

**1.5 426-452 Highbury Road, Mount Waverley
EXTENSION OF TIME - DEVELOPMENT OF LAND FOR 118 DWELLINGS AND
SUBDIVISION
TPA/24806/J**

EXECUTIVE SUMMARY:

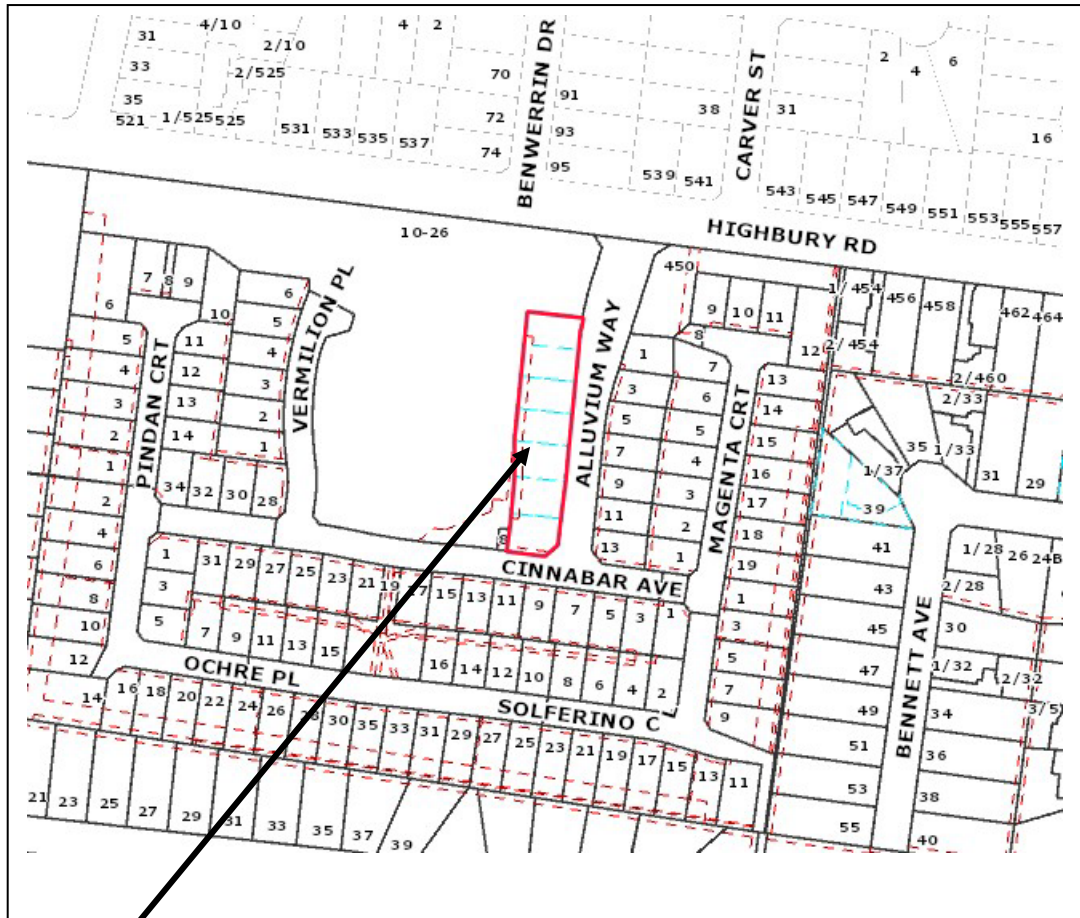
An application has been received on 9 September 2019 to extend the completion date to Planning Permit TPA/24806. The permit allows development and subdivision of 118 dwellings now known as 'Sienna Mount Waverley'. The development and subdivision has largely been finished with only the final stage comprising of 7 dwellings/lots to be completed. The original permit was issued on 25 January 1999. The permit has been extended on four previous occasions.

Public notification of the request for an extension of time is not considered necessary given that the approved development is consistent with existing applicable planning controls and policy, and is nearing completion.

