

# 1 THE USE AND DEVELOPMENT OF A PLACE OF WORSHIP 90 SOLDIERS ROAD, PAKENHAM SOUTH

FILE REFERENCE INT1741747

RESPONSIBLE GENERAL MANAGER Andrew Paxton

AUTHOR Hugh Pierce

## RECOMMENDATION

That a Refusal to Grant Planning Permit T160439 be issued for 'The use and development of a Place of Worship' at 90 Soldiers Road, Pakenham South for reasons set you in this report.

## Attachments

- |   |   |         |
|---|---|---------|
| 1 | Site plan   | 1 Page  |
| 2 | Development plans                                 | 7 Pages |
| 3 | List of objections circulated to councillors only | 6 Pages |

## EXECUTIVE SUMMARY:

|                              |  |
|------------------------------|--|
| APPLICATION NO.:             | T160439  |
| APPLICANT:                   | Yoga Yogaparan   |
| LAND:                        | 90 Soldiers Road, Pakenham South VIC 3810  |
| PROPOSAL:                    | The use and development of a place of worship  |
| PLANNING CONTROLS:           | Green Wedge Zone Schedule 1<br>Land Subject to Inundation Overlay  |
| NOTIFICATION & OBJECTIONS:   | The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> , by sending notices to adjoining land owners and occupiers and placing a sign on site. A total of six objections were received |
| KEY PLANNING CONSIDERATIONS: | Consistency with the Green Wedge Zone<br>Impact on agriculture<br>Access and proximity to other urban uses   |
| 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 | Permit Issued: 9 July 2012 |

|         | approved plans  |   |
|---------|---|---|
| T120119 | Use of the land for animal husbandry and development o the land for two outbuildings and retrospective earthworks | Permit Issued: 15 August 2012<br>Amended: 15 May 2015 |
| T12380  | The development of the land for twelve horse shelters, generally in accordance with the approved plans.           | Permit Issued: 14 September 2012                      |

## SUBJECT SITE

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. The land also currently contains grazing livestock.

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

The main characteristics of the surrounding area are:

- Large rural allotments predominantly cleared of vegetation and occasionally containing dwellings and associated outbuildings.

## PROPOSAL

The applicant is seeking planning approval for the use and development of a place of worship. The proposed place of worship will comprise of an 840 square metre temple and associated detached 142 square metre dining hall. The existing dwelling on the subject site will be occupied by the priest associated with the place of worship.

The place of worship is proposed to generally operate during the following hours:

Monday to Friday

7:30 AM to 11:00 AM

6:00 PM to 8:30 PM

Maximum attendance: 10 patrons

Saturday to Sunday

7:30 AM to 12:00 PM

5:00 PM to 8:30 PM

Maximum attendance: 25 patrons

In addition to the above, there are also 10 proposed auspicious days within the calendar year of which the following hours and attendances are requested:

January (maximum of 2 days)

7:30 AM to 12:30 PM

5:00 PM to 9:30 PM

Maximum attendance: 150 patrons and 75 patrons on respective days

February

7:30 AM to 12:30 PM

5:00 PM to 9:30 PM

Maximum attendance: 75 patrons

April

7:30 AM to 12:30 PM

5:00 PM to 9:30 PM

Maximum attendance: 75 patrons

October (maximum of 5 days)

7:30 AM to 12:30 PM

5:00 PM to 9:30 PM

Maximum attendance: 150 patrons on 1 day and 75 on the remaining 4 days

November

7:30 AM to 12:30 PM

5:00 PM to 9:30 PM

Maximum attendance: 75 patrons

## **PLANNING SCHEME PROVISIONS**

### **State Planning Policy Framework (SPPF)**

The relevant clauses of the SPPF are:

- Clause 11 Settlement
- Clause 11.06-7 Green wedges
- Clause 12.04-2 Landscapes
- Clause 13.02 Floodplains
- Clause 14.01-1 Protection of agricultural land
- Clause 15.01 Urban environment
- Clause 15.03-2 Aboriginal cultural heritage
- Clause 18.02-5 Car Parking
- Clause 19.02-4 Distribution of social and cultural infrastructure
- Clause 19.03-2 Water supply, sewerage and drainage

