

**1.6 1 EVELYN STREET, CLAYTON
EXTENSION OF TIME - CONSTRUCTION OF A TWO LEVEL BUILDING PLUS
BASEMENT CAR PARKING COMPRISING EIGHT DWELLINGS
TPA/38345/A**

EXECUTIVE SUMMARY:

An application has been received for an extension of time to Planning Permit TPA/38345 to construct a two level building plus basement car parking comprising of eight dwellings. The original permit was issued on the 6 May 2011.

The permit has been extended on four (4) previous occasions.

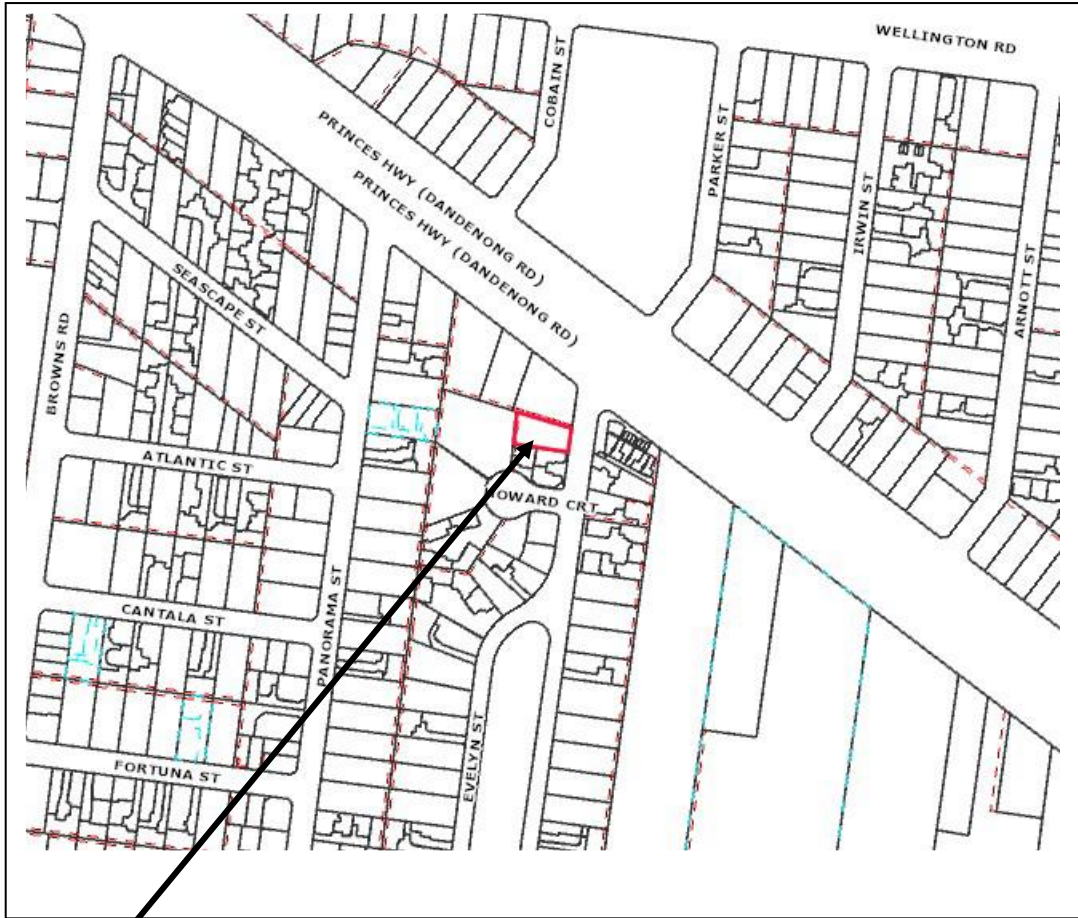
Construction of the development has not commenced.

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 appropriate and it is recommended that a three month extension to the permit is granted accordingly.

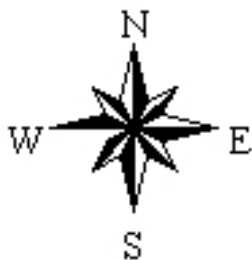
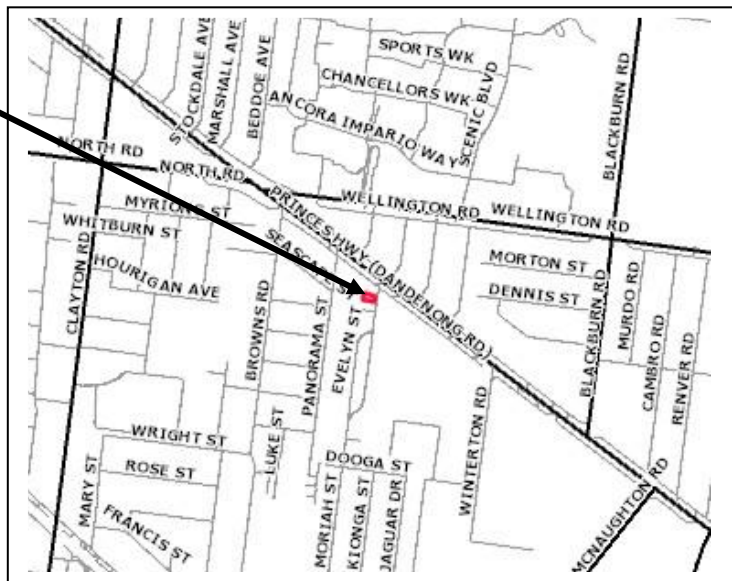
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Michael Edwards
WARD:	Oakleigh
PROPERTY ADDRESS:	1 Evelyn Street, Clayton
ZONING:	General Residential Zone 3
OVERLAY:	No overlay
EXISTING LAND USE:	Single dwelling
RELEVANT LEGISLATION:	Section 69 of the Planning and Environment Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

That Council resolves to issue an **Extension of time** to Planning Permit No. **TPA/38345/A** to develop the land by constructing a two level building plus basement car parking comprising of eight dwellings with associated landscaping at 1 Evelyn Street, Clayton, 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 and completion of the development be extended for a further 3 months. Accordingly, the development must be commenced by 6 August 2022 and completed by 6 August 2024.
2. 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 and the non-compliance with Council Policy.

BACKGROUND:**History**

Planning Permit TPA/38345 was issued on the 6 May 2011 allowing the development of the land by constructing a two level building plus basement car parking comprising of eight dwellings with associated landscaping. Development plans were endorsed pursuant to the requirements of condition 1 of the permit on 15 February 2018. A copy of the approved endorsed plans can be found at Attachment 1.

