

7.1.2 TPA 45183A - 108 STANLEY AVENUE MOUNT WAVERLEY- EXTENSION OF TIME

Responsible Manager:	Kaitlyn Zeeck, Manager City Planning
Responsible Director:	Peter Panagakos, Director City Development

EXECUTIVE SUMMARY

This application is for an extension of time to Planning Permit TPA/45183/A for the construction of two (2) double storey dwellings.

The original permit was issued on 15 August 2016, with an amended permit granted on 28 May 2021.

The permit has been extended on three (3) previous occasions. The latest extension of time was granted on 9 August 2022 requiring the development to have commenced construction by 15 August 2024.

Construction of the development has not commenced.

The reason for presenting this report to Council is this is the fourth 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 a two (2) year extension to the permit be granted.

RESPONSIBLE DIRECTOR:	Peter Panagakos, Director City Development
RESPONSIBLE MANAGER:	Kaitlyn Zeeck
RESPONSIBLE PLANNER:	Dianne Stanley
WARD:	University Ward
PROPERTY ADDRESS:	108 Stanley Avenue MOUNT WAVERLEY
NUMBER OF OBJECTIONS:	N/A
ZONING:	General Residential Zone – Schedule 3
OVERLAY:	N/A
EXISTING LAND USE:	Single storey dwelling
RELEVANT LEGISLATION:	Section 69 of the <i>Planning and Environment Act 1987</i>
RELEVANT POLICY:	<p><u>Purpose and Vision</u></p> <p>Clause 02.03-1 – Settlement</p> <p>Clause 02.03-4 – Built Environment and Heritage</p> <p>Clause 02.03-5 – Housing</p> <p>Clause 02.04-1 – Strategic Framework Plan</p> <p>Clause 02.04-3 – Residential Development Plan</p>

Planning Policy Framework

Clause 11.01-1R - Settlement – Metropolitan Melbourne

Clause 11.02-1S - Supply of Urban Land

Clause 15.01-1S&R - Urban Design

Clause 15.01-2S - Building Design

Clause 15.01-2L-02 – Environmentally Sustainable Development

Clause 15.01-4S & R - Healthy Neighbourhoods

Clause 15.01-5S - Neighbourhood Character

Clause 15.01-5L – Monash Preferred Neighbourhood Character

Clause 16.01-1L-01 Housing Supply - Monash

Clause 16.01-1S &R - Housing supply

Clause 16.01-2S - Housing affordability

Clause 19.03-3L – Stormwater Management

Clause 19.03-3S - Integrated Water Management

Particular Provisions

Clause 52.06 - Car Parking

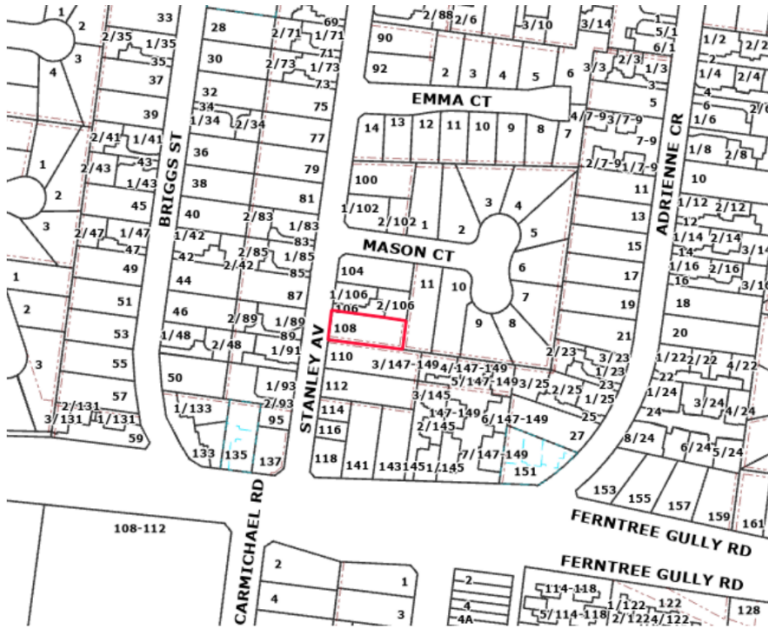
Clause 53.03 - Residential Reticulated Gas Service Connection

Clause 53.18 - Stormwater Management in Urban Development

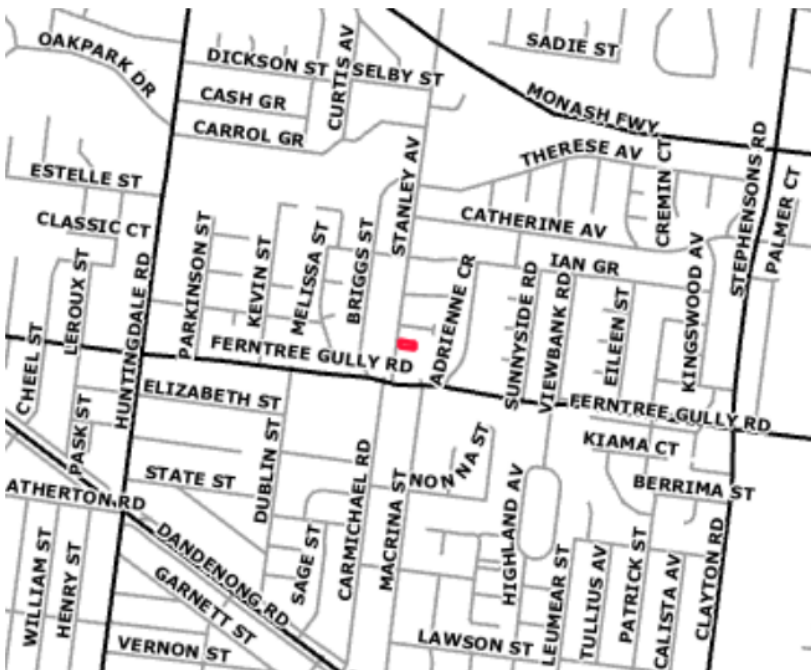
Clause 55 - Two or more dwellings on a lot and residential buildings

Clause 65 - Decision Guidelines

LOCALITY PLAN



& NEIGHBOURHOOD PLAN



RECOMMENDATION

That Council resolves to issue an Extension of time to Planning Permit No. TPA/45183/A for the construction of two (2) double storey dwellings and a front fence at 108 Stanley Avenue Mount Waverley, pursuant to the provisions of Section 69(2) of the *Planning and Environment Act 1987*, subject to the following:

1. That in accordance with Section 69(2) of the *Planning and Environment Act 1987*, the time for the commencement and completion of the development be extended for a further two (2) years. Accordingly, the development must be commenced by 15 August 2026 and completed by 15 August 2028.

COUNCIL PLAN STRATEGIC OBJECTIVES

Sustainable City

Ensure an economically, socially, and environmentally sustainable municipality.

Inclusive Services

Advocate and partner to deliver social and affordable housing in Monash.

