

5.3 Use of the Land for a Place of Worship and Works Associated With the Construction of a Car Park at 90 Soldiers Road, Pakenham South

Responsible GM: Peter Benazic
Author: Dean Haeusler

Recommendation(s)

That Council issue a Refusal to Grant Planning Permit T200082 for Use of the land for a place of worship and works associated with the construction of a car park at 90 Soldiers Road, Pakenham South VIC 3810 on the grounds detailed in the report.

Attachments

1. Development Plans [5.3.1 - 2 pages]
2. Copy of Objections - Circulated to Councillors only [5.3.2 - 13 pages]

Executive Summary

APPLICATION NO.:	T200082
APPLICANT:	Mr Zlatimir Kostic
LAND:	90 Soldiers Road, Pakenham South VIC 3810
PROPOSAL:	Use of the land for a place of worship and works associated with the construction of a car park
PLANNING CONTROLS:	Green Wedge Zone Schedule 1 Land Subject to Inundation Overlay
NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by sending notices to adjoining land owners and occupiers and placing a sign on site. A total of thirteen objections were received
KEY PLANNING CONSIDERATIONS:	Land use compatibility Impact on productive land Traffic generation and parking
RECOMMENDATION:	Refusal

Background

The following planning decisions are relevant to subject site:

Planning Application No.	Proposal	Determination
T120168	Use and development of the land for a rural store and outbuilding generally in accordance with the approved plans	Permit Issued: 9 July 2012
T120119	Use of the land for animal husbandry and development o the land for two outbuildings and retrospective earthworks	Permit Issued: 15 August 2012 Amended: 15 May 2015
T120380	The development of the land for twelve horse shelters, generally in accordance with the approved plans.	Permit Issued: 14 September 2012
T160439	The use and development of a place of worship.	Refused: 27 July 2017

Subject Site



Figure 1: Subject site and locality

The site is located on the north side of Soldiers Road, is rectangular in shape and 8.509 hectares. Two crossovers are located on the site one along the east side of the site's frontage the other on the west side.

The site currently contains an existing dwelling, horse shelters and outbuildings scattered sporadically throughout the subject site and used predominantly for horse agistment.

The topography of the land features some undulation between 500 mm to 1 metre sporadically across the subject site.

The property is located approximately 2.6 kilometres from the Urban Growth Boundary and 3.6 kilometres from Southeast Business Park.

The main characteristics of the surrounding area are:

Large rural allotments predominantly cleared of vegetation. There are a mixture of rural-residential and agricultural properties generally defined by grazing and equestrian land uses.

Relevance to Council Plan

Nil.

Proposal

Approval is sought to convert an existing shed to a Place of Worship and carry out works for an associated car parking area.