The original application was decided under delegation and there were two objections to the proposal.

Council has extended the permit on four (4) previous occasions.

An extension of time application for additional time was previously refused by Council on 28 May 2019. Council's determination to refuse the application was overturned by VCAT. VCAT found the approved development resulted in an acceptable planning outcome having regard to the surrounding context, applicable policy of Clause 22.01 – Residential Development and Character Policy, and the schedule requirements of the zone, forming a view that a permit would issue should a fresh application be made today. On this basis a commencement extension of two years was granted to the permit.

Whilst the permit applicant initially sought a 3 year extension to the permit, VCAT determined that a 2 year extension would allow sufficient and reasonable time for commencement of the development. It is noteworthy that given the

date of the VCAT decision (2/3/20), the effective timeframe of the extension was 14 months from the time VCAT granted an extension to the permit.

VCAT's order (P1480/2019) granting an extension of time to the permit was issued on 2 March 2020, merely weeks before the Coronavirus Pandemic began to impact the wider community and leading into ongoing lockdowns throughout the course of 2020. The applicant has advised that the project was put on hold during the 2020 Covid lockdowns and that the business had suffered financial difficulties as a consequence of the Covid situation. The applicant has indicated they experienced delays in obtaining certification of structural drawings which have delayed the issue of a Building Permit.

The current expiry date is 6 May 2021. The extension of time request was made on 28 April 2021 which is within 6 months of the expiry date in accordance with the requirements of the *Planning and Environment Act 1987*.

The Site and Surrounds

The subject site is located on the western side of Evelyn Street approximately 30 metres south of Princes Highway (Dandenong Road). The subject site has a total site area of 647 square metres and is currently developed with a single storey weatherboard dwelling, garage and outbuildings.

Development within the surrounding area comprises of a mix of single and double storey dwellings, two storey walk up flats to the immediate north and west, and numerous multi-unit developments within the surrounding vicinity.

PROPOSAL:

The applicant has requested a 1 year extension to the permit's commencement date. The applicant has indicated that they only require a 3 month extension to the prescribed commencement date to allow for issue of a building permit and commencement of construction works. The applicant has requested the extension due to administrative and financial delays associated within the past year as a consequence of the Covid 19 pandemic which have prevented appointment of a builder and finalisation of the Building Permit. The applicant intends to start construction once a Building Permit is acquired to which the applicant is in the process of obtaining.

The previous request was made for similar reasons. Since acquiring the property, the new owners made amendments to the plans which were approved in January 2017, and endorsed on 15 February 2018.

Since the last extension was granted by VCAT the permit holder has resolved the following additional documentation:

28/09/2020	Waste Management Plan obtained.
2/12/2020	Fire Engineering Report approved.
22/12/2020	Drainage Plan approved by City of Monash Engineering.

3/3/2021 Contract with builder signed.
10/03/2021 Energy Rating Report approved.
29/03/2021 Working Drawings (construction plans) finalised.

All of the above are required for issue of a Building Permit. It is noteworthy that the applicant has now appointed a builder to construct the approved development pending approval of an extension to the permit.

DISCUSSION:

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

“Before the permit expires or within six 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 15 March 2019, before the expiry date.

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. 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 there has been one significant state amendment affecting the land and two local amendments through Amendment C125.

Amendment VC110 (gazetted March 2017) introduced a mandatory garden area requirement and height requirement applicable to the zone. The proposal meets the mandatory height requirement of no more than 11 metres or 3 storeys as the proposal is limited to double storey and a maximum building height of 7.4 metres. In terms of the Garden Area, 36% garden area is provided which meets the requirement of 35%.

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, the land is now within Category 3 – Monash National Employment Cluster, and Category 8 – Garden City Suburbs residential area which identifies areas suitable for incremental change including multi-dwelling

unit development within a garden setting, along with the potential for lower to medium density apartment development in predominately residential streets.

Under Clause 22.01, the land is now within the Garden City Suburbs (Southern) character area. The preferred future character statement makes reference to the development of well-designed unit and apartment development which takes place within an open landscaped setting. Furthermore the built form will be unified by well planted front gardens.

It is considered that the form, scale and intensity of the development continues to be broadly consistent with the policy objectives.

The zoning of the land has also changed from General Residential Zone – Schedule 2 to General Residential Zone 3, through the implementation of Amendment C125.

The General Residential Zone 3 (GRZ3) 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.

Under the provision of GRZ3, there are the following variations to the Clause 55 requirements:

	GRZ3 Requirement	Approved Development
Street setback	At least 7.6 metres from the front street.	Complies - 7.6m
Site coverage	Should not exceed 50%.	Minor non-compliance - 50.23% VCAT Hearing P1480/2019 states that this non-compliance is not fatal to the overall design and siting of the building.
Permeability	Should be at least 30%.	Does not comply - 22.72% Total Permeability - 147m ² (47m ² below the requirement)
Landscaping	Provide or retain at least one canopy tree plus at least one canopy tree per 5m of site width.	Complies Provision of 10 canopy trees are shown on the endorsed landscape plan.
Side and rear setbacks	A new wall not on or within 200mm of a rear boundary should be setback at least 5 metres.	Does not comply. Rear apartments are setback of 2.0m – 2.8m.
Private open space	75 square metres, including 35 square metres SPOS with minimum; or A balcony or roof-top area of 10 square metres with a minimum width of 2 metres and convenient	Minor non-compliance. Balcony spaces of 8m ² -16m ² are provided to each apartment. Balcony minimum width ranges from 1.6m-2.26m.

	access from a living room. width of 5 metres	
Front fence	1.2 metre front fence	Complies. No front fence is proposed.

As identified above the approved development does not comply with a number of current schedule requirements.

The VCAT determination considered these variations, and on balance considered the overall outcome to be appropriate. Key factors in VCAT's determination to grant an extension to the permit included:

- The area contains a predominance of two storey walk up flats along Princes Highway and surrounding streets. This includes two storey walk-up flats to the north at 1794 and 1796 Princes Highway (adjoining property to the north) and two storey flats to the west at 1 Howard Court (adjoining property to the west).
- The setback to the west (rear) is appropriate given the context and provides adequate opportunity for landscaping.
- Open space provision in the form of balconies to ground level apartments is appropriate. The size of balconies spaces provides for satisfactory residential amenity.
- The siting and design of the apartment building on the land was considered to be consistent with the objectives of the zone and local policy.
- The approved development will contribute to a diversity of housing in this area that is located less than 50 metres from Princes Highway and adjacent to the Monash National Employment Cluster and Monash University.