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

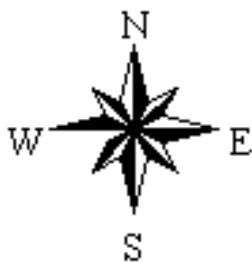
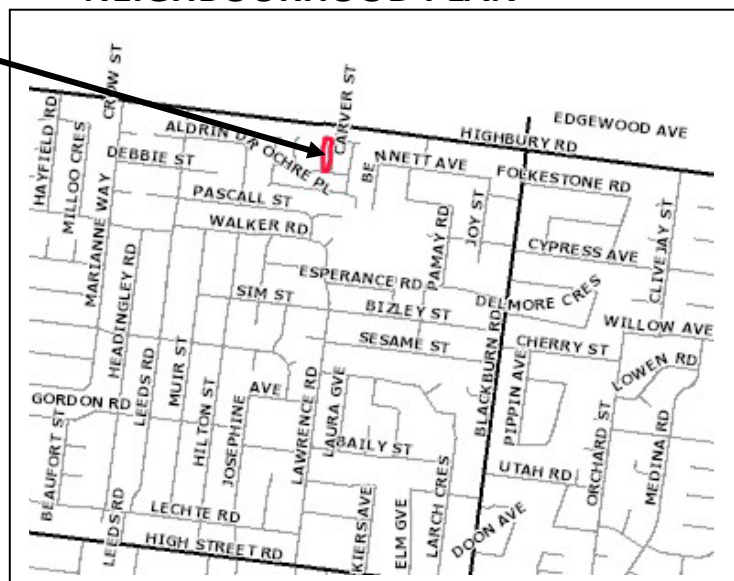
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Michael Edwards
WARD:	Mount Waverley
PROPERTY ADDRESS:	426-452 Highbury Road, Mount Waverley
NUMBER OF OBJECTIONS:	N/A
ZONING:	General Residential Zone – Schedule 2
OVERLAY:	N/A
EXISTING LAND USE:	Residential
ADOPTED AMENDMENT C125:	General Residential Zone – Schedule 3
RELEVANT LEGISLATION:	Section 69 of the P&E Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

That Council resolves to issue an **Extension of time** to Planning Permit No. **TPA/24806/J** for development of land for 118 dwellings together with associated earthworks and landscaping and subdivision generally in accordance with the plans at 426-452 Highbury Road, Mount Waverley, pursuant to the provisions of Section 69 of the *Planning and Environment Act 1987*.

The permit expiry dates extended as follows:

- The development is not completed before 25 January 2021.

BACKGROUND:**History**

Planning Permit TPA/24806 was issued on the 25 January 1999 allowing development of land for 118 dwellings together with associated earthworks and landscaping and subdivision generally in accordance with the plans.

The development commenced between 1999 and 2001. The overall development is largely complete with only construction and subdivision of 7 dwellings remaining.

Council has extended the permit on four previous occasions. The current expiry date for completion of the development was 25 January 2019. The current extension of time request was made 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 subject site is located on the southern side of Highbury Road, approximately 500 metres west of the intersection of Highbury and Blackburn Roads in Mount Waverley.

Formerly a disused quarry, the land is now known as 'Sienna Mount Waverley'. Land surrounding the subject site is residential in nature.

Commencement of the development occurred well before the initial planning permit expiry date, with the majority of the development now complete.

Stage 1A (final stage) of the development remains incomplete, however the road and crossovers are installed.

PROPOSAL:

The applicant has requested an extension of the permit's completion date for a further two (2) years due to unforeseen circumstances, and delays in securing finances/buyers. The applicant intends to complete the remaining 7 lots by 2020/2021.

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 9 September 2019 which is less than 12 months after the development was due to be completed. Accordingly, Council is able to consider a further extension to the completion date for the development under the *Planning and Environment Act 1987*.

Assessment

VCAT 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.

The zoning has changed from Residential C to General Residential Zone 2 since the permit was granted in 1999.

