

**1.3 1071 NORTH ROAD, HUGHESDALE
EXTENSION OF TIME - DEVELOPMENT OF TWO DOUBLE STOREY DWELLINGS TO
THE REAR OF THE EXISTING DWELLING
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 and preparatory work done for the other dwellings. The permit has been extended on three previous occasions.

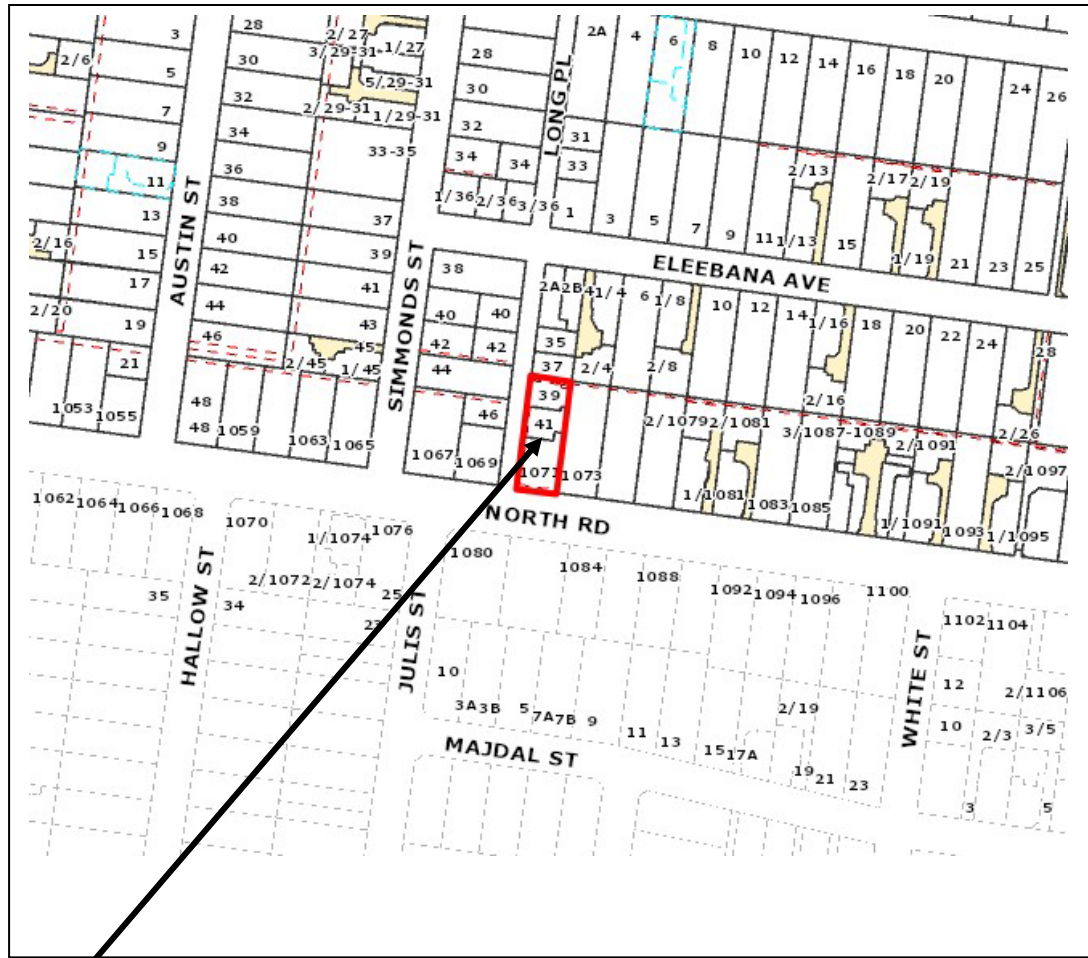
Construction of the development commenced within time but has not been completed.

Public notification of the application for an extension of time is not considered necessary given that the approved development is consistent with existing planning policy.