Amendment VC110 requires 30% garden area for land between 500-650 square metres and limits building heights to 11 metres. The proposal has 38% garden area of the site, and maximum building height of 8.75 metres for the apartment building. These requirements only apply to a new application for permit should a fresh permit application be made today.

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

The total elapsed time between the date of issue of the permit and the date of the request to extend the permit is ten (10) years.

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. It would be difficult to show that the owner has no current intention of commencing the development.

Condition 1 plans were endorsed on 15 February 2018, and drainage plans were approved on 22 December 2020.

Whilst a considerable period of time has passed since the original approval, the current COVID-19 pandemic has caused delays in commencement of building projects and issues associated with finalising documentation which would allow commencement of the development.

Further, the relevant VCAT decision found the applicant is not warehousing the approval on the basis that:

- Endorsed plans had been obtained.
- Delays have occurred in the processing of the amendments to plans.
- The applicant has commenced in the preparation of working drawings for approval through the building permit application process since the amendment was approved.
- A building surveyor has been engaged to obtain a building permit.
- A builder has been appointed and a copy of the signed contract has been provided.

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

The owner was unable to commence the development within time due to delays experienced owing to the COVID-19 pandemic. The pandemic resulted in delayed commencement of finalising documentation including obtaining a building permit. It is noted that the applicant has an approved Drainage Plan and Letter, dated 22 December 2020, and has submitted a Waste Management Plan for Council's review and obtained a Fire Engineering Report, Energy Rating Report and working drawings all required as part of the Building Permit approval.

The applicant has indicated that they intend to commence the development promptly upon extension of the permit. Further, the applicant has submitted that an extension of 3 months (from date of issue) should be sufficient to allow for prompt commencement of the development.

The total elapse of time.

The permit has been in place for 10 years.

VCAT previously acknowledged the extensive length of time that has passed since issue of the original permit and noted the proposal still resulted in an appropriate planning outcome for the land and was nearly ready for commence subject to obtaining a building permit and appointment of a builder.

It is noted that the Tribunal did not agree to extend the permit for three years, as requested by the Applicant, rather only 2 years. This would indicate that any further request for extension would be viewed differently as the permit has now been in place for over 10 years.

On the basis of the elapse of time since the original approval an extension would not be supported on this basis.

Whether the time limit originally imposed was adequate

The original time limit was adequate for this application and on this basis an extension of time would not be supported.

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

Considering the development has not commenced, the degree to which the owner is economically committed to the permit is limited.

It is not considered that any conditions of the permit would have placed additional economic burden on the applicant that could have affected the commencement of construction. The conditions are standard for this sort of development.

No submissions were lodged by the applicant to expand the economic considerations under this test and on this basis an extension of time would not be supported.

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

Having regard to relevant zoning and policy controls, it is considered that a development of a similar form would be approved under the current Planning Scheme. It is noteworthy that VCAT in its determination stated:

“I have considered this request on its own merits and the rezoning of the land is not the only matter to be considered. Taking into account the context of the site that contains a dominance of multi-dwelling developments, I find the development is an acceptable response when assessed against the current local policy and zoning. I find that allowing an extension of time will not lead to a poor planning outcome, undermine the policy or create a development that will not complement the existing neighbourhood character.”

Overall on balance of all the considerations above it is appropriate to support one last three month extension to the permit to allow for the issue of the Building Permit.

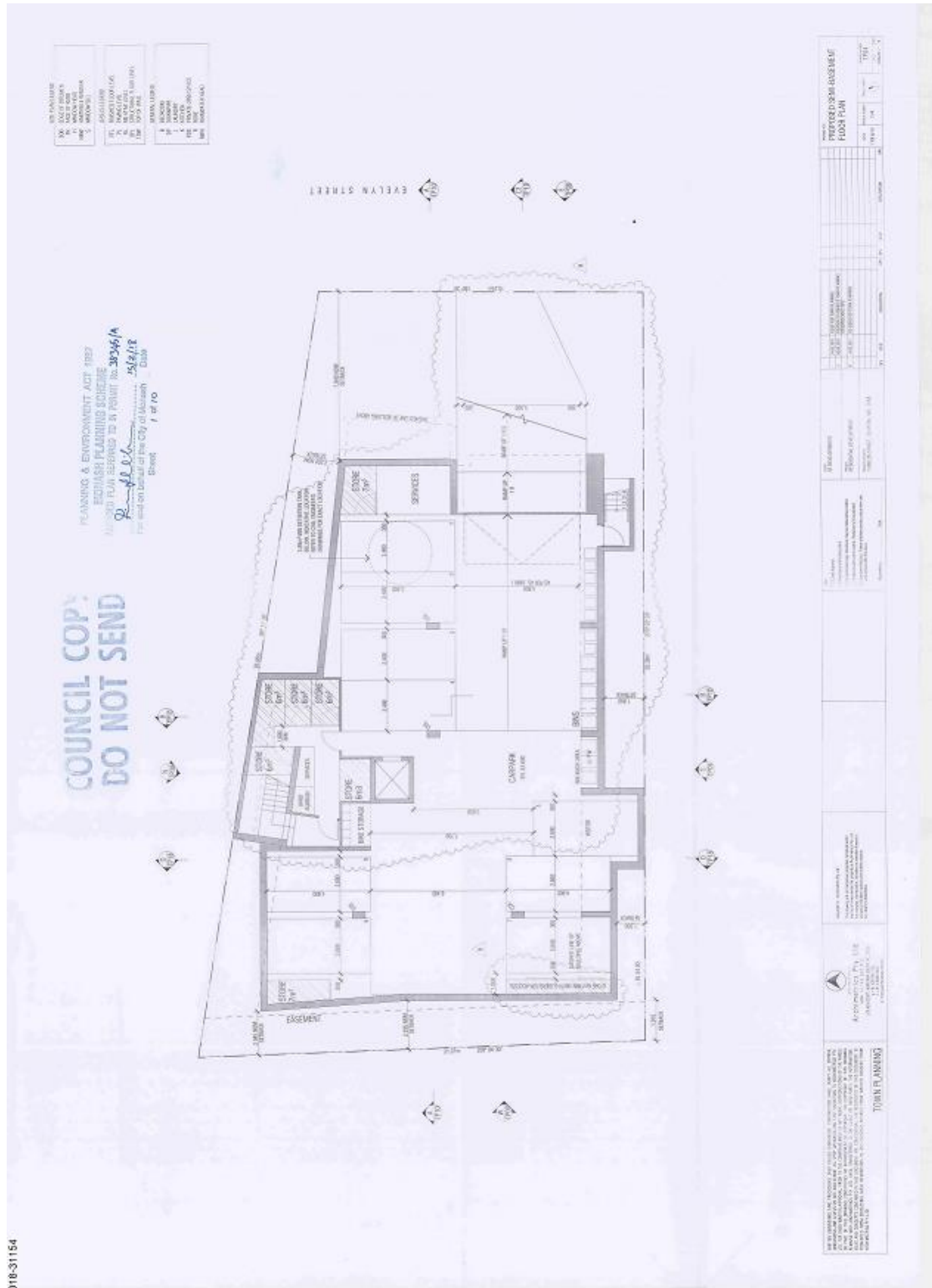
CONCLUSION:

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 and most importantly consistency with current planning policy objectives.