Enhanced Places

Improving open spaces, bushland and street trees, including prioritising biodiversity and community engagement.

Pursue a planning framework that meets Monash needs.

BACKGROUND

History

Planning Permit TPA/45183 was issued on 15 August 2016 for the construction of two (2) double storey dwellings and a front fence.

The permit was amended (TPA/45183/A) on 1 June 2021. The amended permit required amended plans to be submitted to Council for endorsement. The applicant submitted amended plans on 4 September 2024 to meet the requirements specified in condition 1 of the amended permit. Council officers cannot progress endorsement of plans until an extension of time to the permit has been granted.

The permit has been extended on three (3) occasions, 3 September 2018, 18 March 2021 and 29 September 2022.

The current permit expiry dates are:

- Commence the development before 15 August 2024 and;
- Complete the approved development before by 15 August 2026.

The current extension of time request was made on 12 August 2024, which is before the expiry date of the permit, meaning that the request can be considered.

Attachment 1 details the decision plans forming part of the application.

Site and Surrounds

The subject land is located on the eastern side of Stanley Avenue, approximately 85 metres north of the intersection with Ferntree Gully Road in Mount Waverley.

The site is rectangular in shape, with a frontage of 16.7 metres, a depth of 43.2 metres and an overall site area of 725 square metres and contains several small to medium sized trees at the front of the site.

The site has a fall of approximately 2.5 metres east to west.

The land is currently developed with a single storey detached brick dwelling, with an attached double garage and a pitched tiled roof.

Land to the north is developed with a multi-unit development comprising one double storey and one single storey brick dwelling. The site to the south is developed with a detached single storey dwelling and the large private open space area at the rear of the site includes a swimming pool.

The property to the rear (east) of the site is the secluded private open space at the rear of No. 11 Mason Court which includes generous vegetation and several trees.

Opposite the land to the west of the site is a multi-unit development comprising a weatherboard dwelling at the front of the site and a double storey dwelling at the rear, with one shared accessway and modest landscaping at the front of the site.

The site is located in a garden City Suburbs – Northern areas. Surrounding land to the wider north, south, east and west is an established residential precinct typified by detached single and double storey dwellings and medium density residential development.

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

PROPOSAL

An application has been received to extend the time to commence the development for an additional two (2) years.

The applicant has advised that the additional time is required due to significant financial constraints caused by industry wide increased construction costs and interest rate rises.

PERMIT TRIGGERS

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 12 August 2024 which is within 6 months of the permit expiring.

Accordingly, Council can consider a further extension to the commencement and 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 request to extend the permit is eight (8) 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.
- 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 issue of the original planning permit in 2016, the planning controls which apply to the subject site and proposal, have undergone several changes. In summary:

Amendment VC110 introduced mandatory garden area requirements for development in residential zones into all planning schemes in Victoria.

Amendment C125 Part 1 changed the zoning of the land from General Residential 2 to General Residential Zone 3 where housing growth in the form of multi-unit developments is encouraged.

Council's decision to amend the permit on 29 March 2021 fully considered these policy changes. There have been no further changes in planning controls since this time that would affect the development.

Amendment VC250 was gazetted on 1 January 2024 which supports Victorias Gas Substitution Roadmap (Victorian Government, 2022) by prohibiting new gas connections for new dwellings, apartments and residential subdivisions where a planning permit is required. However, transitional provisions apply to Planning Permits already issued and therefore if the approved development is constructed it may still include a gas connection.

Amendment C166 was gazetted on 23 May 2024. This amendment replaced the Local Planning Policy Framework of the Monash Planning Scheme with a new Municipal Planning Strategy at Clause 02, a modified Planning Policy Framework at Clauses 11-19 and a selected number of operational provisions in a manner consistent with changes to the Victoria Planning Provisions introduced by Amendment VC148. This was a neutral translation, which has no impact on the policies assessed in this application. Overall, the changes in planning policy are inconsequential in the context of the approved development which continues to comply with planning policy.

Whether the landowner is seeking to "warehouse" the permit.

Warehousing is the obtaining of permits with no intention of acting on them in the foreseeable future to gain a windfall when selling the land.

Since the Applicant submitted the original application in December 2015, he has sought an amendment to the permit to address the garden area requirement and make improvements to the layout of the development. This amendment indicates an effort to refine the development and meet the requirements of the Monash Planning Scheme.

The owner also advises the reason for not commencing in time is due to industry wide financial pressures.

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

Inflation impacts including increased construction costs, availability of builders and trade services changes and additional obstacles in obtaining finance since the permit was originally granted have delayed the development in commencing. It is also noteworthy that the permit was granted during the COVID pandemic which constrained the commencement of some development and has led to ongoing delays in commencement of projects and increased construction costs.

The total elapse of time.

The total elapse of time since the issue of the permit is eight (8) years. This is not fatal to the application in isolation, given the broad compliance with current planning policy and objectives seeking provision of additional housing along with increased residential density.

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 that could have affected the commencement 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 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 a permit would be issued should a fresh application be made, given that the proposal has recently been amended and is consistent with current planning provisions. The conditions on the existing permit issued are still valid and would be similar to those that would be included in any permit should it be issued today.

POLICY IMPLICATIONS

There are no policy implications to this report.

SOCIAL IMPLICATIONS

There are no social implications to this report.

HUMAN RIGHTS CONSIDERATIONS

There are no human rights implications to this report.

GENDER IMPACT ASSESSMENT

A GIA was not completed because this agenda item is not a 'policy', 'program' or 'service'.

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 to enable the development to commence.