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

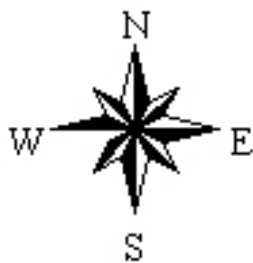
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Craig Smith
WARD:	Oakleigh
PROPERTY ADDRESS:	1071 North Road, Hughesdale
NUMBER OF OBJECTIONS:	N/A
ZONING:	General Residential Zone – Schedule 3
OVERLAY:	Special Building Overlay
EXISTING LAND USE:	Dwelling
RELEVANT LEGISLATION:	Section 69 of the Planning and Environment Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



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

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 2021.
- That the applicant be advised 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.

Demolition works have been completed, including demolition of the existing garage. Building approvals have been issued for the building and works to the existing dwelling.

A planning permit for subdivision of three lots was issued on 15 September 2010. The land was subsequently subdivided into three lots, with new titles issued.

Council has extended the permit on three previous occasions. The current expiry date for completion of the development was 10 November 2019. The current extension of time request was made on 25 October 2019, within 12 months of the expiry date and can be considered in accordance with the requirements of the *Planning and Environment Act 1987*.

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 delays in obtaining finance. At the time of lodging the request, the applicant stated the intention was to complete the development by the end of 2020.

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 19 October 2019 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 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.

The changes introduced by Amendment VC110 are mandatory to the consideration of a development. The proposal meets the mandatory height

requirement of 11 metre or 3 storeys as the proposal is limited to double storey and a height of 7 metres. In terms of the Garden Area, 46% garden area is provided which would exceed the requirement of 35%.

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.

For corner sites, the context of the 'rear' can vary depending on the relationship of the adjoining properties which in turn affects the location of breaks and landscape character. The landscape open character is often created by traditional rear yards creating a landscaped open corridor. However, for this site, this has been partially eroded by surrounding developments, particularly the development to the north behind the proposal which is built to the boundary.

The approved development shows Dwelling 2 and 3 is provided with 5 metres for most (two thirds) of their rear setbacks and 3 metres for the balance oriented to the east boundary. In this context, this is considered the appropriate response to the objective.

A modest encroachment is considered appropriate in this context as it maintains sufficient landscaping opportunities at the rear of the site and does not impose unreasonable visual bulk to surrounding properties.

The variation to the rear setback requirement is considered appropriate in this instance.

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. The applicant acted on the permits initially by commencing the development and completing the other minor activities associated with the project, including finalising the subdivision of the subject site into 3 separate lots.

Although no further activity has occurred in the last 3 years, it would be difficult to show that the owner has no intention of completing the development, but it is evident we are at a tipping point in terms of warehousing. Accordingly although an extension is supported at this time, no further extensions would be likely on this basis.

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

The owner was unable to complete the development within time due to delays in obtaining finance.

The total elapse of time.

The total elapse time to complete the development has been nine 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.

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.