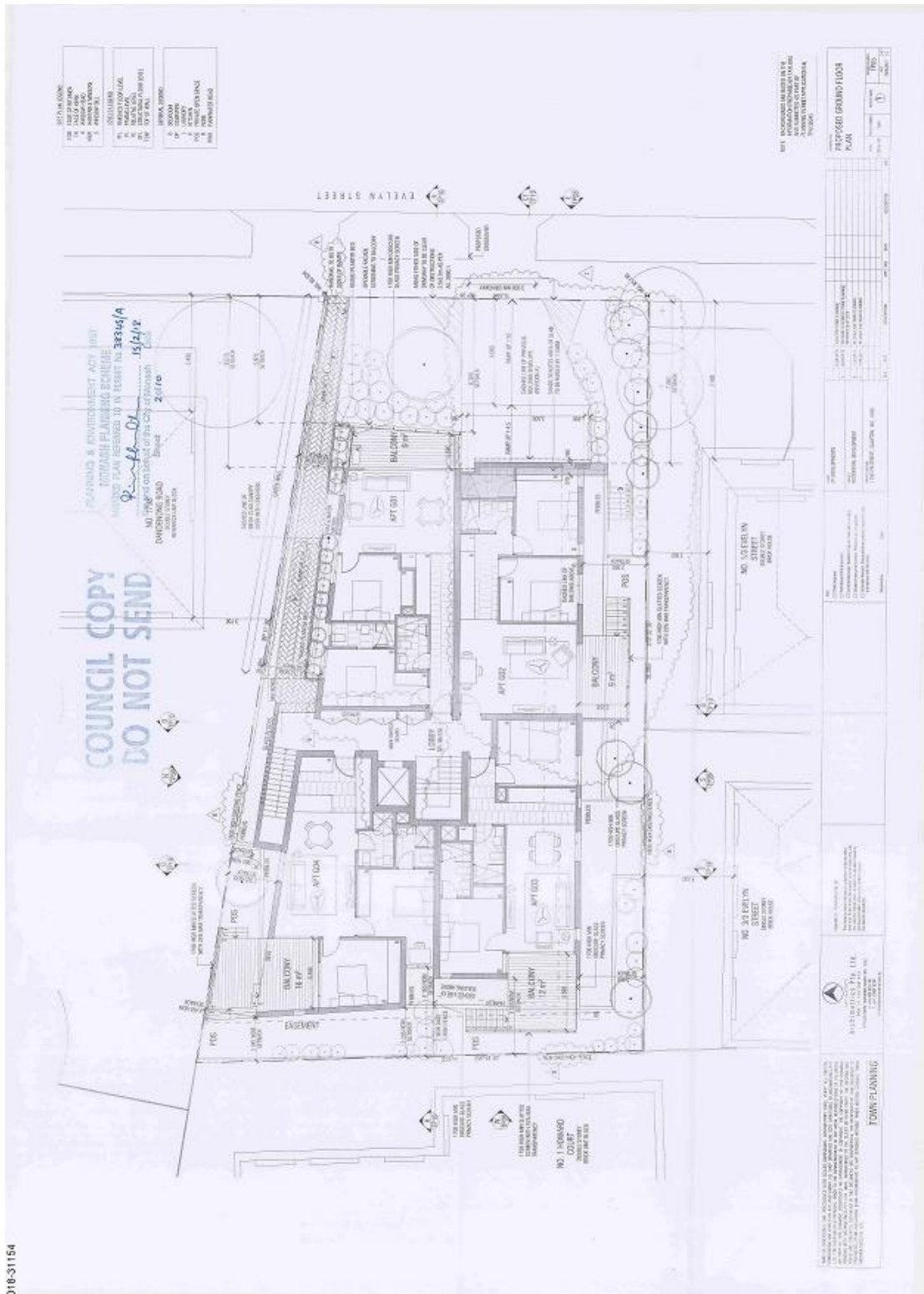
It is recommended the Council approve an extension of three months for the commencement and completion of the development.

ATTACHMENT 1



1 Evelyn Street, Clayton - Extension Of Time - Construction Of A Two Level Building Plus Basement Car Parking Comprising Eight Dwellings