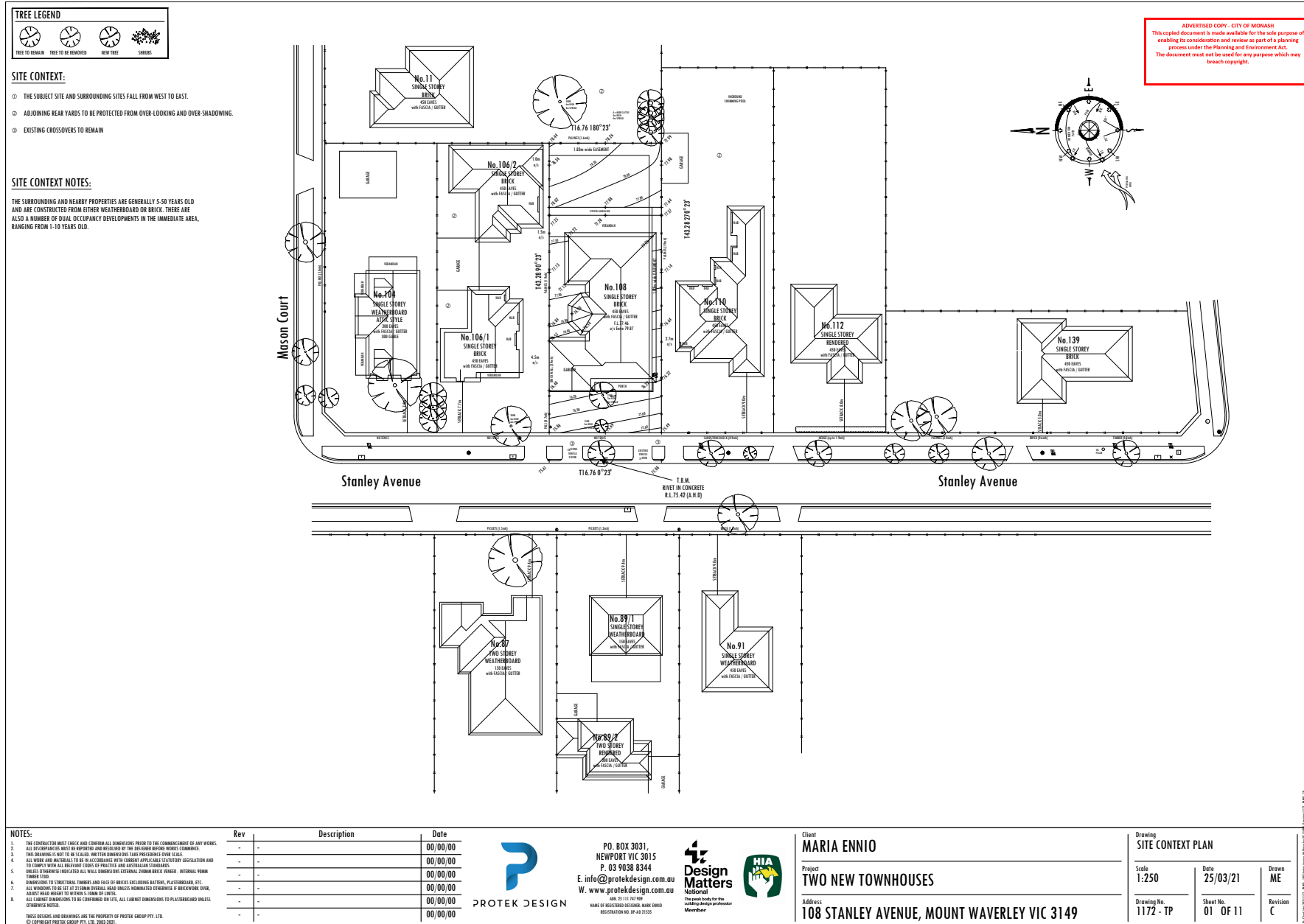
The proposal on balance meets the tests established in the Supreme Court decision Kantor v Murrindindi Shire Council (1997), including and most importantly consistency with current planning policy objectives.

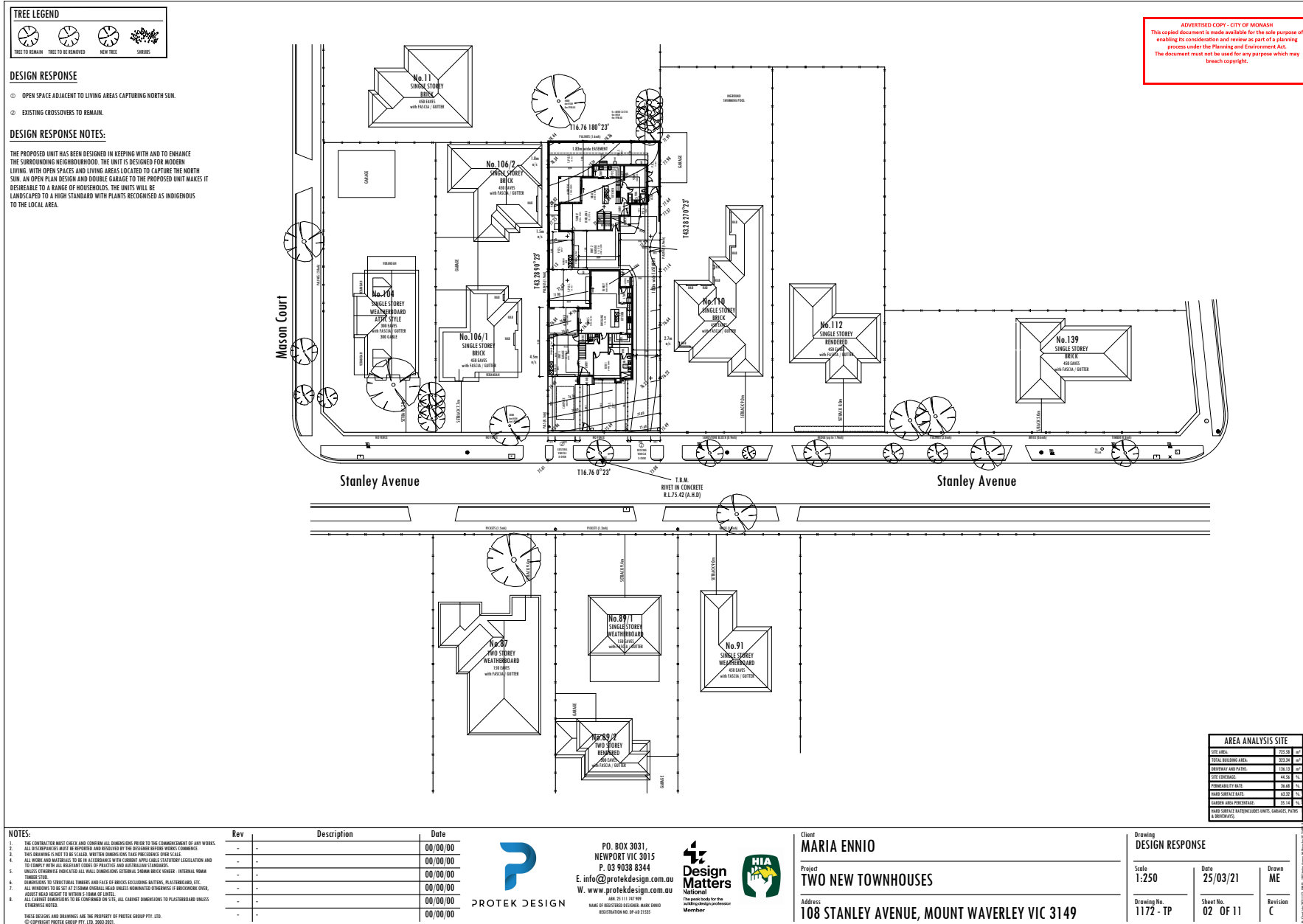
The development outcome is appropriate, the built form will be consistent with the desired future outcome and the permit remains current and relevant.