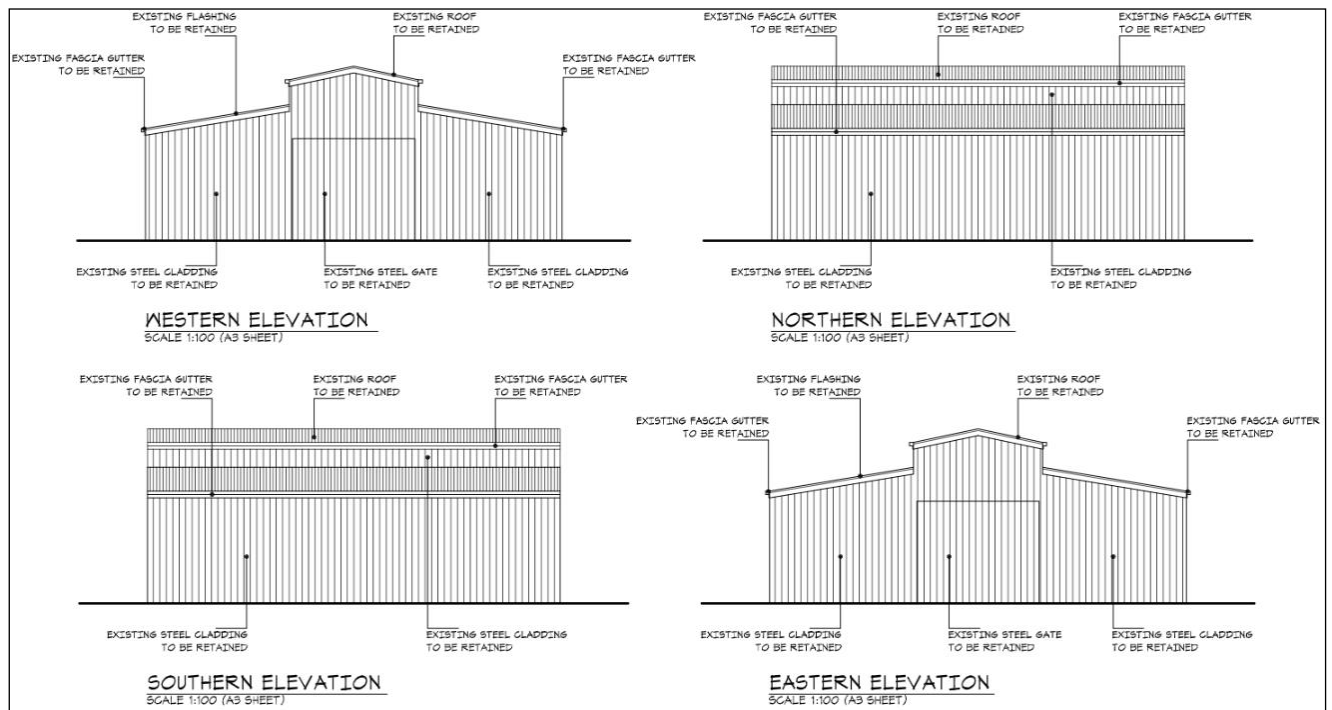


Figure 2: Existing building to be converted

The shed is a 149 square metre structure situated approximately 85 metres from Soldiers Road (South), 165 metres from the eastern boundary and 63 metres from the west. Internal modifications will be required however the details have not been specified. No external modifications are proposed.

LAND USE

The shed has been previously approved by Council for the purpose of a Rural Store but will be converted to accommodate a place of worship open to the public once a week to a maximum of 12 patrons. The building will be used for prayer and other calendar religious activities. Special Events are held four times a year when most attendees are anticipated.

No external amplification or lighting is proposed from the building and waste will be managed through standard Council collection or private waste collection if required.

WORKS

Access will be made using one of the existing driveways that services the building. East of the building, provision will be made for twenty-one car spaces. Access and parking areas are proposed to be surfaced in asphalt.