### **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 Environment
- 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 21.06-1 Design and built form

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**Relevant Particular/ General Provisions and relevant incorporated or reference documents**

The relevant provisions/ documents are:

- Clause 52.06 Car Parking
- Clause 57 Metropolitan Green Wedge Land
- Cardinia Western Port Green Wedge Management Plan

**Zone**

The land is subject to the **Clause 35.04 Green Wedge Zone**

**Overlays**

The land is subject to the following overlays:

- Clause 44.04 Land Subject to Inundation Overlay

**PLANNING PERMIT TRIGGERS**

The proposal for a place of worship 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 two (2) sign on site

Council has received six (6) objections to date.

The key issues that were raised in the objections are:

- Inconsistency with agriculture which characterises the immediate area.
- Detrimental impact on property values.
- Lack of surrounding infrastructure.
- Inability of Soldiers Road to accommodate the volume of traffic.
- Hazardous intersection of Soldiers Road and Koo Wee Rup Road.
- Invasion of privacy.
- Noise and dust generated by the proposed use.

## REFERRALS

The application was referred to Melbourne Water as a statutory referral. Melbourne Water has not yet provided a response to date and is outside their statutory timeframe to respond.

## DISCUSSION

### **Is a place of worship appropriate within the context of the subject site and surrounding land?**

The subject site is located within the Green Wedge Zone (GWZ) characterised by open rural landscapes. The predominate use occupying land within this zone is agriculture, which is the underlying purpose of the GWZ specifically empathises the provision of land for.

Clause 14.01-1, Protection of agriculture land, highlights the protection of productive farmland by way of preventing inappropriately dispersed urban activities in rural areas and permanent changes of land use. Likewise, Clause 21.04-2 Agriculture, advises that productive agricultural land must be protected from incompatible uses and inappropriate development.

Council's Westernport Green Wedge Management Plan acknowledges that there are broader activities and uses encroaching into the GWZ which has increased the amount of urban uses, such as place of worships, 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 assembly within the GWZ should therefore be located, subject to strategic justification, closer to the urban growth boundary (UGB) or within existing townships.

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 only compromising of 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.

The subject site is currently located in excess 2.7 kilometres from the UGB around Pakenham and in excess of 6 kilometres from the UGB around Koo Wee Rup. Furthermore, there are multiple properties between the subject site and the UGB all predominantly open and rural. The proposal includes the land to be used for grazing livestock and to plant fruit trees to further enhance the agricultural production of the land. However, the proposed place of worship including the temple, dining hall, car parking area and space between comprises a space of approximately 8,500 square metres, which is currently vacant and capable of accommodating agricultural activities.

Clause 21.05-6 Community services facilities, encourages the provision of a reasonable level of access to a range of community services and facilities to rural townships in response to community needs. 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 within the GWZ, as it is acknowledged that the use is not explicitly prohibited by the zone. However, in this instance taking into account the limited urban activities within Pakenham South, the subject site's distance from the UGB, the access constraints of the subject site and the loss of agricultural land, that such a use as proposed should not be supported.

### **Are the building and works suitable within the Green Wedge Zone?**

The proposed temple is a rectangular building 840 square metres in size and a height of 5.463 metres situated in the northern half of the subject site. The proposed dining hall is situated immediately south of the temple, 142 square metres in size and a height of 8.657 metres. The temple is setback in excess of 200 metres from Soldiers Road, 84 metres from the north boundary, 106 metres from the east boundary and 93 metres from the west boundary. The dining hall is setback in excess of 200 metres from Soldiers Road, in excess of 100 metres from the north, east and west boundaries. This results in the buildings providing significant separation with all adjoining allotments which will minimise the impact of the development on the surrounding area. Both buildings feature rooves of with muted tones that would aid in further integrating them into the landscape.