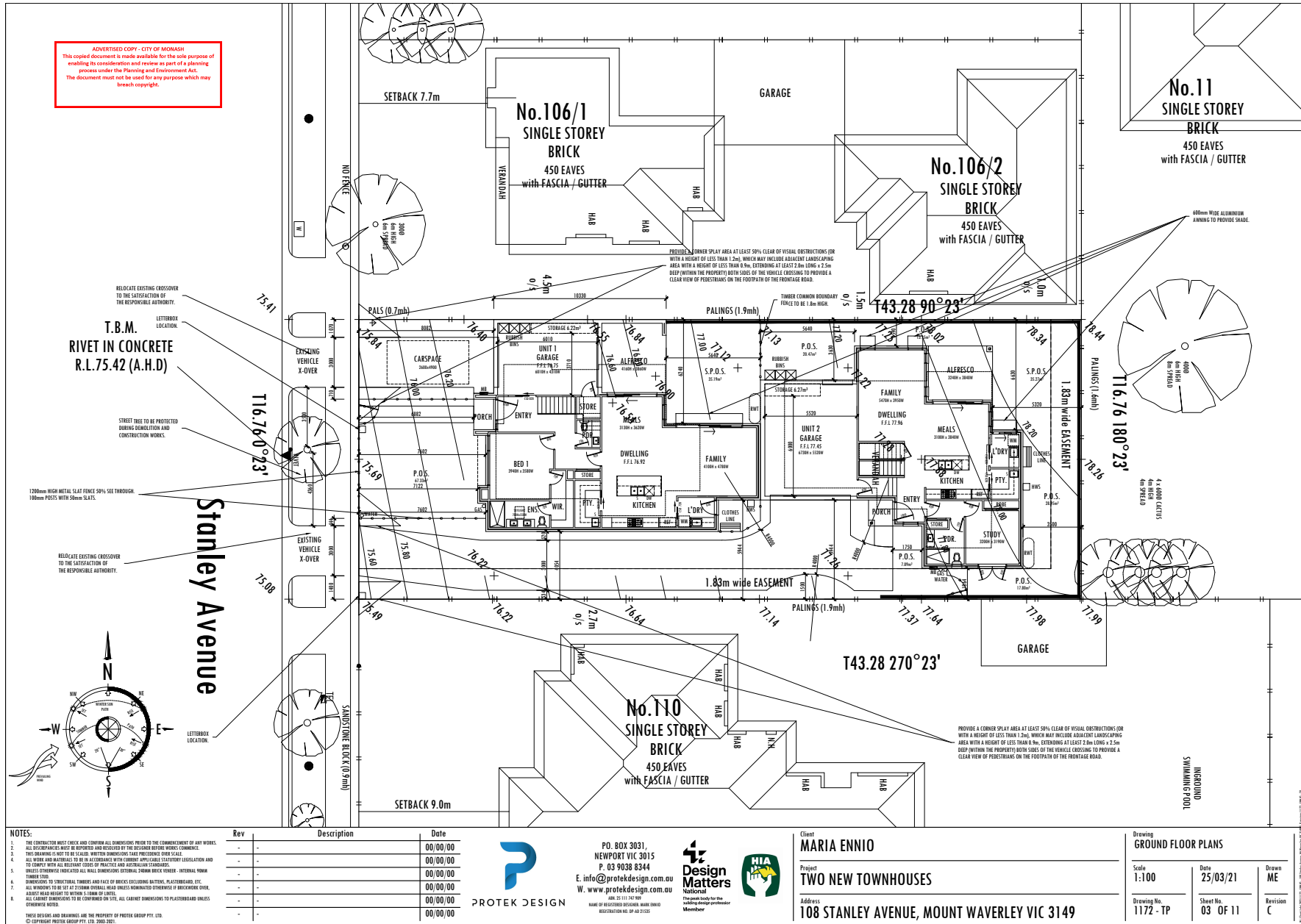
It is recommended the Council approve an extension of two (2) years for the commencement of the development.

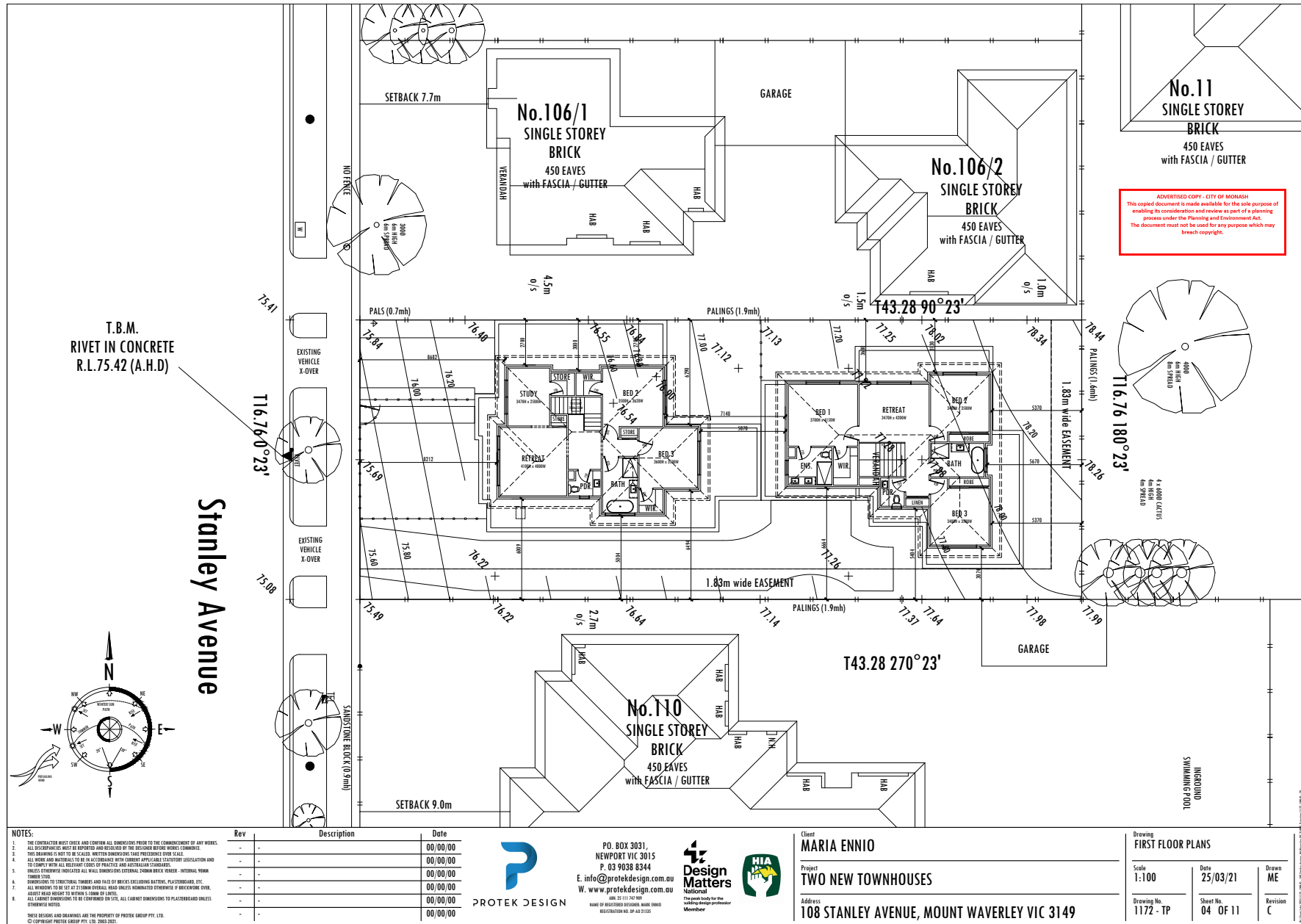
ATTACHMENT LIST

1. Development Plans - 108 Stanley Ave [7.1.2.1 - 11 pages]
2. Aerial Photograph - 108 Stanley Ave [7.1.2.2 - 1 page]
3. Zoning and Overlays Map - 108 Stanley Ave [7.1.2.3 - 1 page]





