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**1071 NORTH ROAD HUGHESDALE
EXTENSION OF TIME - DEVELOPMENT OF TWO (2) NEW DOUBLE STOREY
DWELLINGS TO THE REAR OF THE EXISTING
TPA/38170**

EXECUTIVE SUMMARY:

An application has been received for an extension of time to Planning Permit TPA/38170 for the development of two double storey dwellings to the rear of the existing dwelling. The original permit was issued on 10 November 2010. The development has completed the changes to the existing dwelling, preparatory work for the other dwellings and began the building permit process. The permit has been extended on four previous occasions.

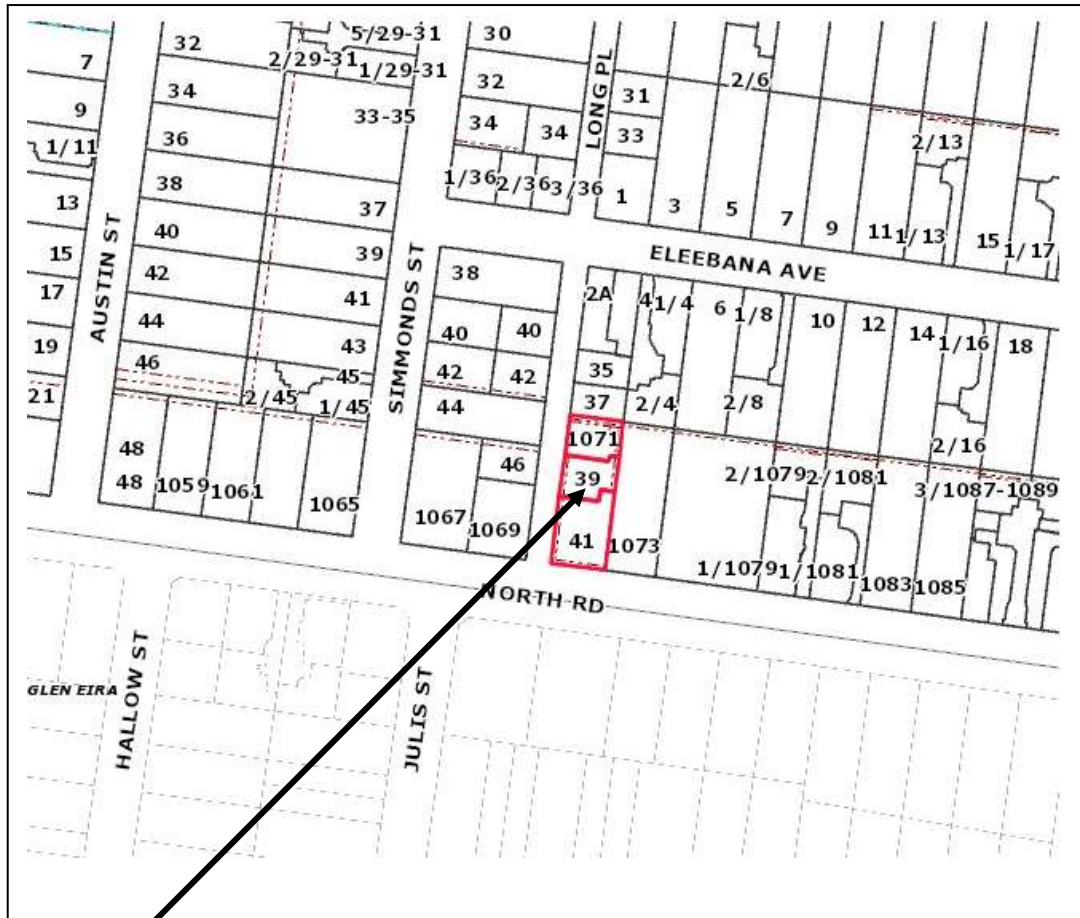
Construction of the development commenced within time but has not been completed.

