

ITEM-2 **DA NO. 1178/2009/HA - PLACE OF WORSHIP - LOT 2 DP 263960 - 33 NELSON ROAD, NELSON**

THEME: Balanced Urban Growth

HILLS 2026 OUTCOME/S: BUG 2 Lifestyle options that reflect our natural beauty.

COUNCIL STRATEGY/S: BUG 2.3 Enhance and maintain the Shire's natural and cultural heritage through quality urban planning and development.

LODGEMENT DATE: 12 MARCH 2009

AUTHOR: SENIOR TOWN PLANNER
ADAM DEAN

RESPONSIBLE OFFICER: MANAGER DEVELOPMENT ASSESSMENT
PAUL OSBORNE

BACKGROUND

Applicant: Shree Swaminarayan Temple

Owner: Shree Swaminarayan Temple

Zoning: Rural 1(a)

Area: 20270m²

Existing Development: Free standing shed

MANDATORY REQUIREMENTS

1. BHLEP 2005 – Permissible but unsatisfactory when assessed against clause 13.
2. SREP 20 – Hawkesbury-Nepean River – Complies.
3. BHDCCP Part C Section 1 Rural – Does not comply.
4. BHDCCP Part D Section 1 Parking – Complies.
5. BHDCCP Part D Section 3 Landscaping – Complies.
6. BHDCCP Part D Section 4 On-site Sewage Management Systems – Complies.
7. Section 79C (EP&A Act) – Does not comply.

SUBMISSIONS

1. Exhibition: Not required.
2. Notice Adj Owners: Yes, on two occasions totalling 28 days.
3. Number Advised: 28 (1st notification)
87 (2nd notification)

REASONS FOR REFERRAL TO DAU

1. Submissions received.
2. Variations to BHDCCP Part C Section 1 – Rural.
3. Recommended for refusal.

4. Submissions Received: 1st notification - 140 opposing proposal and 48 supporting the proposal.
2nd notification - 70 opposing proposal and 155 supporting the proposal.

BACKGROUND

On 21 November 2007, prior to the subject application, the applicant lodged DA 932/08/HA for a place of worship at No. 33 Nelson Road, Nelson. Notification of the application generated 73 submissions raising concerns relating to various issues including noise impacts, hours of operation, anticipated numbers, traffic & parking, effluent disposal, impact upon the character of the area, stormwater disposal, building design and view loss.

A Conciliation Conference was held on 27 February 2008 attended by 78 people.

The application was subsequently withdrawn on 19 March 2008.

HISTORY

- 13/06/2007** DA 1462/07/MA for a Shed over a Shipping Container and a Rainwater Tank approved under delegated authority. The shed has been constructed.
- 21/11/2007** DA 932/08/HA Place of Worship lodged.
- 19/03/2008** DA 932/08/HA Place of Worship withdrawn.
- 12/03/2009** Subject application lodged.
- 28/04/2009** Letter sent to applicant raising issues relating to site coverage, hours of operation, attendee numbers, waste management, flooding, site drainage, effluent disposal, disabled access, boundary fencing, motorcycle parking, landscaping, electricity supply and roof colour.
- 04/05/2009** Conciliation Conference held.
- 11/08/2009** Additional plans and reports submitted providing motorcycle parking, additional landscaping along McHale Way frontage, change in roof colour to green, a disabled access report, written request for variation to the site coverage controls contained in BHDCP Part C Section 1 – Rural, additional waste water/ effluent disposal information, disabled access ramp to building entry and an addendum to the previously submitted acoustic report.

THE SITE

The site is known as Lot 2 in DP 263960. It is generally rectangular in shape with a 106m frontage to Nelson Road, a 213m frontage to McHale Way and a site area of 2.027 ha. A 1 in 100 year flood affected drainage depression runs in a north south direction generally through the centre of the site. The land is largely cleared with the exception of a small pocket of Cumberland Plain Woodland along the drainage depression. The land slopes away from the corner of Nelson Road and McHale Way by some 12m in a north west to south east direction towards the drainage line, similarly the land slopes towards the drainage depression from the north east corner of the site, falling some 9m.

Development on surrounding lots comprises single storey dwellings generally with an associated dam and shed. The lots are largely cleared, have an average area of 1.9 Ha and are used as rural residential/ hobby style farms.

PROPOSAL

The proposal is for the construction of a new building for use as a place of worship. The proposal includes the following works:-

- Construction of a place of worship in the north western corner of the site comprising one main level plus a mezzanine level.
- The building is generally rectangular in shape measuring 38.5m x 32m with pre-cast concrete panel walls painted in a range of earthy tones principally grey and brown and a hipped metal deck roof painted dark green. One (1) decorative gold coloured dome is proposed over the main entry on the north eastern side of the building.
- Cut and filling be undertaken to create a pad for the construction of the place of worship and hardstand car park. The cut being up to 3m deep and the fill 1.2m high.
- A disabled access ramp from McHale Way to the main entry.
- The ground floor level contains two prayer halls, dining hall, kitchen, amenities and ancillary storage areas. The mezzanine level contains a library, office, two meeting rooms, a single priest's residence and amenities.
- The building is proposed to be set back 15m from Nelson Road and 15m from McHale Way.
- Hardstand parking area for sixty three (63) cars and two (2) motorcycles located to the east and south of the new building.
- Two (2) x thirty (30) space overflow car parking areas.
- Vehicle access and pedestrian access to McHale Way.
- 1800mm high palisade fencing along the Nelson Road and McHale Way frontages.
- Landscaping to property boundaries and within and around the proposed hardstand parking area.
- Erection of a 1.8m high noise barrier 6m to the south of the southern most overflow car park.

The maximum persons attending the site at anytime will be 300. The applicant has provided a schedule of activities which details the typical usage of the facility and gives 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 proposed hours of operation of the facility are:-

Monday to Sunday 7am – 9:30pm.

It is expected that people attending the place of worship would typically arrive and depart the premises within 30 minutes preceding/ following each scheduled activity. The effect of this being that arrivals would commence at 6:30am and departures would conclude at 10pm.

Proposed Schedule of Activities

ACTIVITY	DURATION	DAYS	TIMES	MAXIMUM ATTENDEES
Weekend Worship (4/ week)	4 hours	Saturday Sunday	7am – 11am & 5:30pm – 9:30pm 7am – 11am & 5:30pm – 9:30pm	50 150 50 200
Weekday Worship (10/ week)	3 – 4 hours	Monday to Friday	7am – 10am 5:30pm – 9:30pm	30 50 Monday – Thursday & 60 Friday
Weddings (Av. 1/ month)	1.5 hours	Saturday or Sunday	10:00am – 11:30am	100
Festivals (10/ year)	13 hours	Various	8:00am – 9:30pm	300
Seminars (1/ month) & Meetings (as required)	10 hours	Generally Monday to Friday	8:00am – 6:00pm	50
Library Use	Continuous	As required	Between operational hours	10
Office Use	Continuous	10 hours	Daily	10

The applicant has indicated that the facility will serve the worship and community needs of 35 families within a 5 kilometre radius of the proposed facility. It may be noted that the

Australian Bureau of Statistics Census 2006 figures indicate that within the Hills LGA there was a total of 3765 persons who indicated a religious affiliation with the Hindu faith.