Since the issue of the original permit, Amendment C125 to the Monash Planning Scheme has been adopted by Council in February 2017 and the State initiated Amendment VC110 has been implemented. In accordance with Council's decision on 28 February 2017, the changes proposed in Amendment C125 are to be considered with any new development. The changes introduced by Amendment VC110 are mandatory to the consideration of a development. The table below outlines compliance with Amendment VC110;

<u>Garden Area applicable</u>	<u>Garden Area provided</u>
35%	47.1%

Under the Council adopted Amendment C125, the proposed new residential zone for the subject site is General Residential Zone — Schedule 3 (GRZ3).

Whether the land owner is seeking to "warehouse" the permit.

The land owner is not seeking to “warehouse” the permit as the owner is and has been actively working on the land over the past 20 years.

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

No.

The total elapse of time.

20 years.

Whether the time limit originally imposed was adequate.

The permit was subject to standard time limit conditions. Given the scale of development, it is considered however reasonable to provide more time to allow completion.

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

The conditions of permit did not impose any unreasonable requirements that would cause an economic burden.

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

In the circumstances of a fresh application being made, it would most likely be approved as there is adequate justification for the remaining lots to be developed. Furthermore, the development would comply with current policy, including Amendment VC110 by exceeding the necessary garden area requirements.

The development of the site has encountered a number of challenges and unforeseen delays due to its elevation and other site characteristics which have demanded additional engineering requirements.

It is anticipated that construction of Stage 1A, which entails the last 7 lots to be developed out of the total 118 lots – is expected to be completed in 2020/2021. An extension of two years is considered an acceptable time frame to enable completion of the development.

The applicant has not been warehousing this permit as they have been actively working on the site for the past 20 years. The applicant states in their application, that:

“The vast majority of the works under the permit are complete”.

“The site is an extremely challenging site to construct dwellings on due to (the) unique site characteristics which requires construction of a small number of homes at a time.”

“The challenging property market in Mount Waverley over the past couple of years has contributed to slower than normal sales activities”.

From the above, it is clear that the applicant is actively working on the permit, and thus not warehousing.