### **Can Soldiers Road accommodate the potential maximum volume of patrons proposed?**

Council's traffic engineers have reviewed the proposal and advised that a traffic impact assessment would be required to determine the capacity of Soldiers Road. Given the previously discussed position on the use itself being undertaken on the land and the statutory timeframes prescribed by the *Planning and Environment Act 1987*, it has been determined to instead proceed to a decision. Council's traffic engineers have advised that at least half of the length of the subject site's frontage would likely need to be sealed, if a permit were to be issued.

### **Is there enough car parking provided?**

Pursuant to Clause 52.06 Car Parking a place of worship required 0.3 car spaces per patron. With a maximum patron capacity of 150 people that would equate to 45 car spaces being needed. The proposal includes a car park with a capacity of 48 spaces that more than satisfies the minimum car parking requirements.

### **What are the implications of the Land Subject to Inundation Overlay?**

The subject site is covered by Clause 44.04 Land Subject to Inundation Overlay which necessitates a referral to Melbourne Water. As previously discussed the application has been referred to Melbourne Water but a response it yet to be provided. Given the previously discussed position on the use itself being undertaken on the land and the statutory timeframes prescribed by the *Planning and Environment Act 1987* it has been determined to instead proceed to a decision.

### **Objector concerns**

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

- *Noise and dust generated by the proposed use.*

If a permit were approved, a condition will be included to ensure the proposal complies with the relevant EPA noise level requirements.

- *Detrimental impact on property values.*

Property values are outside of the ambit of discretion in assessing a planning application.

## CONCLUSION

The proposed place of worship is considered to be inappropriate for the subject site due to its lack of close proximity to other urban activities and the urban growth boundary, the fragmentation of agricultural land and access constraints. The proposal is inconsistent with the relevant State Planning Policy Framework, Local Planning Policy Framework, Zone and Particular Provisions.

It is recommended that a Refusal to Grant Planning Permit T160439 be issued for 'The use and development of a Place of Worship' at 90 Soldiers Road, Pakenham South on the following:

1. The proposal is located well outside of an established township or the urban growth boundary inconsistent with:
  - Clause 19.02-4 Distribution of social and cultural infrastructure
  - Clause 21.05-6 Community services and facilities
  - Cardinia Westernport Green Wedge Management Plan – Adopted July 2016.
2. The proposal would undermine the agricultural viability of the land sought to be preserved by:
  - Clause 11.06-7 Green Wedges
  - Clause 14.01-1 Protection of agriculture land
  - Clause 21.04-2 Agriculture
  - Clause 35.04 Green Wedge Zone
  - Clause 57 Metropolitan Green Wedge
  - Cardinia Westernport Green Wedge Management Plan – Adopted July 2016
3. The lack of information provided in relation to traffic management and road maintenance combined with the limited infrastructure in the area does not enable a comprehensive understanding of the potential adverse implications on the immediate road network.



**T160439 PA - Site plan**





|  |   |
|--|---|
| <b>SHAW &amp; ASSOCIATES</b><br>CONSULTANTS  |   |
| 1000 WEST 10TH AVENUE, SUITE 100<br>DENVER, CO 80202<br>TEL: 303.733.1111<br>FAX: 303.733.1112<br>WWW.SHAWSA.COM |   |
| 1000 WEST 10TH AVENUE, SUITE 100<br>DENVER, CO 80202<br>TEL: 303.733.1111<br>FAX: 303.733.1112<br>WWW.SHAWSA.COM |   |
| PLAN OF ENTIRE DRIVE IF<br>IN SOLERS ROAD<br>1000 WEST 10TH AVENUE, SUITE 100<br>DENVER, CO 80202                |   |
| DATE: 10/1/01<br>DRAWN BY: J. H. H.  | CHECKED BY: J. H. H.<br>APPROVED BY: J. H. H.<br>SCALE: AS SHOWN<br>SHEET: 1 OF 1 |




## LEGEND

- A EXISTING HORSE SHELTER
- B EXISTING SHELTER
- C EXISTING HORSE WASHING SHED
- D1 EXISTING SINGLE SLOPE DRILLING
- D2 EXISTING DOUBLE SLOPE DRILLING
- E EXISTING UNDER TANK
- F EXISTING HAY SHED
- G EXISTING HORSE RACING AREA
- EXISTING TREES