CONCILIATION CONFERENCE

As a result of the number of submissions received, a Conciliation Conference was held on 4 May 2009. A summary of the matters raised is outlined below:-

- Noise & Anticipated Numbers
- Vehicle Traffic & Parking
- Effluent Disposal
- Character of the Area
- Building Design & Location
- Stormwater & Flooding

As a result of issues raised at the Conciliation Conference the applicant amended the application providing:-

- Clarification of hours of operation and attendee numbers
- Provision of motorcycle parking and redesign of hardstand car park
- Additional wastewater information
- Roof colour of building changed to green
- Additional landscaping along McHale Way
- Drainage/ flood assessment report
- Revised stormwater and architectural drawings
- Disabled access report
- Additional acoustic/ noise information

ISSUES FOR CONSIDERATION

1. Issues Raised in Submissions

The application was originally notified for a period of fourteen (14) days. One hundred and forty (140) submissions were received, comprising ninety two (92) objecting to the development, and forty eight (48) supporting the development. Following the Conciliation Conference, the amended plans and details were notified for a period of fourteen (14) days and two hundred and twenty five (225) submissions were received comprising seventy (70) objecting to the development and one hundred and fifty five (155) supporting the development. The table below addresses the objections received during both notification periods.

ISSUE/OBJECTION	COMMENT	OUTCOME
The hours of operation are too long.	The application provides that activities will be carried out between the hours of 7am – 9:30pm seven (7) days a week. It is expected that people attending the place of worship would typically arrive and depart within 30 minutes preceding/ following each scheduled activity. The effect of this being that arrivals would commence at 6:30am and departures would conclude at 10pm. The proposed hours of operation will unacceptably impact upon adjoining land uses in the surrounding area.	This issue warrants refusal of the application.

The acoustic report is based on 200 worshippers yet it also indicates that 300 worshippers will be on site for festivals ten (10) times per year. The noise report should be based on 300 people.	The proposal has been assessed by Council's Environmental Protection Department who advise that amplified instruments set the upper noise limit, not the number of worshippers. The acoustic report does not require amendment in this regard.	Issue addressed.
The acoustic report assesses the development against the Industrial Noise Policy (INP). Is the INP the correct policy?	The INP is the correct policy.	Issue addressed.
Amplified music/instruments in the morning and late at night will impact upon the amenity of the area.	The proposal has been assessed by Council's Environmental Protection Department who advise that noise at surrounding premises will comply with the INP.	Issue addressed.
Has traffic noise and general car park noise been considered?	Traffic noise and general car park noise have been considered in the acoustic assessment.	Issue addressed.
The 2007 acoustic report said the place of worship would exceed background noise, however the 2009 report said it won't.	The current proposal is different to the previous (2007) proposal particularly in regards to the design of the building and car park.	Issue addressed.
Will car doors closing and people talking in the car park heard?	Yes, however just because car doors closing and people talking can be heard doesn't mean the noise is offensive.	Issue addressed.
Will windows in the building be able to be opened?	Noise mitigation measures provided in the acoustic assessment require windows and doors to remain closed.	Issue addressed.
Has generator noise been taken into account?	Generator noise has been considered in the acoustic report.	Issue addressed.
The acoustic assessment says up to 950 worshippers may attend the site each week yet the Statement of Environmental Effects says 860 worshippers + 300 (10 x per year). The reports are inconsistent.	This matter has been clarified in the amended information received. The maximum number of attendees are detailed in the <i>Proposed Schedule of Activities</i> above.	Issue addressed.
Every Saturday and Sunday (the quietest nights of the week) there will be 200 and sometimes 300 people on the site and leaving as late at 10pm.	The intensity of the use of the site including the proposed hours of operation, number of attendees and frequency of activities will unacceptably impact upon the character of the area.	This issue warrants refusal of the application.

How many worshippers live within 5km of the proposal?	The applicant has indicated that the facility will serve the worship and community needs of 35 families within a 5 kilometre radius of the proposed facility. This advice reflects the submissions received in response to the notification of the application.	Issue addressed.
If the development is approved then an application to increase the hours of operation will be made. Will Council consider the possibility of the hours being extended as part of this application?	If the current application were approved, then any future application to change the hours of operation will be considered following lodgement. An extension to the hours of operation does not form part of this application and cannot be considered.	Issue addressed.
The 64 space car park is not large enough for 200 worshippers on a Sunday. The traffic report states that on a Sunday 200 people will generate 70 cars. This will mean the overflow car park is used every weekend, the cars will drag mud out onto the road creating a dangerous situation.	Council's BHDCP Part D Section 1 Parking provides that 60 car parking spaces is sufficient for 300 worshippers. The hardstand car park provides 63 car parking spaces. Accordingly the proposal complies with Council's adopted policy. The figure of 70 cars noted in the traffic report represents the worst case scenario, i.e. maximum attendance of 200 people onsite all at the same time. Should this occur then the overflow car parking areas would be utilised. If the application were recommended for approval then appropriate conditions could be imposed regarding the design and construction of the overflow car park and access driveway to mitigate mud being dragged onto McHale Way.	Issue addressed.
The intersection of Old Pitt Town Rd, Nelson Rd and Mason Rd is an RTA "Black Spot". A full redesign of this intersection and the McHale Way and Nelson Road intersection should be undertaken. The works should include overtaking lanes, footpaths, kerb and gutter.	The intersection of Old Pitt Town Rd, Nelson Rd and Mason Rd is not classified as a "Black Spot" under the criteria specified by the Roads and Traffic Authority. There have been a number of run off carriageway incidents for southbound vehicles as a result of the bend in the alignment of Old Pitt Town Rd at the intersection, however Council have implemented remedial treatments such as transverse linemarking and improved advanced warning signposting including advisory 65km/hr speed signs to minimize such incidents.	Issue addressed.
McHale Way becomes blocked when a garage sale occurs. It will be blocked if the place of worship is approved.	Sufficient parking is available within the proposed on-site car parking areas.	Issue addressed.

Can Council staff liaise with the NSW Police regarding the area's traffic accident history?	Council's Traffic Section has liaised with NSW Police Force regarding the area's traffic accident history as part of their assessment.	Issue addressed.
Will Council require the upgrading of the surrounding road network? The upgrade should not be funded by rate payers.	If the application were recommended for approval conditions requiring kerb and gutter and a footpath along McHale Way would be required to be provided at the applicant's expense.	Issue addressed.
The roads in the area are used as footpaths. The safety of these road users will be in jeopardy.	The proposed increase in traffic within surrounding streets will not significantly increase the risk to pedestrians in McHale Way and Nelson Road. In this regard it is noted that: <ul style="list-style-type: none"> <input type="checkbox"/> the increase in vehicle movements in Nelson Road will be negligible at 0.4% per day. <input type="checkbox"/> A footpath is required to be provided along the McHale Way frontage of the site for pedestrians (where vehicle movements will be higher). <input type="checkbox"/> Vehicle speeds will be low in McHale Way when compared to surrounding streets. <input type="checkbox"/> Pedestrians using McHale Way would generally be local residents and be aware of the existence of the place of worship and modify their road use behaviour accordingly. 	Issue addressed.
No standing or no parking signs should be placed along the frontages of the property.	Sufficient on site parking is provided for attendees. On street parking should not be required. If the development were approved and a need for no standing or no parking signs did arise, signage could be erected at that time.	Issue addressed.
The bunds around the effluent disposal area will direct water onto adjoining properties.	The bunds are similar to a speed hump. The bunds proposed are not designed to direct water onto adjoining properties but divert clean water around the effluent disposal area. This is standard practice.	Issue addressed.
The traffic report shows at figure 4, "Give Way" signs where there aren't any.	Council's Traffic Section is aware of the oversight with respect to the key provided in Figure 4. The key should have two symbols "Give Way" and "Give Way priority". The latter symbol should have been used at those intersections where signposting does not exist. The <i>Traffic Comments</i> later in this report have been prepared recognising the correct location of Give Way signs.	Issue addressed.

