

## 7.1.4 1071 NORTH ROAD HUGHESDALE

<b>Responsible Manager:</b>	Catherine Sherwin, Manager City Planning
<b>Responsible Director:</b>	Peter Panagakos, Director City Development

### EXECUTIVE SUMMARY

This application is 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 at 1071 North Road Hughesdale.

The original permit was issued on the 10 November 2010.

The permit has been extended on five (5) previous occasions. The latest extension of time was granted on 2 December 2021 for completion of the development. The current permit expired on 10 November 2023 as the development was not completed.

Construction of the development has commenced, and the two new dwellings are at frame stage.

The reason for presenting this report to Council is this is the fifth extension of time request sought for this permit, and the period of time sought to extend the permit exceeds six (6) years.

**The proposed extension of time is considered consistent with the relevant provisions of the Monash Planning Scheme. It is recommended that an extension of two (2) years be granted to complete the development.**

RESPONSIBLE DIRECTOR:	Peter Panagakos, Director City Development
RESPONSIBLE MANAGER:	Catherine Sherwin
RESPONSIBLE PLANNER:	Lisa Groenewegen
WARD:	Oakleigh
PROPERTY ADDRESS:	1071 North Road Hughesdale (Parent Address) 39 and 41 Long Place Hughesdale (subdivided land to the rear)
ZONING:	General Residential Zone (Schedule 3)
OVERLAY:	Public Acquisition Overlay (PAO1) and Special Building Overlay (SBO) on parent address only. No overlays on 39 or 41 Long Place, Hughesdale.
EXISTING LAND USE:	Residential
RELEVANT LEGISLATION	Section 69 of the <i>Planning &amp; Environment Act 1987</i>
RELEVANT POLICY:	<b>Planning Policy Framework</b> Clause 11.01-1R - Settlement – Metropolitan Melbourne Clause 15.01-1S&R - Urban Design Clause 15.01-2S - Building Design Clause 15.01-4S & R - Healthy Neighbourhoods





## RECOMMENDATION

That Council resolves to issue an Extension of time to Planning Permit No. TPA/38170 for the 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 by a further 2 years. Accordingly, the development must be completed by 10 November 2025
- 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.

## COUNCIL PLAN STRATEGIC OBJECTIVES

### Sustainable City

Ensure an economically, socially, and environmentally sustainable municipality.

### Enhanced Places

Pursue a planning framework that meets Monash needs.

## BACKGROUND

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

The original application was decided under delegation and there were five (5) objections to the proposal. Development and landscape plans were endorsed on 25 July 2011. There have been several amendments to the plans approved since this time, including TPA/38170/B which related to the retained dwelling.

A planning permit for subdivision of the land into three lots was issued on 15 September 2015. A Section 173 Agreement was entered into requiring the future development of land to be in accordance with the approved permits and plans. The land was subsequently subdivided, with new titles issued. The rear lots are now known as 39 and 41 Long Place, Hughesdale

Council has extended the permit on five (5) previous occasions, being 24 October 2012, 3 January 2014, 25 November 2015, 28 May 2020 and 2 December 2021. The current expiry date for completion of the development was 10 November 2023. The current extension of time request was made on 12 January 2024.

Attachment 1 details approved plans forming part of the application.

### **Site and Surrounds**

The subject site is located on the north side of North Road, at the intersection with Long Place in Hughesdale. The parent title and prior to subdivision the site had an area of 795 square metres.

Construction of the two new dwellings has commenced with the dwellings both being at frame stage.



*Photos taken 27 February 2024*

Abutting land uses are residential and comprise single and double storey dwellings which include multi dwelling developments. The area can be characterised as dwellings with pitched tiled roofs in a garden setting.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 2).

Attachment 3 details the zoning and overlays applicable to the subject site and surrounding land.

## PROPOSAL

The applicant has requested an extension for a further two years to complete the development. The applicant has requested this time as family health issues have made the progression of the project difficult. Whilst the development has commenced additional time to complete it is required.