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PROJECT  
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17 June '16

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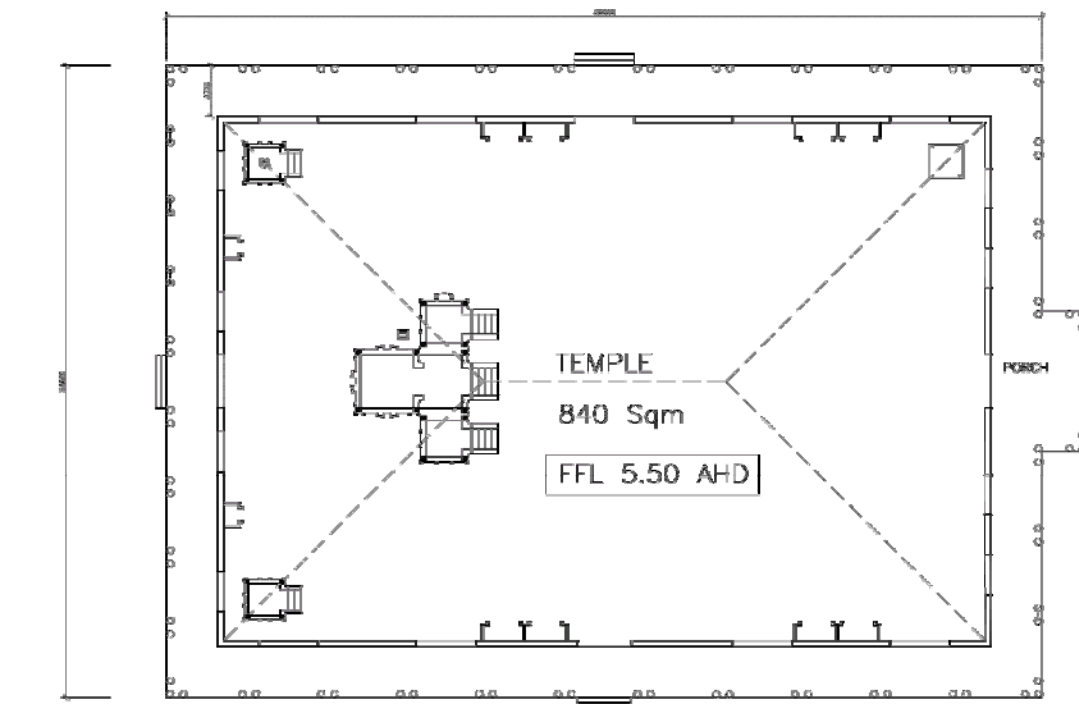
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| CHECKED BY                               | ARK              | Mobile 04 91 01 9889                 |  |
| DATE                                     | 17 June '16      | Email kvt3architects@gmail.com       |  |
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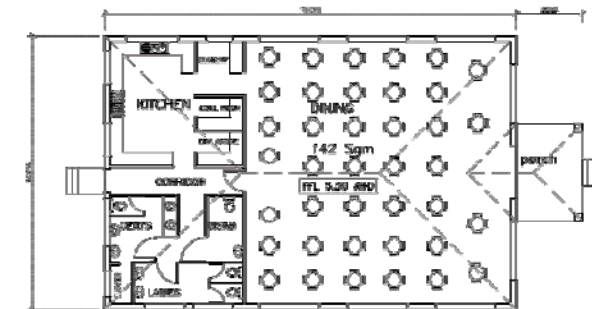