Will there be a backup source of power? The area frequently experiences blackouts.	A backup generator is proposed.	Issue addressed.
The topsoil is not deep enough for subsoil effluent disposal.	The depth required by Australian Standard 1547:2000 for subsoil effluent disposal is available onsite.	Issue addressed.
The community hall in Nelson Road, Box Hill had a problem with the septic overflowing and a pump out system had to be installed.	This is not relevant to the subject application. Onsite wastewater pump out systems are looked at on a case by case basis.	Issue addressed.
The wastewater study did not take any soil samples from the site.	Soil samples were taken from the site and analysed as part of the Soil Investigation of Wastewater Report.	Issue addressed.
The size of the wastewater tanks is not detailed in the application.	Four wastewater tanks approximately 8800 litres in size are proposed. There is also a wet weather storage tank with a minimum size of 41,000 litres.	Issue addressed.
The wastewater study relies on a test model created for properties within Blacktown and states there is no guarantee that 33 Nelson Road fits these criteria.	This statement is inaccurate, reference is made to the Blacktown Landscape Group for the soil properties not measured in the assessment. All soil properties measured are relevant and sufficient.	Issue addressed.
The wet weather storage tank only holds 10 days of effluent. If it rains for more than 10 days what will happen to the excess effluent.	Should it rain for more than 10 days then the system will be required to be pumped out by a licensed contractor. If the application were recommended for approval this requirement would be dealt with by a condition of consent.	Issue addressed.
The wastewater report says that it doesn't take into account rainfall measurements for the actual site. How then can the report be a true representation for this site?	The report is not required to provide historical rainfall measurements for the actual site, no such data exists. It is standard practice that Richmond data is used in the Nelson area.	Issue addressed.
The reserve area does not take into account the gradient of the land. There aren't any physical barriers to contain the effluent within the reserve area.	Irrigation areas are calculated such that effluent does not extend beyond the boundary of the area allocated. Buffer distances used in the application are as per the Australian Standard and relevant guidelines have also been complied with.	Issue addressed.
The height and style of the proposal is not in keeping with the local built form. The visual impact is greater than that of most residential	The built form is not in keeping with the bulk or scale of surrounding built form. The development is spread out along almost the entire length of both road frontages with the main building at the highest point on the site. This has the	This issue warrants refusal of the application.

<p>dwellings.</p>	<p>effect of heightening the visibility of the development in both the streetscape and when viewed from adjoining land and nearby land, particularly down slope. The design does not respect or satisfactorily integrate with the existing land form resulting in an unexpected and unusual form of development.</p>	
<p>When it rains large volumes of water flow onto and off the site. Water flows onto the site via the McHale Way culvert and road surface.</p>	<p>The drainage (flooding) assessment report submitted with the application considers existing overland flows in conjunction with the proposed development. The report concludes that if built the development will not change the pre development flooding impacts either upstream or downstream of the site.</p>	<p>Issue addressed.</p>
<p>Will the floodwater impact on effluent disposal area?</p>	<p>No. If the development were to be built, the 1 in 100 year flood affected portion of the land would not impact upon the effluent disposal areas.</p>	<p>Issue addressed.</p>
<p>Increased stormwater runoff will have impacts upstream and downstream of the site.</p>	<p>On-site-detention is proposed as part of the application. The pre and post development stormwater flows will not exceed the predevelopment flows.</p>	<p>Issue addressed.</p>
<p>The proposal does not benefit the immediate community, the congregation do not live within the Shire.</p>	<p>This issue is not supported by any evidence in the submissions. The applicant has indicated that the facility will serve the worship and community needs of 35 families within a 5 kilometre radius of the proposed facility. It may be noted that the Australian Bureau of Statistics Census 2006 figures indicated that within the Hills LGA there is a total of 3765 persons who indicated a religious affiliation with the Hindu faith.</p>	<p>Issue addressed.</p>
<p>External and internal lighting including car headlights will impact on neighbours and change the character of the area.</p>	<p>The internal and external lighting of the building until 10pm every evening and the lighting impacts from vehicle movements will contribute to the deterioration of the character of the surrounding area.</p>	<p>This issue contributes to warranting refusal of the application. However, the impact arising from headlights does not warrant refusal in its own right.</p>
<p>The site is not serviced by town water or a reliable electricity supply.</p>	<p>The proposal provides for sufficient rainwater tank storage. Integral Energy has reviewed the proposal advising that if approved the applicant would be required to augment the existing electricity system.</p>	<p>Issue addressed.</p>

A search of the internet indicates that the Hindu faith has up to 72 festivals per year.	The proposal seeks consent for 10 festivals. If the application were recommended for approval a condition could be imposed restricting the maximum number of festivals to 10.	Issue addressed.
Will a child proof fence be erected around the site to stop children running onto the road?	A 1.8m high palisade fence is proposed along the McHale Way and Nelson Road frontages of the site.	Issue addressed.
What plans have been made for bushfire?	A bushfire hazard assessment report was submitted with the application. The report makes several recommendations including a dedicated 20,000 litre water tank being provided for fire fighting purposes. The report has been reviewed by the NSW Rural Fire Service and been found to be satisfactory.	Issue addressed.
The proposal will result in a decrease in the value of adjoining and nearby land.	No evidence has been provided to substantiate that property values will be reduced as a result of this development.	Issue addressed.
The proposal doesn't meet the LEP Objectives for the Rural 1(a) zone.	The proposal is contrary to several objectives of the Rural 1(a) zone. This is discussed later in this report.	This issue warrants refusal of the application.
What is the proposed site coverage?	5693m ² which does not comply with the maximum 2500m ² prescribed by the BHDGP Part C Section 1 Rural.	This issue warrants refusal of the application.

Submissions received in support of the application identified benefits of the proposal including:-

- Children of the Hindu faith will be able to identify with and learn more about their cultural roots.
- The development will satisfy the worship needs of the nearby Indian community.
- The development will enhance the cultural life of the surrounding community and raise awareness of the Hindu faith.

2. Compliance with the Baulkham Hills Local Environmental Plan 2005 (BHLEP 2005)

(i) Permissibility of Use

The proposed use is defined within the BHLEP 2005 as a place of worship. A place of worship meaning:-

"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"

The subject site is zoned Rural 1 (a) pursuant to clause 13 of the BHLEP 2005 and a places of worship is permissible in the zone with consent.

(ii) Clause 13 Zone Objectives and Zoning Controls

Clause 13(2) provides:-

"(2) *Except where otherwise provided by this plan, consent must not be granted for development unless the consent authority is satisfied that the proposed development:*

(b) is not contrary to achieving the objectives of the zone within which it will be carried out."