## PERMIT TRIGGERS

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 12 January 2024, within 12 months of the permit expiry. The development commenced lawfully prior to the permit expiry. Accordingly, Council can consider a further extension to the completion date for the development under the *Planning and Environment Act 1987*.

## ASSESSMENT

The total elapsed time between the date of issue of the permit and the date of the request to extend the permit is thirteen (13) years.

The Supreme Court decision *Kantor v Murrindindi Shire Council (1997)* established the following tests to determine if a permit should be extended:

- Whether there has been a change of planning policy;
- Whether the landowner is seeking to "warehouse" the permit;
- Intervening circumstances bearing on the grant or refusal of the extension;
- The total elapse of time;
- Whether the time limit originally imposed was adequate;
- The economic burden imposed on the landowner by the permit; and
- The probability of a permit issuing should a fresh application be made

These tests must be considered on balance, meaning that an application does not necessarily need to meet all tests. These tests are considered in detail below.

### Whether there has been a change of planning policy

Since the permit was issued there have been significant state, regional and local amendments affecting the land. These changes were considered and assessed as part of the previous requests to extend the planning permit. In summary:

**Amendment VC110** gazetted on 27 March 2017 impacts the development with regard to garden area requirements and mandatory controls relating to height. The changes introduced by Amendment VC110 are mandatory to the consideration of a development.

The proposal meets the mandatory height requirement of 11 metres or 3 storeys as the development is limited to two storey and a height of 7 metres. The development plans have a garden area calculation of approximately 46% which exceeds the requirement of 35% for lots over 650 square metres.

**Amendment C125 Part 2** was gazetted in November 2019 in which Residential policies (Clause 21.04 and 22.01) were changed. The zoning schedule for the land changed from schedule 2 to 3 of the General Residential Zone.

Under Clause 21.04, the land is now within a Garden City Suburbs area 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 “southern area” refers to modest dwellings with simple pitched rooflines and articulated facades to continue the area's prevailing development themes.

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 schedule 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 <sup>2</sup> to site area 794 m <sup>2</sup> )	Complies
Permeability	30%	50%	Complies
Landscaping	Provision for 3 canopy trees	Provision for at least 5 canopy trees	Complies
Rear setback	A new wall not on a boundary should be setback 5 metres	New carport wall on rear northern boundary	Complies
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 - see discussion below

The 1.5 metre front fence to North Road has been constructed and exceeds the preferred 1.2 metres. There is a mix of fence heights along North Road, including multiple examples of 1.8 metre high fences which are not visually permeable and given this, together with the main road frontage, the 1.5 metre high timber picket fence is acceptable.

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.

Whilst a considerable period of time has passed since the original approval, the prolonged impact of the COVID1-19 Pandemic on the building and financial sectors, together with the personal family circumstances of the owners of the land have all impacted on the owners ability to complete the development.

Considering the recent commencement of works within the past few months and progression to framing stage, it would be difficult to demonstrate that the owner has no current intention of completing the development.

The owners have indicated that the project will continue once the extended permit is issued.

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

The owner has detailed health issues that have impacted the commencement of the development along with financial constraints. Pleasingly they have recently commenced development in late 2023 and is at frame stage.

#### The total elapse of time

Thirteen (13) years have elapsed between the time the planning permit was issued and the extension of time application being lodged. 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 original time limit imposed was two years for commencement and two years to complete, which is a standard condition of approval and considered adequate for this development.

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

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.

It is acknowledged that there would likely be an economic burden on the land owner if the permit was not extended, considering the cost of the works to date and the cost of making a new application should the extension not be supported.

#### 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 consistent with current planning policy. As detailed in the original approval, the proposal achieves a high level of compliance with Clause 55, appropriate scale and form, and provides a suitable response to neighbourhood character. The development meets the mandatory height and garden area requirements (introduced after the original development was approved.)