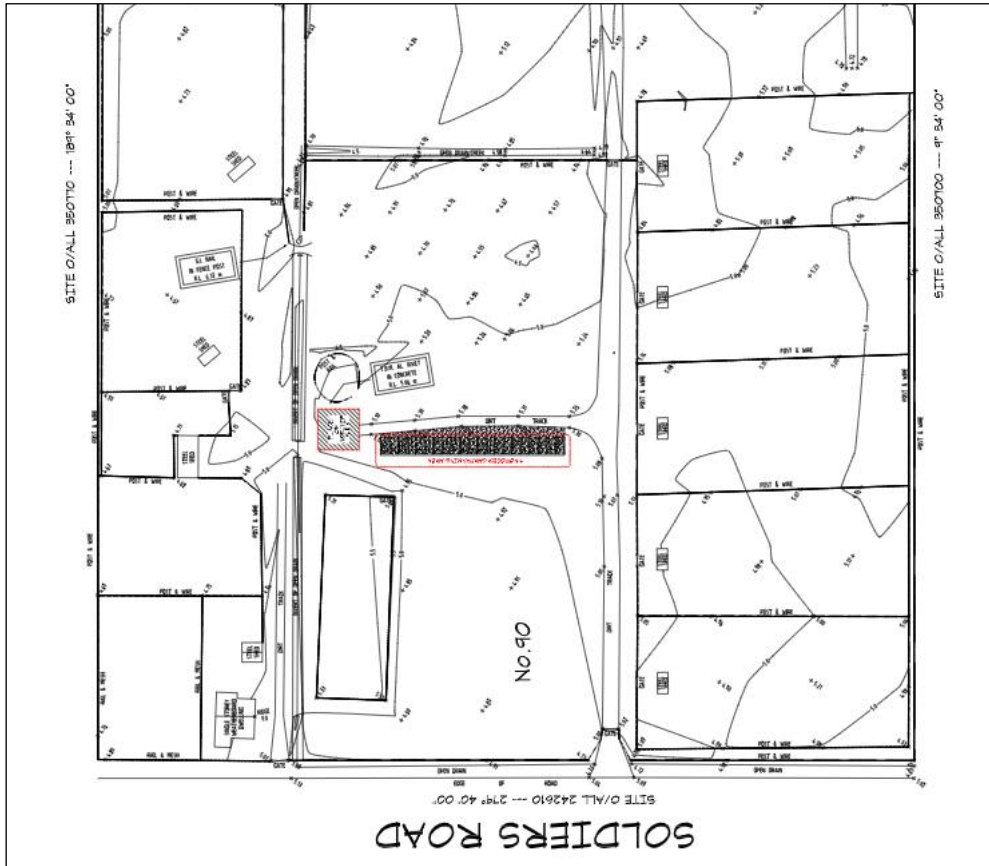


Figure 3: Site Plan

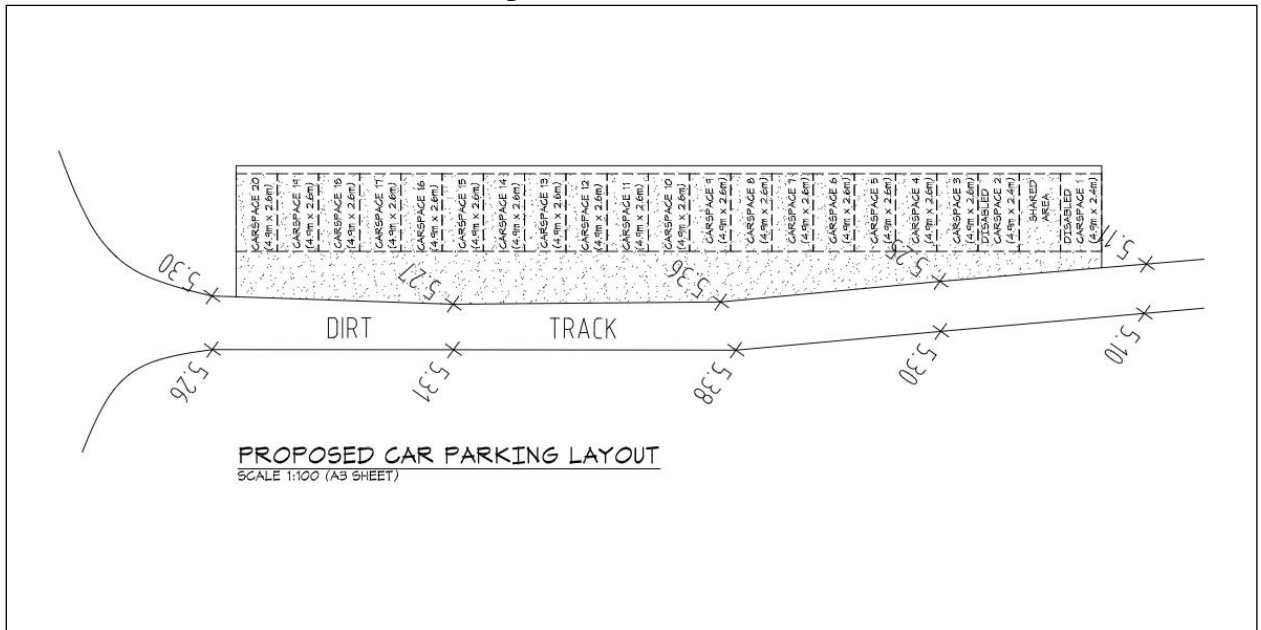


Figure 4: Car parking plan

Planning Scheme Provisions
Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 13.03-1S Floodplain Management
- Clause 13.07-1S Land Use Compatibility
- Clause 14.01-1S Protection of agricultural land
- Clause 14.01-1R Protection of agricultural land – Metropolitan Melbourne
- Clause 15.03-2S Aboriginal cultural heritage
- Clause 18.02-4S Car Parking
- Clause 19.02-3S Cultural Facilities

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.02 Cardinia Shire Key Issues and Strategic Vision
- Clause 21.01-2 Key influences
- Clause 21.01-3 Key issues
- Clause 21.02-7 Aboriginal cultural heritage
- Clause 21.03-3 Rural townships
- Clause 21.04-2 Agriculture
- Clause 21.05-3 Local roads
- Clause 21.05-6 Community services and facilities
- Clause 22.05 Green Wedge Management Policy

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions
- Clause 52.06 Car Parking
- Clause 65 Decision Guidelines
- Clause 66 Referral and Notice Provisions
- Cardinia Western Port Green Wedge Management Plan

Cardinia Shire's Liveability Plan 2017-2029

This proposal has regard to Cardinia Shire's Liveability Plan 2017-2029, in particular:

- Improved social cohesion of a place of worship.

Zone

The land is subject to the Green Wedge Zone Schedule 1

Overlays

The land is subject to the Land Subject to Inundation Overlay.

Planning Permit Triggers

The proposal for use of the land for a place of worship and works associated with the construction of a car park requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 35.04 Schedule 1 of the Green Wedge Zone a planning permit is required for a Section 2 use (Place of Worship).
- Pursuant to Clause 35.04 Schedule 1 of the Green Wedge Zone a planning permit is required to construct or carry out buildings and works associated with a Section 2 use (Place of Worship).