Comment:

The proposed development is contrary to objectives (d) and (e) of the Rural 1 (a) zone:-

"(d) *to ensure that development is designed and carried out having regard to adjoining land uses and the natural environment"*

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

The above objectives require the design and operation of the development to be assessed against *adjoining land uses, the natural environment and the rural character of the surrounding area.*

To give full meaning to clause 13(2), requires a consideration of firstly, what is the *surrounding area*; secondly, what is the *rural character of the /are the adjoining land uses* of the surrounding area; thirdly, what is the *natural environment*; and fourthly, has the proposed development been designed and will it be carried out having regard to the former?

What is the surrounding area?

In *The Qur'anic Society v Camden Council*, [2009] NSWLEC 1171 (2 June 2009), Brown G T made the following relevant comment:-.

"34 *The locality could be generally described as the visual catchment of the site and the setting in which any development on the site would be viewed and any comparison made with the adjoining and surrounding area. Any comparison with more distant or less visible areas becomes clearly less important when [the objectives referred to above] require a comparison to be made between the development and the locality."*

It is considered that *locality* and *surrounding area* are interchangeable terms.

Given the above and considering matters such as topography, vegetation and built form, in this instance the *surrounding area* can be considered to be the area generally within a 300m radius of the site. This area comprises some 14 lots (excluding the subject site).

What is the rural character of the surrounding area? What are the adjoining land uses?

The character of the surrounding area is small scale rural residential/ hobby style farms with little built form beyond scattered farm sheds, dams and single storey family homes. The fourteen lots making up the *surrounding area* can be summarised as follows:-

- a) 9 single storey dwellings, 1 two storey dwelling and 4 vacant.
- b) All the lots containing a dwelling also contain an ancillary dam and detached shed.
- c) The lots are typically cleared and have an average area of 1.9 Ha.
- d) The average dwelling front setback is 49.5m.
- e) The area is exclusively used for rural residential purposes.

The existing traffic movements in McHale Way comprise 10 vehicles in the peak hour and 100 vehicles per day.

On 23 October 2009 the NSW Department of Planning (DoP) declared in the Government Gazette that the Box Hill and Box Hill Industrial Precincts had been released for urban development. These Precincts form part of the North West Growth Centre. The location of the Precincts and their proximity to the subject development are shown at Attachment 8. The subject site is adjacent to the Box Hill Precinct.

The next step is the Precinct Planning Process. The Process is scheduled to commence in 2010 and will involve the DoP and Council looking into the future zoning and development controls for the Precincts. This will require extensive investigation ranging from Aboriginal and European heritage to land capability, contamination, noise, odour, transport, biodiversity, bushfire, water cycle management, economics and employment, and community facilities and open space.

While there is a high likelihood that the Precincts will rezoned and developed in the future, it has not yet been established when this will occur or what form of urban development will be established.

What is the natural environment?

Approximately 100m to the north of the subject site is a ridgeline running generally east west. The ridgeline is generally identified by Mason Road and Nelson Road and forms the northernmost boundary of the *surrounding area*. The intersection of Mason and Nelson Roads marks the point where the land gradually and consistently slopes away at 1:10 to both the south east and south west.

The *surrounding area* contains seven pockets of remnant Cumberland Plain Woodland averaging 4000m² in area. The smallest of the pockets is located on the subject site and has an area of 1200m². With the exception of the Cumberland Plain Woodland, other little vegetation exists.

Findings - Has the proposed development been designed, and will it be carried out, having regard to adjoining land uses, the natural environment and the rural character of the surrounding area?

The development is a large bulky building having a footprint 38.5m x 32m, an external wall height of 5.9m and a ridgeline up to 8.2m above existing ground level. The building is surrounded by ancillary structures including a hardstand carpark, pathways, disabled ramps and two overflow car parks which in total occupy an area of 5,693m².

The main building is located at the highest point on the site and is setback 15m from both street frontages while ancillary structures such as car parking areas and access ramps are as close as 1m from the property boundary. These works require significant cut and fill and associated retaining walls.

The built form is not in keeping with the bulk or scale of surrounding built form. The development (factoring in the built form and surrounding car parks) is spread out along

almost the entire length of both road frontages with the main building at the highest point on the site. This has the effect of heightening the visibility of the development in both the streetscape and when viewed from adjoining land and nearby land, particularly down slope. The design does not respect or satisfactorily integrate with the existing land form resulting in an unexpected and unusual form of development.

The proposed hours of operation, attendee numbers and frequency of use point to a development which if approved would not operate in a manner compatible with adjoining land uses.

The proposed increase in traffic movements in McHale Way particularly on Saturday and Sunday evenings and during festivals are detailed in the table below. The percentage increases in traffic movements will significantly contribute to the deterioration of the character of the surrounding area.

Traffic Movements	Existing	Proposed Increase	Proposed Totals	% Increase
<i>Saturday Evening</i>				
Vehicle Movements				
Peak Hour	10	50	60	500%
Vehicles Per Day	100	100	200	100%
<i>Sunday Evening</i>				
Vehicle Movements				
Peak Hour	10	67	77	670%
Vehicles Per Day	100	134	234	134%
<i>Festivals</i>				
Vehicle Movements				
Peak Hour	10	100	110	1000%
Vehicles Per Day	100	200	300	200%

Because of the above the proposal will contrast markedly with the existing predominantly quiet, peaceful, low scale and somewhat undeveloped rural character.

Is the proposed development contrary to achieving the zone objectives?

In terms of clause 13(2)(b), the proposed development is contrary to objectives (d) and (e) of the Rural 1(a) zone in that the proposed development is not a compatible form of development. It has not been designed having regard to and will unacceptably impact on adjoining land uses, the natural environment and the rural character of the surrounding area.

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

The proposal is affected by the provisions of the Sydney Regional Environmental Plan No. 20 – Hawkesbury Nepean River (SREP No. 20). These provisions address matters such as water quality, general planning considerations, and recommended strategies and controls. The proposal is considered to be consistent with the aims and objectives of SREP No. 20. Given the location of the site, it is not considered that the proposal will adversely impact upon the riverine quality of the Hawkesbury Nepean River.

4. Compliance with Baulkham Hills Development Control Plan

The proposal has been assessed against the provisions of the Baulkham Hills Development Control Plan (BHDCP) particularly:-

- Part C Section 1 Rural
- Part D Section 3 Landscaping
- Part D Section 1 Parking
- Part D Section 4 On-site Sewage Management Systems

The proposed development achieves compliance with the relevant requirements of the above with the exception of the following:

DEVELOPMENT STANDARD	BHDCP Part C SECTION 1 RURAL REQUIREMENTS	PROPOSED DEVELOPMENT	COMPLIANCE
3.2 (a) Site Coverage	Maximum 2500m ²	5693m ² (28% of the site area)	This issue warrants refusal of the application.

Section 3.2 (a) of the BHDCP Part C Section 1 Rural provides that the site coverage requirement for properties having an area between 2 – 10 hectares shall be "15% of the site area; or 2500m², whichever is the lesser." "The site coverage includes areas containing dwellings, outbuildings, ancillary items (such as pools, manoeuvring areas, garages etc) and effluent disposal areas."

The site area is 2.027 hectares and as such a maximum site coverage of 2500m² applies.

Comment:

The application proposes a site coverage of 5693m² comprising:-

DESCRIPTION	AREA (m ²)
Site Area	20,267.5
Place of Worship, Hardstand Car Park and Pathways	3840.4
Waste Water Disposal Area	1776.0
Storage Container	76.8
Proposed Site Coverage	5693.2 (28%)

The proposed site coverage is 3193.2m² larger or 2.28 times greater than the maximum permitted.