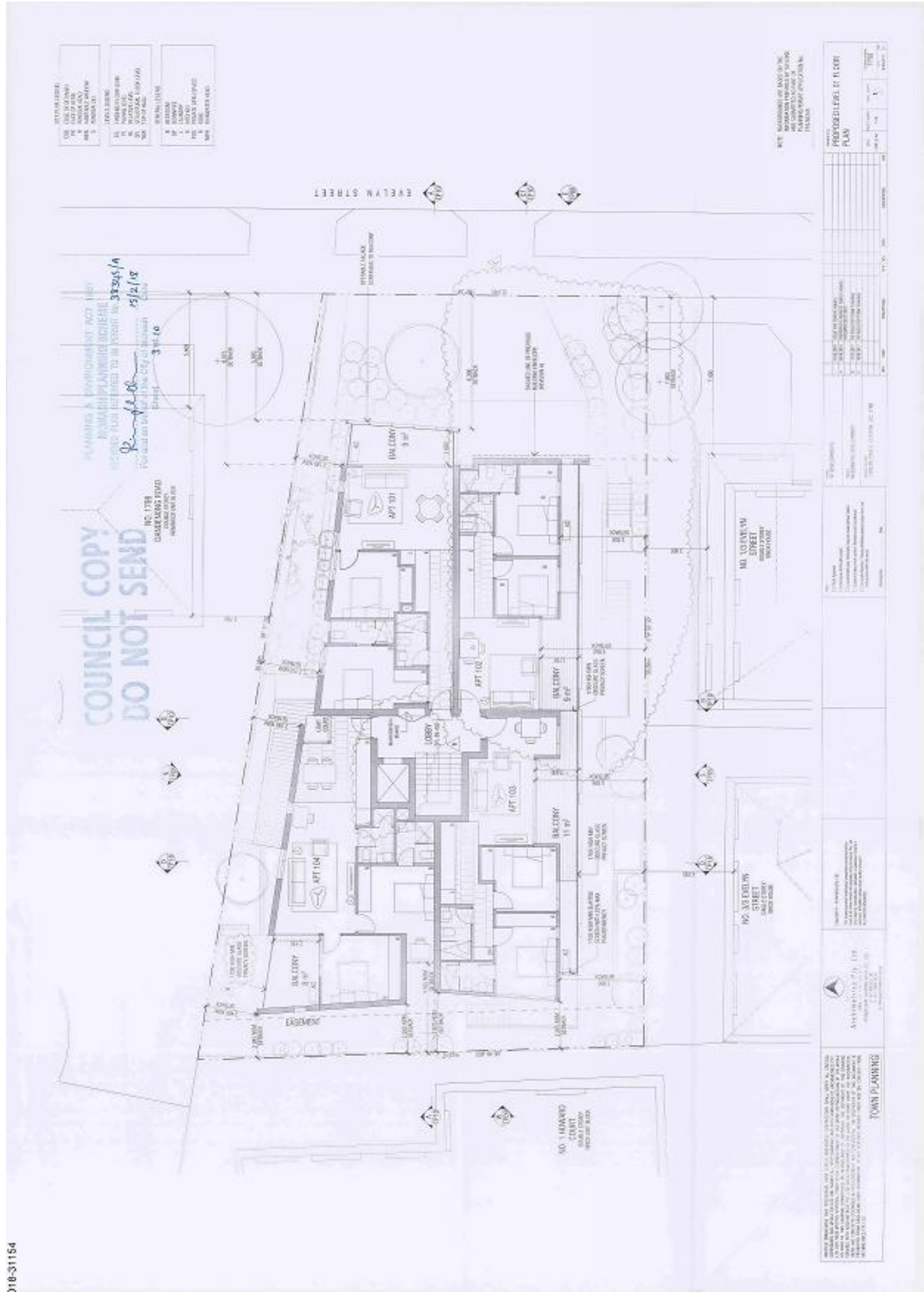
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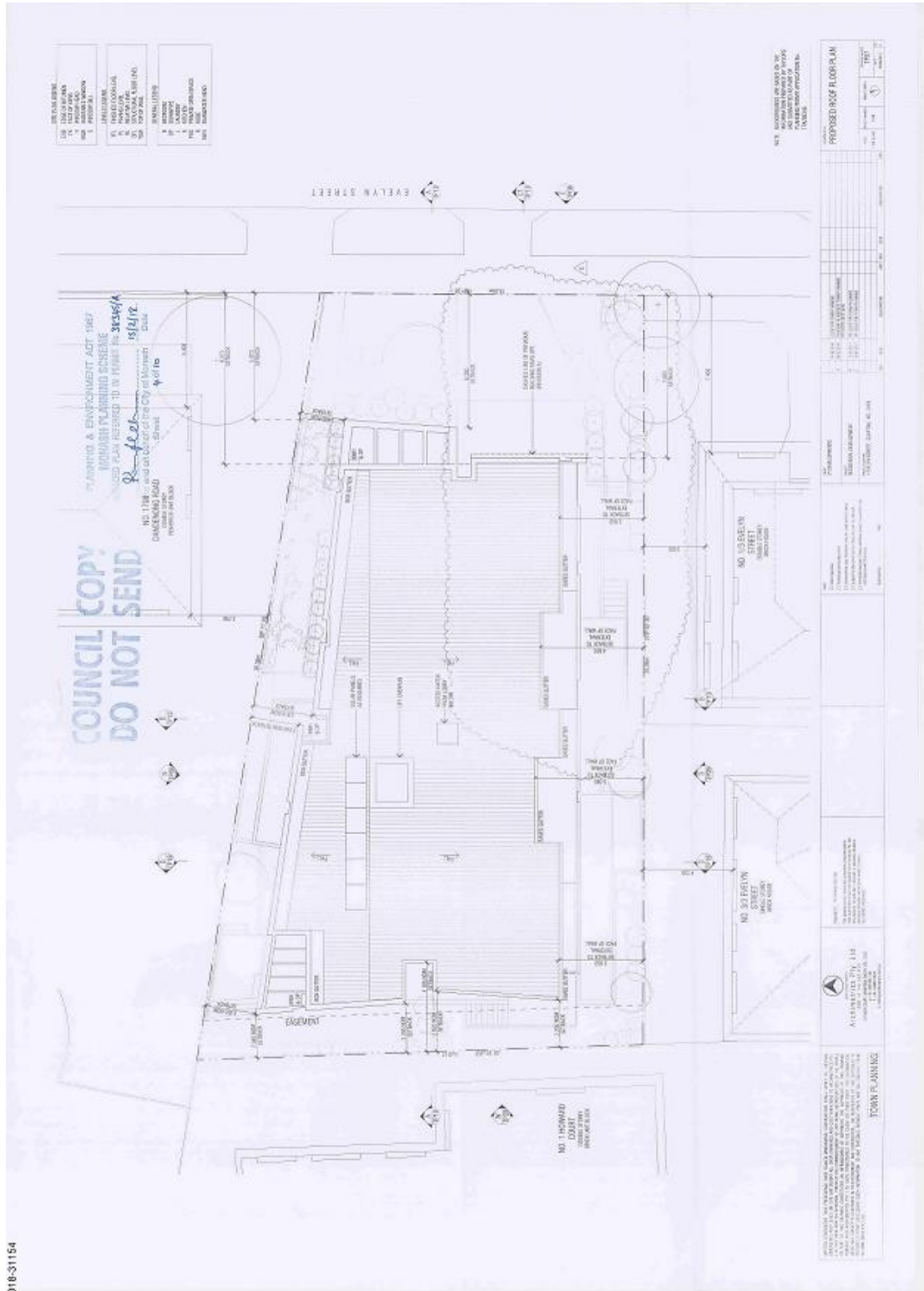
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D16-31154