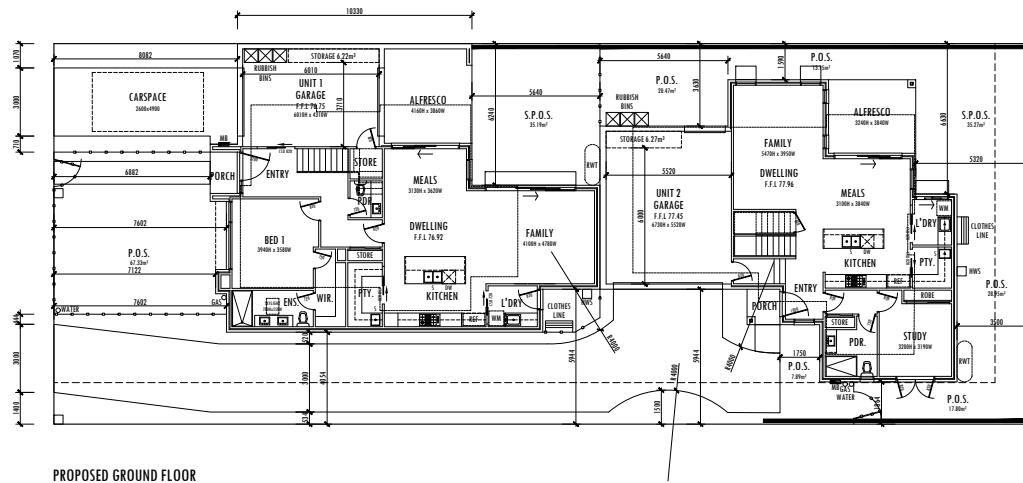




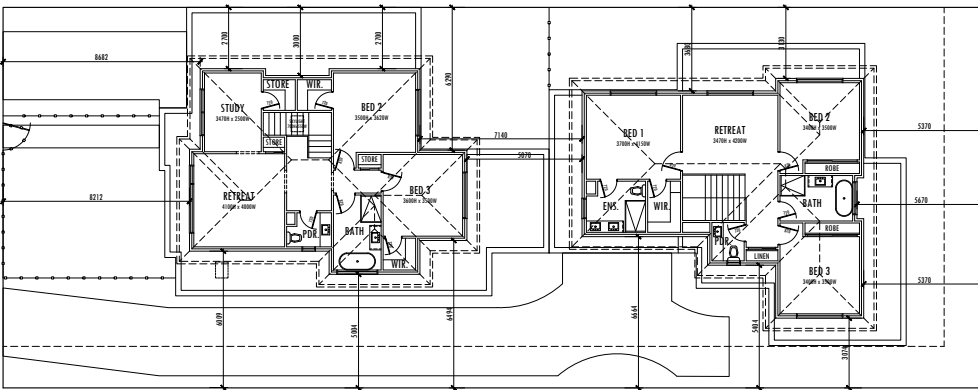
AREA ANALYSIS SITE		
SITE AREA:	725.54	m ²
TOTAL BUILDING AREA:	3223.34	m ²
DRIVEWAY AND PATHS:	136.13	m ²
SITE COVERAGE:	44.54	%
PERMEABILITY RATE:	26.48	%
HARD SURFACE RATE:	63.32	%
GARDEN AREA PERCENTAGE:	25.14	%
HARD SURFACE RATE INCLUDES UNITS, GARAGES, PATHS & DRIVEWAYS		

AREA ANALYSIS UNIT 1		
GROUND FLOOR:	128.29	m ²
FIRST FLOOR:	91.42	m ²
TOTAL DWELLING:	211.71	m ²
GARAGE:	29.34	m ²
ALFRESCO:	14.94	m ²
PORCH:	2.40	m ²
GRAND TOTAL:	248.59	m ²
UPPER STOREY %:	60.85	%
SECLUDED PRIVATE OPEN SPACE:	35.19	m ²
PRIVATE OPEN SPACE:	67.33	m ²
TOTAL OPEN SPACE:	102.52	m ²
NO. OF CAR SPACES:	2.00	

AREA ANALYSIS UNIT 2		
GROUND FLOOR:	97.88	m ²
FIRST FLOOR:	86.91	m ²
TOTAL DWELLING:	184.79	m ²
GARAGE:	31.59	m ²
ALFRESCO:	15.44	m ²
PORCH:	2.26	m ²
GRAND TOTAL:	235.08	m ²
UPPER STOREY %:	69.79	%
SECLUDED PRIVATE OPEN SPACE:	35.27	m ²
PRIVATE OPEN SPACE:	88.26	m ²
TOTAL OPEN SPACE:	123.53	m ²
NO. OF CAR SPACES:	2.00	



PROPOSED GROUND FLOOR
1:100



PROPOSED FIRST FLOOR
1:100

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Client: **MARIA ENNIO**

Project: **TWO NEW TOWNHOUSES**

Address: **108 STANLEY AVENUE, MOUNT WAVERLEY VIC 3149**

Drawing: **FLOOR PLANS**

Scale: **1:100**

Date: **25/03/21**

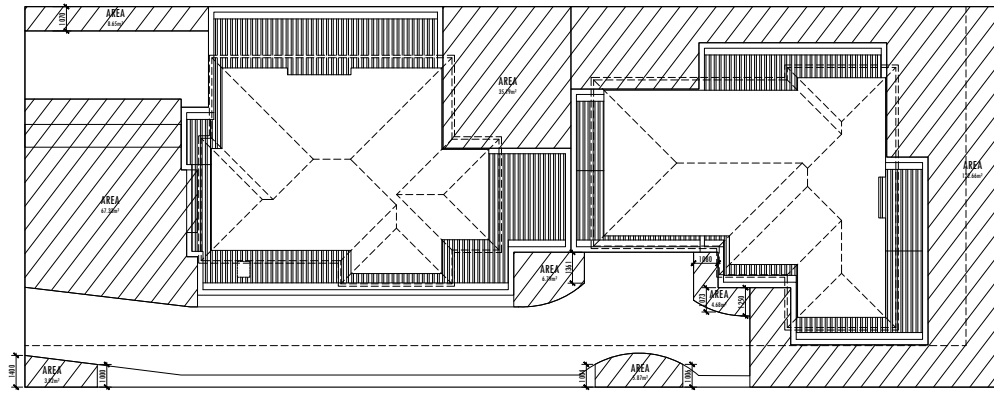
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Sheet No.: **05 OF 11**

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GARDEN AREA
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Drawing
GARDEN AREA PLAN

Scale
1:100

Date
25/03/21

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Drawing No.
1172 - TP

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06 OF 11

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MATERIALS LEGEND:

- SELECTED RENDER FINISH 1.
- SELECTED RENDER FINISH 2.
- SELECTED FACE BRICKWORK.
- SELECTED TILED ROOF.