- Pursuant to Clause 44.04 Schedule to the Land Subject to Inundation Overlay a planning permit is required to construct a building or to construct or carry out works.

Public Notification

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing one sign on site.

Council has received thirteen (13) objections to date.

The key issues that were raised in the objections are:

- Inconsistency with agriculture and Green Wedge Management Plan
- Impact on agricultural businesses
- Effluent management and access to reticulated water
- Inability of Soldiers Road to accommodate the volume of traffic.
- Hazardous intersection of Soldiers Road and Koo Wee Rup Road.

Referrals

The application was referred to Melbourne Water as a statutory referral. Melbourne Water had no objection to the proposal subject to conditions.

Discussion

Planning policy framework

A number of state and local policies apply to the assessment of this application. The following is an assessment against the most applicable policies under the Cardinia Planning Scheme.

Clause 14.01-1S Protection of agricultural land highlights the protection of productive farmland by way of preventing inappropriately dispersed urban activities in rural areas, the permanent removal of farmland and the compatibility between the proposed or likely development and the existing use of the surrounding land. Likewise, Clause 21.04-2 Agriculture, advises that productive agricultural land must be protected from incompatible uses and inappropriate development.

The proposed use occupies a central portion of the property that is otherwise used for animal husbandry. Further plans by the applicant suggest grazing and cropping will be introduced. The conversion of an agricultural building and allocation of a large parking area reduce the agricultural productivity of the land and introduce a use that is not complimentary of the current property use or surrounding uses.