The development will sit comfortably within the streetscape and meets the amended neighbourhood character vision of “modest dwellings with simple pitched rooflines and articulated facades within a spacious garden setting” which was introduced by C125 part 2.

The conditions on the existing permit issued are still valid and would be similar to those placed on any permit should it be issued today.

## CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

## 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 Murrumbidgee Shire Council (1997)*, including and most importantly consistency with current planning policy objectives.

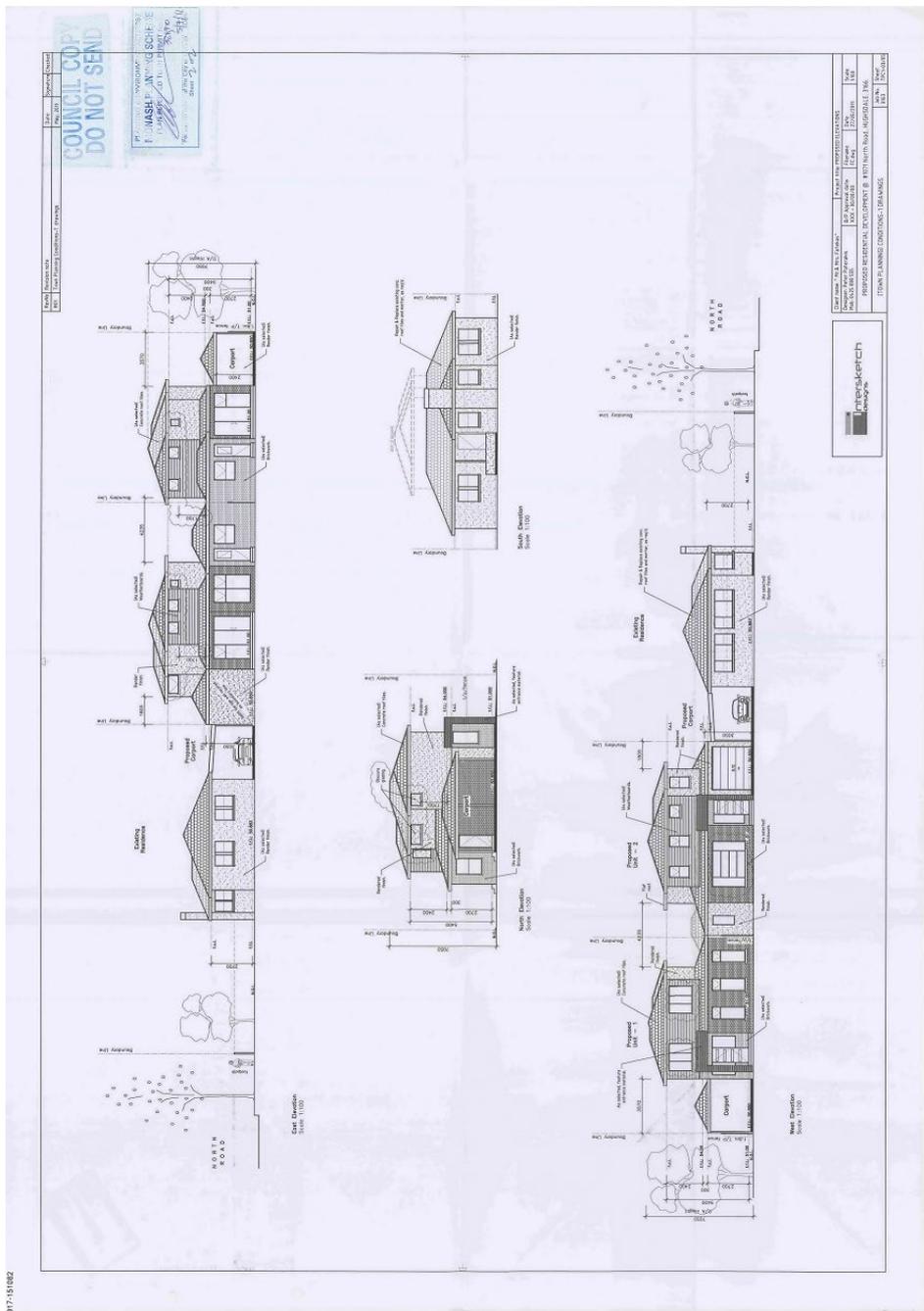
The development outcome is appropriate, the built form will be consistent with the desired future outcome and the permit remains current and relevant.