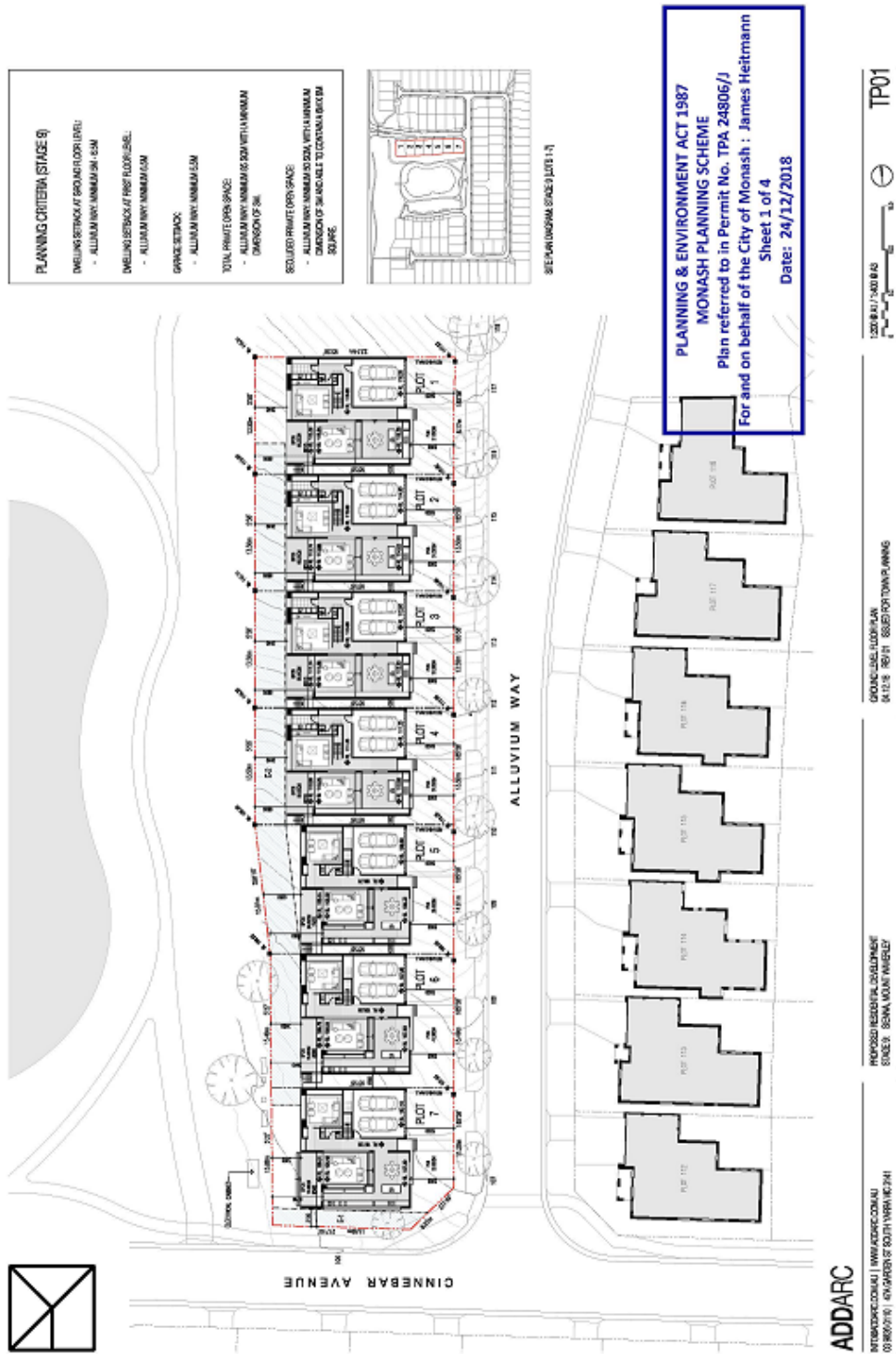
Since the issue of the original permit, whilst the zoning has retained its residential purpose, the description of the zoning has changed from Residential C, to Residential 1, and now to General Residential Zone 2. The intent and purpose of each of the zones has been a general 'like for like' transition of zones through the phases of State Government reform of planning.

CONCLUSION:

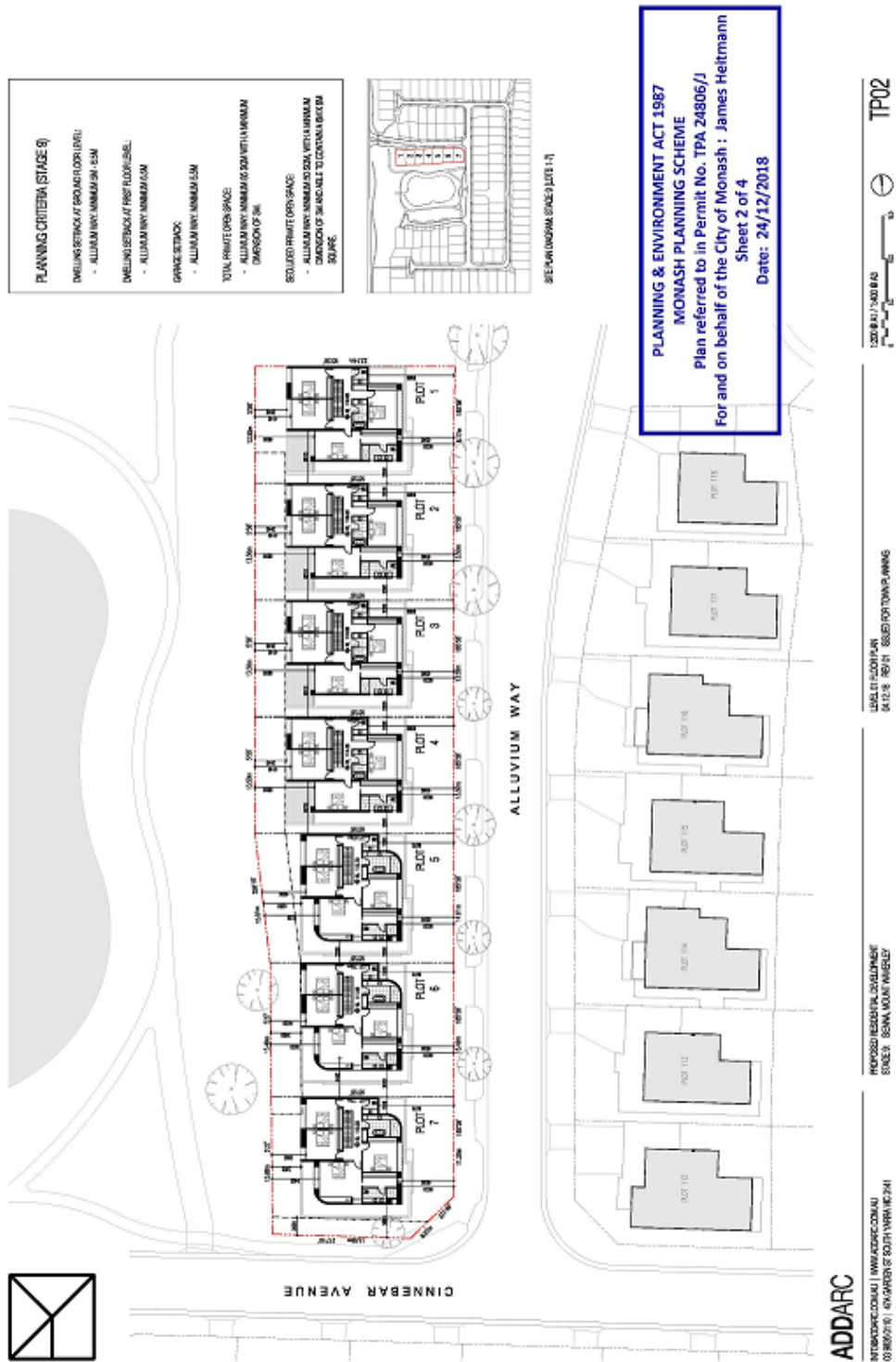
It is considered appropriate to grant a further extension of time to the permit to allow for completion of the development and subdivision. The development outcome is considered appropriate as this is the last stage of development, and the built form will be consistent with the other 111 dwellings that have been completed.

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

ATTACHMENT 1

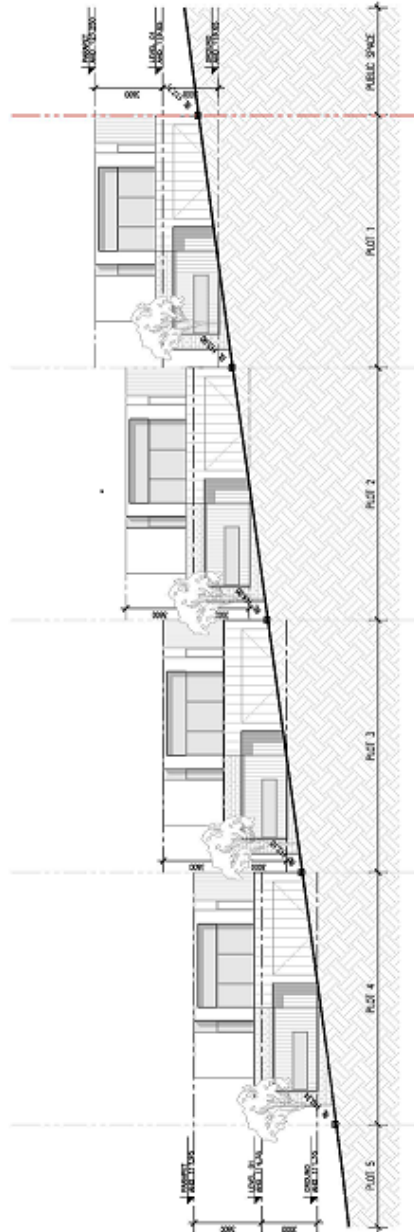


ATTACHMENT 1 (Continued)



