

## 7.1.2 TPA/42334/B - 18A THOMAS STREET CLAYTON VIC 3168 - EXTENSION OF TIME

<b>Responsible Manager:</b>	Kaitlyn Zeeck, 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/42334/B for the construction of three (3) double storey dwellings on a lot.

The original permit was issued on 16 June 2014.

The permit has been extended on three (3) previous occasions. The latest extension of time was granted on 15 September 2022, requiring the development to be completed by 16 June 2024.

Construction of Dwelling 3 and the garage for Dwelling 2 is complete. The permit has been acted on. Works for dwelling 1, dwelling 1 garage and dwelling 2 have not commenced.

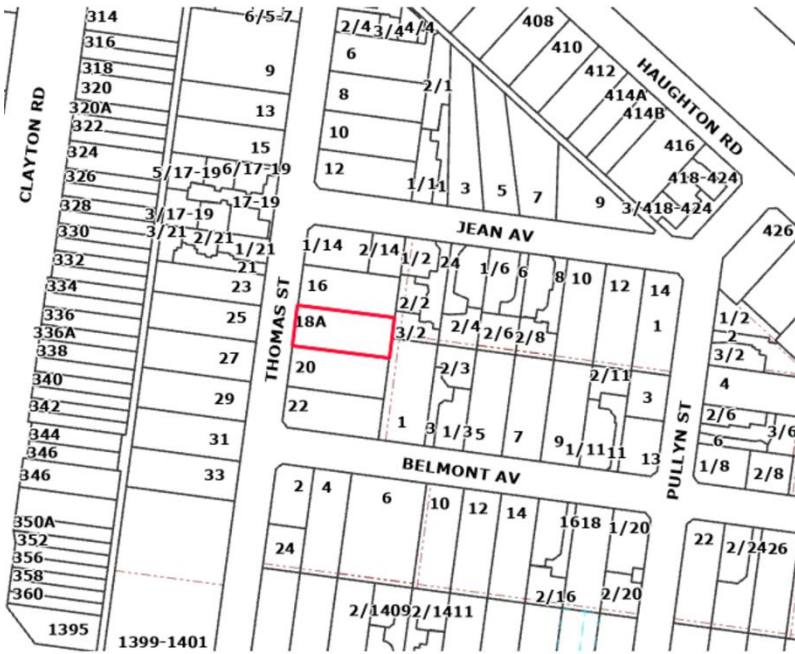
The reason for presenting this report to Council is this is the fourth extension of time request sought for this permit, and the period of time sought to extend the permit exceeds six (6) years.

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

RESPONSIBLE DIRECTOR:	Peter Panagakos, Director City Development
RESPONSIBLE MANAGER:	Kaitlyn Zeeck, Manager City Planning
RESPONSIBLE PLANNER:	Aurora Jin, Statutory Planner
WARD:	Banksia Ward
PROPERTY ADDRESS:	18A Thomas Street CLAYTON VIC 3168
ZONING:	Residential Growth Zone (Schedule 3)
OVERLAY:	NA
EXISTING LAND USE:	Two Dwellings
RELEVANT POLICY:	<b><u>Planning Policy Framework</u></b> Clause 11.01-1R - Settlement – Metropolitan Melbourne Clause 11.02-1S - Supply of Urban Land

	<p>Clause 11.03-1S &amp; R - Activity Centres          Clause 15.01-1S&amp;R - Urban Design          Clause 15.01-2S - Building Design          Clause 15.01-4S &amp; R - Healthy Neighbourhoods          Clause 15.01-5S - Neighbourhood Character          Clause 15.01-5L – Monash Preferred Neighbourhood Character          Clause 16.01-1S &amp;R - Housing supply          Clause 16.01-2S - Housing affordability          Clause 18.02-2R - Principal Public Transport Network</p> <p><b>Particular Provisions</b></p> <p>Clause 52.06 - Car Parking          Clause 53.18 - Stormwater Management in Urban Development          Clause 55 - Two or more dwellings on a lot and residential buildings          Clause 65 - Decision Guidelines</p>
<p>STATUTORY (60 DAY)          PROCESSING DATE:</p>	<p>NA</p>

LOCALITY PLAN



## NEIGHBOURHOOD PLAN



## RECOMMENDATION

That Council resolves to issue an Extension of time to Planning Permit No. TPA/42334/B for the construction of three (3) double storey dwellings on a lot at 18 Thomas Street, Clayton VIC 3168, 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 completion of the development be extended for a further two (2) years. The development must be completed by 16 June 2026.