It is recommended the Council approve an extension of two (2) years for the completion of the development.

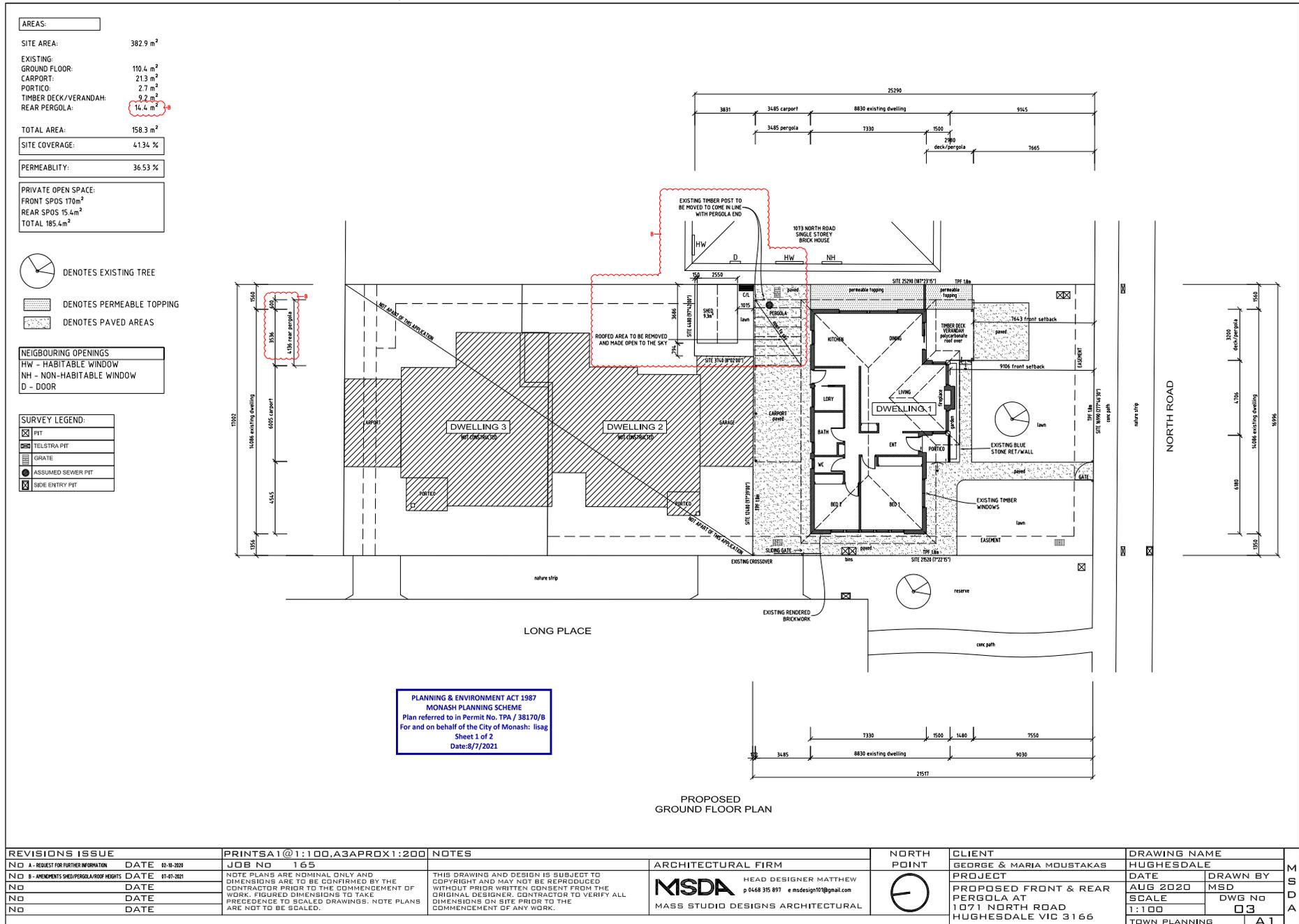
## ATTACHMENT LIST

1. Attachment 1 - Proposed & Updated Endorsed Development Plans - 1071 North Rd [7.1.4.1 - 4 pages]
2. Attachment 2 - Aerial Photograph - 1071 North Rd [7.1.4.2 - 1 page]
3. Attachment 3 - Zoning and Overlays Map - 1071 North Rd [7.1.4.3 - 1 page]