Council's Westernport Green Wedge Management Policy, Clause 22.05 and the associated Green Wedge Management Plan acknowledge that there are broader activities and uses encroaching into the GWZ which has increased the amount of urban uses, such as place of worship, being proposed in the zone. If inappropriately located, these uses can detrimentally impact the rural character of these landscapes and fragment agricultural land. Within this plan the subject site is located in 'Precinct 1' which is recognised as an area for agriculture, horticulture and soil-based food production. Within this precinct uses such as places of worship are discouraged and encouraged within townships and closer to the urban growth boundary.

Clause 21.03-3 Rural townships, categorises rural areas of settlement outside the urban growth area into 'large rural townships', 'small rural townships' and 'rural localities'. Pakenham South is identified as a 'rural locality' within this hierarchy. This would be due to Pakenham South comprising of predominantly large rural allotments with no central commercial township hub. This clause acknowledges the need to set clear limits for development of the townships and that the capacity for growth varies depending on the environmental and infrastructure capabilities of each individual town.

As identified in the site assessment, the subject site is currently located approximately 2.6 kilometres from the UGB on the fringe of Pakenham and in excess of 6 kilometres from the UGB around Koo Wee Rup. There are multiple properties between the subject site and the UGB all predominantly open and rural and a large portion of the local road network is unsealed.

Clause 19.02-4S Social and Cultural Infrastructure, encourages the provision of infrastructure within activity centres to ensure accessibility and is built upon by local policy 21.05-6 to establish new facilities and community based organisations in activity centres and residential areas where they can be provided in a manner which minimises any impacts on the amenity of the area. This includes establishing facilities in the most accessible location and to co-locate community activities to encourage joint management.

The proposed place of worship as previously highlighted is located within a rural locality of Pakenham South, with no immediate commercial township hub. The immediate character of the area is open and rural landscapes, comprising of predominantly agricultural activities on large allotments. The road servicing the subject site is not sealed and there is no immediate access to public transport options.

As a consequence of the above, the proposed place of worship is not considered to be appropriately located in accordance with the relevant state, local and Council policy. To locate the proposed use on the subject site would result in the encroachment of urban activities into an area which is sought to be conserved primarily for its agricultural purpose. This is not to say that a place of worship would be inappropriate as it is acknowledged that the use is not explicitly prohibited by the zone. However, in this instance taking into account the relative isolation of the subject site and distance from the Urban Growth Boundary and townships, in conjunction with the strategic protection of agricultural land at a local and state level suggest the proposal is incompatible for this location.

Green Wedge Zone

The Green Wedge Zone (GWZ) primarily provides for agricultural uses and sustainable farming practices while encouraging the protection of environmental, historic, cultural and landscape assets and facilitating recreational and tourism opportunities.

The following assessment provides a review of the proposal against the various considerations of the zone:

DESIGN AND SITING

- *The need to minimise adverse impacts on the character and appearance of the area*

The use of the existing building and location deep within property boundaries ensure impact to landscape character will not be substantially affected.

- *The need to minimise any adverse impacts of siting, design, height, bulk and colours and materials to be used*

No new structures are proposed.

GENERAL ISSUES

- *The capability of the land to accommodate the proposed use or development*

From a perspective of property size, the land is considered capable of accommodating the land use however as mentioned, the use is not considered compatible with the site or surrounds

- *How the use or development relates to rural land use, rural diversification, natural resource management, natural or cultural heritage management, recreation or tourism*

The proposal does not support agricultural land management and reduces the useable agricultural land and introduced a use that may conflict with neighbouring farm operations.

- *Whether the site is suitable for the use or development and the compatibility of the proposal with adjoining land uses*

The site is surrounded by a mixture of medium to large rural property predominantly used for rural uses including grazing, cropping and animal husbandry. The proposed land use is best considered an urban activity that is not complimentary to the existing use of the land. There is no benefits to rural productivity and it is considered incompatible with adjoining rural uses.

- *Whether the use or development is essential to the health, safety or well-being of the State or area, but is not appropriate to locate in an urban area because of the effect it may have on existing or proposed urban areas or the effect that existing or proposed urban areas may have on the proposed use or development*

The proposed use serves an important broader community benefit in providing cultural services yet is most appropriately located within urban areas or on the fringe of these areas to improve accessibility and integration with other services.