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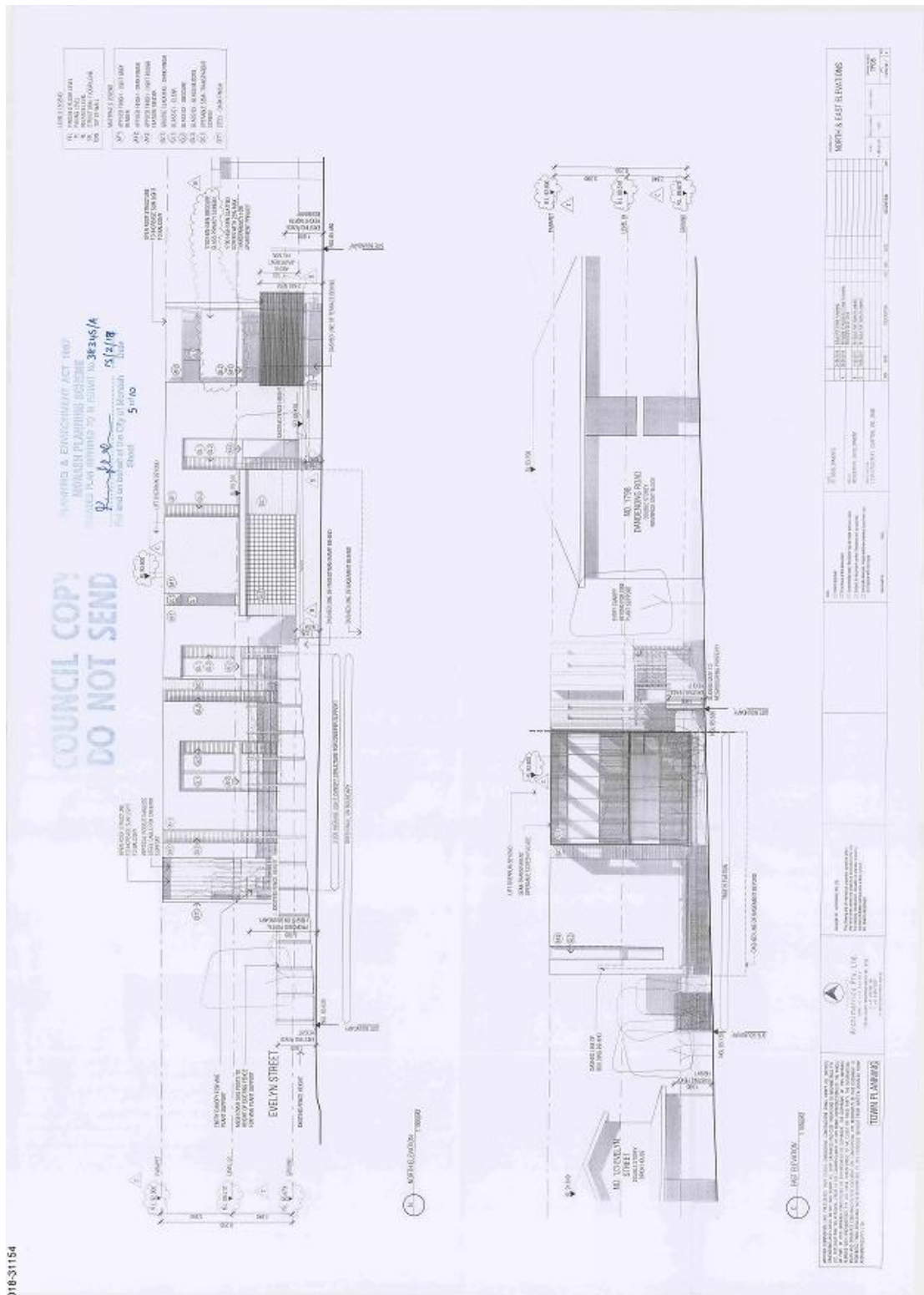
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D18-31154

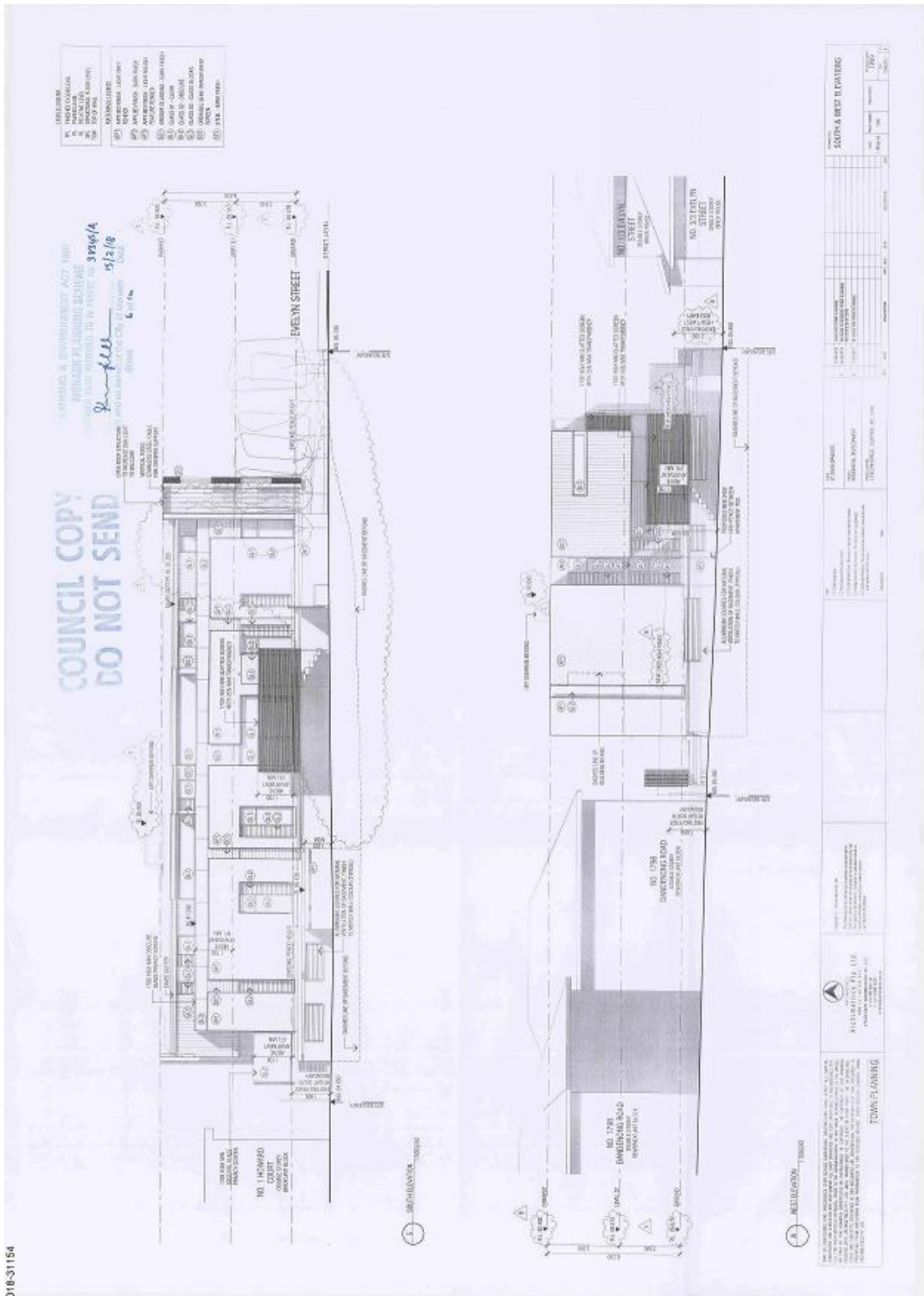
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ATTACHMENT 1 (Continued)



