

**1.5 101-121 WHALLEY DRIVE, WHEELERS HILL
EXTENSION OF TIME - THE DEVELOPMENT OF THREE APARTMENT BUILDINGS UP
TO THREE STOREYS IN HEIGHT, ASSOCIATED WITH THE EXISTING RETIREMENT
VILLAGE AND INCLUDING A REDUCTION IN THE APPLICABLE CAR PARKING
REQUIREMENT
TPA/42225/A**

EXECUTIVE SUMMARY:

An application has been received for an extension of time to Planning Permit TPA/42225/A for development of three apartment buildings up to three storeys in height associated with the existing retirement village and including a reduction in the car parking requirement.

The original permit was issued on the 6 October 2014, with amended permit TPA/42225/A issued on 9 February 2018 allowing modifications to the approved development.

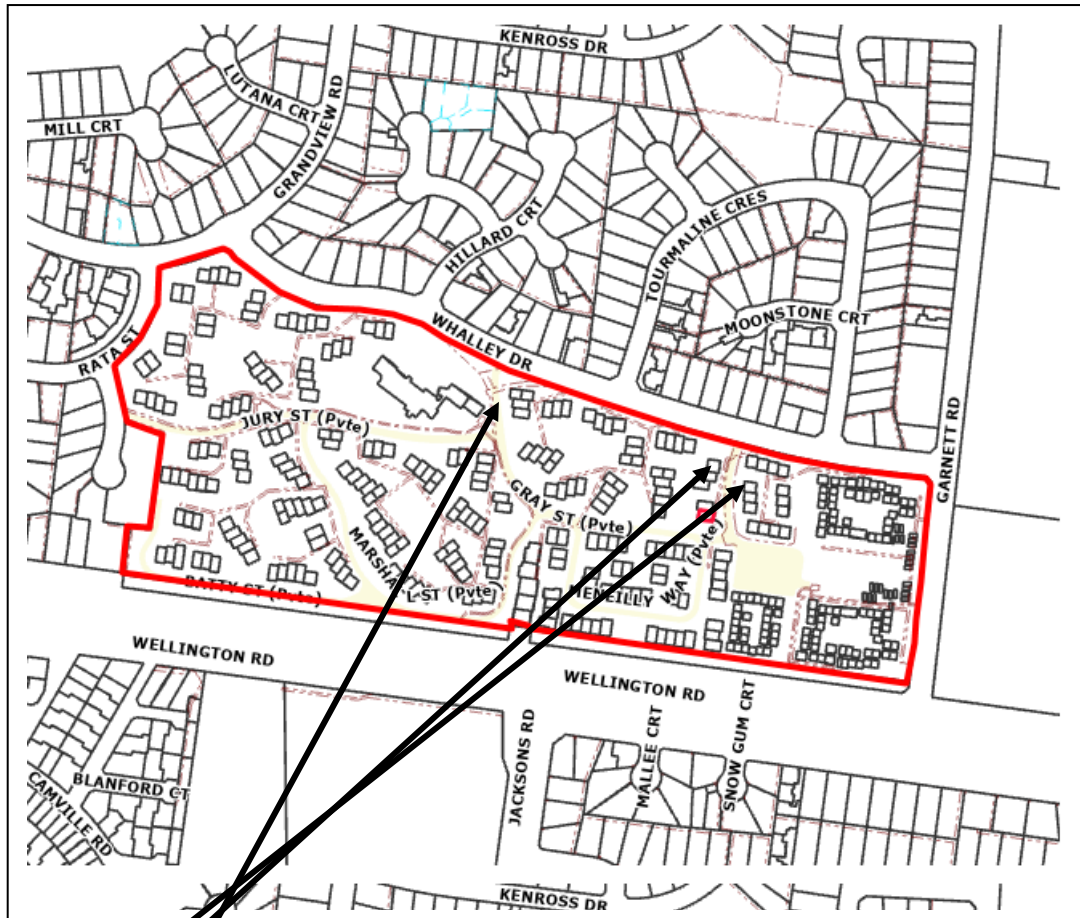
Construction of the development has not commenced. The current permit will expire on 6 October 2022. The reason for presenting this report to Council is this is the fifth extension of time request sought for this permit.

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

RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Catherine Sherwin
RESPONSIBLE PLANNER:	Jeanny Lui
WARD:	Mulgrave
PROPERTY ADDRESS:	101-121 Whalley Drive, Wheelers Hill
ZONING:	Neighbourhood Residential Zone Schedule 4
OVERLAY:	No Overlays
EXISTING LAND USE:	Retirement Village and Aged Care
RELEVANT POLICY	<u>Planning Policy Framework</u> Clause 11 – Settlement Clause 15 - Built Environment Clause 16- Housing Clause 19- Infrastructure

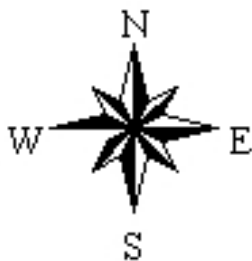
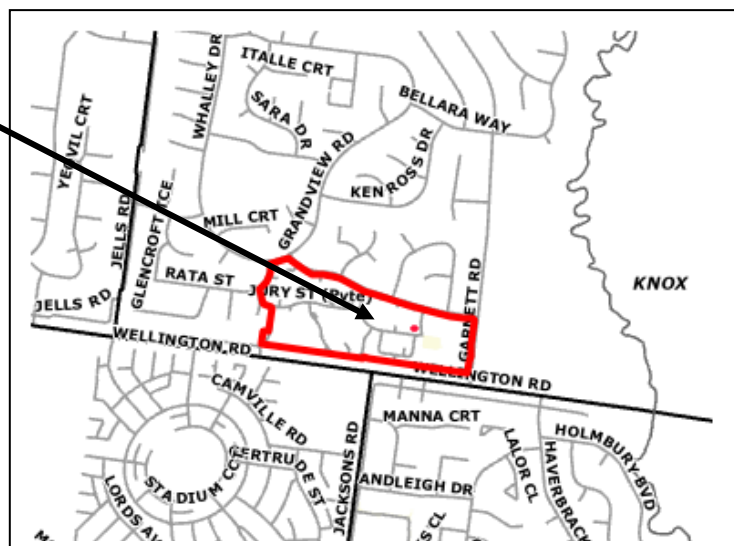
	<u>Local Planning Policy</u> Clause 21.04- Residential Development Clause 22.01 – Residential Development and Character Policy Clause 22.04- Stormwater Management Policy Clause 22.13- Environmentally Sustainable Development Policy
RELEVANT LEGISLATION:	Section 69 of the Planning and Environment Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

RECOMMENDATION:

That Council resolves to issue an **Extension of time to Planning Permit No. TPA/42225/A** for the development of three apartment buildings up to three storeys in height associated with the existing retirement village including a reduction in the applicable car parking requirement at 101-121 Whalley Drive, Wheelers Hill, pursuant to the provisions of Section 69(2) of the *Planning and Environment Act 1987*.

1. That in accordance with Section 69(2) of the Planning and Environment Act 1987, the time for the commencement of the development be extended for a further 2 years. Accordingly, the development must be commenced by 6 October 2024 and completed by 6 October 2026.
2. 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/42225 was issued on 6 October 2014 allowing the development of three apartment buildings up to three storeys in height associated with the existing retirement village and a reduction in the car parking requirement.

An amended Planning Permit TPA/42225/A was issued on 9 February 2018 permitting modification to the second floor building envelope, architectural form, building an enclosure to the existing pool and internal layout of the approved development. Development plans were later endorsed pursuant to the requirements of condition 1 of the permit on 26 February 2018.

The permitted timeframe for commencement has been extended four previous occasions; July 2016 (2 year extension), October 2018 (1 year extension), July 2019 (2 year extension) and October 2021 (1 year extension). The current expiry date for commencement of the development is 6 October 2022.