## 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

### History

Planning Permit TPA/42334 was approved on 16 June 2014 for the construction of three (3) dwellings on a lot, in an arrangement of two in the front and one at the rear.

An amended planning application (TPA/42334/A) was approved on 8 September 2016 and made changes to the building footprints and both ground and first floors.

The planning permit was amended again on a second occasion, with TPA/42334/B approved on 28 April 2023. This amended allowed a reduction in the front setback from 7.6 metres to 4 metres and associated internal changes to dwellings 1 and 2 which front the site.

Dwelling 3 and its garage, and the garage to dwelling 2 have been constructed.

The permit has been extended on three (3) previous occasions being 5 August 2016, 21 July 2020 and 15 September 2022. The current permit expiry date to complete the development was 16 June 2024.

Attachment 1 includes the considered development plans associated with TPA/42334/B.

### **Site and Surrounds**

The site is located on the eastern side of Thomas Street in Clayton. The site is rectangular in shape, with an area of approximately 697 square metres.

The site is developed with a single storey dwelling at the front, which is the original dwelling remaining to be removed and replaced with two new dwellings. A two-storey dwelling (dwelling 3 on the plans) has been constructed to the rear of the existing dwelling, together with two single car garages.

The site is located within the “MNEIC and Clayton Activity Centre – Housing Growth Area.” The surrounding area is characterised by single and two-storey dwellings and multi-unit developments.

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

### **PROPOSAL**

The applicant has requested an extension of a further two years to complete the development.

The applicant has requested this time as a number of varying financial issues have made the progression of the project difficult.

### **PERMIT TRIGGERS**

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

*“ The owner or occupier of land to which a permit for a development applies, or another person with the written consent of the owner, 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 6 January 2025, within 12 months of the permit expiry date. 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 request to extend the permit is ten (10) years and eight (8) months.

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 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** introduced mandatory garden area requirements for development in residential zones into all planning schemes in Victoria. However, the land was rezoned RGZ3 in 2019, the mandatory garden area requirement does not apply to the Residential Growth Zone.

**Amendment C125** Part 2 was gazetted in November 2019 in which Residential policies (Clause 21.04 and 22.01 now listed as Clause 15.01-5L and 16.01-1L-01) were changed. The land was re-zoned to Residential Growth Zone – Schedule 3 (RGZ3). Under the provision of RGZ3, there are the following variations to the Clause 55 requirements:

	<b>Requirement RGZ3</b>	<b>Approved Development</b>
<b>Minimum Street Setback</b>	Minimum setback from front street – 4 metres.	4 metres front setback complies.
<b>Site Coverage</b>	None specified	52.72 complies with Clause 55
<b>Permeability</b>	None specified	30.9% complies with Clause 55
<b>Landscaping</b>	Retain or provide at least one canopy tree with a minimum mature height equal to the height of the roof of the proposed building or 10 metres, whichever is greater.	5 trees are shown to be planted- Complies.
<b>Side &amp; Rear Setbacks</b>	Side setbacks – 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every metre of height over 6.9 metres.	All side and rear setbacks comply.

	Rear setback – 3 metres for the first 2 storeys plus 2 metres for the third storey.	
<b>Walls on Boundaries</b>	None specified	N/A
<b>Private Open Space</b>	An area of 40 square metres, with one part of the private open space at the side or the rear of the dwelling or residential building with a minimum area of 35 square metres, a minimum width of 3 metres and convenient access from a living room.	Exceeded, each dwelling contains a private open space of more than 75 square metres with a secluded private open space area exceeding 35 square metres.
<b>Front Fence</b>	0.9 metres	The front fence has been approved at a height of 1.2 metres high and considered acceptable in the context of the site surrounds.

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.

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

The commencement of the development was within time, however due to issues with the builder, constraints as a result of COVID 19 and finances the development has been significantly delayed.

The total elapse of time.