RURAL ISSUES

- *The maintenance of agricultural production and the impact on the rural economy*

The importance of rural productivity is recognised as the primary purpose of the Green Wedge Zone. Given the nature of the proposal, it is not expected to make a tangible contribution to the rural economy.

- *The impact on the existing and proposed rural infrastructure*

The impacts to the existing infrastructure are predominantly related to the increase in traffic that will be introduced by the Place of Worship. Due to the low scale and relative infrequency, these increased demands are expected to be met on the existing road network.

- *The potential for the future expansion of the use or development and the impact of this on adjoining and nearby agriculture and other land uses*

Should the use be supported there is a reasonable assumption that the size and capacity of the Place of Worship could increase over time. This would however be regulated by a planning permit and therefore be subject to scrutiny if an application was made that affected operation times or patron numbers.

ENVIRONMENTAL ISSUES

- *The impact of the use or development on the flora and fauna on the site and its surrounds*

The site is clear of vegetation and not located in proximity to any watercourses, wetlands or reserves.

- *How the use or development relates to sustainable land management and the need to prepare an integrated land management plan*

The proposal is not expected to result in environmental pressures on the land and a land management plan is not considered applicable.

Land Subject to Inundation Overlay (LSIO)

The LSIO identifies land in a flood storage or flood fringe area affected by the 1 in 100 year flood and seeks to ensure development maintains the free passage and temporary storage of flood waters and is compatible with the flood hazard.

The land lies on the fringe on the former Koo Wee Rup swamp area and is entirely affected by the LSIO. Under this clause a permit is required to construct or carry out works.

As mentioned, the application has been referred and reviewed by Melbourne Water who provide no objection, subject to conditions relating to minimum floor level height due to the change of use of the building, open area, fencing and access requirements.

The proposal is considered compatible with the LSIO, provided the conditions of Melbourne Water can be achieved. The proposed works are not expected to increase the flood risk to life, health or safety and are not expected to obstruct floodwater or affect flood levels given the minor scale of the car park works,

Clause 52.06 – Car Parking

This clause seeks to ensure the appropriate number of parking spaces are provided for a given land use and having regard for the demand likely to be generated and ensure parking does not adversely affect the amenity of the locality.

Based on the table of uses to this clause, a Place of Worship is categories under the broader definition of Place of Assembly, requiring 0.3 spaces to each patron.

The proposed maximum of 12 patrons translates to a 3.6 required spaces, which is then rounded down to 3. The parking provided exceeds this number by 18 spaces while access and moveability are easily accommodated on the site and design standards able to be met.

Clause 51.02 Metropolitan Green Wedge Land: Core Planning Provisions

The following objectives form the basis of this provision:

- *This clause outlines the protection of the metropolitan green wedge land from uses and development that diminish the agricultural, environmental, cultural heritage, conservation, landscape natural resources or recreation value.*
- *Protection of agricultural land from incompatible uses and development*
- *Ensuring that the scale of use is compatible with the non-urban character of metropolitan green wedge land*

The proposed Place of Worship is not listed in the table to Clause 51.02-2 and is therefore not considered prohibited.

Cultural Heritage

The proposed activity is considered a High Impact Activity under the Aboriginal Heritage Regulations 2018. A Cultural Heritage Management Plan (CHMP) has been submitted with the application however this plan is outdated and has not been approved by Aboriginal Victoria. A new or updated CHMP is required however the applicant has elected to defer the preparation of a management plan. Given Council's position on the application, this has not affected the assessment of the proposal.

Objections

Concerns raised within objections that have not been addressed in the discussion of the application above are responded to below:

- Impact on road network/traffic generation

Based on the proposed numbers of attendees and frequency of events impact to the surrounding road network is not anticipated. If a permit were to be approved, the frequency and patron numbers would form a condition of permit.