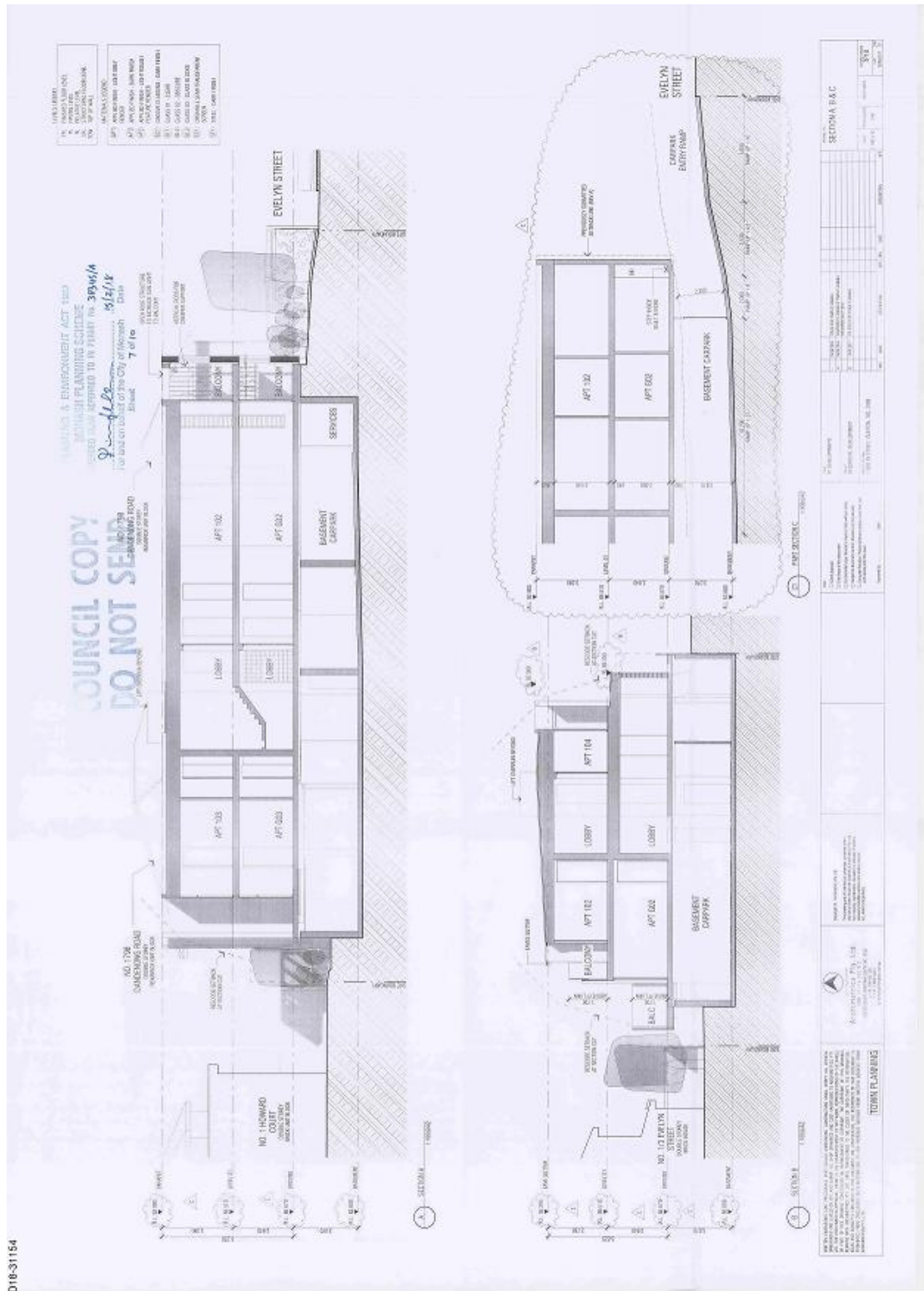
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ATTACHMENT 1 (Continued)



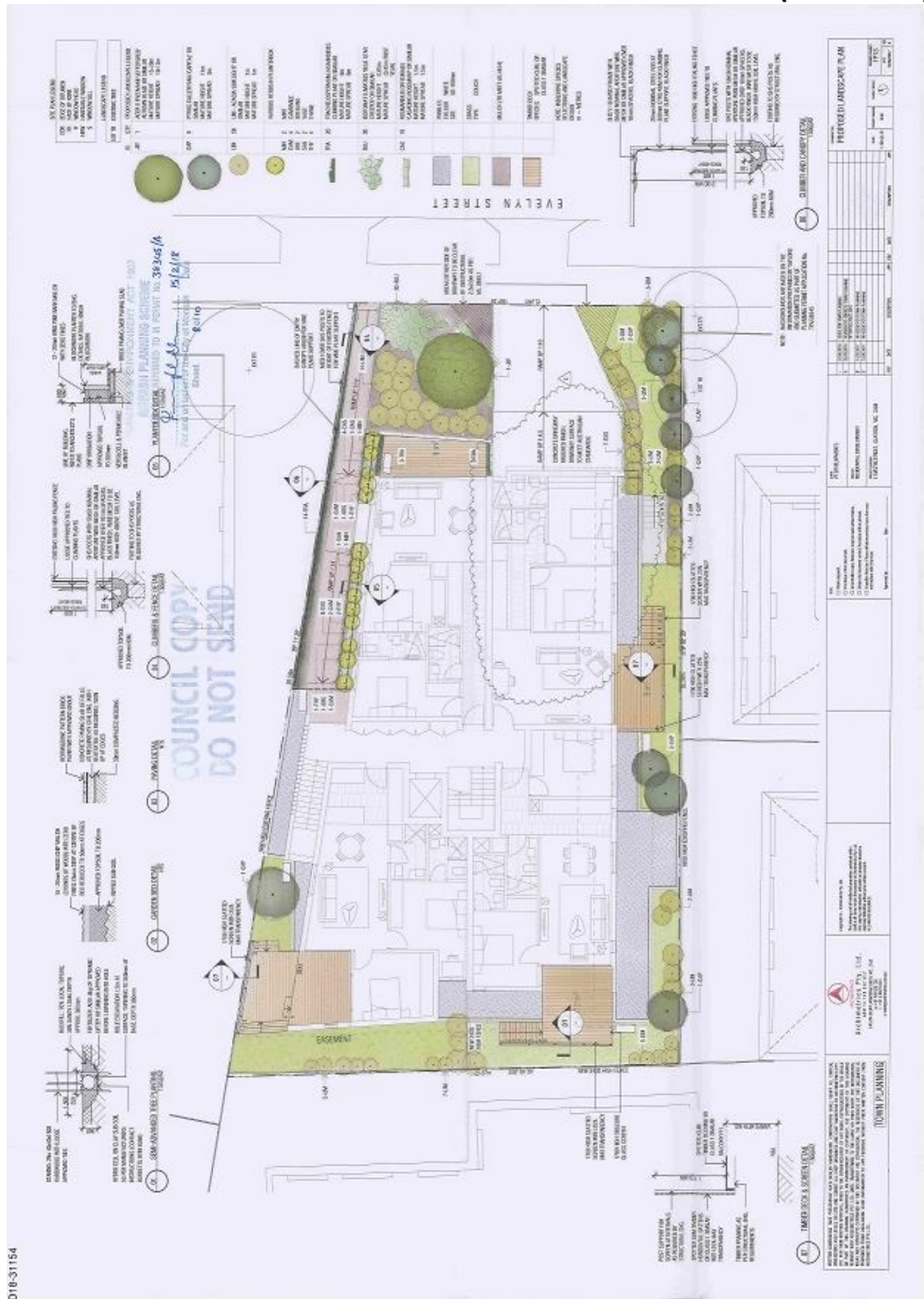
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ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)