TEMPLE FLOOR PLAN

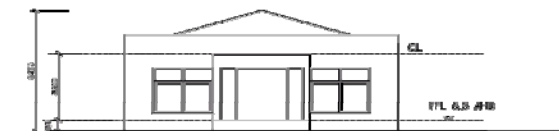


DINING HALL WEST ELEVATION

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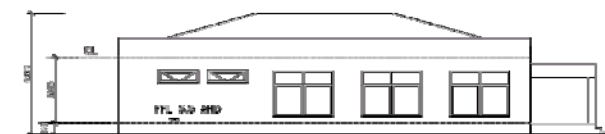
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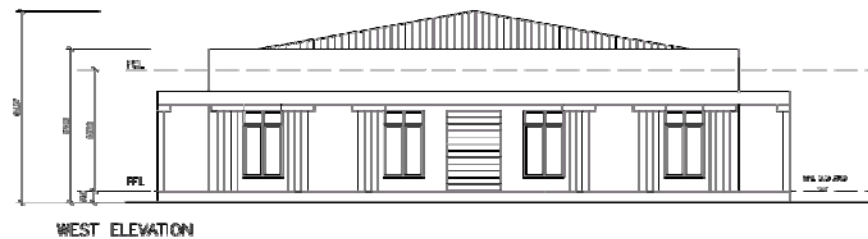


DINING HALL NORTH ELEVATION



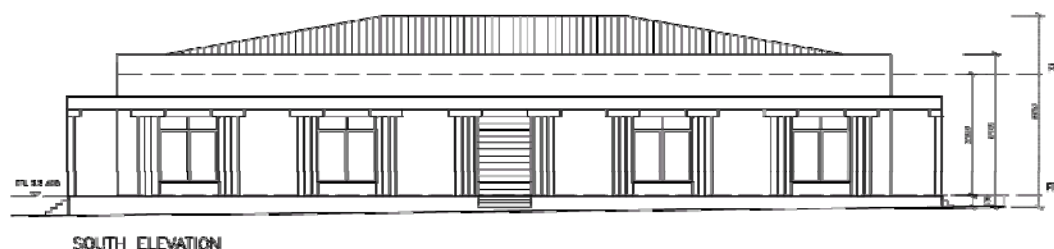
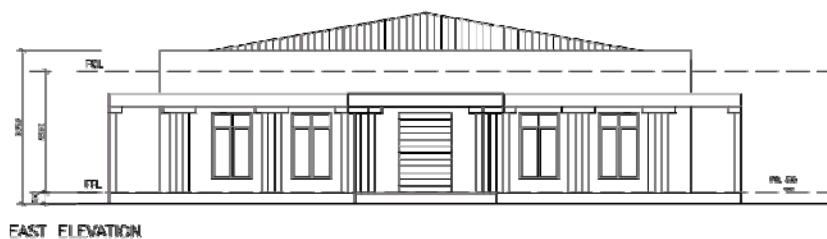
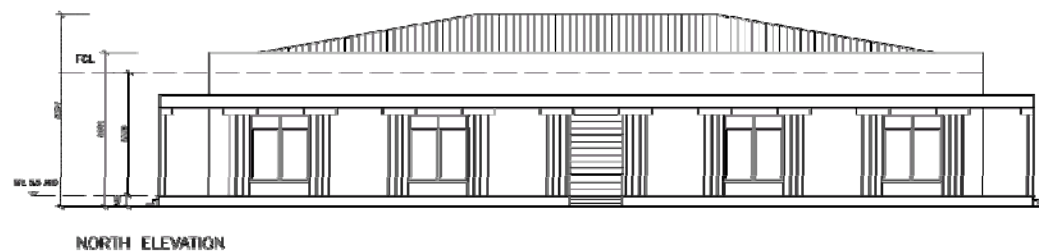
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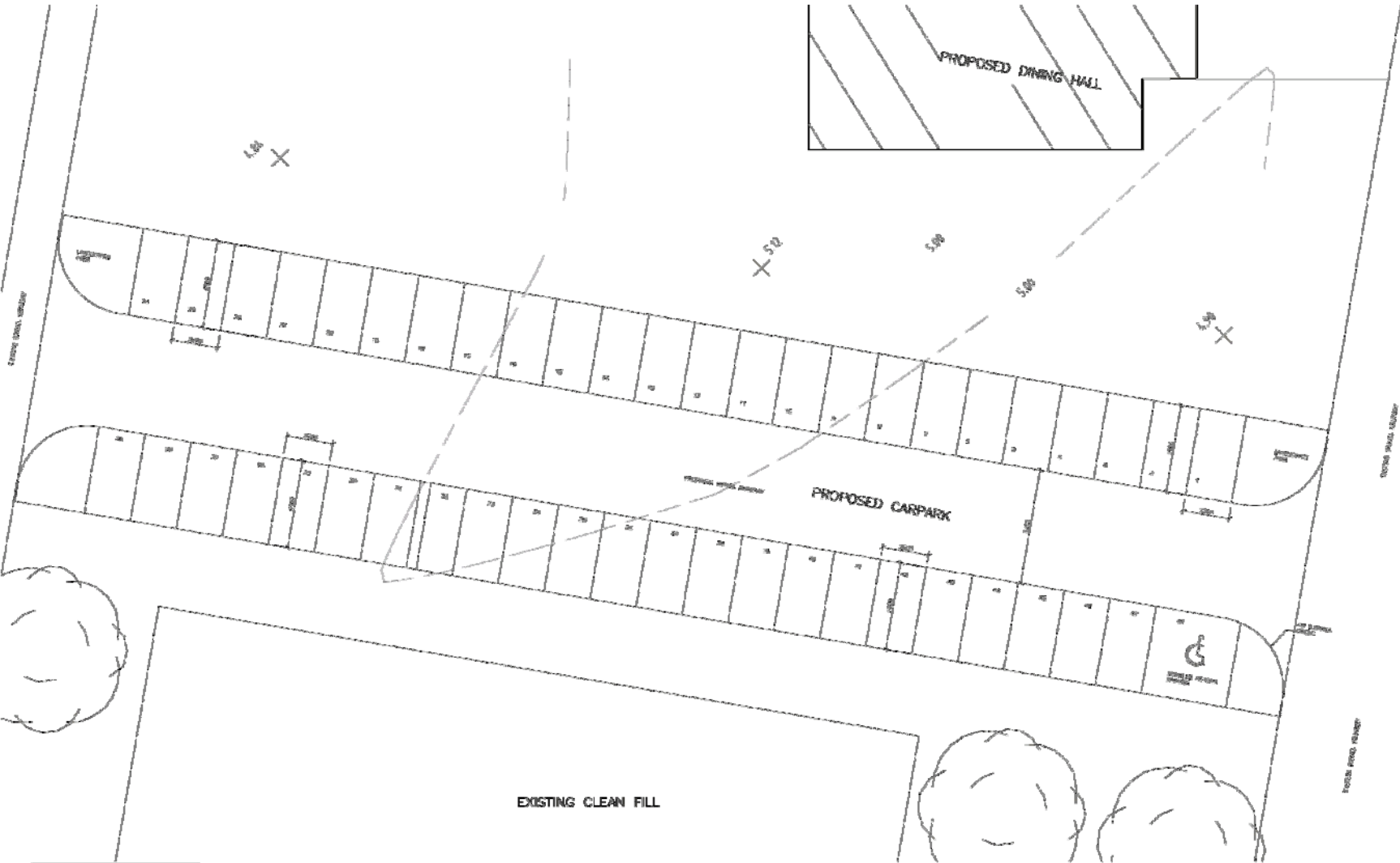
## MATERIAL SCHEDULE

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| ROOF        | COLOURED IRON<br>OVER GALVANIZED STEEL     |
| WALL        | CONCRETE BLOCK<br>BRICK                    |
| WINDOWS     | POWERSHED COLOURED ALUMINIUM<br>WITH GLASS |
| DOORS       | COLOURED<br>ALUMINIUM                      |
| ROOF LINING | COLOURED<br>ALUMINIUM                      |



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|   |  |   |  | — — — — —                                   |  | AT 90 SOLDIERS ROAD          |  |
|   |  |   |  | — — — — —                                   |  | PAKENHAM SOUTH               |  |
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ALL LEVELS ARE TO AHD

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| AMENDMENTS |          |   |     |
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**PROPOSED CARPARK**  
**BUILDINGS AND WORKS**  
**TO USE AS A PLACE OF WORSHIP**  
**AT 90 SOLDIERS ROAD**  
**PAKENHAM SOUTH**



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DATE  
**17 June '16**

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**7 of 9**

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