The reason for presenting this report to Council is this is the fourth extension of time request sought for this permit.

The proposed extension of time is appropriate and it is recommended that a two (2) year extension to the permit is granted accordingly.

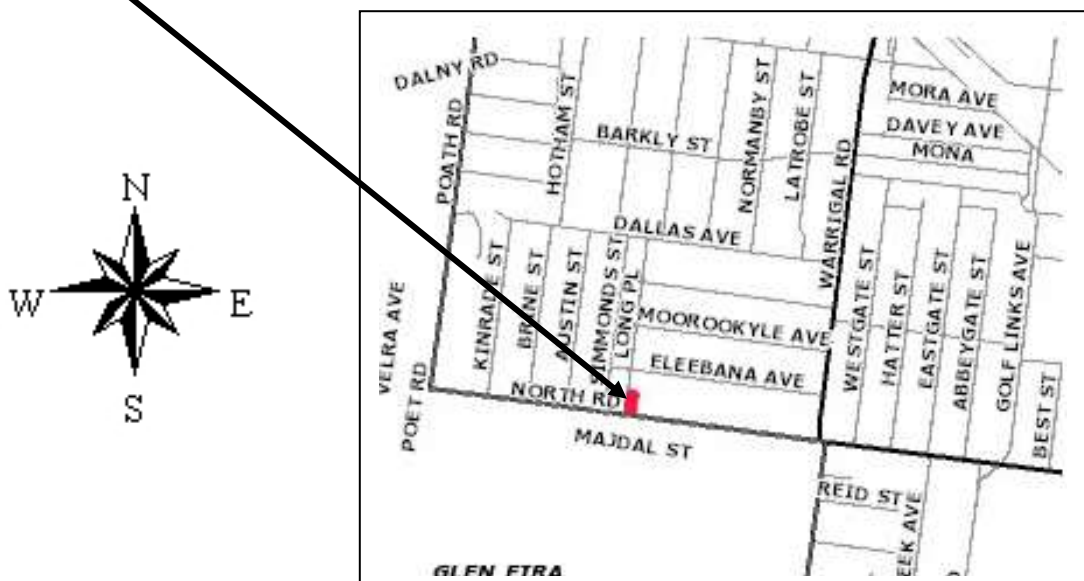
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Lisa Groenewegen
WARD:	Oakleigh
PROPERTY ADDRESS:	1071 North Road, Hughesdale
ZONING:	General Residential Zone – Schedule 3
OVERLAY:	Special Building Overlay
EXISTING LAND USE:	Dwelling
RELEVANT LEGISLATION:	Section 69 of the P&E Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

That Council resolves to issue an **Extension of time to Planning Permit No. TPA/38170** for development of two (2) new double storey dwellings to the rear of the existing single storey dwelling (which is to be modified) with associated car parking and landscaping, and buildings and works within land affected by a Special Building Overlay at 1071 North Road, Hughesdale, pursuant to the provisions of Section 69(2) of the *Planning and Environment Act 1987*.

- That in accordance with Section 69(2) of the *Planning and Environment Act 1987*, the time for the completion of the development be extended for a further 2 years. Accordingly, the development must be completed by 10 November 2023.
- That the applicant be advised that it is unlikely a further extension of time will be granted given the time that has passed since the permit was granted.

BACKGROUND:**History**

Planning Permit TPA/38170 was issued on 10 November 2010 for the development of two double storey dwellings to the rear of the existing dwelling.

The development has commenced with the building and works, landscaping and fencing to the existing dwelling completed. Drainage works for all three dwellings has been completed and the separate vehicle crossings constructed.

A building surveyor has been appointed for the construction of the two additional dwellings.

A planning permit for subdivision of the land into three lots was issued on 15 September 2015. The land was subsequently subdivided into three lots, with new titles issued. A Section 173 Agreement was also entered into requiring the future development of the two new dwellings be in accordance with the approved permits and plans.