The total elapse of time since the issue of the permit is 10 years and 8 months. 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 or completion of the construction. The conditions are standard for this type 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 commenced 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

Should a fresh application be made, given the Residential Growth Zoning a residential development of three dwellings in this location would be considered an underdevelopment of the site, and land consolidation together with a more intense form of residential development would be strongly encouraged. Having said this, the development was consistent with planning policy at the time of permit issue and as the development has commenced with one of the three dwellings constructed, it would be an unnecessary burden to refuse the extension of time application to complete the development, at this point in time.

## **CONFLICT OF INTEREST**

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

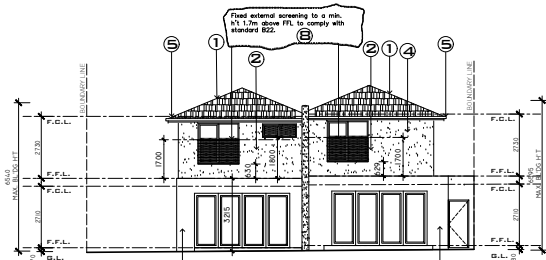
## **CONCLUSION**

It is considered appropriate to grant a further extension of time to the permit to enable the development to be completed.

The proposal on balance meets the tests established in the Supreme Court decision Kantor v Murrindindi Shire Council (1997). It is considered that the completion of the development would not lead to a poor planning outcome. Having regard to all the circumstances, it is recommended that Council approve the extension of time application.

## **ATTACHMENT LIST**

1. Considered Development Plans - 18 A THOMAS STREET CLAYTON VIC 3168 18 B THOMAS [7.1.2.1 - 4 pages]
2. Aerial Photograph - 18 A Thomas St [7.1.2.2 - 1 page]
3. Zoning and Overlays Map - 18 A Thomas St [7.1.2.3 - 1 page]



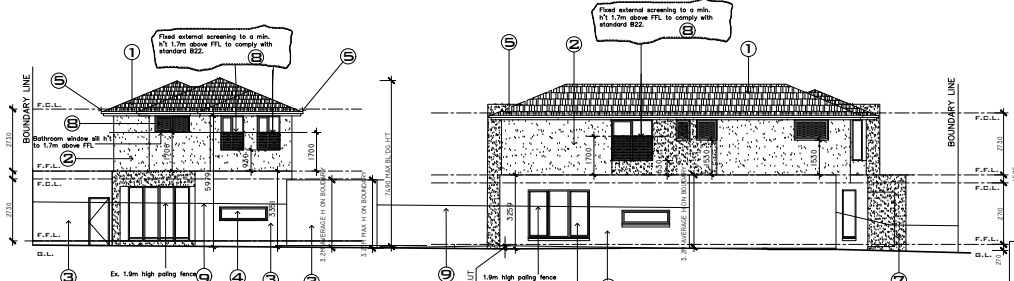
**EAST ELEVATION SCALE 1:100**

- 1 - TILE ROOF (LOW PITCH)
- 2 - ACRYLIC RENDER (AS SELECTED)
- 3 - FACE BRICKWORK (TYP.)
- 4 - ALUMINIUM WINDOWS (TYP.)
- 5 - COLORBOND FASCIAS & GUTTERS (TYP.)
- 6 - COLORBOND RAD OR LIFT-UP PANEL DOORS OR SIMILAR
- 7 - COLUMN/CANOPY ABOVE PORCH WITH DARK GRAY ACRYLIC RENDER FINISH
- 8 - FIXED EXTERNAL SCREENING TO MIN HT 1.7M ABOVE FFL
- 9 - 1.9M H. PALING FENCE

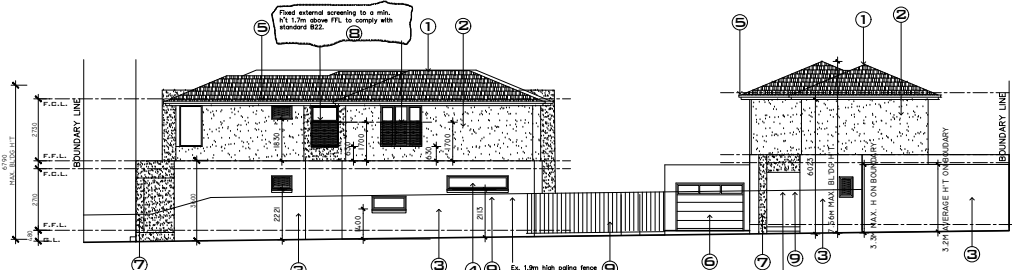
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**SCHEDULE OF CONSTRUCTION MATERIALS & COLOURS**