The current extension of time request was made on 3 June 2022 which is before the expiry date of the permit, and in accordance with the requirements of the *Planning and Environment Act 1987*.

The Site and Surrounds

The subject land is located on the southern side of Whalley Drive in Wheelers Hill. The land has an overall land area of approximately 14 hectares. It has a gradual fall of approximately 30 metres across the site from south-west to north-east. The land is bounded by Whalley Drive to the north, Garnett Road to the east, Wellington Road to the South, Rata Street and Windmill Court to the west.

The property is a large integrated retirement community comprising independent living units and aged care accommodation. The approved buildings and works are within the existing retirement village.

Surrounding land to the north, east and west is an established residential area.

PROPOSAL:

The applicant has requested an extension of the permit's start and completion dates by a further four (4) years stating grounds due to the last two years of the COVID pandemic and the significant increase in construction costs.

DISCUSSION:

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

"Before the permit expires or within 6 months afterwards, the owner or the occupier of the land to which it applies may ask the responsible authority for an extension of time."

The request was made on 3 June 2022, which is before the development is due to be commenced. Accordingly, Council is able to consider a further extension to the commencement and 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:

- Whether there has been a change of planning policy.
- Whether the land owner 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 land owner by the permit.
- 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 and local amendments affecting the land.

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 and 22.01, the land is within *Dandenong Valley Escarpment Areas*. This amendment also rezoned the land from General Residential Schedule 2 to Neighbourhood Residential Zone Schedule 4 (NRZ4).

The NRZ4 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. These variations of Clause 55 however do not apply to the development as a retirement village.

Overall, the changes in planning policy are inconsequential in the context of the approved development which continues to comply with planning policy.

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, it is acknowledged that an amendment to the original development was approved by Council in February 2018, and the COVID-19 pandemic since early 2020 has caused significant delays in building constructions. The increase in building costs is also a contributing factor to the delay in commencing the approved building works.

The Applicant has advised that the approved development represents a long term planning outcome for the retirement village. In light of the existing context, it would be difficult to show that the owner has no intention of commencing and completing the development.

However, the applicant's request for a four year extension to commence the permit is not considered appropriate and only two years is recommended. A four year commencement date is not considered appropriate for the following reasons:

- It is not commensurate with the scale of development proposed.
- Plans and associated documentation have been endorsed which could otherwise hold up commencement.

- No evidence has been provided by the applicant why such a long extended period of time has been requested. Noting that a four year commencement date would be out of step with normal planning practices across the state.
- The length of time passed already is considerable and a further four year request could be considered warehousing.

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

Although no activity has occurred on site in relation to the construction of the development, the amended application does demonstrate the applicant's intention to fulfil the permit. The development has been unable to commence within time due to delays owing to the COVID-19 pandemic and increased construction costs.

The total elapse of time.

The total elapse of time to commence the development has been 7 years and 10 months which is a significant period. 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, 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 that could have affected the commencement of construction. The conditions are standard for this sort of development.

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

Any new proposed development would be assessed against the current regulations under Clause 22.01 *Residential Development and Character Policy* and 32.09 *Neighbourhood Residential Zone* should a fresh application be made.

Clause 22.01 seeks to ensure that new development is successfully integrated into existing residential environments, with minimal streetscape or amenity impact, and designed to achieve outcomes that enhance the Garden City Character of the area. Neighbourhood character objectives in Clause 32.09 NRZ4 seek to *ensure new development maintains the important view lines to the Dandenong Ranges, along the street and between buildings; ensure development is defined by its spacious and generous garden settings...and open gardens to the street...*

The height and scale of the development has been designed to have regard for the established built form of the surrounding area and context. The design response provides for a double storey form with a well recessed third storey orientated to Whalley Drive. The substantial setback of the third storey from the

northern façade results in minimal visual prominence when viewed from the Whalley Drive streetscape and maintains the view lines to the Dandenong Ranges.

The substantial setback of the proposed development provides for meaningful landscaping opportunities throughout the site, particularly adjacent to the boundaries meeting the objectives of Clause 22.01 and 32.09.

The development also complies with the overlooking and overshadowing objectives of Clause 55.04 which provides a benchmark in assessing external amenity impacts.

CONCLUSION:

It is considered appropriate to grant a further extension of time to the permit. However, the applicant's request for a four year extension to commence the permit is not considered appropriate and only two years is recommended.

The proposal on balance meets the tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, including consistency with current planning policy objectives. The development outcome is appropriate.

It is therefore recommended that Council approves a further two years for the commencement of the development until 6 October 2024 and completion by 6 October 2026.