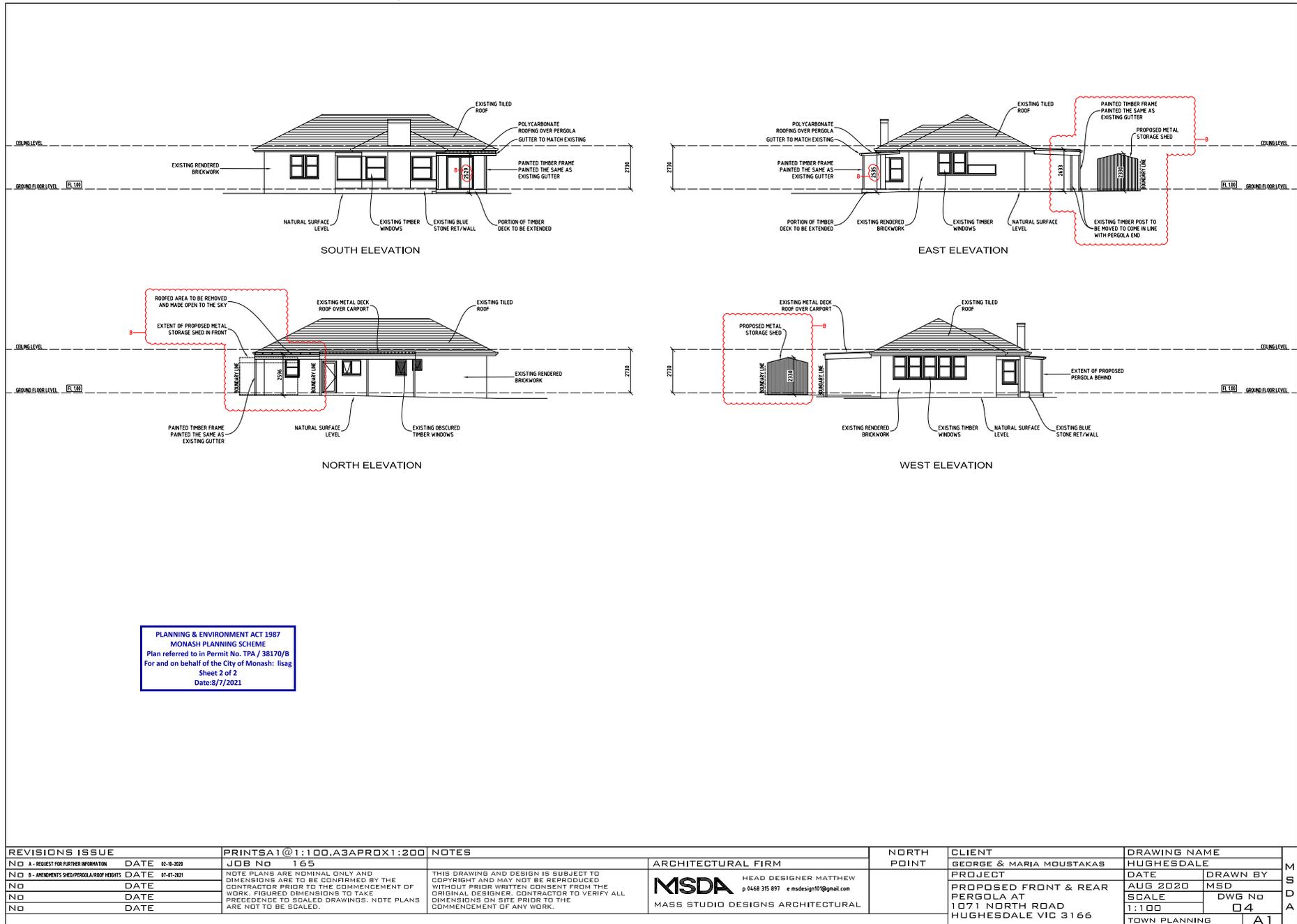




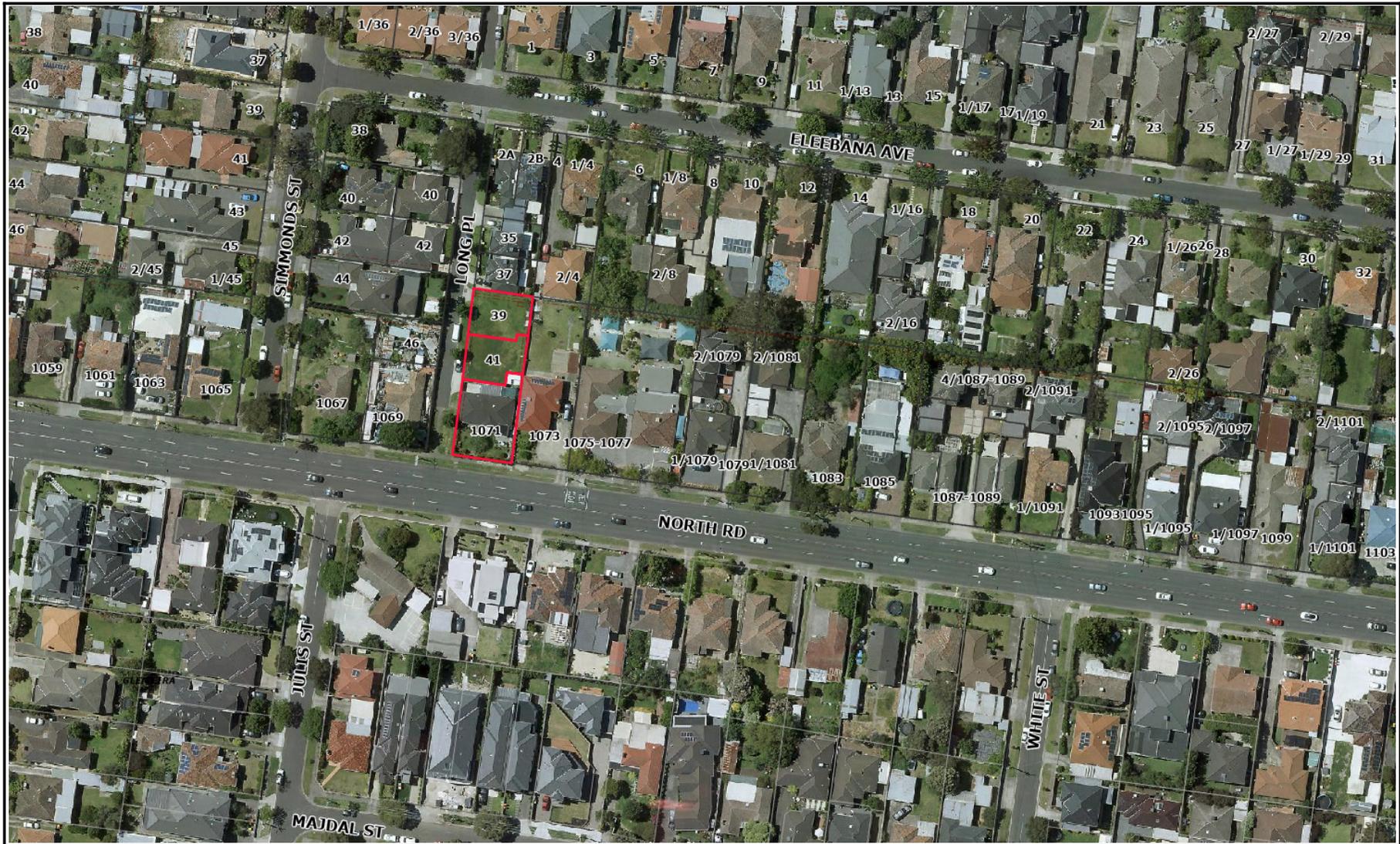
Attachment 7.1.4.1 Attachment 1 - Proposed & Updated Endorsed Development Plans - 1071 North Rd