COMPONENT	UNIT 1 -	UNIT 2 -	UNIT 3 -
ROOF	TILES/CHARCOAL	TILES/CHARCOAL	TILES/CHARCOAL
GUTTERS/D PIPES	COLORBOND/DARK GRAY	COLORBOND/DARK GRAY	COLORBOND/DARK GRAY
WINDOWS	ALUMINIUM/DARK GRAY	ALUMINIUM/DARK GRAY	ALUMINIUM/DARK GRAY
EXTERNAL WALLS - GRND BRK.WORK	REDISH/BROWN BR.WORK/DARK GRAY	REDISH/BROWN BR.WORK/DARK GRAY	REDISH/BROWN BR.WORK/DARK GRAY
- 1ST FLR.	LIGHT GRAY RENDER	LIGHT GRAY RENDER	LIGHT GRAY RENDER
GARAGE DOORS	COLORBOND/DARK GRAY	COLORBOND/DARK GRAY	COLORBOND/DARK GRAY
PAVING PATHWAYS	CHARCOAL COLOUR DRIVEWAY COLOUR CONC.	CHARCOAL COLOUR DRIVEWAY COLOUR CONC.	CHARCOAL COLOUR DRIVEWAY COLOUR CONC.
FRONT FENCE	1.2m H. MERBAU-IMITATION OR SIMILAR	1.2m H. MERBAU-IMITATION OR SIMILAR	N/A



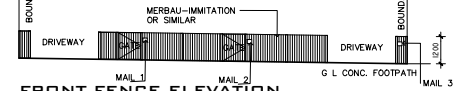
**UNIT 3 NORTH ELEVATION UNIT 1 SCALE 1:100**