The aim of the site coverage control extends to limiting the scale and intensity of development within the Rural 1(a) zone in an effort to maintain rural character. To this end the BHDCP deliberately sets a specific maximum of 2500m².

The proposed site coverage is far in excess of any other in the surrounding area and would contribute to the deterioration of the rural character, natural environment and enjoyment of adjoining land.

Accordingly the variation is considered unacceptable from an environmental planning viewpoint.

5. Impacts on Rural Residential Amenity

The intensity of the proposal is considered excessive given the:-

- Proposed site coverage is 5693.2m² which is 3193.2m² larger or 2.28 times greater than the maximum 2500m² permitted,
- Proposed hours of operation are 6:30am – 10:00pm seven (7) days per week,
- Number and frequency of activities,
- Bulk and scale,
- Boundary setbacks to the building and car parking areas
- Increase in motor vehicle movements particularly in McHale Way and
- Lighting impacts from the internal and external lighting of the building and motor vehicles until 10pm every evening.

6. Social Impact Assessment

The application has been reviewed having regard to the provisions of *'Social Impact Assessment: Provisions for Local Government'* published in 1995 which was an initiative of the NSW Government's Office on Social Policy and the Local Government and Shires Association of NSW. This document states that social impact may be defined as:-

"significant events experienced by people as changes in one or all of the following:-

- 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".*

The document also lists types of developments that may have a significant social impact. Within the list, 'large cultural or religious centres' are specified. Further, the document specifies the role of notification and consultation with the public, that the level of public reaction to a proposal can indicate the likely social impacts of the development, and additionally the function of conditions of consent to mitigate any adverse social impacts.

The following table uses the impact checklist tool in the guidelines to assess social impact.

IMPACT	LIKELY TO RESULT FROM DEVELOPMENT	COMMENT
Demographic Change: <input type="checkbox"/> Changing community needs and expectations <input type="checkbox"/> Significant population changes	The application is a demonstration of the multi-cultural make up of the population and the worship needs of the variety of religions practiced in the Shire. The applicant has indicated that worshippers reside both within and outside the Shire. This situation is not uncommon in other places of worship. The 2006 ABS Census Data shows only a small proportion of the population of the Shire indicated that they practice the Hindu faith. The proposal is not likely to result in significant population change (see comment below on housing).	This issue does not warrant refusal of the application.

<p>Accommodation and housing:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Low-income housing. <input type="checkbox"/> Affordable housing. <input type="checkbox"/> Housing for special needs groups. <input type="checkbox"/> Housing for older people and people with a disability. <input type="checkbox"/> Servicing and management of housing for older people and people with a disability. 	<p>The development does not have any significant impact on housing. The issue of whether worshippers will be attracted to reside in the vicinity of the facility if approved is not a matter for consideration arising from this development because there are no restrictions on place of residence. Further housing development in Nelson is restricted by zoning, minimum allotment size and services.</p>	<p>This issue does not warrant refusal of the application.</p>
<p>Needs of Older People:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Access issues <input type="checkbox"/> Availability of support services 	<p>The proposal does not alter the access needs or restrict the availability of support services for older persons. The proposal is designed to accommodate the needs of worshippers of the Hindu faith.</p>	<p>This issue does not warrant refusal of the application.</p>
<p>Needs of People with a Disability:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Access issues <input type="checkbox"/> Signs <input type="checkbox"/> Availability of support services. 	<p>The proposal does not impact on the access needs or restrict the availability of people with a disability. The proposal is designed to accommodate the needs of worshippers of the Hindu faith. The proposal will be required to provide access for aged and disabled persons.</p>	<p>This issue does not warrant refusal of the application. Appropriate conditions are proposed.</p>
<p>Needs of Younger People:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Child care issues <input type="checkbox"/> Children’s needs <input type="checkbox"/> Youth 	<p>The proposal supports the needs of younger people, particularly those of the Hindu faith.</p>	<p>This issue does not warrant refusal of the application.</p>
<p>Health impacts:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Health effects of water and air quality <input type="checkbox"/> Toxic wastes and hazardous materials 	<p>The proposal is likely to have only minimal impact on water and air quality. If the application were recommended for approval then conditions would be imposed to ensure all water run-off and effluent is managed by an appropriate drainage and on-site disposal system. This would ensure adjoining properties are not impacted by the development. Air quality impacts can be expected to occur from the increase in motor vehicles accessing the site. These impacts are acceptable. The proposal does not produce any toxic wastes or hazardous materials.</p>	<p>This issue does not warrant refusal of the application.</p>

<p>Cultural issues:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Needs of people of non-English speaking background. <input type="checkbox"/> Aboriginal issues <input type="checkbox"/> Religious needs <input type="checkbox"/> Other cultural issues. 	<p>The applicant has indicated that worshippers reside both within and outside the Shire. The worshippers may come from non-English speaking backgrounds. There are no aboriginal issues or impacts arising from the development. The proposal is designed to accommodate the needs of worshippers of the Hindu faith.</p>	<p>This issue does not warrant refusal of the application.</p>
<p>Neighbourhood and community:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Neighbourhood safety <input type="checkbox"/> Community identity <input type="checkbox"/> Community severance <input type="checkbox"/> Community cohesion 	<p>The proposal is not likely to pose a threat to neighbourhood safety. The proposal as a single site development and will not alter the community identity or cause community severance. In physical terms the proposal will not alienate publicly accessible land being located on a parcel of land under private ownership. Access to public and private facilities in the Nelson/ Box Hill area will be unaffected by the proposal.</p> <p>The proposal is not likely to be used by all of the Nelson or Shire residents. Its purpose is rather to serve the worship and community meeting needs of part of the community and which will involve worshippers from both within and outside the Shire. There are similar places of worship elsewhere in the Shire which cater for only sections of the community.</p>	<p>This issue does not warrant refusal of the application.</p>
<p>Facility requirements:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Need for community services and facilities <input type="checkbox"/> Recreation needs <input type="checkbox"/> State Government provided facilities – education and health. 	<p>The proposal does not pose a requirement for additional community services and facilities, recreation needs or State provided, owned or managed facilities.</p>	<p>This issue does not warrant refusal of the application.</p>
<p>Economic issues:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Redundant facilities and possible reuse <input type="checkbox"/> Effects of similar types of developments in the locality. 	<p>The proposed development may generate short-term benefits in terms of employment and business during construction, if approved. In the longer term no adverse impacts are anticipated on employment and business development.</p>	<p>This issue does not warrant refusal of the application.</p>

<p>Cumulative Impacts:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Redundant facilities and possible reuse <input type="checkbox"/> Effects of similar types of developments in the locality 	<p>The proposal has no impact on redundant facilities and does not propose reuse of any existing facility. There are no other known places of worship for the Hindu faith in the locality which would accommodate the needs of the congregation. There are however a wide variety of religious faiths practiced by the community in the Shire. The experience in general with places of worship in the past has been that once approved some have attracted more worshippers than originally anticipated which can result in traffic and parking issues. These issues could be managed by conditions, which can be enforced, if breached in accordance with both the provisions of the Environmental Planning & Assessment Act and Local Government Act.</p>	<p>This issue does not warrant refusal of the application.</p>
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Having regard to the definition of social impact outlined above and comments thereafter, it is considered that the proposal will not adversely impact upon the area from a social viewpoint. The proposal will not adversely impact upon the way of life, the cultural pursuits of individuals or community of the area. The proposal is confined to a site area and provides adequate car parking, landscaping and ancillary features for the use of the building for a place of worship.