Council has extended the permit on four previous occasions. The current expiry date for completion of the development was 10 November 2021. The current extension of time request was made on 8 October 2021, prior to the expiry date.

It is noted that an amended planning permit and development plans were endorsed on 22 October 2020 rectifying building works to the existing dwelling which did not accord with the approved development plans.

The Site and Surrounds

The site is located on the north side of North Road, at the corner of Long Place. The site has an area of 795 square metres and has been subdivided into the three lots with new titles issued.

The surrounding land comprises the following:

- North: Multi-dwellings developments.
- South: North Road.
- East: Single dwellings
- West: Single dwellings and multi-dwellings developments.

The area can be characterised as attached and detached, brick veneer dwellings with pitched tiled roofs in a garden setting.

PROPOSAL:

The applicant has requested an extension of the permit's completion date for a further two (2) years. This is due to financial uncertainty created by the prolonged COVID-19 Pandemic and its impact on their finances and the difficulty of progressing this permit during a pandemic.

The previous extension of time was issued in May 2020, in the height of restrictions and whilst the applicant was experiencing personal health issues.

DISCUSSION:

Pursuant to the provisions of Section 69(1A) of the *Planning and Environment Act 1987*:

“The owner or occupier of land to which a permit for a development applies may ask the responsible authority for an extension of time to complete the development or a stage of the development if:

- a) The request for an extension of time is made within 12 months after the permit expires; and
- b) The development or stage started lawfully before the permit expired”.

The request was made on 8 October 2021 before the permit expiry date. Accordingly, Council is able to consider a further extension to the completion date for the development under the *Planning and Environment Act 1987*.

Assessment

The Supreme Court decision *Kantor v Murrindindi Shire Council (1997)* established the following tests to determine if a permit should be extended. These tests must be considered on balance, meaning that an application does not necessarily need to meet all tests.

Whether there has been a change of planning policy

Since the permit was issued, the zoning has changed from General Residential Zone 2 to General Residential Zone 3, introduced by Amendment C125, and the mandatory garden area requirement and height requirement has been introduced by the state- initiated Amendment VC110.

Since the permit was issued there has been one significant state amendment affecting the land and two local amendments through Amendment C125.

Amendment VC110 (gazetted March 2017) introduced a mandatory garden area requirement and height requirement applicable to the zone. The proposal meets the mandatory height requirement of no more than 11 metres or 3 storeys as the proposal is limited to double storey and a maximum building height of 7 metres. In terms of the Garden Area, 46% garden area is provided which exceeds the requirement of 35%.

Amendment C125 Part 1 & 2 (gazetted April 2018 and November 2019) introduced new policies in Clause 21.04 Residential Development and Clause 22.01 Residential Development and Character Policy.

Under Clause 21.04, the land is now within a Category 8 Garden City Suburbs which encourages the provision of a variety of housing types and sizes that will accommodate a diversity of future housing needs and preferences that complement and enhance the garden city character of the city.

The preferred future character statement makes reference to modest dwellings with simple pitched rooflines and articulated facades to continue the prevailing development themes in the area.

It is considered that the form, scale and intensity of the development continues to be broadly consistent with the policy objectives.

The General Residential Zone 3 introduced a number of changes to the schedule to the zone including front setback, site coverage, permeability, landscaping, side and rear setback, private open space and front fence height.

An assessment of the proposal against the changes to the schedule is provided as follows:

Standard	Requirement	Provided	Assessment
Street setback	7.6 metres	9.2 metres	Complies
Site coverage	50%	45% (Area covered by buildings 355 m ² to site area 794 m ²)	Complies
Permeability	30%	50%	Complies

Landscaping	Provision for 3 canopy trees	Provision for at least 5 canopy trees	Complies
Side and rear setbacks	5 metre rear setback	See discussion below	Does not comply
Private open space	75 square metres, including 35 square metres SPOS with minimum width of 5 metres	At least 75 square metres, including 35 square metres SPOS with minimum width of 5 metres	Complies
Front fence	1.2 metre front fence	1.5 metre picket fence	Does not comply

The schedule to the zone has the following objectives, relevant to the rear setback requirement:

- To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.
- To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

Side and rear setbacks

As identified above the current approval does not strictly comply with the desired 5m setback. This standard can be varied.