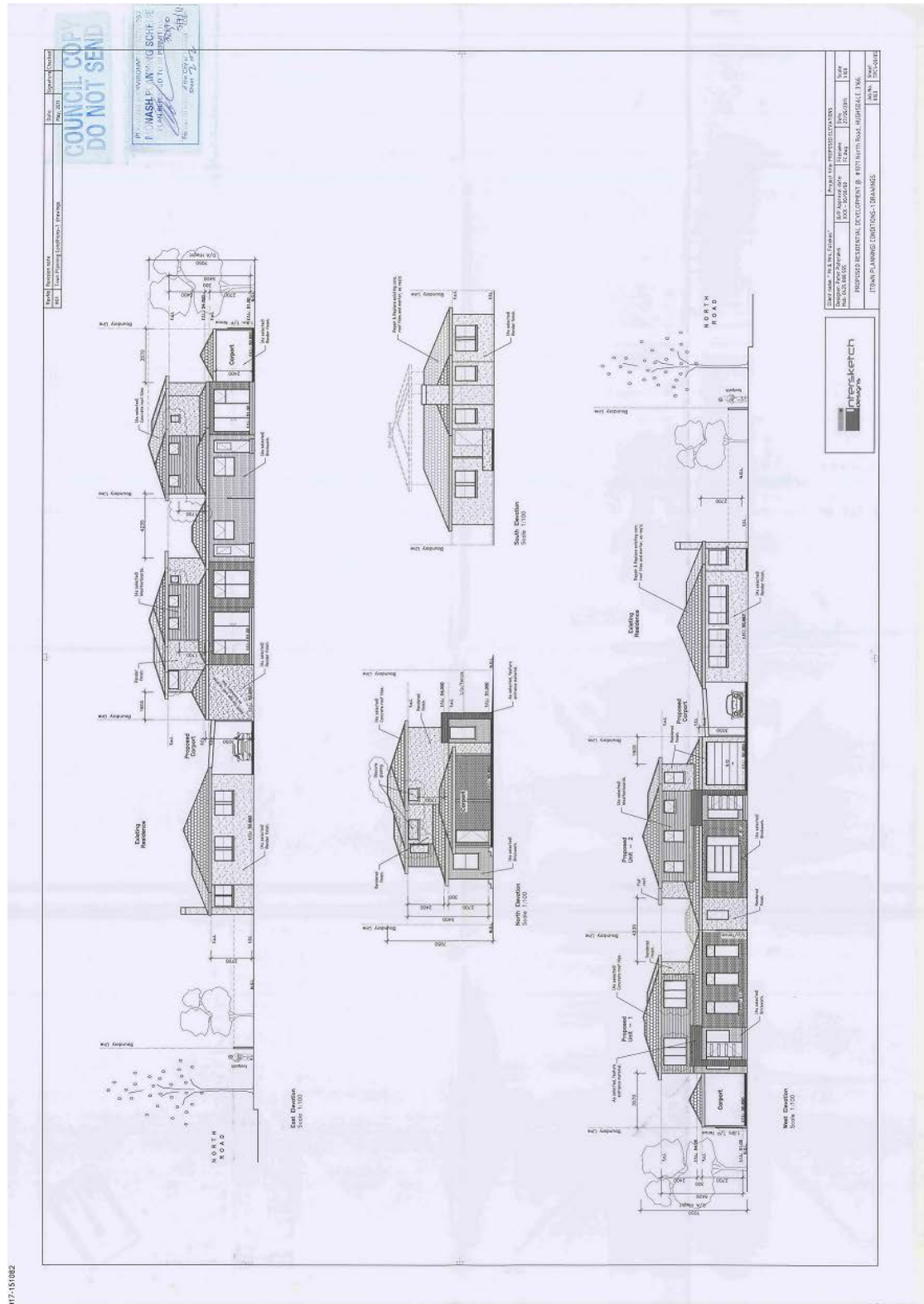
CONCLUSION:

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 consistency with current planning policy objectives.