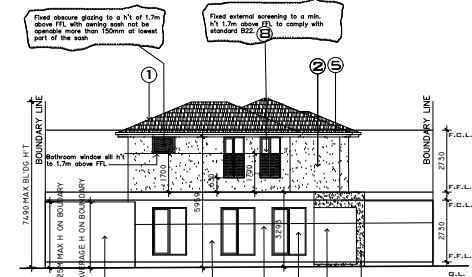
**SOUTH ELEVATION SCALE 1:100**



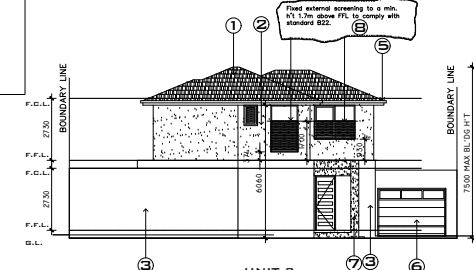
**WEST ELEVATION SCALE 1:100**



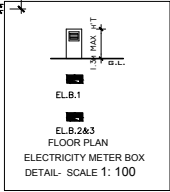
**FRONT FENCE ELEVATION SCALE 1:100**



**UNIT 3 EAST ELEVATION SCALE 1:100**



**UNIT 3 WEST ELEVATION SCALE 1:100**



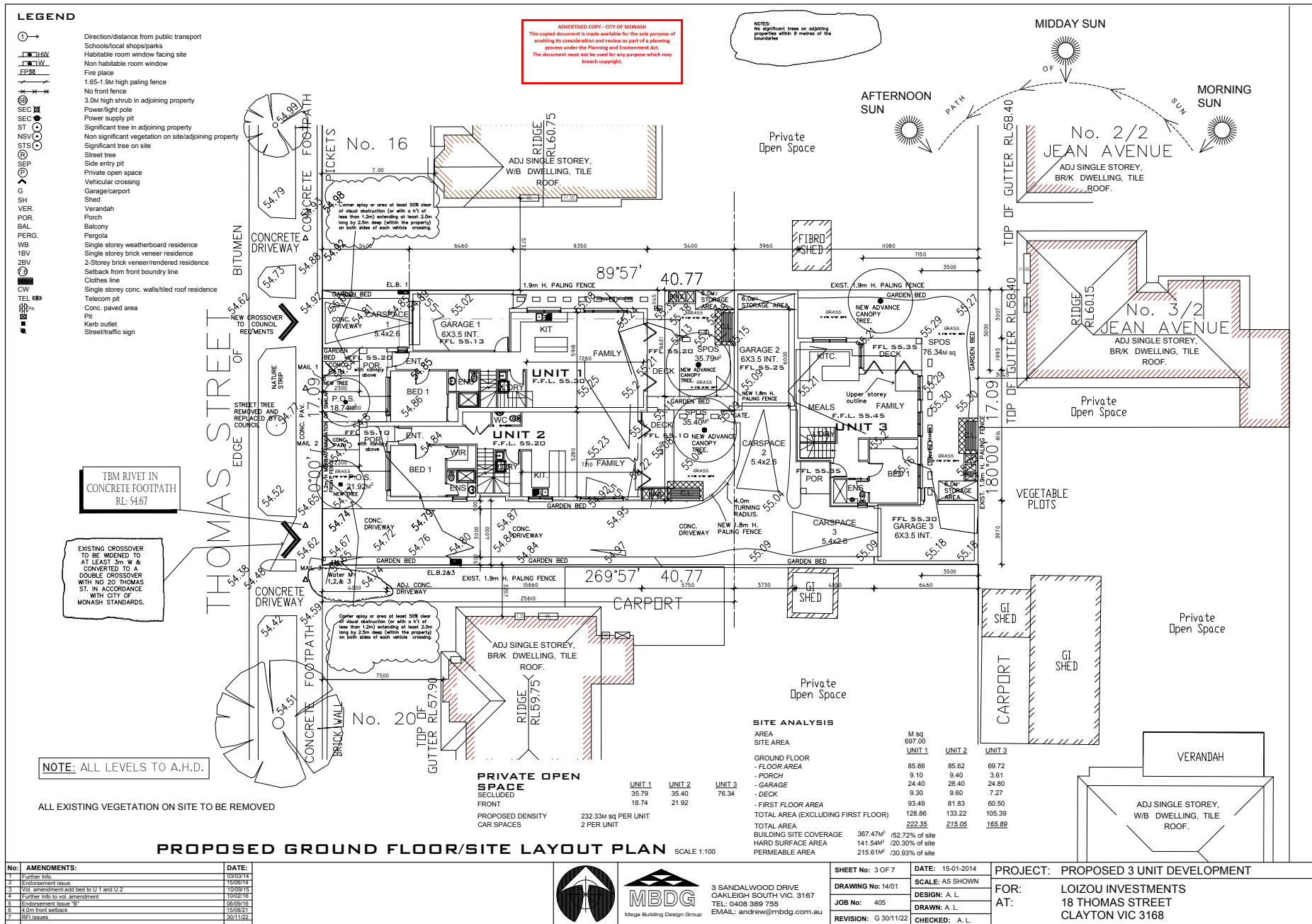
No:	AMENDMENTS:	DATE:
1	Further info.	03/03/14
2	Enhancement issue.	15/06/14
3	Vol. amendment added to U 1 and U 2	10/09/14
4	Further info to vol. amendment	10/02/16
5	Enhancement issue 'B'	05/09/16
6	4.0m front setback	15/08/21
7	RFI issues	30/11/22