The approved development shows Dwelling 2 and 3 are provided with a 5 metre rear setback for almost (two thirds) of their rear setbacks and 3 metres for the balance, oriented to the east boundary. In the context of the built properties surrounding the site, this modest encroachment is considered appropriate as it maintains sufficient landscaping opportunities at the rear and does not impose unreasonable visual bulk to surrounding properties.

Fencing

The 1.5 metre front fence to North Road is open style and in keeping with the character of the area. The 1.2m front fence height requirement has not changed and a higher fence was considered appropriate at the time the permit was issued. There is a mix of fence heights along North Road including multiple examples of 1.8 metre fences which are not visually permeable.

Overall, building bulk and massing, landscaping opportunities, car parking, private open space and amenity impacts are considered appropriate and in keeping with the area and the objectives on the zone.

Whether the land owner is seeking to "warehouse" the permit.

Warehousing is the obtaining of permits with no intention of acting on them in the foreseeable future to obtain a windfall by selling the land. It would be difficult to show that the owner has no current intention of completing the

development, given the works undertaken to the existing dwelling and the appointment of a building surveyor for the new dwellings.

Whilst a considerable period of time has passed since the original approval, the current COVID-19 pandemic has caused delays in commencement of building projects and issues associated with financing projects.

Intervening circumstances bearing on the grant or refusal of the extension.

Although no activity has occurred in relation to construction of the two new dwellings in the last 4 years, works have been ongoing on the existing dwelling in the past 12 months. It would be difficult to show that the owner has no intention of completing the development. The COVID-19 pandemic has caused significant financial hardship to the owner. At the time of issuing the last extension in May 2020, it was not foreseen that extensive lockdown would continue for much of 2021. The owner has applied for the relevant building permit for the construction and has a clear resolve to complete the development.

The total elapse of time.

The total elapse time to complete the development has been eleven years which is a significant period of time for such a modest development and certainly considered more than sufficient to have enabled completion of the development. This is not fatal to the application in isolation, given the broad compliance with current planning policy.

Whether the time limit originally imposed was adequate

The time limit originally imposed was four years to complete, which is a standard condition of permit and considered more than adequate time to complete a development which proposes two new dwellings.

The economic burden imposed on the land owner by the permit.

There would likely be an economic burden on the land owner if the permit was not extended considering the cost of the aforementioned activities completed by the owner, and the subdivision of the land.

It is not considered that any conditions of the permit would have placed additional economic burden on the applicant that could have affected the continuation of the construction. The conditions are standard for this sort of development.

The probability of a permit issuing should a fresh application be made

It is likely that a permit would issue should a fresh application be made considering the proposal is broadly consistent with current planning policy as discussed above. Further the conditions included on the permit are consistent with those still used for developments of this nature.

CONCLUSION:

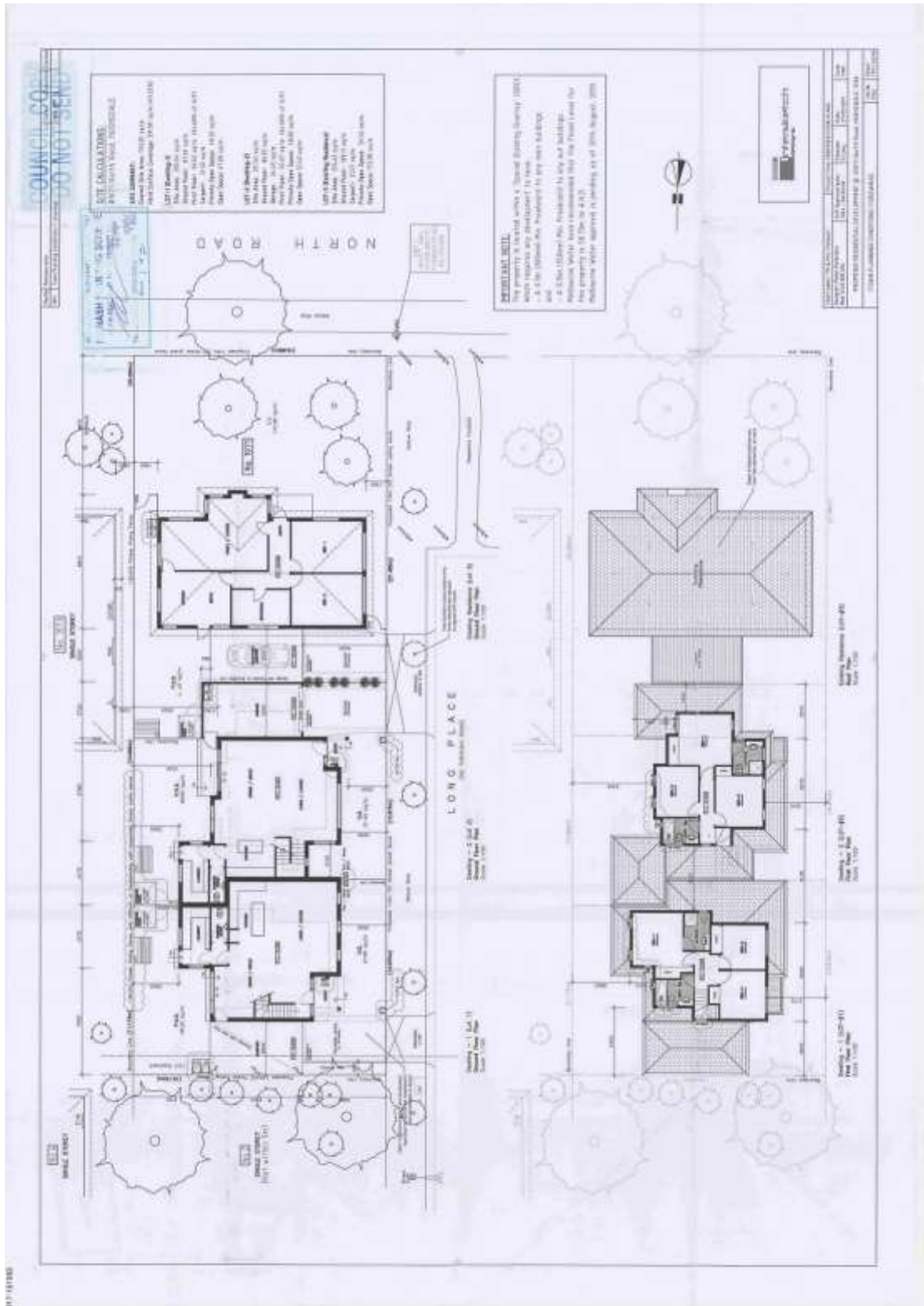
It is considered appropriate to grant a further extension of time to the permit.

The proposal on balance meets the majority of tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, including and most importantly consistency with current planning policy objectives.

The development outcome is appropriate, the built form will be consistent with the desired future outcome and the permit remains current and relevant.