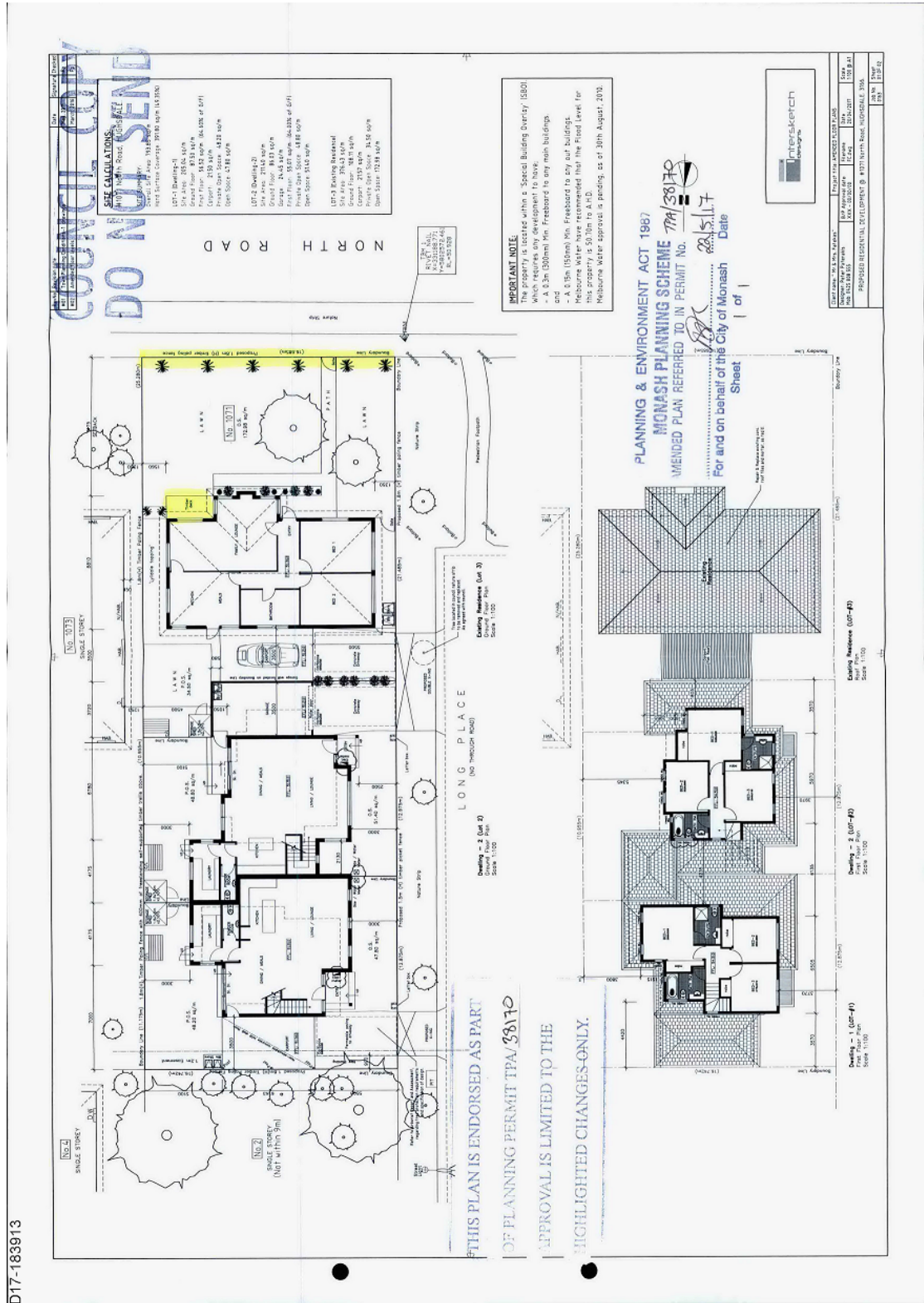
It is recommended the Council approve an extension of two years for the completion of the development until 10 November 2021. Considering the significant elapse time to complete the development, it is recommended that the applicant be advised it is unlikely a further extension of time will be granted.

ATTACHMENT 1 (Continued)