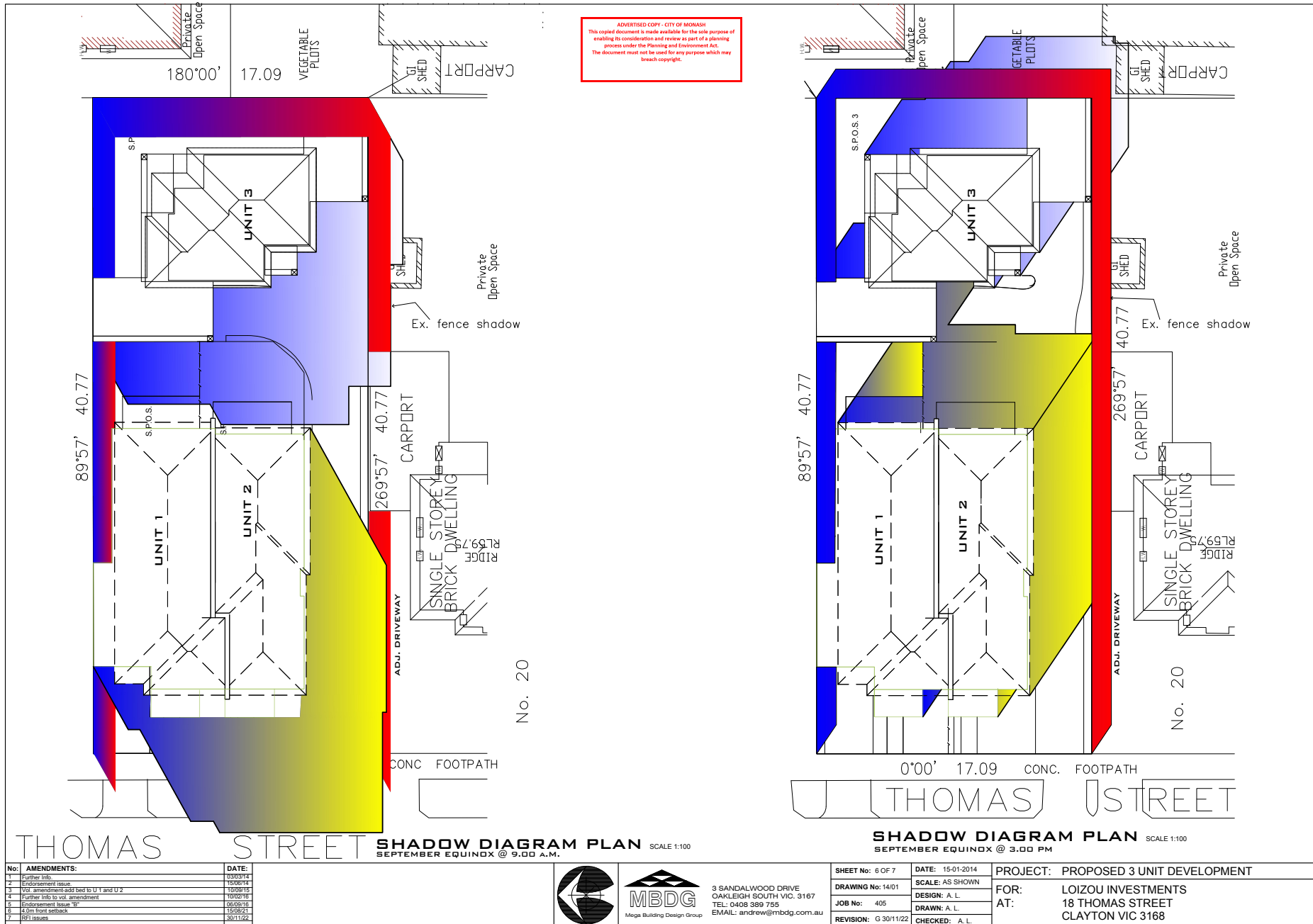
  
**MBDG**  
 Mega Building Design Group

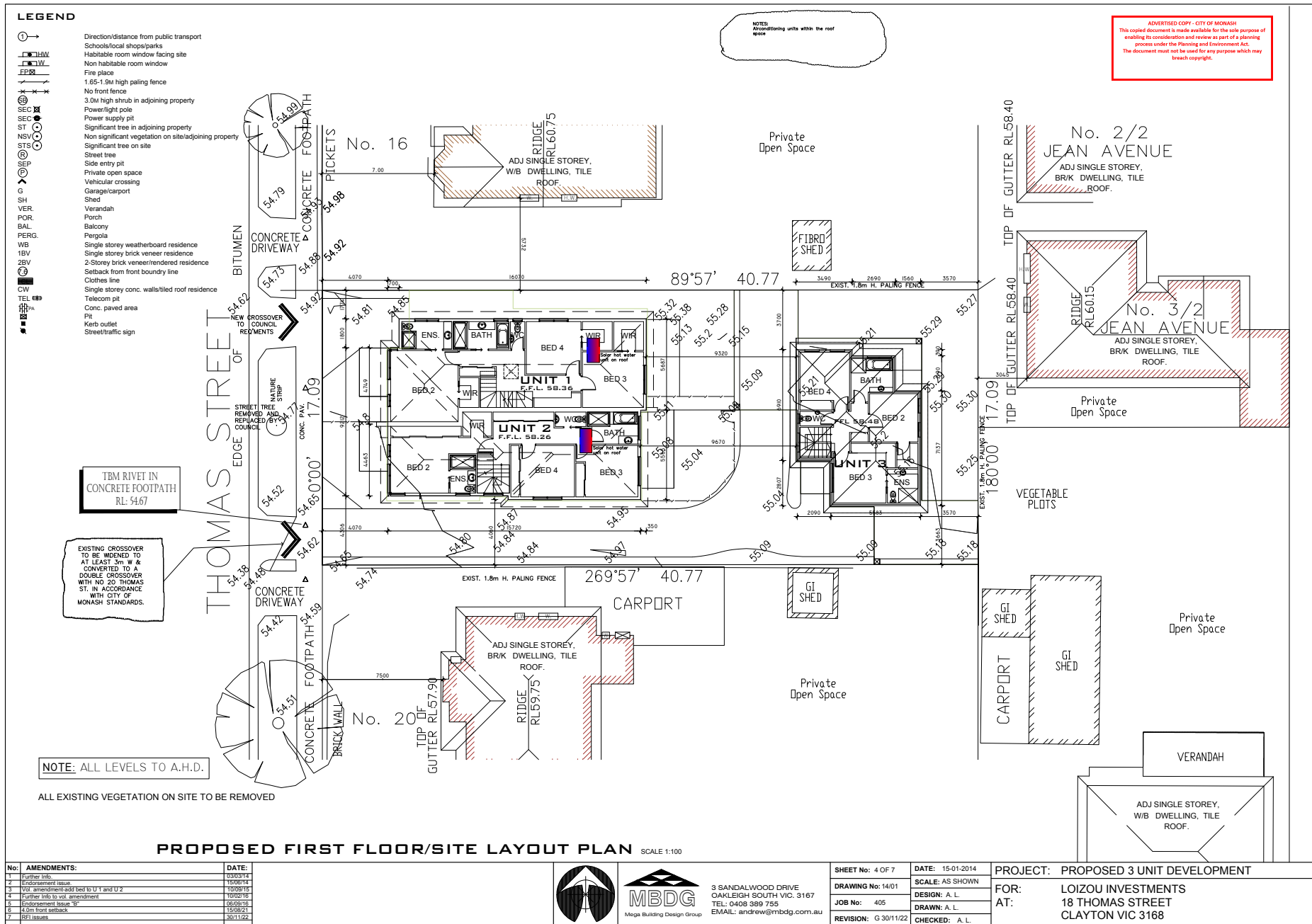
3 SANDALWOOD DRIVE  
 OAKLEIGH SOUTH VIC. 3167  
 TEL: 0408 989 750  
 EMAIL: andrew@mbdg.com.au

SHEET No: 5 OF 7	DATE: 15-01-2014	PROJECT: PROPOSED 3 UNIT DEVELOPMENT
DRAWING No: 14/01	SCALE: AS SHOWN	FOR: LOIZOU INVESTMENTS
JOB No: 405	DESIGN: A. L.	AT: 18 THOMAS STREET
REVISION: G 30/11/22	DRAWN: A. L.	CLAYTON VIC 3168
	CHECKED: A. L.	









No:	AMENDMENTS:	DATE:
1	Further info.	03/03/14
2	Enforcement issue.	15/06/14
3	Vol. amendment add bed to U1 and U2	1/10/09/14
4	Further info to vol. amendment	10/02/16
5	Enforcement issue "B"	06/09/16
6	4.0m front setback	15/08/21
7	RFI issues	30/11/22



**MBDG**  
Mega Building Design Group  
3 SANDALWOOD DRIVE  
OAKLEIGH SOUTH VIC. 3167  
TEL: 0408 989 785  
EMAIL: andrew@mbdg.com.au