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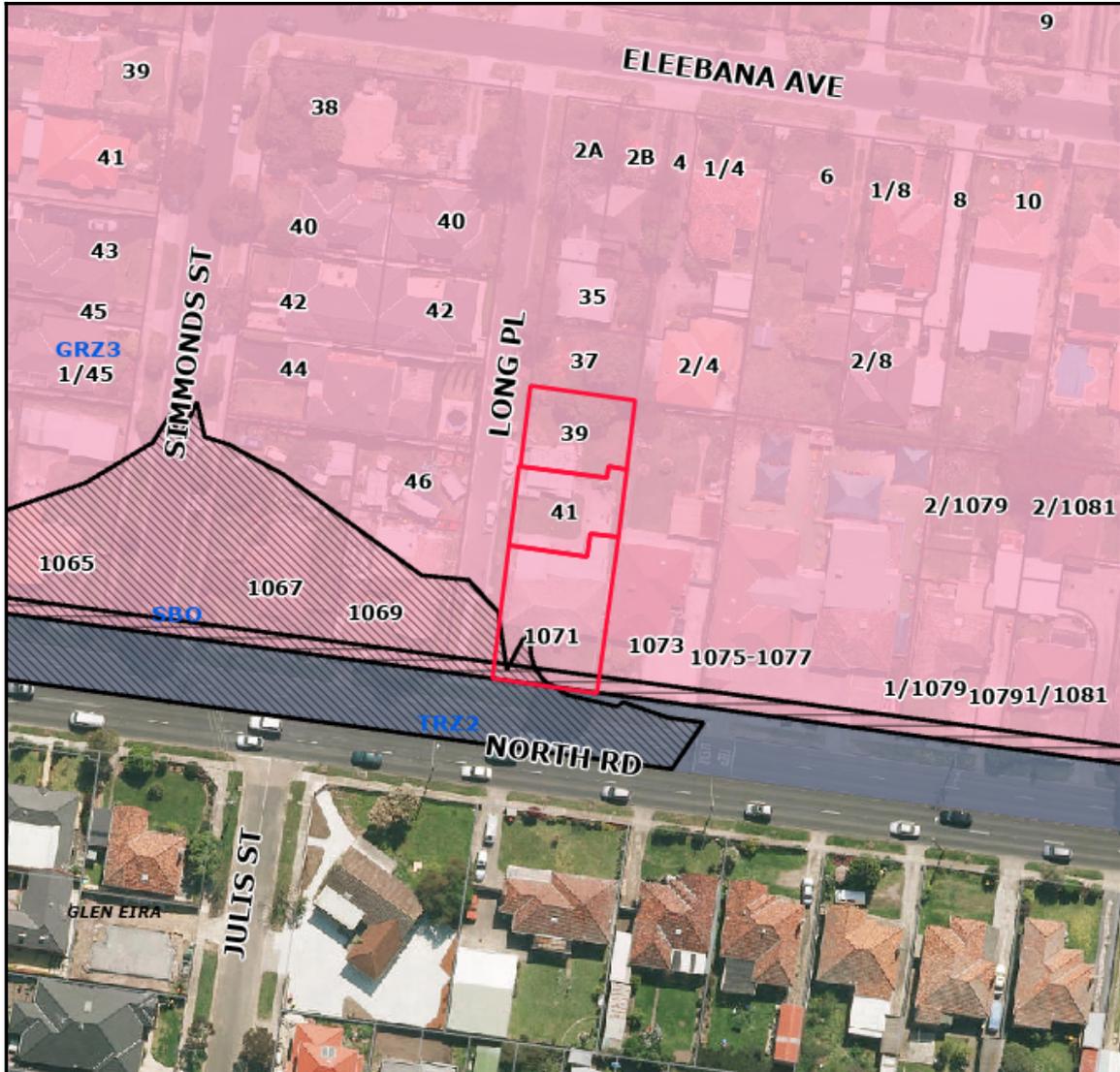