ATTACHMENT 1 (Continued)

PLANNING & ENVIRONMENT ACT 1987
 MONASH PLANNING SCHEME
 Plan referred to in Permit No. TPA 24806/J
 For and on behalf of the City of Monash : James Heitmann
 Sheet 3 of 4
 Date: 24/12/2018



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PROPOSED RESIDENTIAL DEVELOPMENT
 426-452 HIGHBURY ROAD, MOUNT WAVERLEY

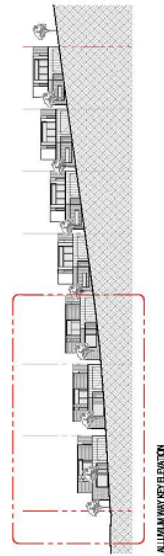
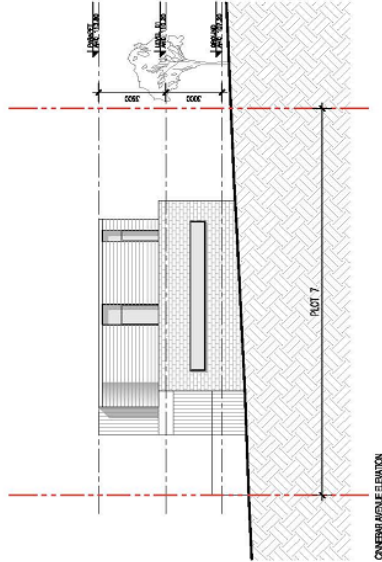
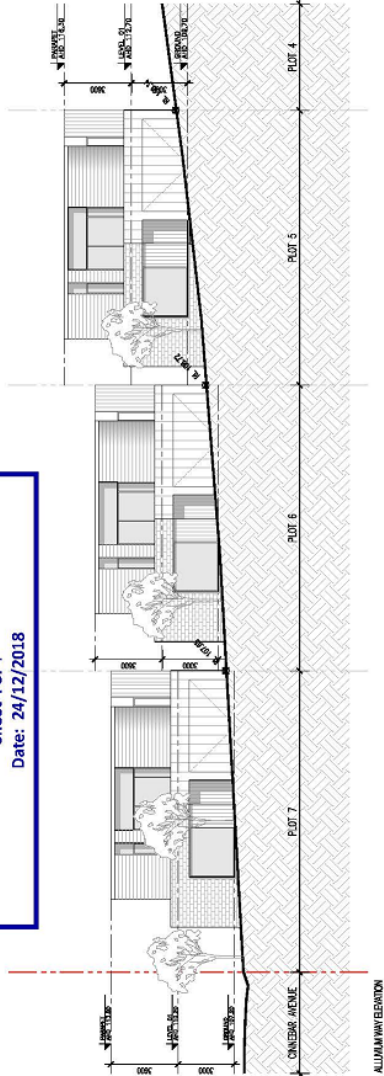
SITE ELEVATION PLOT 1-4
 04.12.18 JBH/LS EBLED FOR TOWN PLANNING

1:200 @ A3

TP03

ATTACHMENT 1 (Continued)

PLANNING & ENVIRONMENT ACT 1987
 MONASH PLANNING SCHEME
 Plan referred to in Permit No. TPA 24806/1
 For and on behalf of the City of Monash : James Heitmann
 Sheet 4 of 4
 Date: 24/12/2018



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PROPOSED RESIDENTIAL DEVELOPMENT
 STAGE 2: SERNA MOUNT WAVERLEY

EAST AND SOUTH ELEVATION PLOT 5/7
 04.12.18 REV 01 ISSUED FOR TOWN PLANNING



TP04

ATTACHMENT 1 (Continued)
Garden area plan