METAL SLAT FENCE 50% SEE THROUGH.
100mm POSTS WITH SLATS.

FRONT FENCE DETAIL
SCALE: 1:0

PROPOSED WEST ELEVATION UNIT 1 (STANLEY AVENUE)

PROPOSED EAST ELEVATION UNIT 1

PROPOSED SOUTH ELEVATION UNIT 1 & 2 (DRIVEWAY)

PROPOSED EAST ELEVATION UNIT 2

PROPOSED WEST ELEVATION UNIT 2

PROPOSED NORTH ELEVATION UNIT 1 & 2

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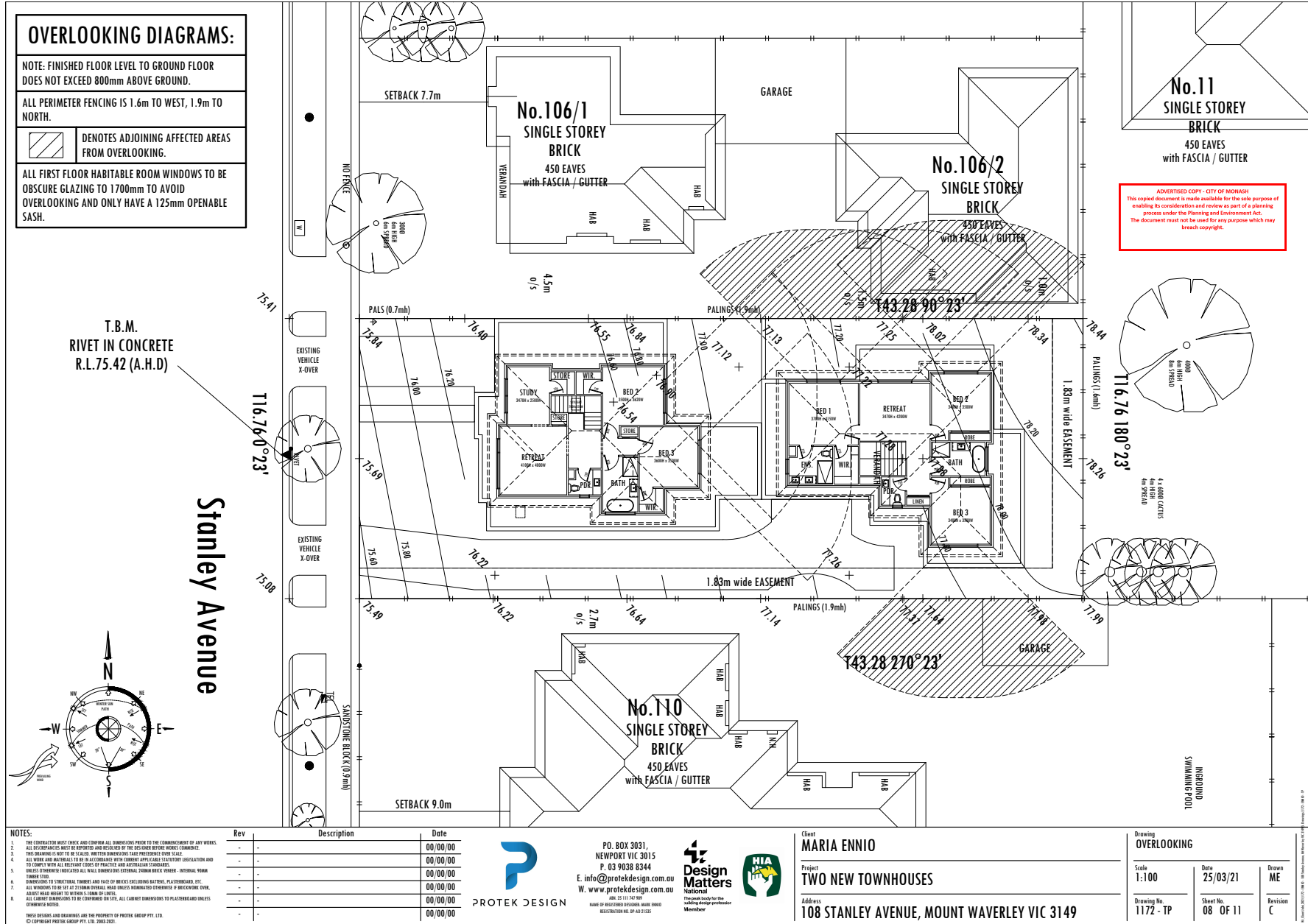