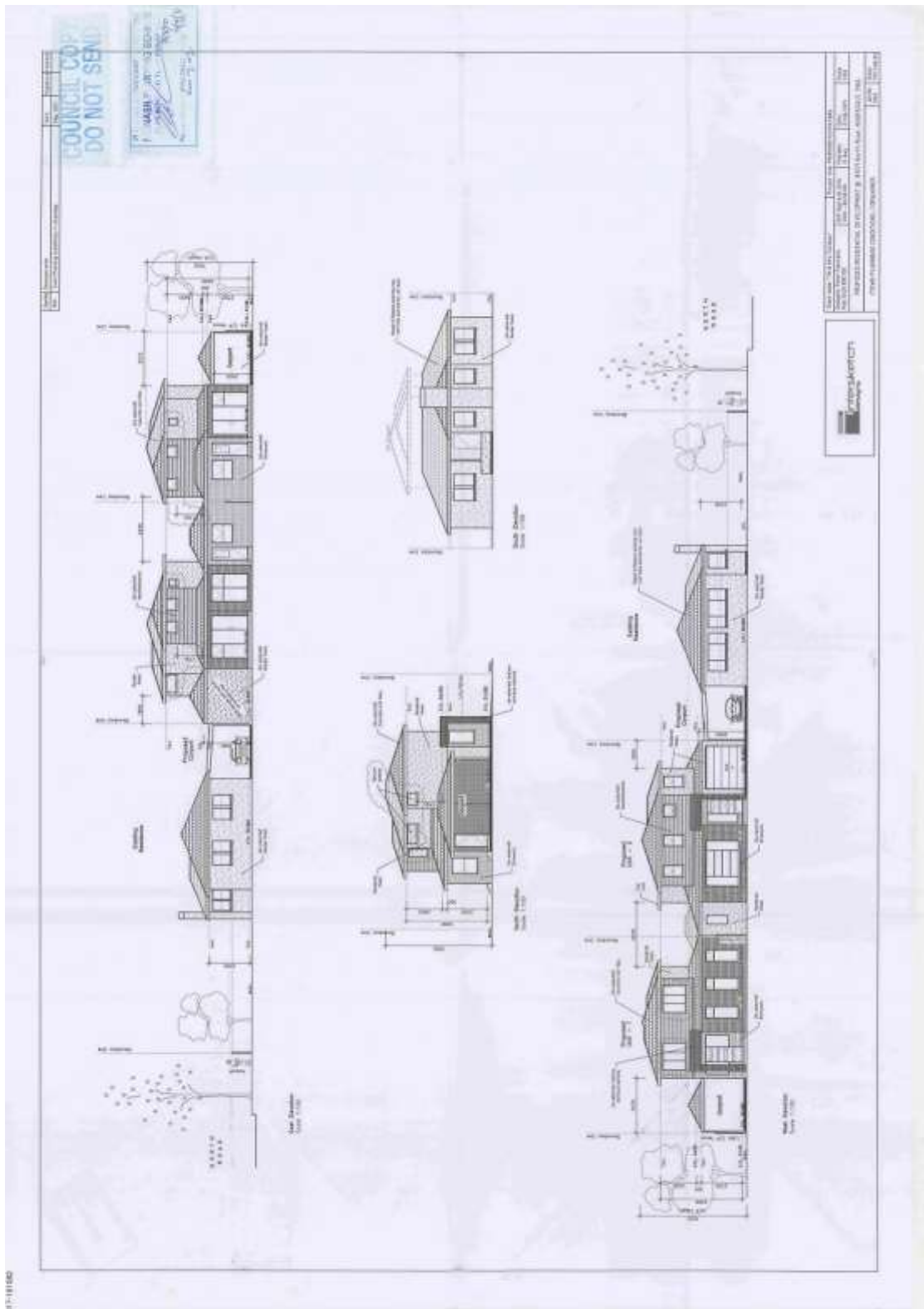
It is recommended the Council approve an extension of two years for the completion of the development. Considering the elapse time since the issue of the permit, it is recommended that the applicant be advised it is unlikely a further extension of time will be granted.