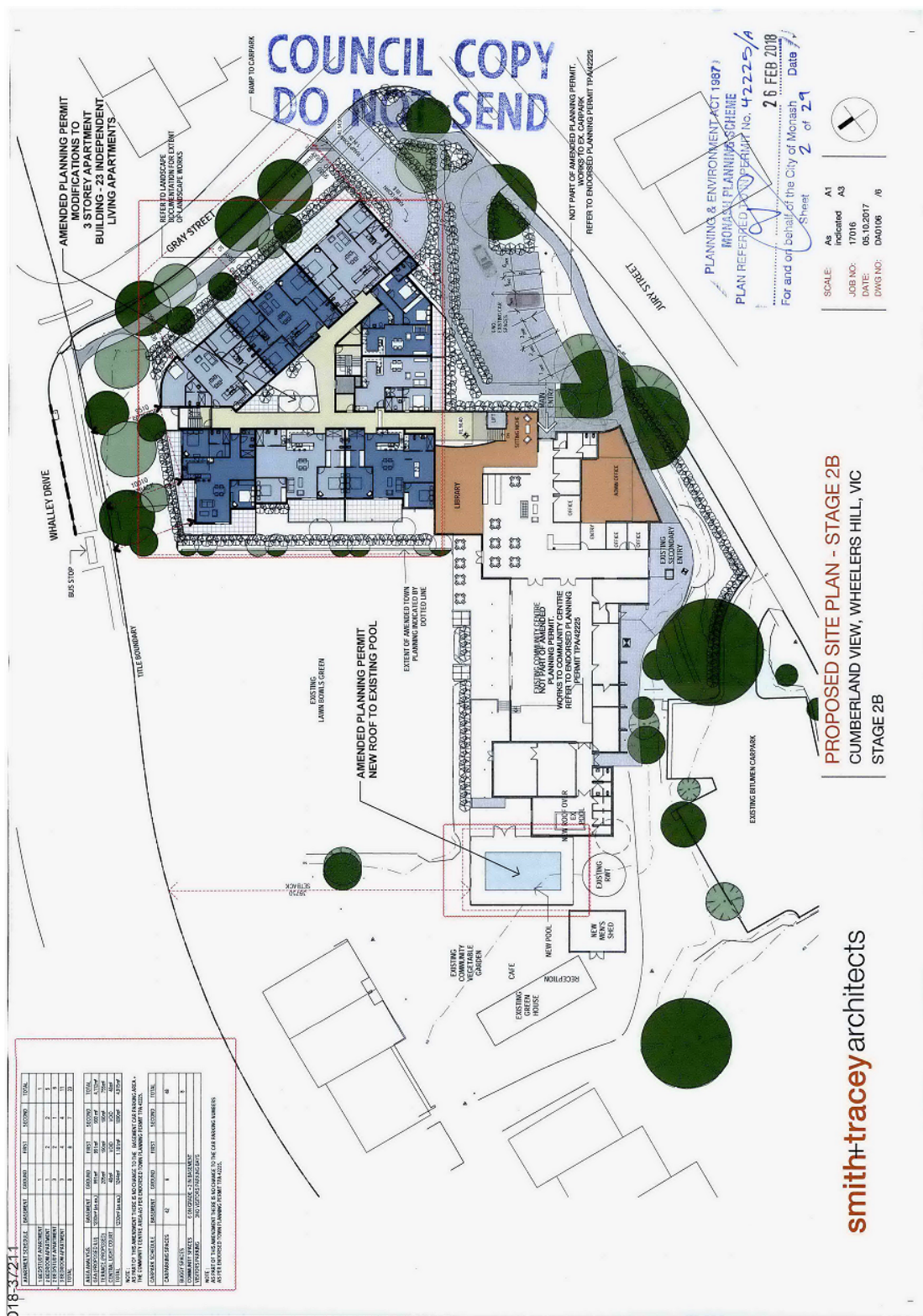
ATTACHMENT 1



D18-37211

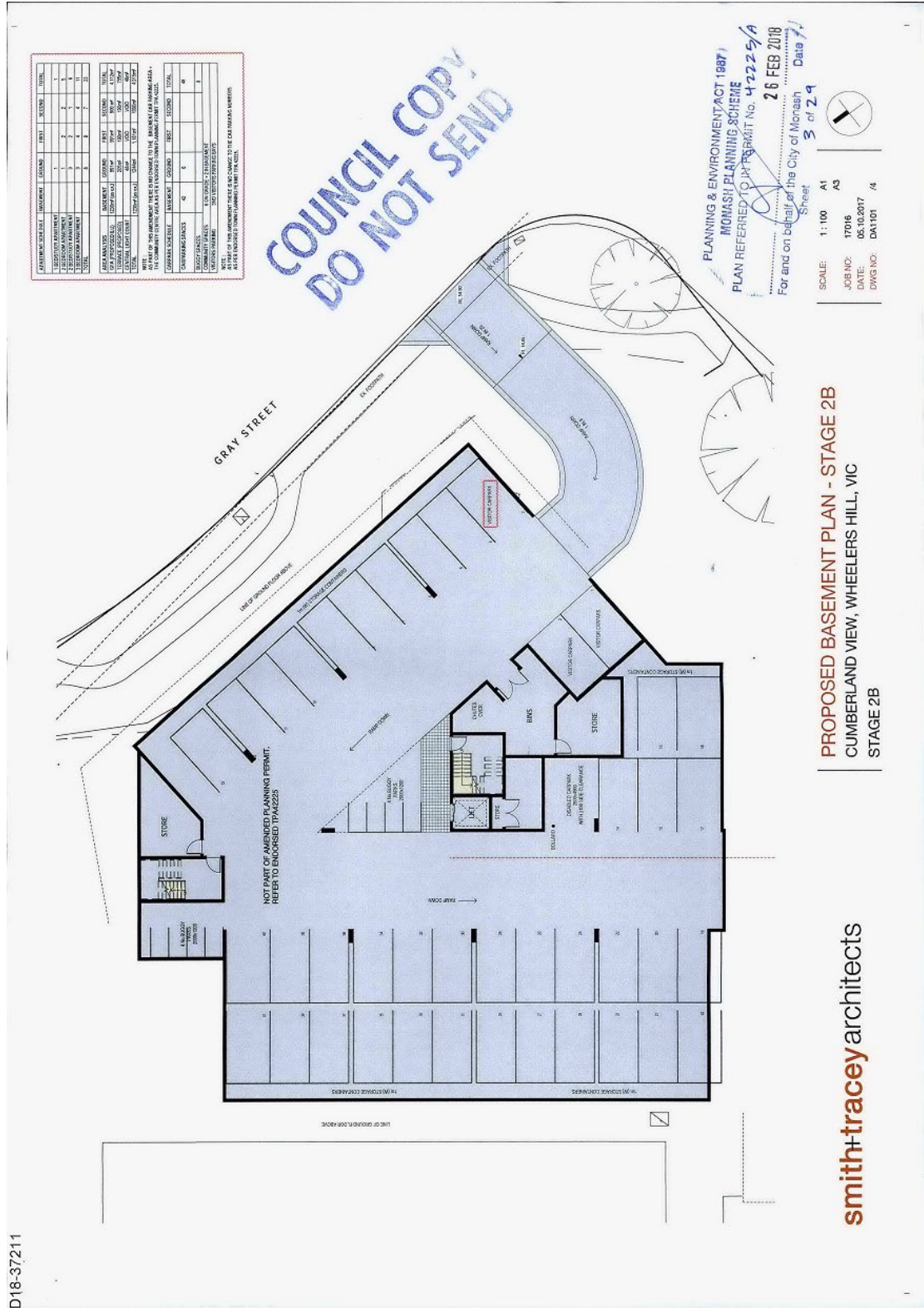
101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)



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PROPOSED FIRST FLOOR PLAN - STAGE 2B
 CUMBERLAND VIEW, WHEELERS HILL, VIC
 STAGE 2B

smith+tracey architects

ATTACHMENT 1 (Continued)



101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

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PLANNING & ENVIRONMENT ACT 1987
 MONASH PLANNING SCHEME
 PLAN REFERRED TO IN PERMIT NO. 42225/A
 26 FEB 2018

For and on behalf of the City of Monash
 Sheet 9 of 29

SCALE:	1:100	A1
JOB NO:	17016	A3
DATE:	05.10.2017	
DWG NO:	042103	/2

DATE ISSUED

PROPOSED ELEVATIONS 01 - STAGE 2B
 CUMBERLAND VIEW, WHEELERS HILL, VIC
 STAGE 2B

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101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

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1000 MAX OVERALL BUILDING HEIGHT

Proposed Elevation 1

Proposed Elevation 2

Proposed Elevation 3

Proposed Elevation 4

Proposed Elevation 5

1000 MAX OVERALL BUILDING HEIGHT

Proposed Elevation 6

Proposed Elevation 7

Proposed Elevation 8

Proposed Elevation 9

Proposed Elevation 10

PLANNING & ENVIRONMENT ACT 1987
MONASH PLANNING SCHEME
PLAN REFERRED TO PERMIT NO. 42225/A
26 FEB 2018
For and on behalf of the City of Monash
Date 7/10/17
Sheet 10 of 29

DA ISSUE

SCALE:	1:100	A1
JOB NO:	17016	A3
DATE:	06.10.2017	
DWG NO:	DA2104	/2

PROPOSED ELEVATION 02 - STAGE 2B
CUMBERLAND VIEW, WHEELERS HILL, VIC
STAGE 2B

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101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



D18-37211

101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

D18-37211

PLANNING & ENVIRONMENT ACT 1987
MOMASH PLANNING SCHEME
PLAN REFERRED TO IN PERMIT No. 42225/A
Date 28 FEB. 2018
For and on behalf of the City of Monash
Sheet 12 of 29

EXISTING DEMO / PROPOSED PLANS
POOL RENOVATION
CUMBERLAND VIEW, WHEELERS HILL, VIC

SCALE:	1:100	A1
JOB NO:	17016	A3
DATE:	19.02.2017	
DWG NO:	D451029	/A

smith+tracy architects

DAISSUE

PROPOSED PLAN

EXISTING GREEN TO REMAIN AS EXISTING

GROUP GROUND FLOOR DEMOLITION

EXISTING GREEN TO REMAIN AS EXISTING

EXISTING GREEN TO REMAIN AS EXISTING

ATTACHMENT 1 (Continued)

D18-37211

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PLANNING & ENVIRONMENT ACT 1987
MONASH PLANNING SCHEME
PLAN REFERRED TO PERMIT No 472225/A
26 FEB 2018
Date
For and on behalf of the City of Monash
Sheet 13 of 29