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Drawing ELEVATIONS	
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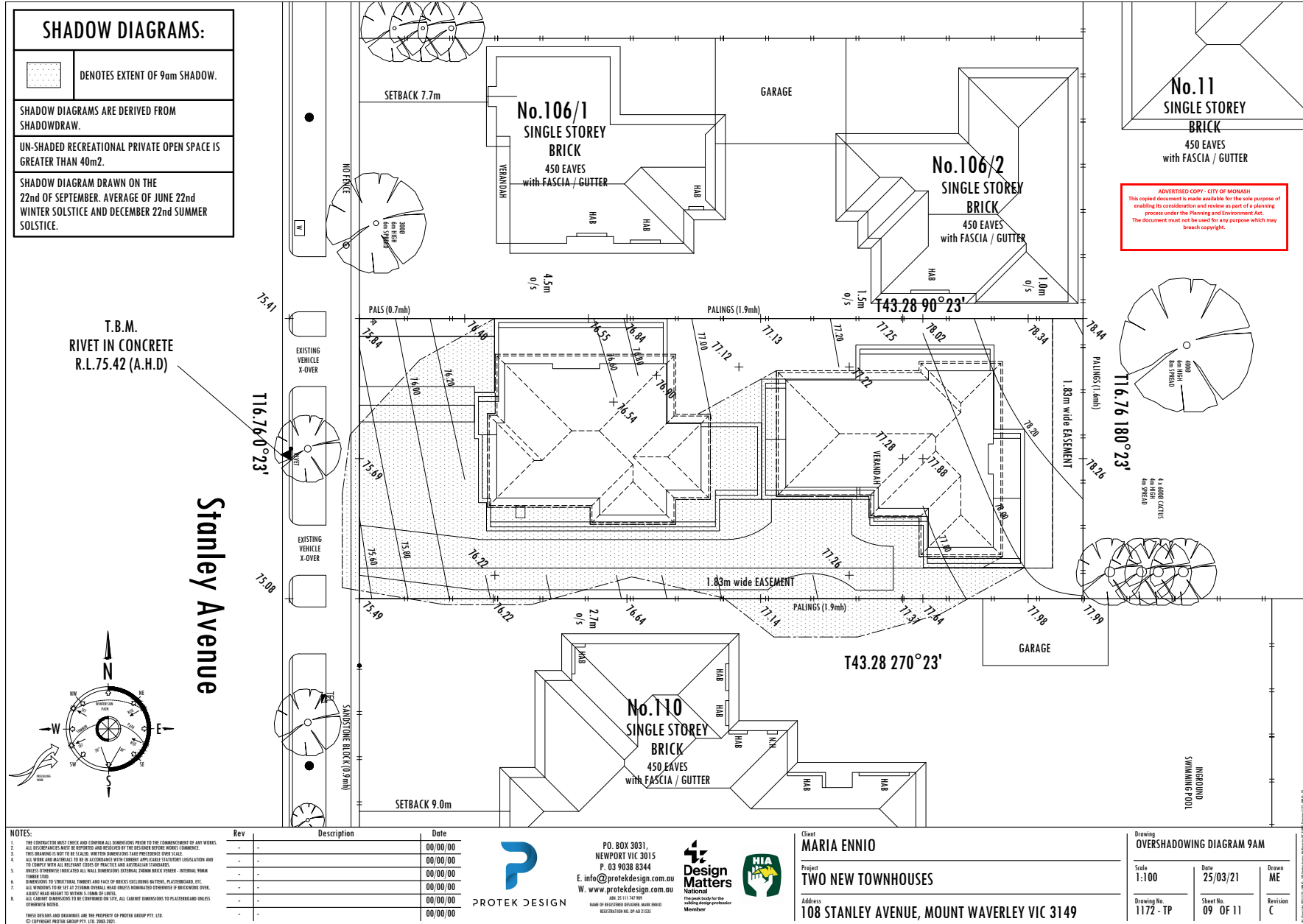
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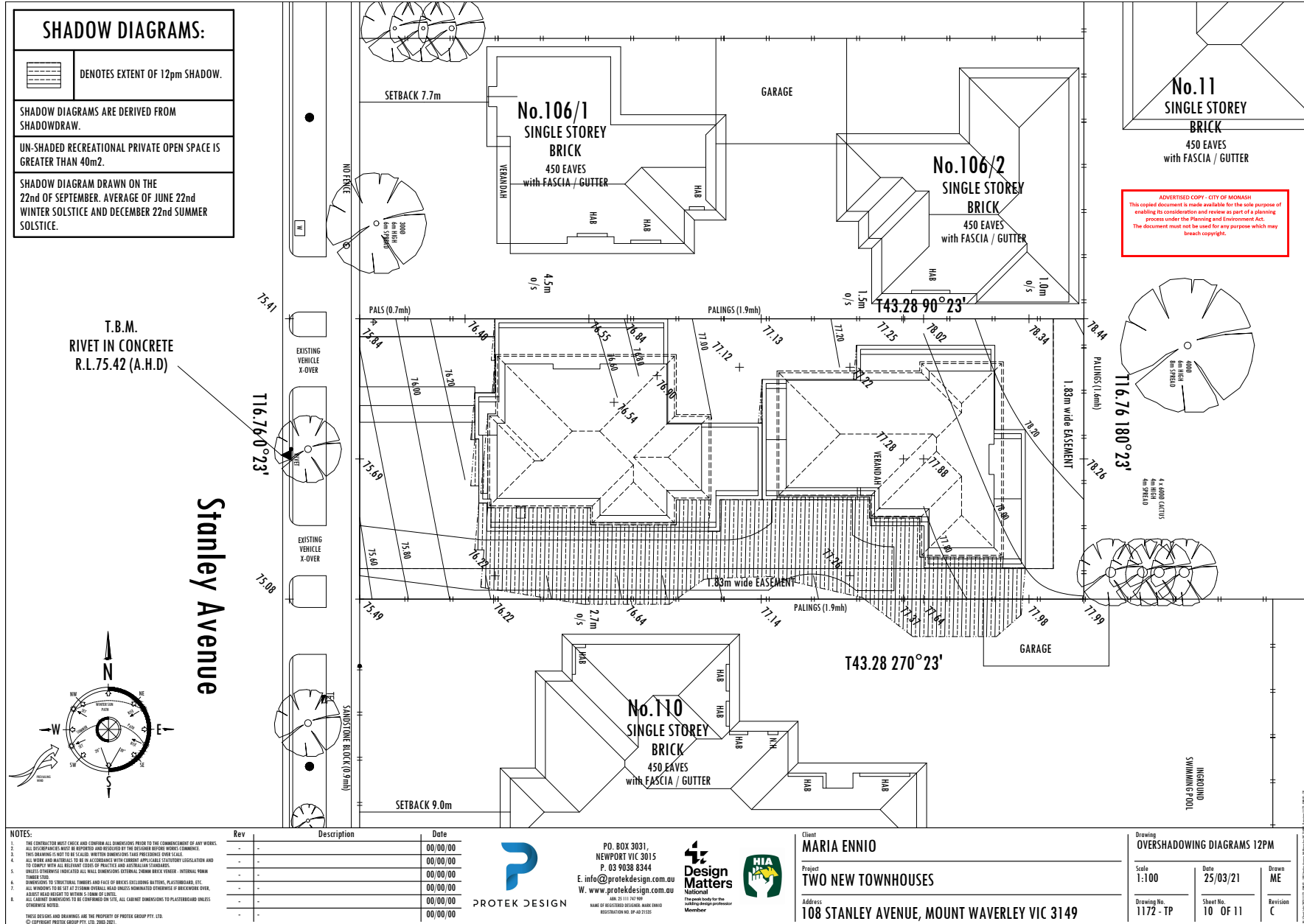
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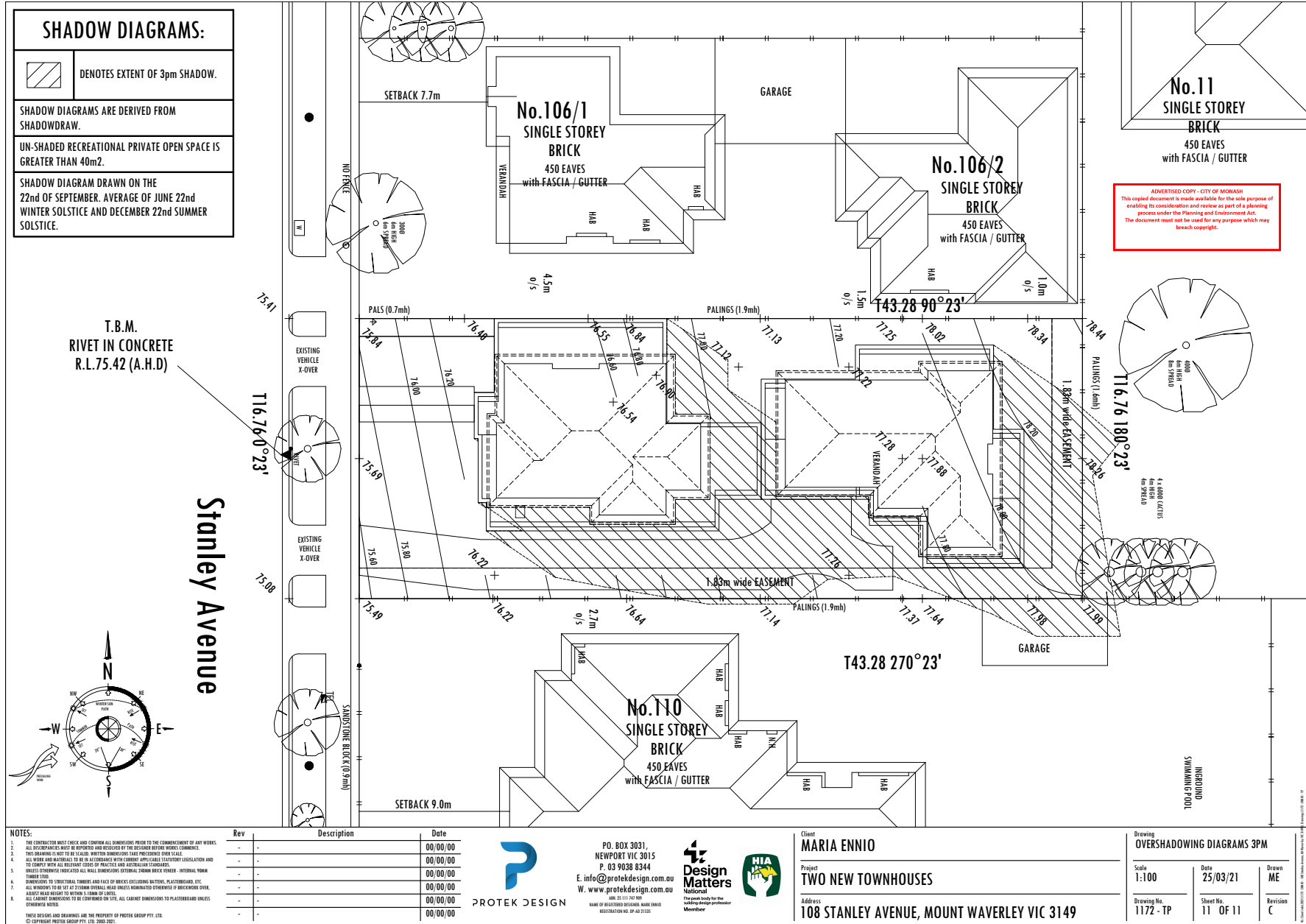
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Drawing
OVERLOOKING