ATTACHMENT 1



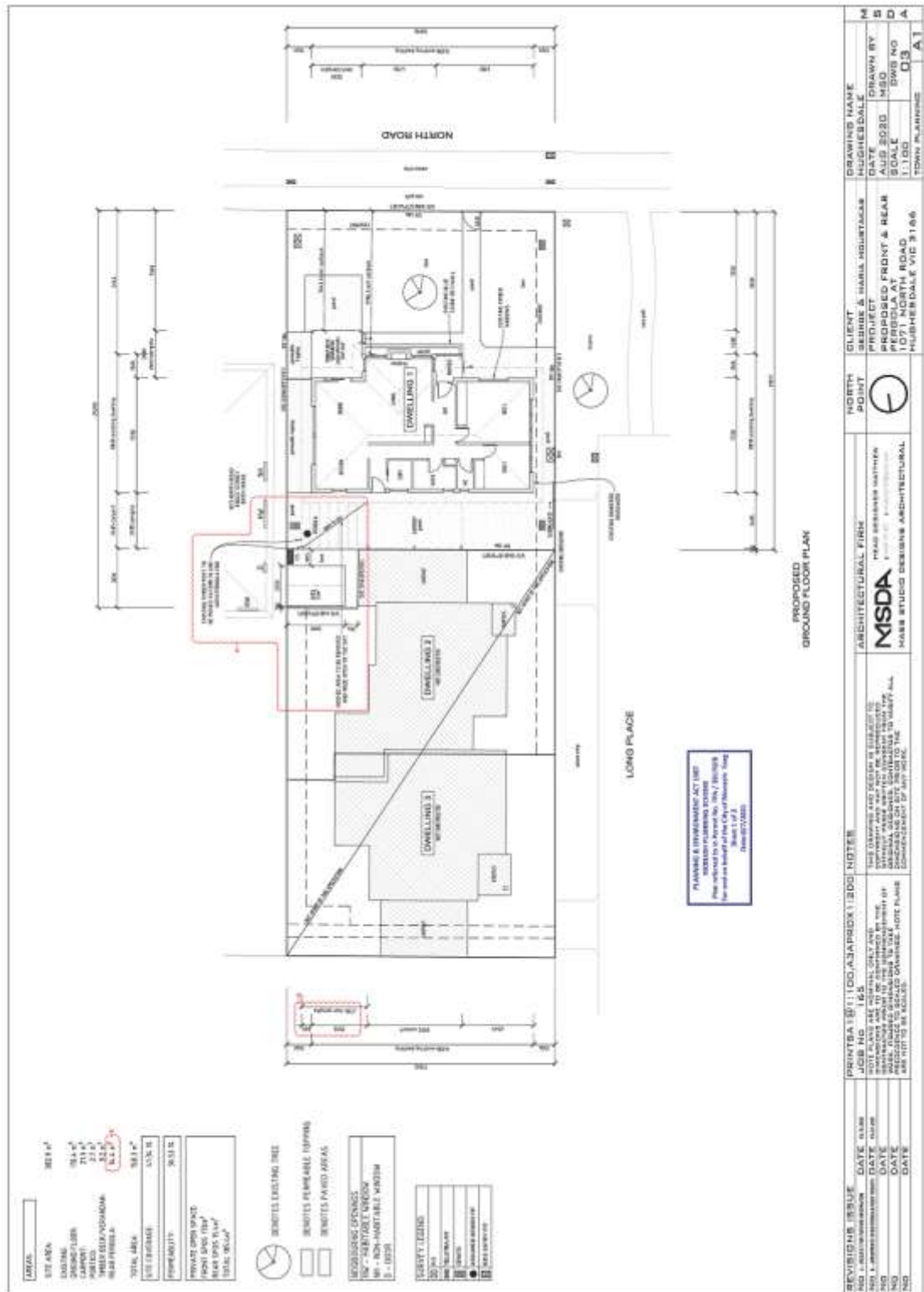
1071 North Road, Hughesdale - Extension Of Time - Development Of Two Double Storey Dwellings To The Rear Of The Existing

ATTACHMENT 1 (Continued)



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