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ATTACHMENT 1 (Continued)

PLANNING & ENVIRONMENT ACT 1987
MUNICIPAL PLANNING AGREEMENT
PROVIDING PLANNING SERVICES TO THE CITY OF CLAYTON
15/6/18
\$ 10

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④⑦ CLEAR GLASS



④⑧ OBSCURE GLASS



④⑨ GLASS BLOCKS



④⑩ OPERABLE BATTEN SCREEN



④⑪ STEEL

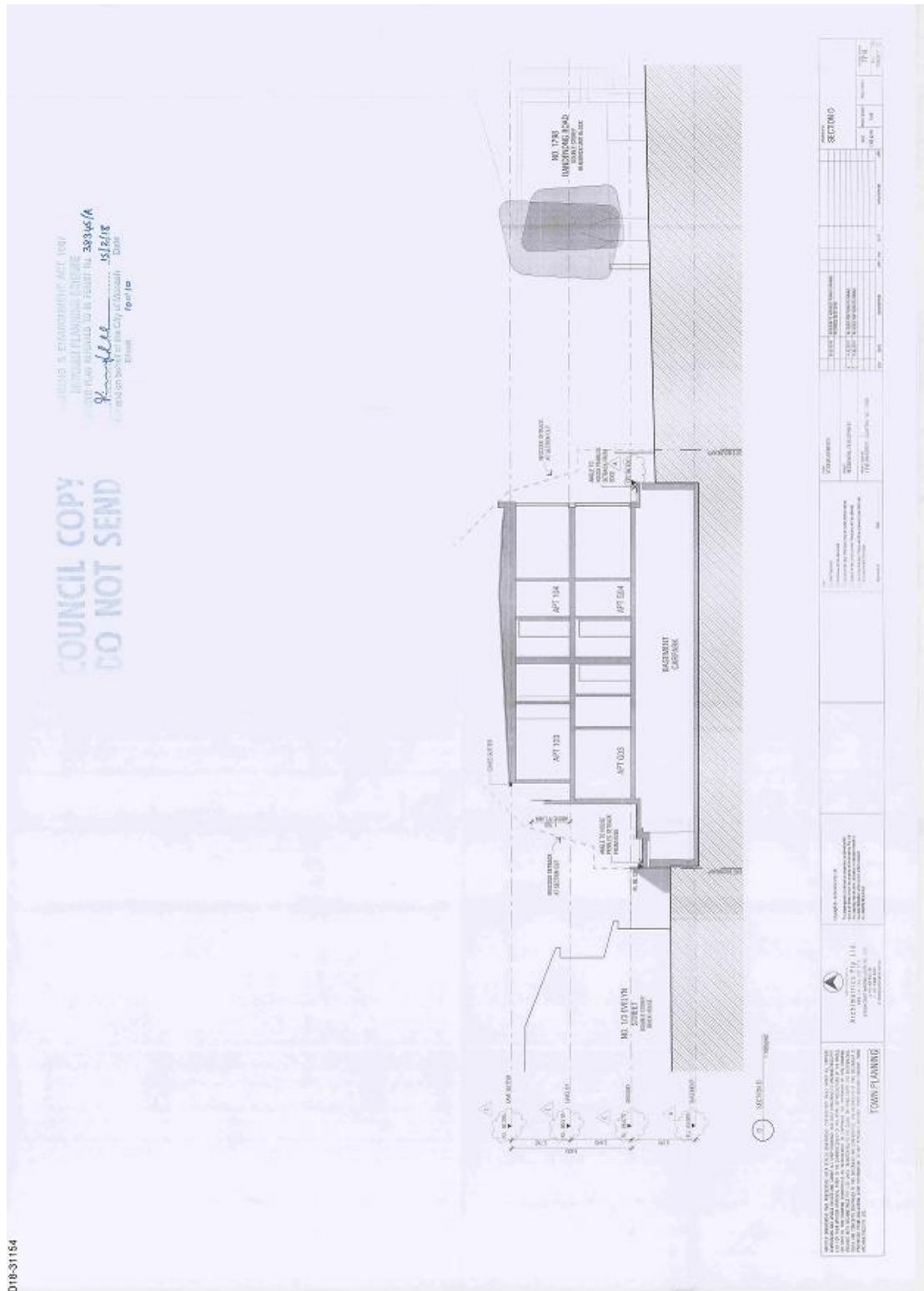
④⑫ MATERIALS

ITEM NO.	DESCRIPTION	QUANTITY	UNIT	PRICE	TOTAL
1	④⑫ MATERIALS				

④⑬ TOWN PLANNING

Archimetrics Pty. Ltd.
15/6/18
15/6/18

ATTACHMENT 1 (Continued)



1 Evelyn Street, Clayton - Extension Of Time - Construction Of A Two Level Building Plus Basement Car Parking Comprising Eight Dwellings