DA ISSUE

SCALE: 1:50 A1 AS
JOB NO: 17016
DATE: 19.08.2017
DWG NO: DAP1010

ELEVATIONS / PERSPECTIVES
POOL RENOVATION
CUMBERLAND VIEW, WHEELERS HILL, VIC

smith+tracey architects

1. POOL RENOVATION - NORTH ELEVATION

2. POOL RENOVATION - SOUTH ELEVATION

3. POOL RENOVATION - WEST ELEVATION

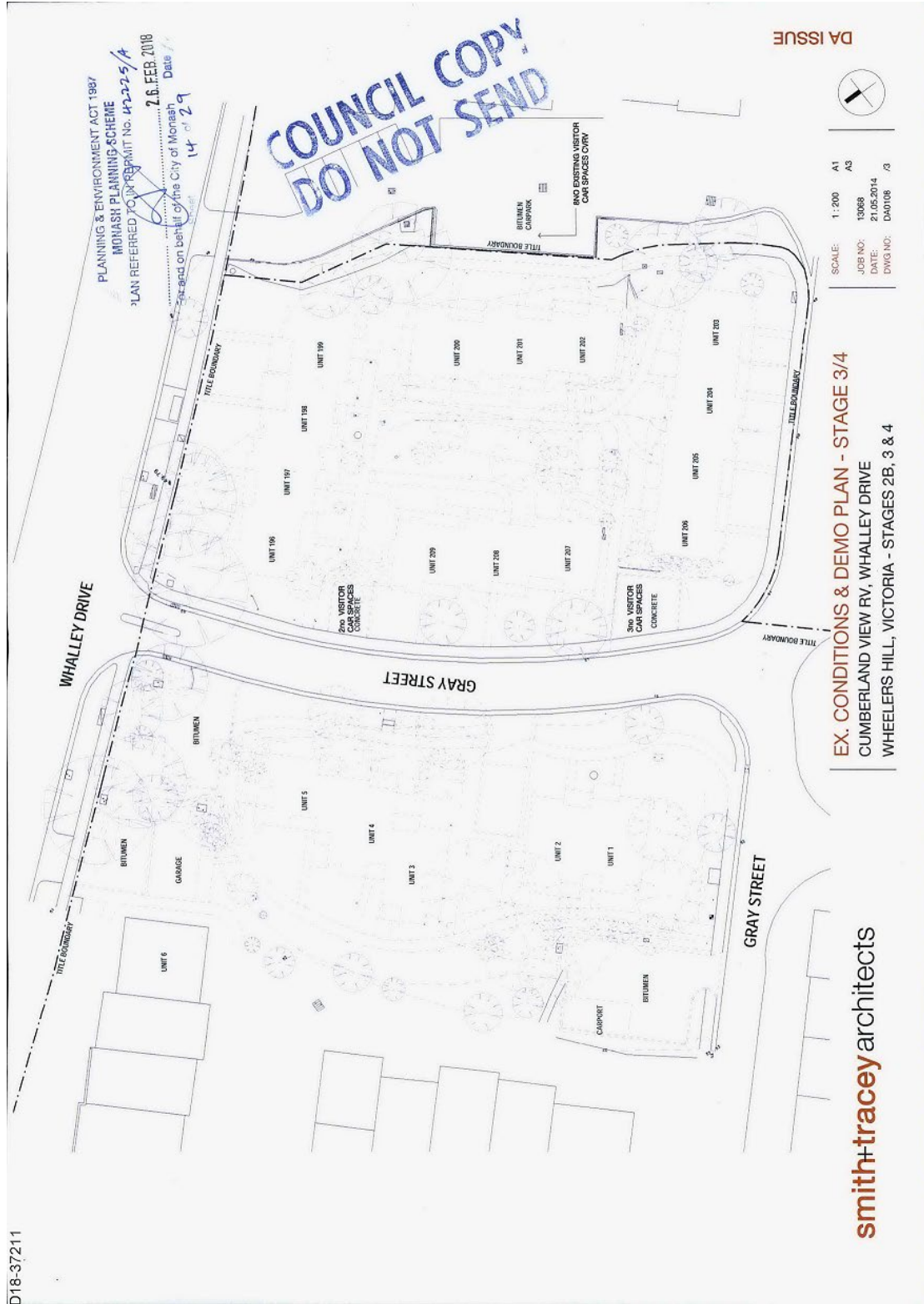
4. POOL RENOVATION - EAST ELEVATION

5. Swimming Pool Roof View - 1

6. Swimming Pool Roof View - 2

101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



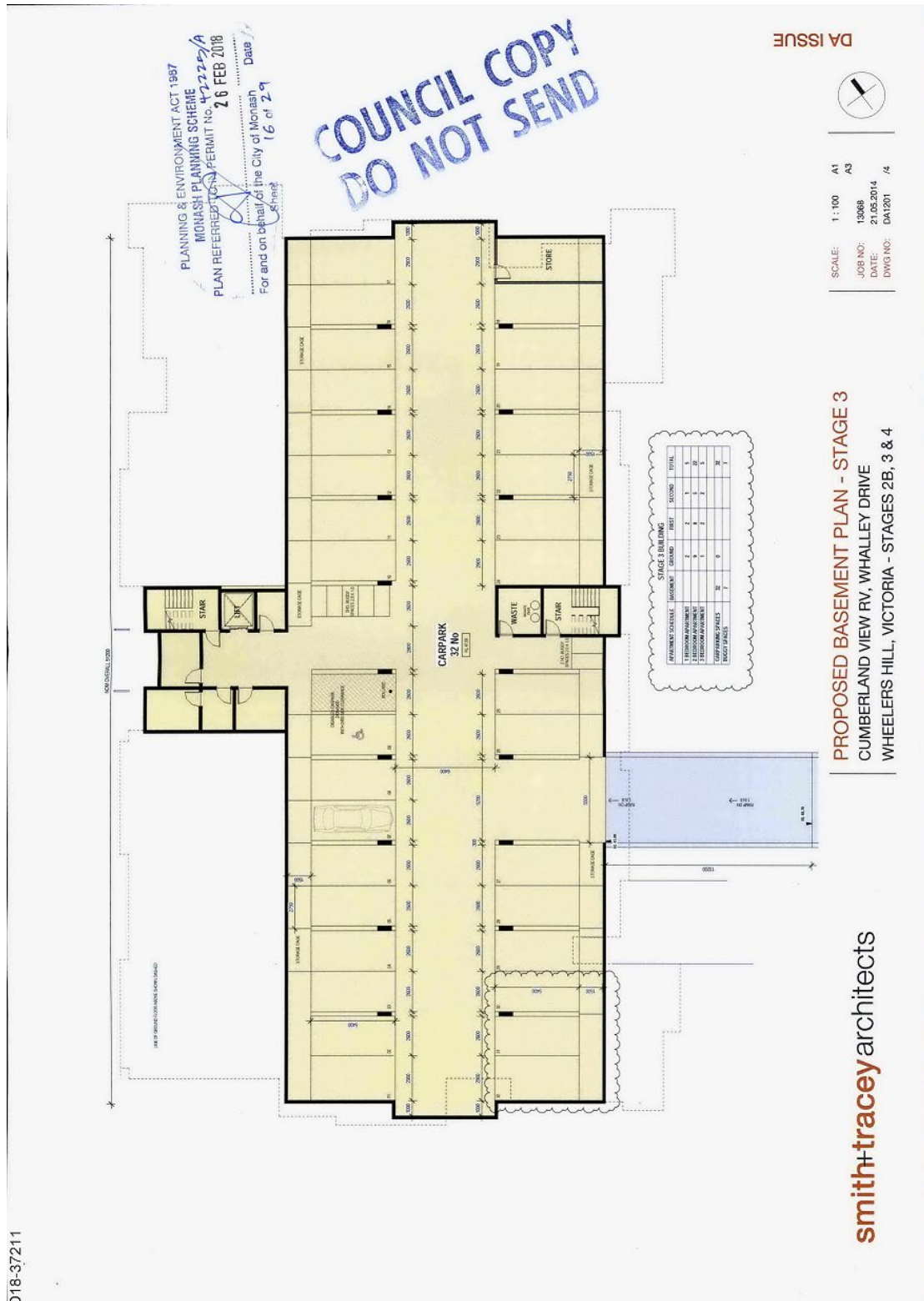
101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)