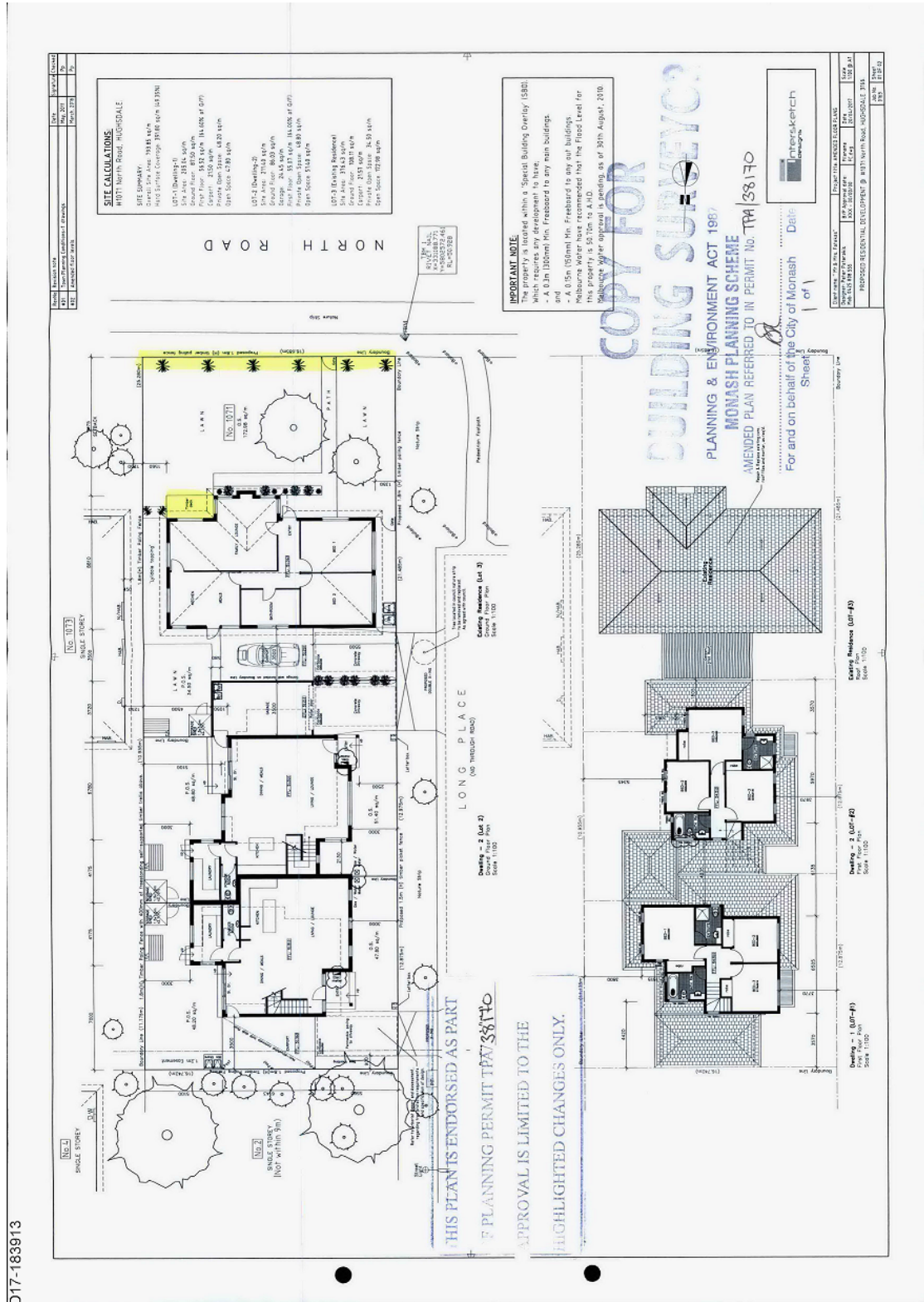
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ATTACHMENT 1 (Continued)