- *Effluent management and water supply.*

An increased or new septic system would be a condition of permit should it be approved. Water supply would met using the infrastructure that supplies the existing dwelling.

Conclusion

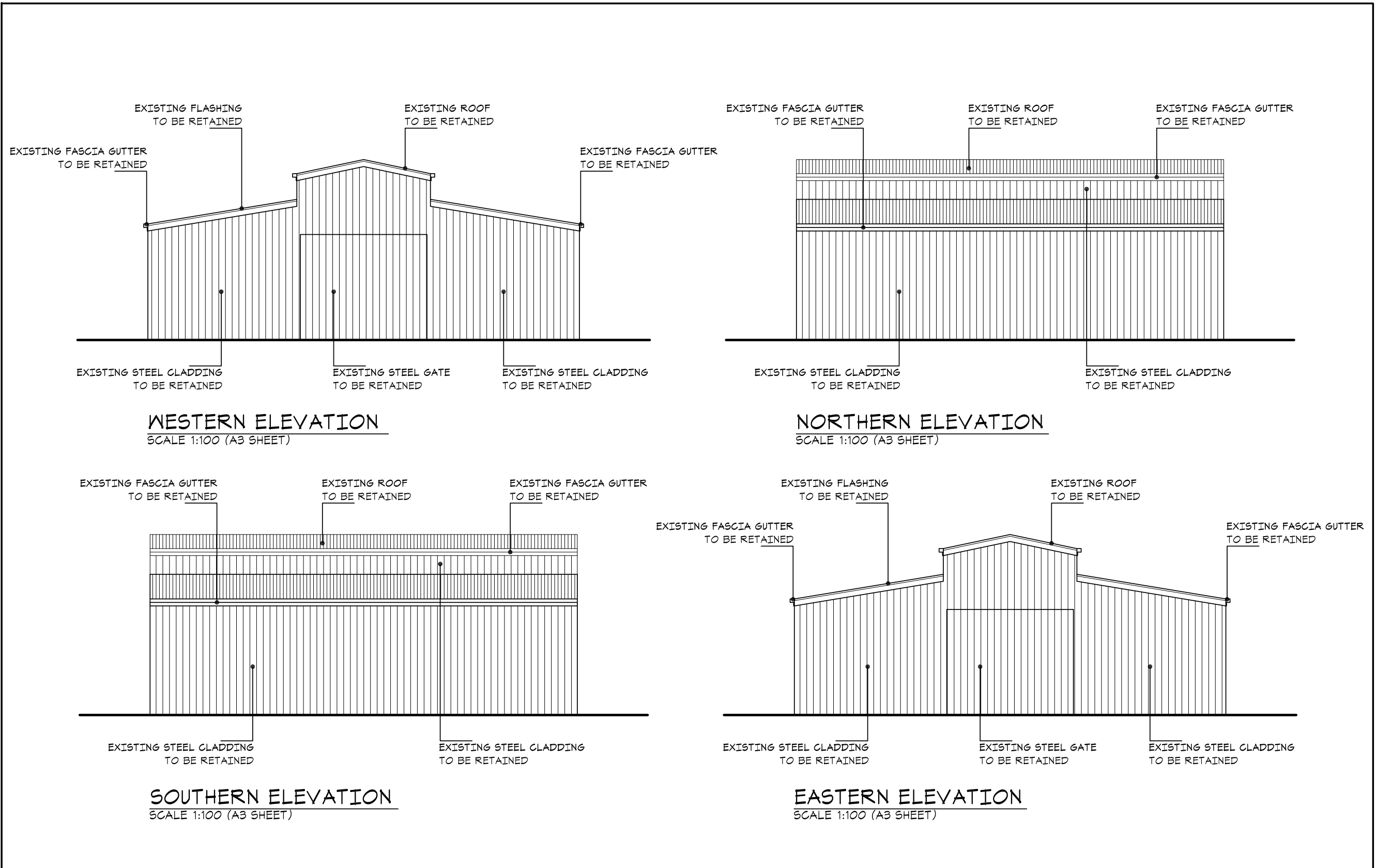
The proposed place of worship and associated works are considered to be inappropriate for the subject site due to the fragmentation of agricultural land and impact to rural productivity and location within an established rural area well beyond urban growth or township

boundaries. The proposal is inconsistent with the relevant Planning Policy Framework, Local Planning Policy Framework, Zone and Particular Provisions.