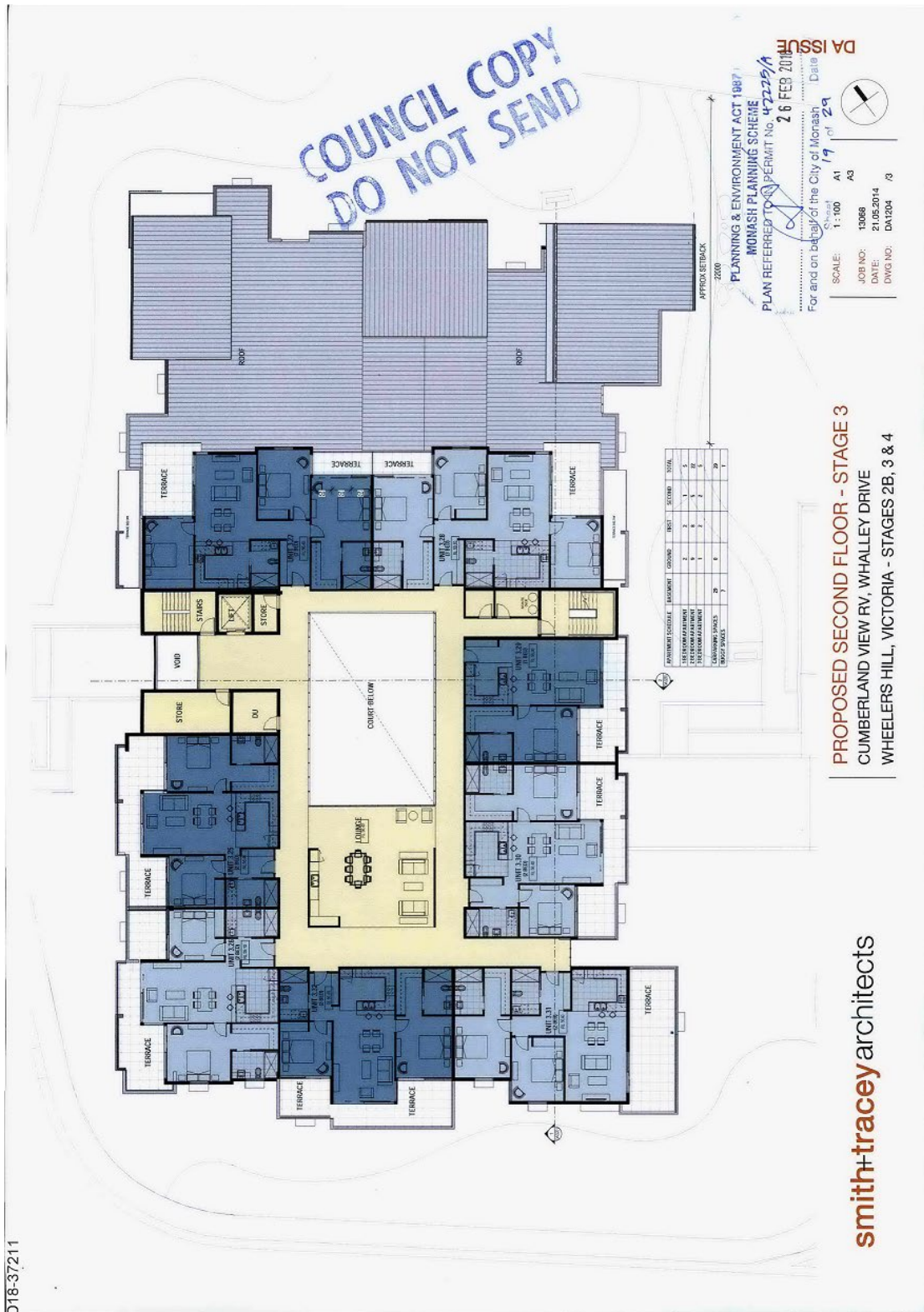
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ATTACHMENT 1 (Continued)



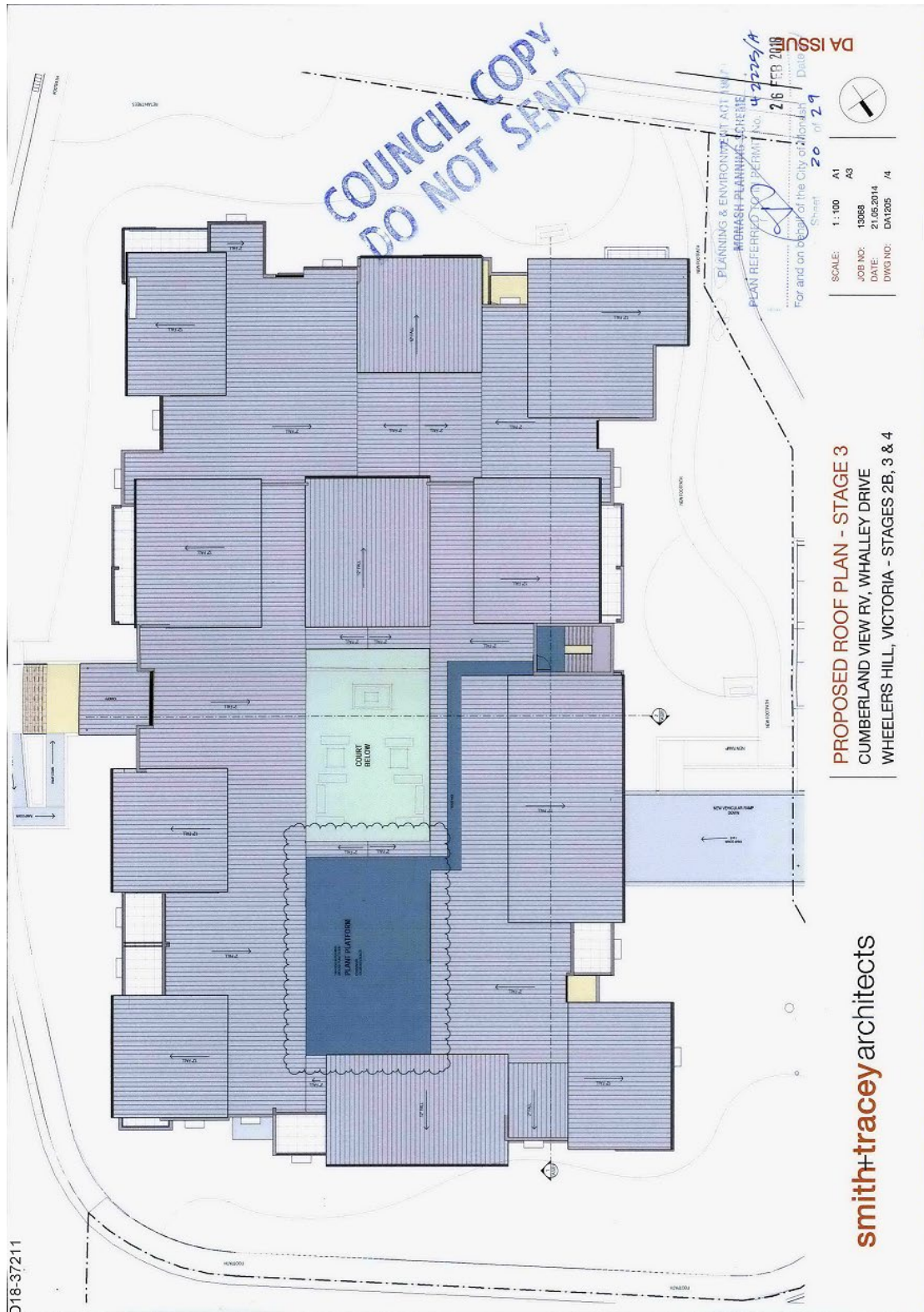
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ATTACHMENT 1 (Continued)