BUILDING CONTROL COMMENTS

No objection is raised to the proposal subject to conditions.

ENGINEERING COMMENTS

No objection is raised to the proposal subject to conditions relating to various matters including site drainage, flooding, vehicular access & parking and footpaving.

TRAFFIC COMMENTS

(a) **Existing Traffic Environment**

This application proposes to construct a place of worship with a potential seating capacity of up to 300 persons at 33 Nelson Road, Nelson. A traffic impact statement dated 30 October 2007 has been prepared by Varga Traffic Planning in support of the application.

The site has a 106m road frontage to Nelson Road and a 213m road frontage to McHale Way.

Nelson Road is a two lane rural road with a 6.0m wide sealed carriageway and 2.0m wide unsealed shoulders providing direct vehicular access to numerous rural/residential properties. It generally runs in an north/south direction connecting with the State Arterial of Windsor Road at its southern extremity and terminating at its northern extremity.

Nelson Road also intersects with Edwards Road approximately 1.5km north of the signalized Windsor Road intersection providing an alternate through traffic link between Annangrove and the northern precincts of Kellyville.

This connectivity and segmented nature results in Nelson Road performing a varied function within the overall road hierarchy in the area. As an indication the south/western section of Nelson Road between Windsor Road and Edwards Road and the central section between Edwards Road and Old Pitt Town Road typically carries in excess of 300 peak hour or 3000 vehicle movements per day. This is verified by the traffic volume counts carried out by the consultant revealing that the central section of Nelson Road sustains approximately 320 peak hour vehicle movements, whereas the northern terminating section of Nelson Road primarily provides access to approx 100 rural/residential properties. Whilst no specific count data is available it would be subject to around 100 peak hour vehicle movements and performs as a local rural road.

Baulkham Hills LEP 2005 nominates the intending surrounding landuse remaining as a Rural 1(a) zoning with no indication for potential road improvement works in the immediate vicinity. However the southern side of Annangrove Road for which Nelson and Edwards Road provides a connection has been identified as future Light Industrial with a 4(b) zoning.

There is also no direct statement concerning the environmental capacity of Nelson Road within the Residential Development and Traffic Study undertaken by TAR Technologies in August 2005 due to the Rural 1(a) zoning of the surrounding land.

(b) **Proposed Development - Traffic Generation**

Primary access to the site is proposed off the 213m wide McHale Way frontage via a single 6m wide two way driveway located approximately 70m from the intersection of Nelson Road.

The Roads and Traffic Authority Guide to Traffic Generating Developments does not nominate a specific traffic generation rate for places of worship however suggests that surveys be undertaken of the existing places of worship operations in order to predict possible future traffic generation and travel modes.

Similar types of facilities to the one proposed generally encounter car occupancy rates of around 3 persons per vehicle. Applying the above rates to a 200 person congregation as occurs during the Sunday afternoon peak, results in an expected traffic generation in the order of 67 peak hour trips. Assuming an equal directional split of 50% approaching and departing the site from a northerly and southerly direction along Nelson Road, it can be deduced that 33 vehicles will be turning right from Nelson Road into McHale Way and 33 turning left.

(i) **Cumulative Impact in Locality – Nelson Road and McHale Way**

Traffic Movements	Existing	Proposed Increase	Proposed Totals	% Increase
Nelson Road				
Vehicle Movements				
Peak Hour	320	67	387	21%
Vehicles Per Day	3200	134	3334	4%

McHale Way

Vehicle Movements

Peak Hour	10	67	77	670%
Vehicles Per Day	100	134	234	134%

The above table contains traffic counts for Nelson Road and Mchale Way showing that the cumulative impact of the proposed development in Mchale Way will result in a traffic increases of up to 670% in Mchale Way and 21% in Nelson Road during the ingress and egress of the congregation throughout the Sunday afternoon service.

It is evident from the above figures that whilst the expected increase in traffic numbers, particularly in Mchale Way is significant compared to the existing flows, the total peak combined traffic volume of 77 vehicles is well within the capacity of the street to cater for the expected increase with more than sufficient spare capacity available.

The consultant has also carried out an INTANAL analysis of the nearby intersections and established that the existing Give Way sign controlled intersection of Nelson Road and Mchale Way will continue to operate at a Level of Service A both prior to and post development conditions.

As a guide the consultant estimates the expected traffic generation during the normal weekday morning and afternoon road peak period with 30 people in attendance at 30 trips in 30 trips out.

(ii) Need for Traffic Improvements in the Locality

Due to the relatively low total traffic volumes and minimal impact on service levels of nearby intersections there is no justification for any additional works on the road network.

(iii) Traffic egress/ingress to arterial/sub-arterial roads

As previously referred above Nelson Road connects with the arterial road network at the signalized Windsor Road intersection. The traffic generation from the proposed development is relatively minor and occurs outside the normal traffic peak periods. It is therefore concluded that the proposal is not likely to adversely impact on the operational efficiency of the surrounding road network.

(iv) Sight distance and other safety issues

The subject site is located on the corner of Nelson Road and Mchale Way, Nelson. The proposed access driveway is located on the eastern side of Mchale Way approximately 70m from Nelson Road. The available sight distance in both directions at the driveway complies with the recommended minimum Safe Intersection Sight Distance requirement of 140m for a 70km/h rural road as required under Austroads Guidelines.

(v) Parking Provision

Council's *BHDGP Part D Section 1 Parking* requires that 1 off street parking space be provided per 5 seats for places of worship. In this case the expected maximum number of patrons is estimated at 300 people the minimum requirement is 60 spaces to be provided. The applicants proposes 123 off street spaces comprising 63 in the main sealed car park and a further 60 assigned to other locations as overflow parking within the site. Clearly this number of spaces clearly satisfies this minimum requirement.

(c) Recommendations

There are no substantial objections raised from a traffic engineering perspective to the proposed development. Should this application be approved the following traffic related conditions should be included with any conditions of consent:-

- All Access and manoeuvring areas to comply with the minimum requirements of AS 2890.1.2004 and the *Baulkham Hills DCP Part D Section 1 Parking*.
- All parking space dimensions within the sealed car park area to comply with the minimum requirements of AS 2890.1.2004 and the *Baulkham Hills DCP Part D Section 1 Parking*.

TREE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions relating to various matters including protection and retention of existing vegetation including the Cumberland Plain Woodland and completion of additional landscaping.

ENVIRONMENT HEALTH & SUSTAINABILITY COMMENTS

Council's Health & Environmental Protection Section has reviewed the application including both the accompanying Acoustical Assessment (as amended) and Onsite Wastewater Feasibility Study (as amended) raising no objection to the proposal subject to conditions. The conditions include a requirement that all of the recommendations as outlined in the reports be implemented.

N.S.W. RURAL FIRE SERVICE

No objection is raised to the proposal subject to a condition requiring the development to comply with the recommendations listed in the Bushfire Hazard Assessment Report accompanying the application.

WASTE MANAGEMENT COMMENTS

No objection is raised to the proposal subject to conditions.

CONCLUSION

The proposal has been assessed having regard to Section 79C of the Environmental Planning & Assessment Act, 1979, Baulkham Hills Shire Local Council Environmental Plan 2005 and Baulkham Hills Development Control Plan and is considered unsatisfactory.