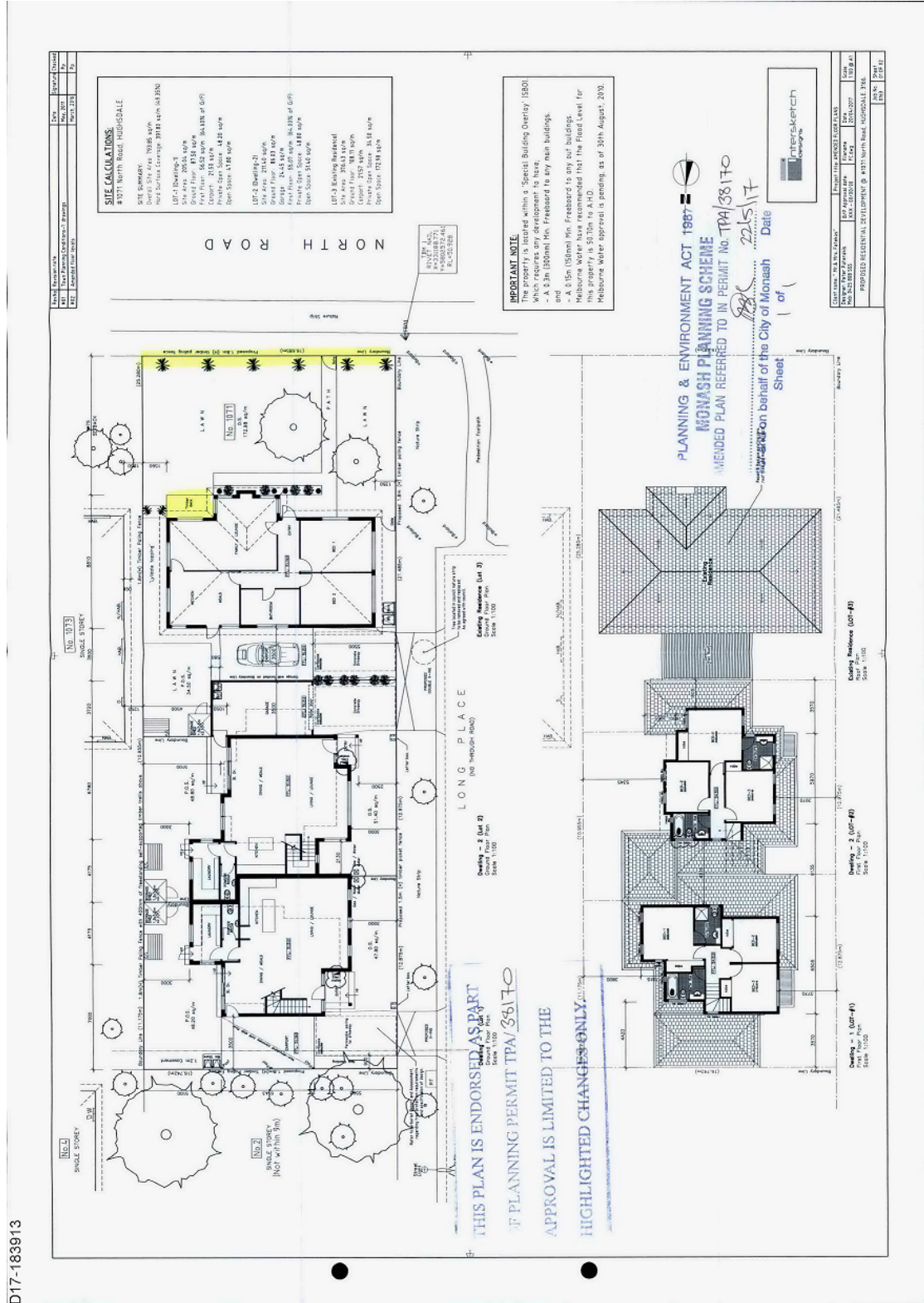
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ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)

D17-183913

PLANNING & ENVIRONMENT ACTIVITY
MONASH PLANNING SCHEME
PLAN REFERRED TO IN PERMIT NO. TPA/18/170

Date: 22/5/17
Sheet: 1 of 1

For and on behalf of: **Legend's Monash**

NORTH ROAD

LONG PLACE (RD THROUGH ROAD)

BOTANICAL SYMBOL	COMMON NAME	H/W AT D/E	SUPPLY MATUREITY SIZE	QTY
TREES				
UN	White Crown Maple	D	2m	03
UP	Ulmus parviflora	E	2m	01
			TOTAL	04
SHRUBS				
ASh	Strawberry Bush	E	20cm	20
APh	Orange Jessamine	E	20cm	28
CI	Cherry laurel	E	1.5x1.5m	02
MP	Magnolia grandiflora	E	20cm	05
			TOTAL	55
GROUND COVERS				
ABh	Agapanthus Lily Star	E	0.25x0.25m	15
LI	Liriodendron tulipifera	E	0.4x0.4m	15
LG	Lamium maculatum	E	0.4x0.4m	05
Dg	Dianthus barbatus	E	0.5x0.5m	04
			TOTAL	42
CLIMBERS				
PH	Passiflora vitifera	D	Climbing	10
TJ	Tournefortia bicolor	E	Climbing	10
			TOTAL	20

PROPOSED DETAIL

APPROVED LANDSCAPING PLAN

REF No. TPA/18/170 DATE: 22/5/17

SIGNED: [Signature]

PROS AND CONS

PROS: The proposed landscaping scheme will enhance the visual appeal of the site, provide shade and shelter for the building, and improve the overall quality of the environment. The scheme will also provide a natural barrier between the building and the road, and will help to reduce noise and air pollution.

CONS: The scheme will require a significant amount of maintenance, including watering, pruning, and fertilizing. The scheme will also require a significant amount of space, and will be subject to the same risks as any other landscaping scheme.

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