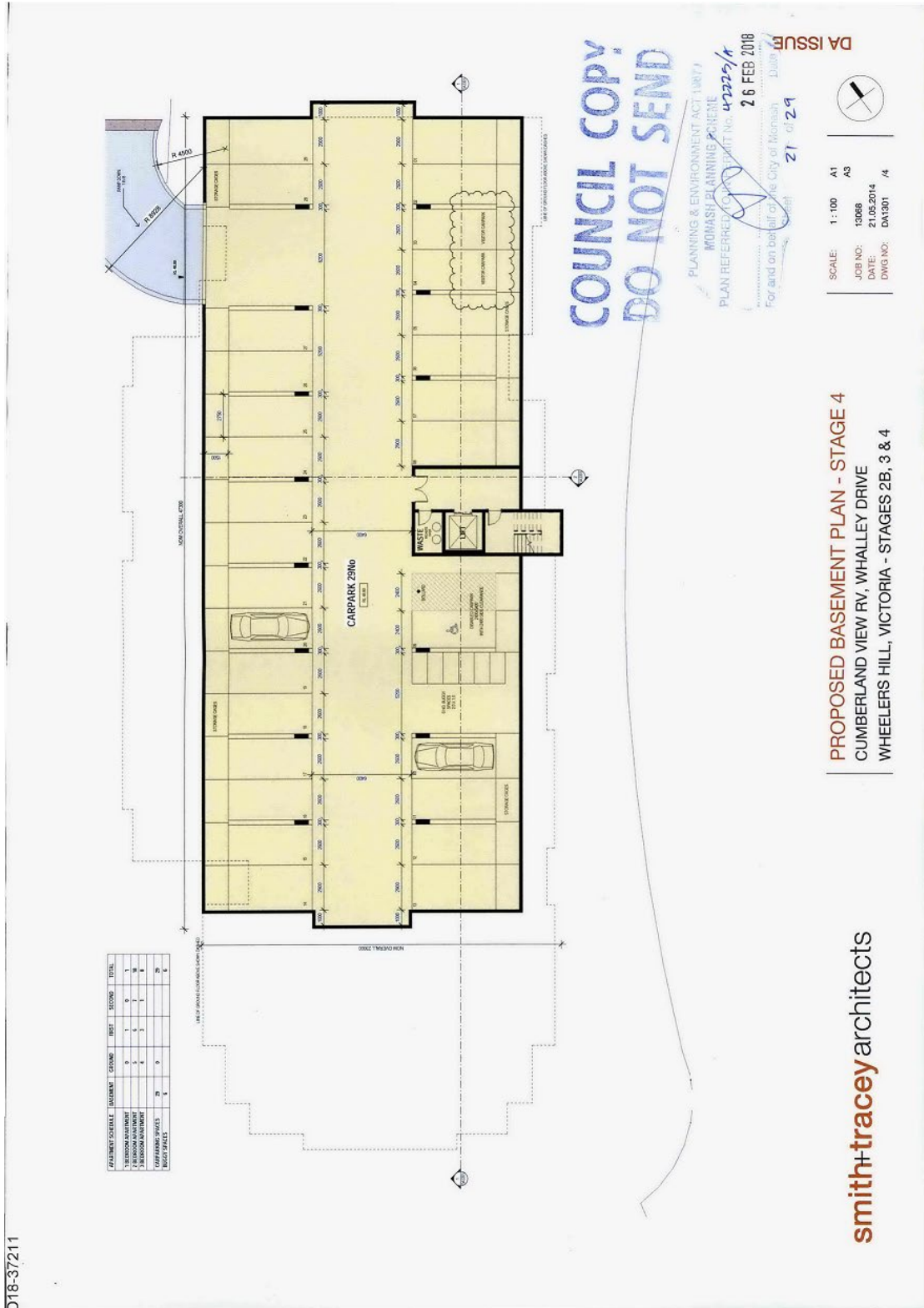
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ATTACHMENT 1 (Continued)



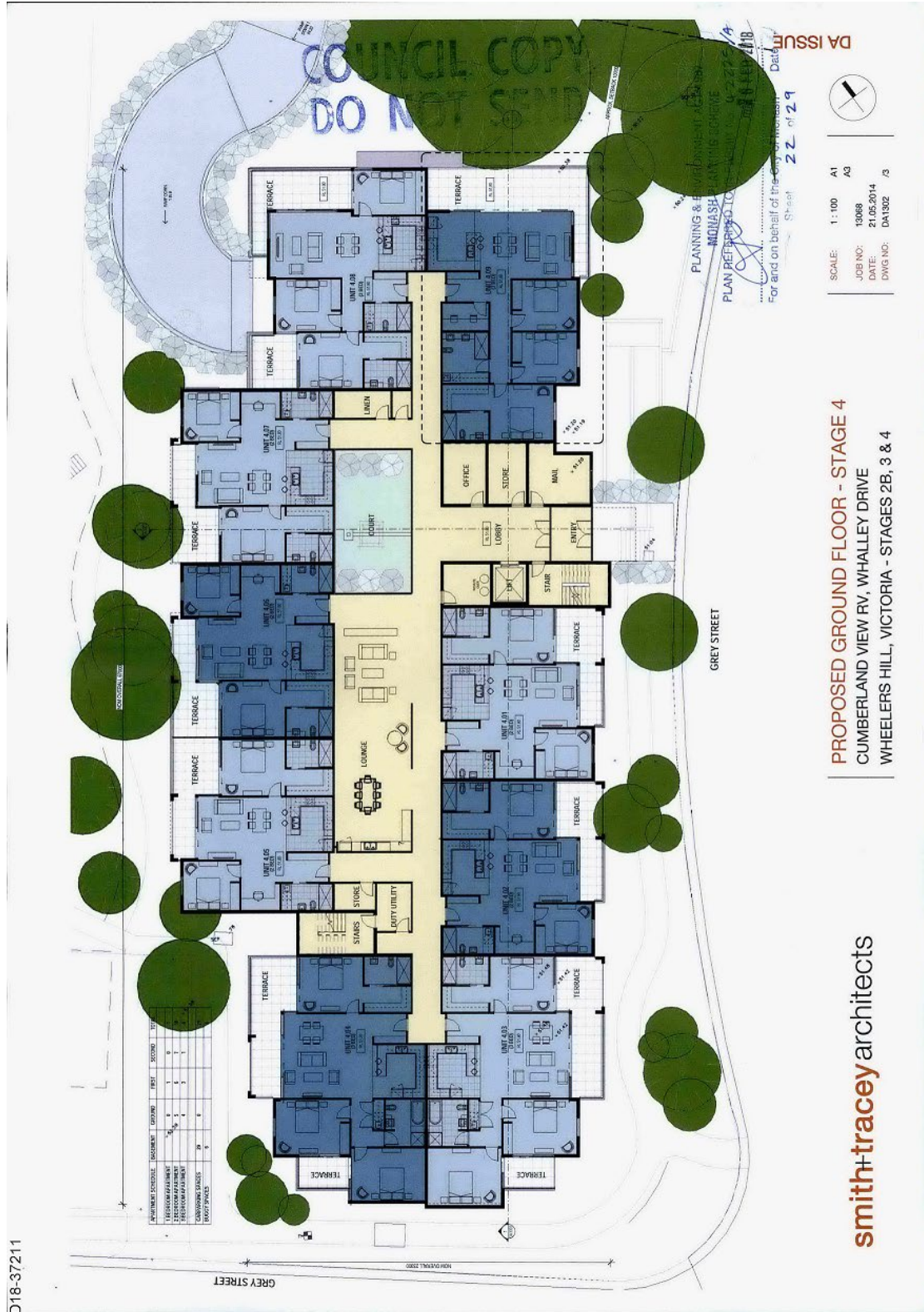
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ATTACHMENT 1 (Continued)