It is recommended that a Refusal to Grant Planning Permit T200082 be issued for 'use of the land for a place of worship and works associated with the construction of a carpark' at 90 Soldiers Road, Pakenham South based on the following:

1. The proposal is located well outside of an established township or the urban growth boundary inconsistent with:
 - Clause 19.02-4S Social and Cultural Infrastructure
 - Clause 21.05-6 Community services and facilities
 - Clause 22.05 and Cardinia Westernport Green Wedge Management Plan.

2. The proposal would undermine the agricultural viability of the land sought to be preserved by:
 - Clause 14.01-1S Protection of agriculture land
 - Clause 21.04-2 Agriculture
 - Clause 35.04 Green Wedge Zone
 - Cardinia Westernport Green Wedge Management Plan – Adopted July 2016

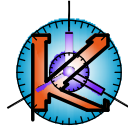


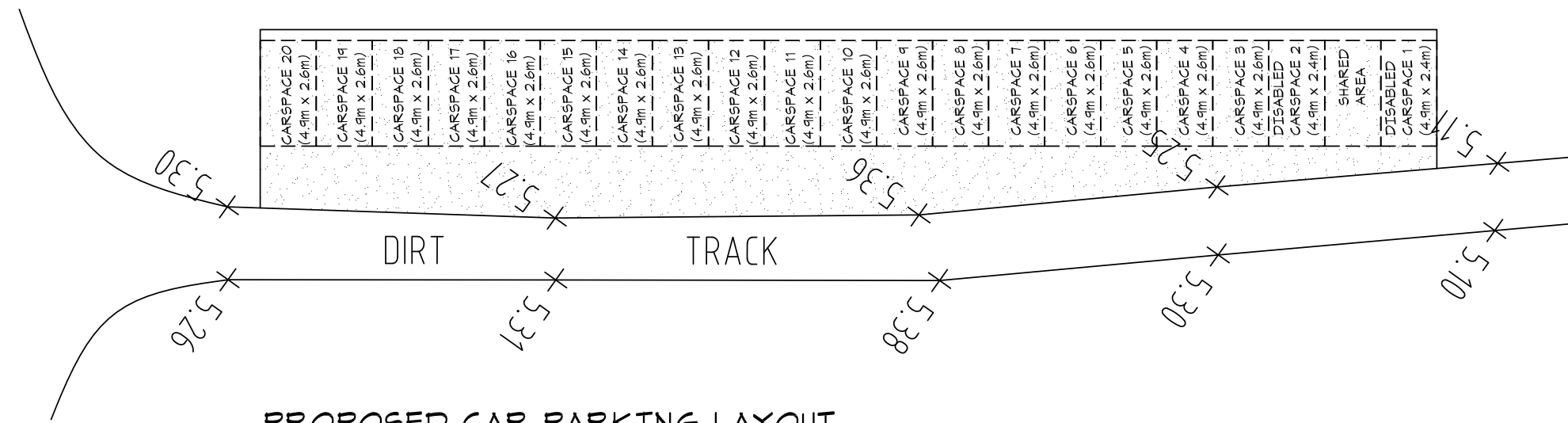
WESTERN ELEVATION
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NORTHERN ELEVATION
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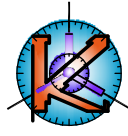
SOUTHERN ELEVATION
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EASTERN ELEVATION
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PROPOSED CAR PARKING LAYOUT
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