SHEET No: 4 OF 7  
DRAWING No: 14/01  
JOB No: 405  
REVISION: G 30/11/22

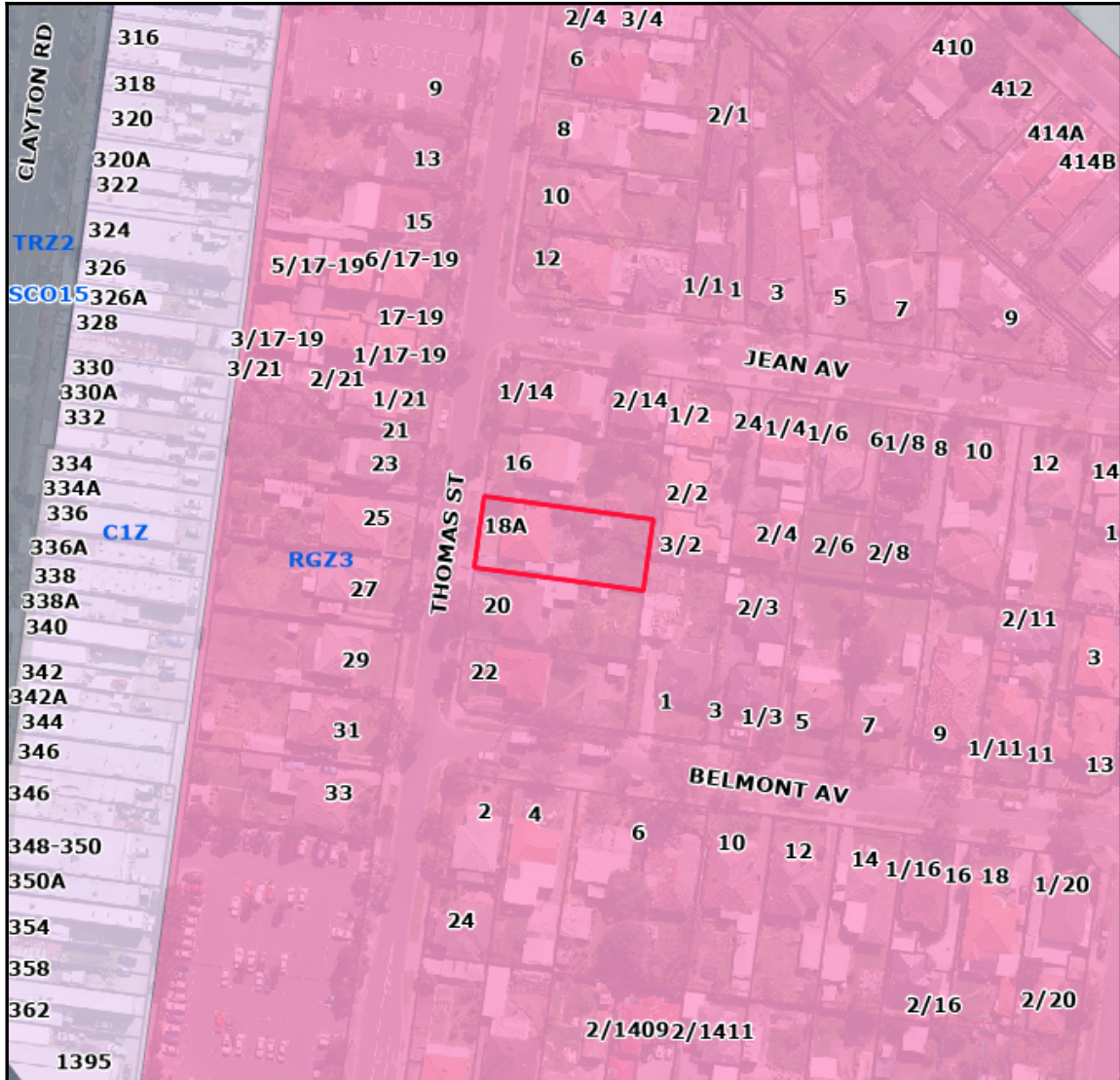
DATE: 15-01-2014  
SCALE: AS SHOWN  
DESIGN: A. L.  
DRAWN: A. L.  
CHECKED: A. L.

PROJECT: PROPOSED 3 UNIT DEVELOPMENT  
FOR: LOIZOU INVESTMENTS  
AT: 18 THOMAS STREET  
CLAYTON VIC 3168





## 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

18A Thomas Street CLAYTON VIC 3168

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