The release of the Box Hill Precinct for urban development is acknowledged. However the subject land will remain rural land subject to constraints limiting the intensity of development on this land. The form and timing of development on the western side of Nelson Road is unknown and thus the compatibility of the subject development with the future urban development is not clear. The development of both precincts would ultimately provide serviced land which would provide opportunity for this form of development.

The proposal is unacceptable in terms of the proposed hours and days of operation, number of attendees, frequency of activities, bulk and scale, site coverage, boundary setbacks and increase in motor vehicle movements particularly in McHale Way.

The proposed development has not been designed having regard to, and would, if approved, unacceptably impact on adjoining land uses, the natural environment and the rural character of the surrounding area.

In view of the above, it is recommended that the application be refused.

IMPACTS:**Financial**

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

Hills 2026

The social and environmental impacts where appropriate have been identified and addressed in the report.

RECOMMENDATION

The application be refused on the following grounds:-

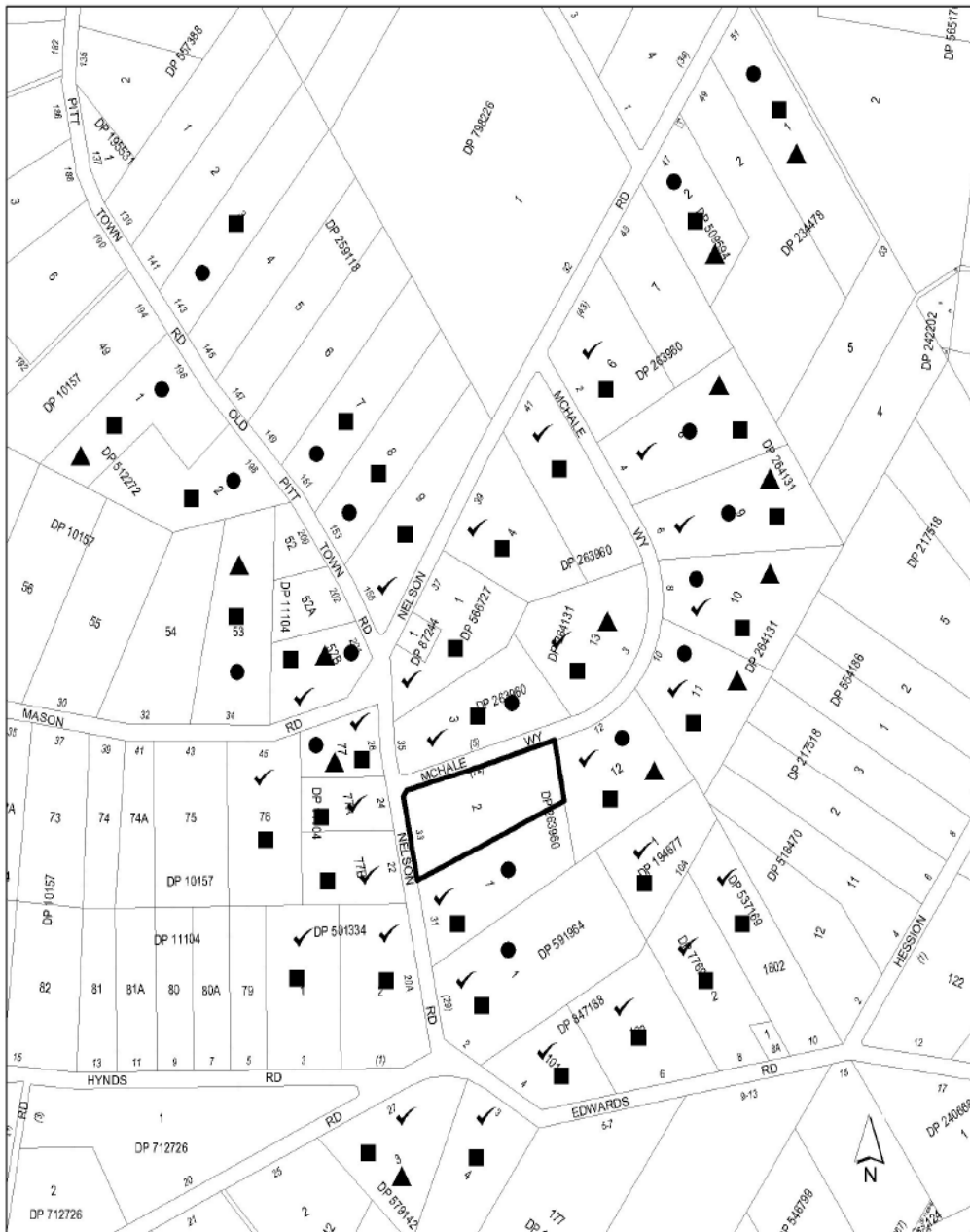
The subject site is not suitable for the development proposed given the intended intensity of the use of the site.

- (1) The proposed development is contrary to objectives (d) and (e) of the Rural 1 (a) zone under Baulkham Hills Local Environment Plan 2005 as it has not been designed having regard to and will unacceptably impact on adjoining land uses, the natural environment and the rural character of the surrounding area.
(Section 79C 1(a)(i) of the NSW Environmental Planning and Assessment Act 1979).
- (2) The proposed development does not comply with the provisions of the Baulkham Hills Development Control Plan Part C Section 1 – Rural in respect of *Section 3.2 – Site Coverage* (in that that the maximum site coverage proposed exceeds the 2500m² maximum prescribed.
(Section 79C 1(a)(iii) of the NSW Environmental Planning and Assessment Act 1979).
- (3) The proposed development will unacceptably impact upon the amenity of adjoining and nearby land due to the proposed hours and days of operation, number of attendees, frequency of activities, bulk and scale, site coverage, boundary setbacks and increase in motor vehicle movements particularly in McHale Way.
(Section 79C 1(b) of the NSW Environmental Planning and Assessment Act 1979).
- (4) Given its relatively small size, its location and flood affectation, the subject site is not suitable for the development proposed.
(Section 79C 1(c) of the NSW Environmental Planning and Assessment Act 1979).

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Site Plan
4. Part Site Plan – Place of Worship
5. Ground Floor Plan
6. Mezzanine Floor Plan and Sections
7. Elevations
8. North West Growth Centre – Box Hill and Box Hill Industrial Precincts

ATTACHMENT 1 – LOCALITY PLAN



 **SUBJECT SITE**

 **PROPERTIES NOTIFIED - (1st NOTIFICATION)**


 **PROPERTIES NOTIFIED - (2nd NOTIFICATION PLUS 51 OUTSIDE SCOPE OF MAP)**


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 **SUBMISSIONS - 1st NOTIFICATIONS (74 OBJECTIONS OUTSIDE THE SCOPE OF THIS MAP)**

