area, but change is part of life and we have to sort of try and live together. We’ve got a very different demographic and sometimes there are possibilities to work with people’s concerns about not having things happen in their backyards”

Non-planning issues outlined in public submissions were often masked as ‘planning issues’ such as traffic generation, car parking, noise generation etc. Education is required so that planners are able to distinguish non-planning issues and deal with them appropriately as they can often be quite confronting when dealing with such a contentious issue.

As mentioned above, cultural diversity is reflected in the built environment in a locality. Thus, this is formed from the fact that policies dealing with cultural and religious
diversity are available and readily given weight. In the case studies, whilst there were policies regarding access and equity to services, there seemed to be less weight given to them than planning ideology would require. However, it is not possible to incorporate diversity into a practice that is culturally exclusive, inequitable and unwilling and/or unable to accommodate diverse land uses (Bugg, 2008).

Whether the changing nature of development for religious purposes has stretched the Town Planning System can be observed, however the first hurdle to best planning practice and approach, as stated by an interviewee is: “its not about bending the rules at all. It’s just about understanding the exact nature of the proposal and dealing with it accordingly.”
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