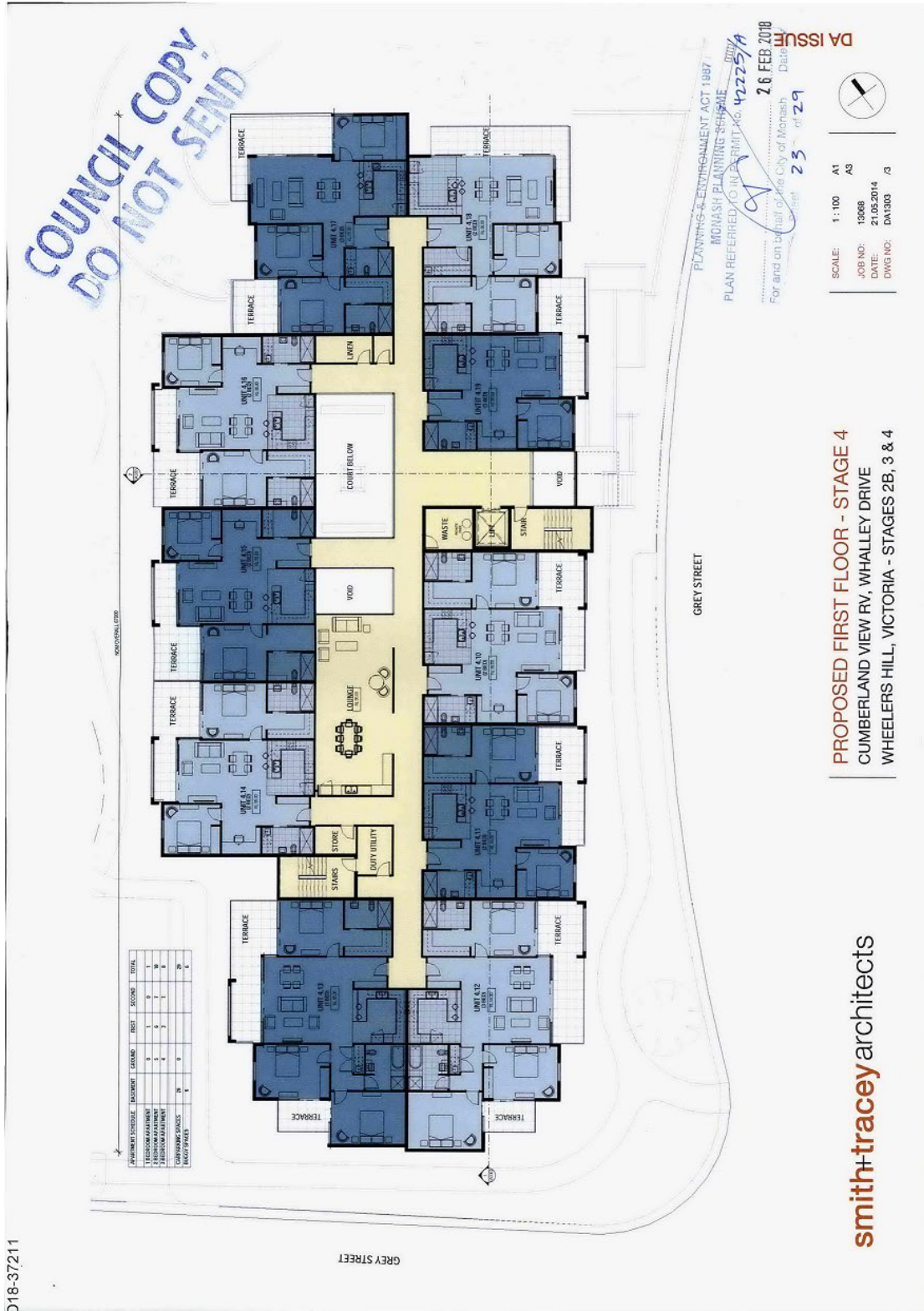
101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



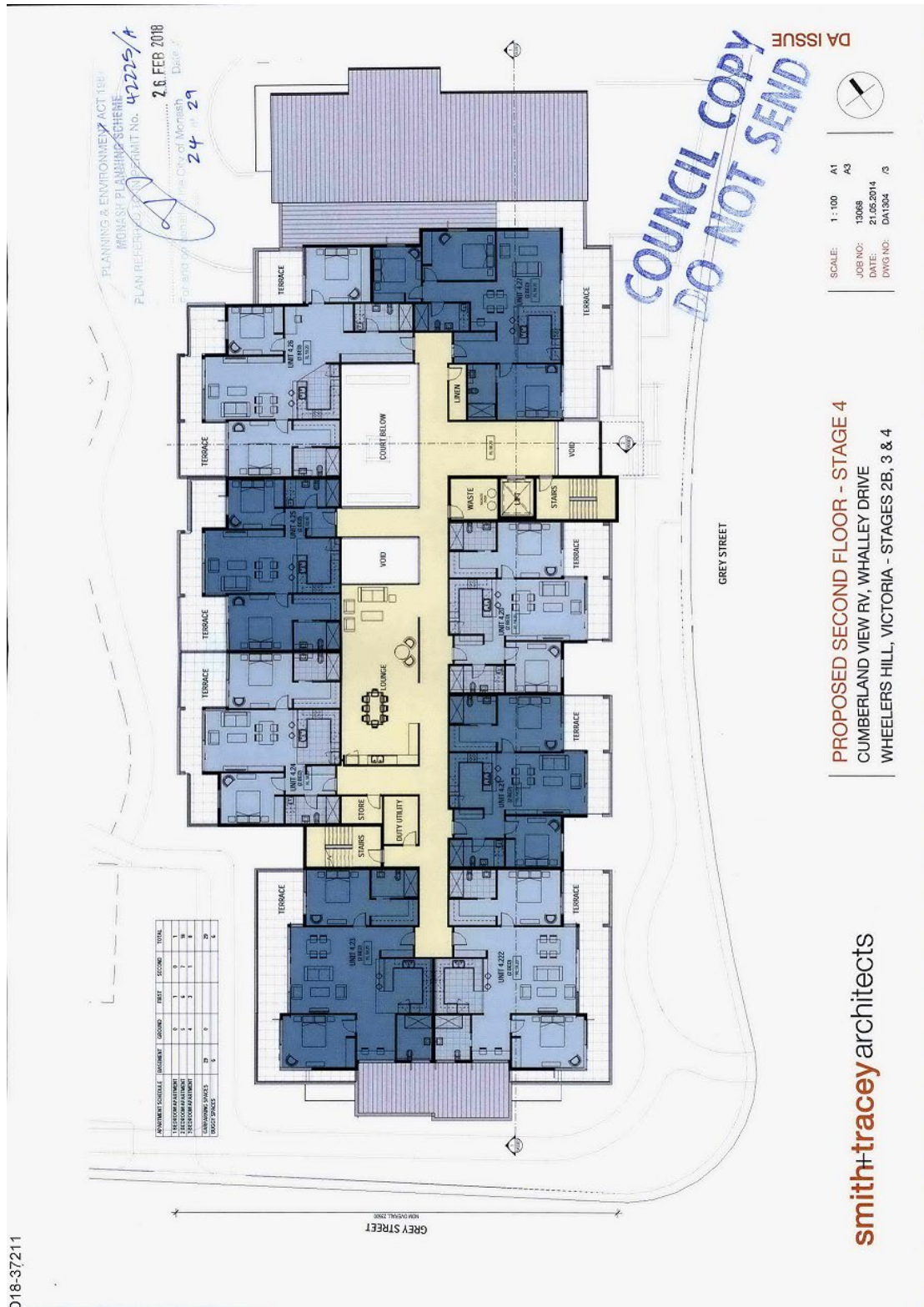
101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