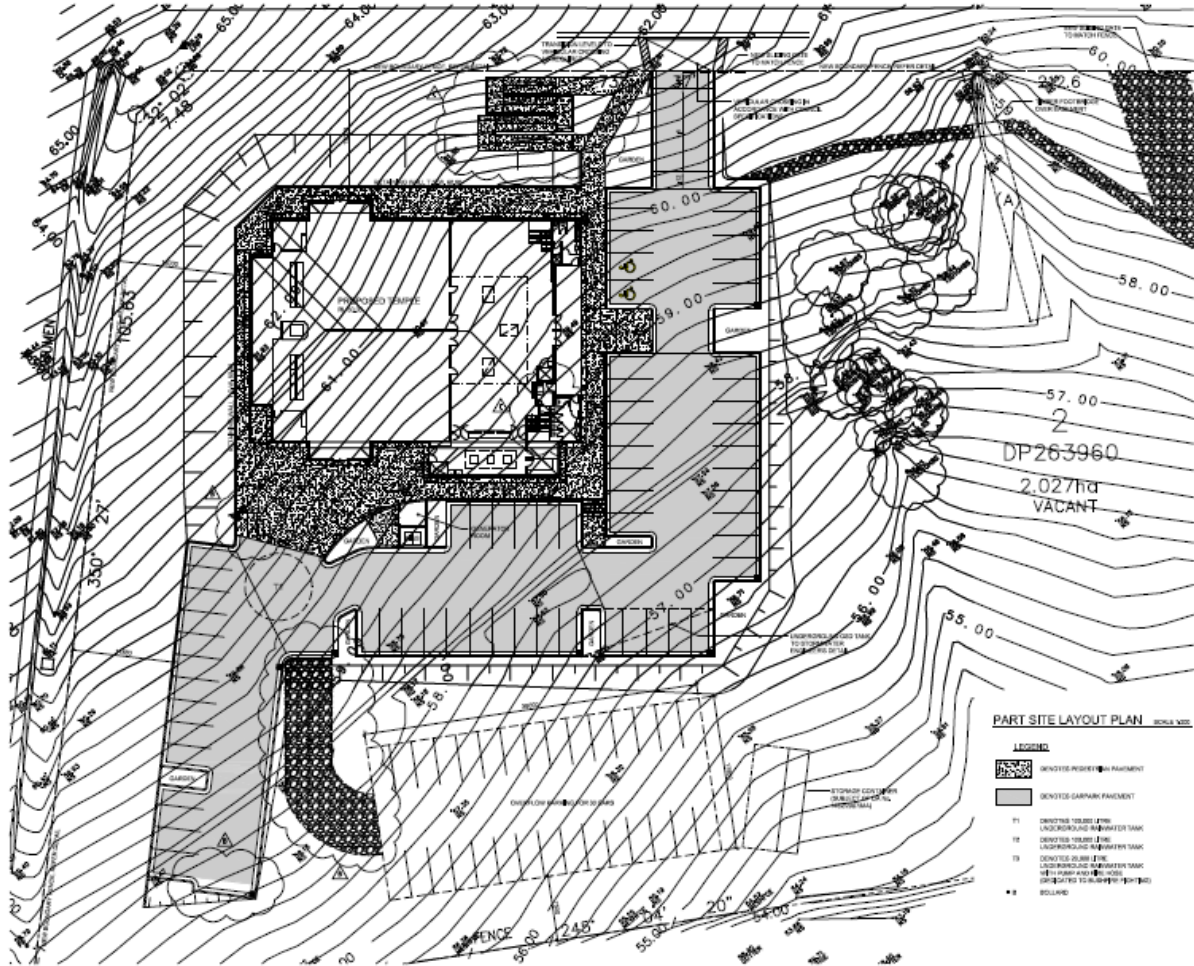
 **SUBMISSIONS - 2nd NOTIFICATION (57 OBJECTIONS OUTSIDE THE SCOPE OF THIS MAP)**

NOTE: ANNANGROVE PROGRESS ASSOCIATION ALSO NOTIFIED

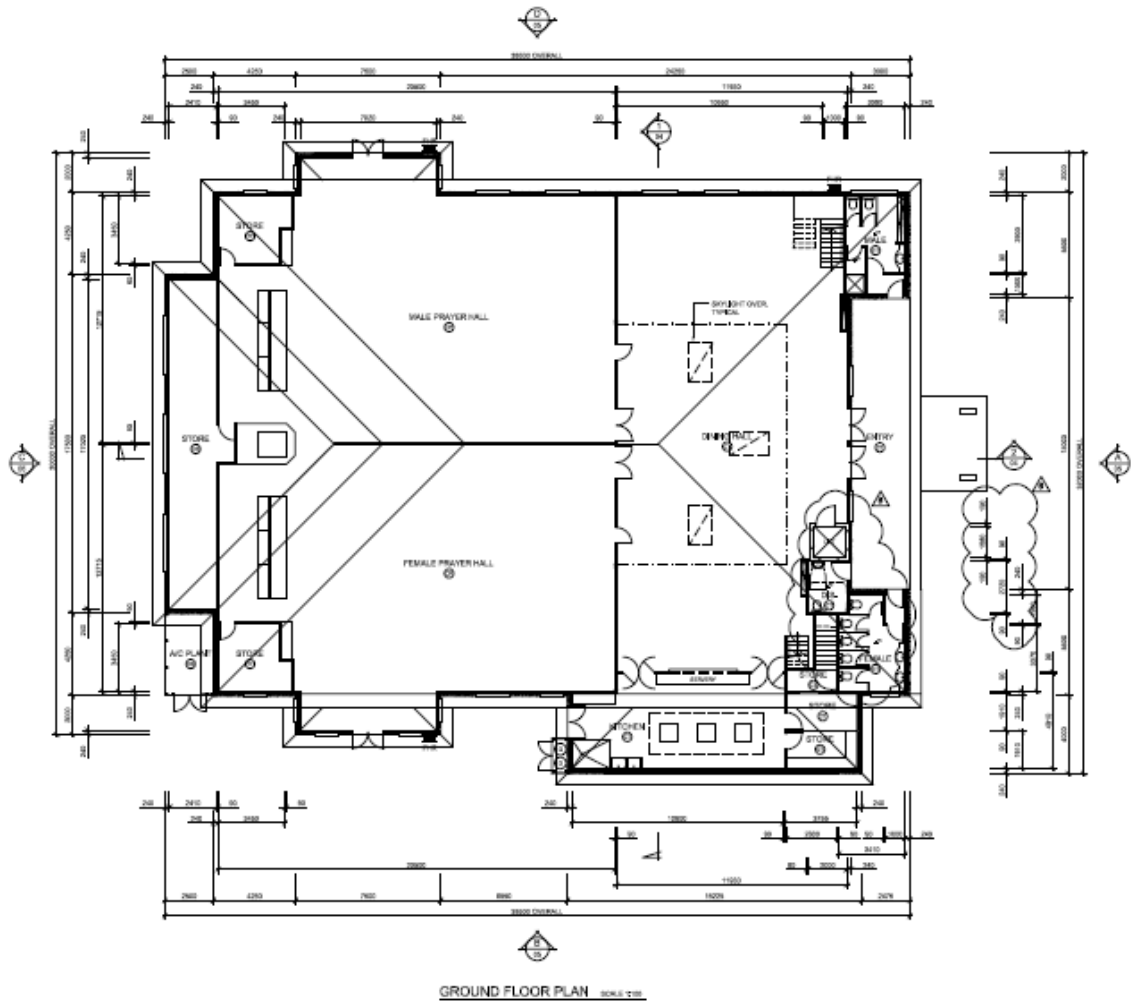
ATTACHMENT 2 – AERIAL PHOTOGRAPH



ATTACHMENT 4 – PART SITE PLAN – PLACE OF WORSHIP



ATTACHMENT 5 – GROUND FLOOR PLAN



ATTACHMENT 6 – MEZZANINE FLOOR PLAN AND SECTIONS