REVISIONS ISSUE		PRINTSA1@1:100, A3APROX1:200	NOTES	ARCHITECTURAL FIRM		NORTH POINT	CLIENT	DRAWING NAME		MSDA
NO	A - REQUEST FOR FURTHER INFORMATION	DATE 02-10-2020	JOB NO 165	MSDA HEAD DESIGNER MATTHEW p 0468 375 897 e msdesign10@gmail.com			GEORGE & MARIA MOUSTAKAS	HUGHESDALE		
NO	B - AMENDMENTS SHED/PERGOLA/ROOF HEIGHTS	DATE 07-01-2021	NOTE PLANS ARE NOMINAL ONLY AND DIMENSIONS ARE TO BE CONFIRMED BY THE CONTRACTOR PRIOR TO THE COMMENCEMENT OF WORK. FIGURED DIMENSIONS TO TAKE PRECEDENCE TO SCALED DRAWINGS. NOTE PLANS ARE NOT TO BE SCALED.	THIS DRAWING AND DESIGN IS SUBJECT TO COPYRIGHT AND MAY NOT BE REPRODUCED WITHOUT PRIOR WRITTEN CONSENT FROM THE ORIGINAL DESIGNER. CONTRACTOR TO VERIFY ALL DIMENSIONS ON SITE PRIOR TO THE COMMENCEMENT OF ANY WORK.			PROJECT	DATE	DRAWN BY	
NO	DATE						PROPOSED FRONT & REAR	AUG 2020	MSD	
NO	DATE						PERGOLA AT	SCALE	DWG NO	
NO	DATE						1071 NORTH ROAD	1:100	04	
NO	DATE						HUGHESDALE VIC 3166	TOWN PLANNING	A1	





## Planning Overlays and Zones



### Legend

#### Planning Zones

C1Z	GRZ10	GRZ7	MUZ2	PCRZ	PUZ4	RGZ1	SUZ3
C2Z	GRZ2	GRZ8	NRZ1	PPRZ	PUZ5	RGZ3	SUZ4
CA	GRZ3	GRZ9	NRZ2	PUZ1	PUZ6	RGZ4	SUZ5
CDZ1	GRZ5	IN1Z	NRZ3	PUZ2	PUZ7	RGZ5	SUZ6
GRZ1	GRZ6	MUZ	NRZ4	PUZ3	RDZ1	SUZ2	UFZ

#### Planning Overlays

DDO	EAO	IPO	NCO	PO
DPO	HO	LSIO / SBO	PAO	VPO

1:1000

### Address

1071 North Road HUGHESDALE VIC 3166

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