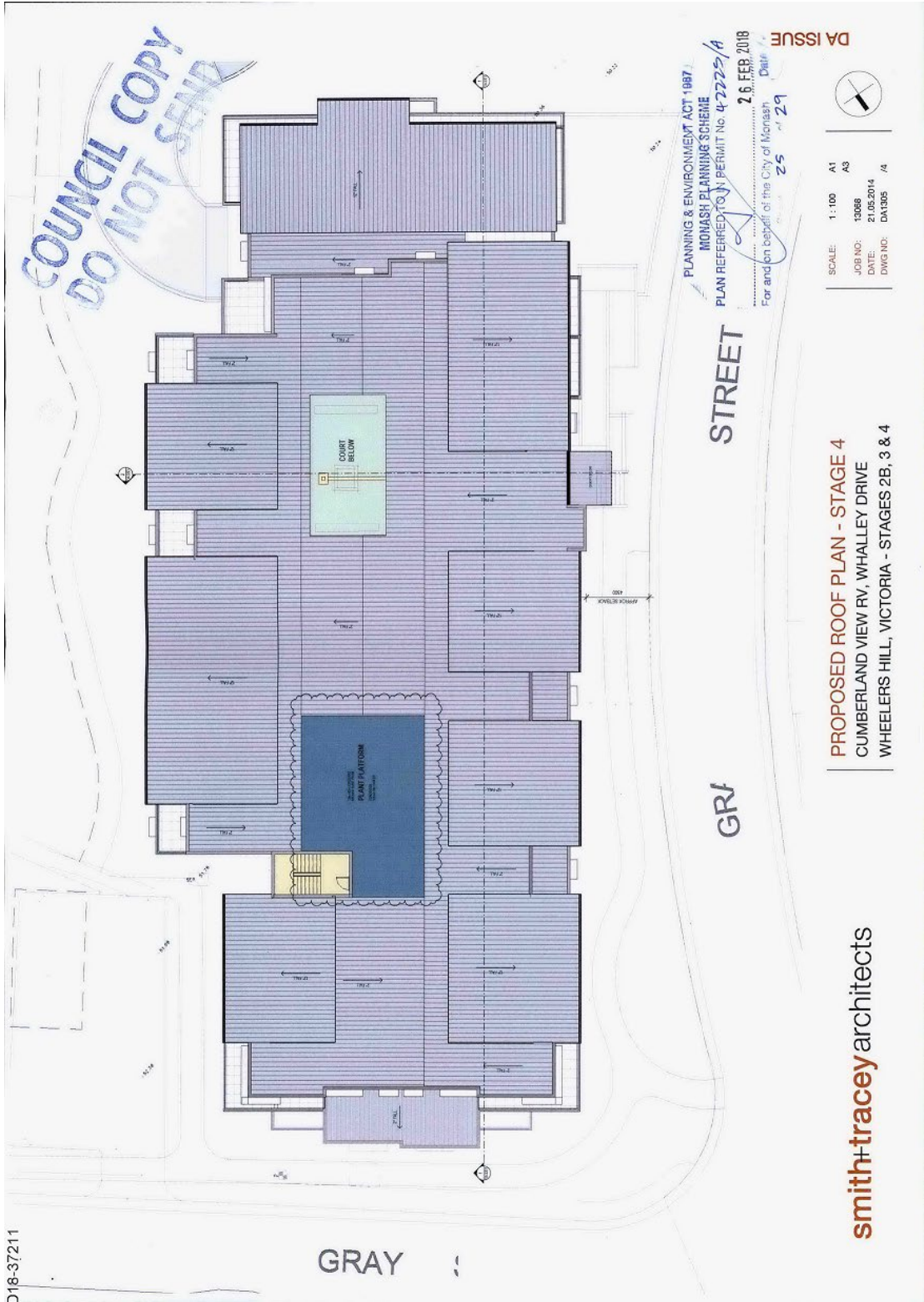
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ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)



101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

D18-37211

② Proposed Elevation - Stage 3 - East

① Proposed Elevation - Stage 3 - South

PLANNING & ENVIRONMENT ACT 1987
 MONASH PLANNING SCHEME
 PLAN REFERRED TO: PERMIT No. 47225/A
 For and on behalf of the City of Monash Date 26 FEB 2018
 Sheet 26 of 29

PROPOSED ELEVATIONS 01 - STAGE 3
 CUMBERLAND VIEW RV, WHALLEY DRIVE
 WHEELERS HILL, VICTORIA - STAGES 2B, 3 & 4

smith+traceyarchitects

SCALE:	1:100	A1
JOB NO:	10068	A3
DATE:	21.05.2014	
DWG NO:	DA2203	/3

DA ISSUE

101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

D18-37211

PLANNING & ENVIRONMENT ACT 1987
 MONASH PLANNING SCHEME
 PLAN REFERRED TO PERMIT No. 42225/A
 For and on behalf of the City of Monash
 Signed: 27 Feb 2018 Date: 26 FEB 2018

DA ISSUE

SCALE:	1:100	A1
JOB NO:	13068	A3
DATE:	21.02.2014	
DWG NO:	DA2204	/3

PROPOSED ELEVATIONS 02 - STAGE 3
 CUMBERLAND VIEW RV, WHALLEY DRIVE
 WHEELERS HILL, VICTORIA - STAGES 2B, 3 & 4

smith+tracey architects

② Proposed Elevation - Stage 3 - West

① Proposed Elevation - Stage 3 - North

101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

D18-37211

PLANNING & ENVIRONMENT ACT 1987
MONASH CLINICAL SCHEME
PLAN REFERRAL / CITY OF MONASH / PERMIT No. 42229/4
For and on behalf of the City of Monash Date 26 FEB 2018
28/01/2018

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SCALE:	1 : 100	A1
JOB NO:	13068	A3
DATE:	21.05.2014	
DWG NO:	DAG303	/3

PROPOSED ELEVATIONS 01 - STAGE 4
CUMBERLAND VIEW RV, WHALLEY DRIVE
WHEELERS HILL, VICTORIA - STAGES 2B, 3 & 4

smith+tracey architects

① - Proposed Elevation - Stage 4 - West

② - Proposed Elevation - Stage 4 - North

101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

D18-37211

PLANNING & ENVIRONMENT ACT 1987
MONASH PLANNING
PLANNING SCHEME
PERMIT NO. U2225/A
For and on behalf of the City of Monash
28 FEB 2018
29 of 29

DA ISSUE

SCALE:	1:100	A1
JOB NO:	13068	A3
DATE:	21.05.2014	
DWG NO:	DA2304	/ 3

PROPOSED ELEVATIONS 02 - STAGE 4
CUMBERLAND VIEW RV, WHALLEY DRIVE
WHEELERS HILL, VICTORIA - STAGES 2B, 3 & 4

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Proposed Elevation - Stage 4 - East

Proposed Elevation - Stage 4 - South

101-121 Whalley Drive, Wheelers Hill - Extension Of Time - The Development Of Three Apartment Buildings Up To Three Storeys In Height Associated With The Existing Retirement Village Including A Reduction In The Applicable Car Parking Requirement