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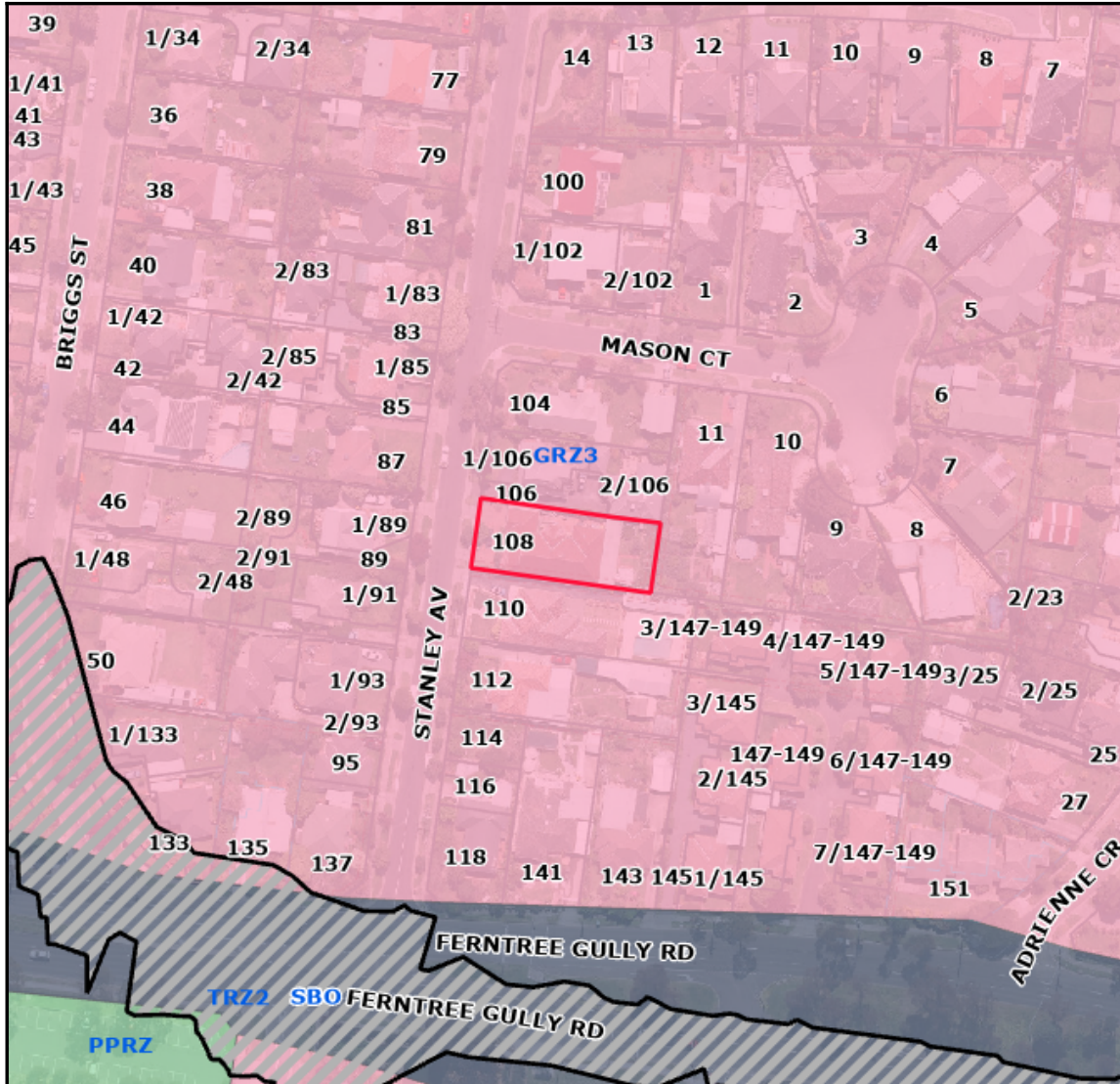








Planning Overlays and Zones



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

Address

108 Stanley Avenue MOUNT WAVERLEY VIC 3149

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