

**1.4 1899-1901 DANDENONG ROAD, CLAYTON  
EXTENSION OF TIME - THE CONSTRUCTION OF A FOUR STOREY BUILDING  
COMPRISING SHOPS AND DWELLINGS INCLUDING A REDUCTION IN THE APPLICABLE  
CAR PARKING REQUIREMENT  
TPA/42833/A**

**EXECUTIVE SUMMARY:**

An application has been received for an extension of time to Planning Permit TPA/42833/A for the construction of a four storey building comprising shops and dwellings including a reduction in the applicable car parking requirement.

The original approval TPA/42833 was issued on 12 May 2015, with amended permit TPA/42833A issued on 15 August 2018, permitting the addition of a fourth level and consequential changes to the permit description and conditions.

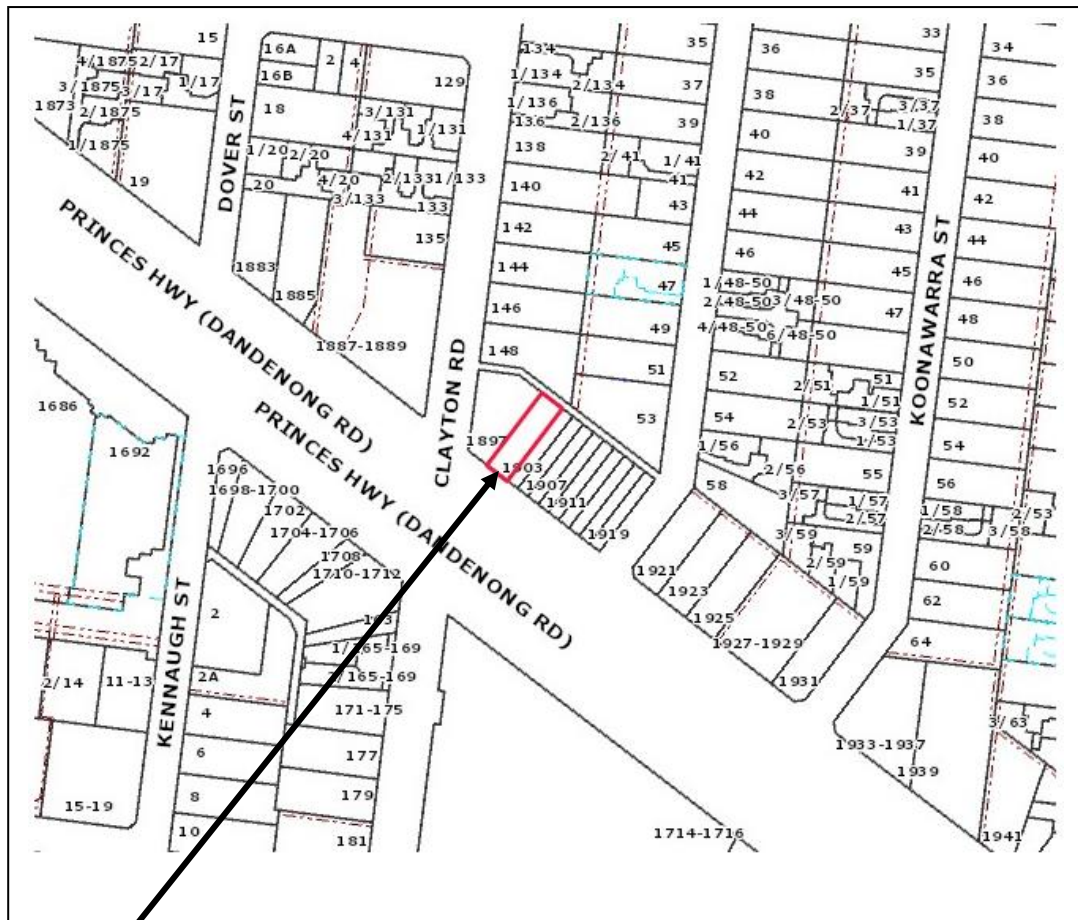
The permit has been extended on three previous occasions. The first extension for one year, second extension issued for two years and the final extension of time issued was for one year. The current permit expired on 12 May 2021, as the development has not commenced.

**The reason for presenting this report to Council is this is the fourth extension of time request sought for this permit.**

**The proposed extension of time is appropriate and it is recommended that a one (1) year extension to the permit is granted accordingly.**

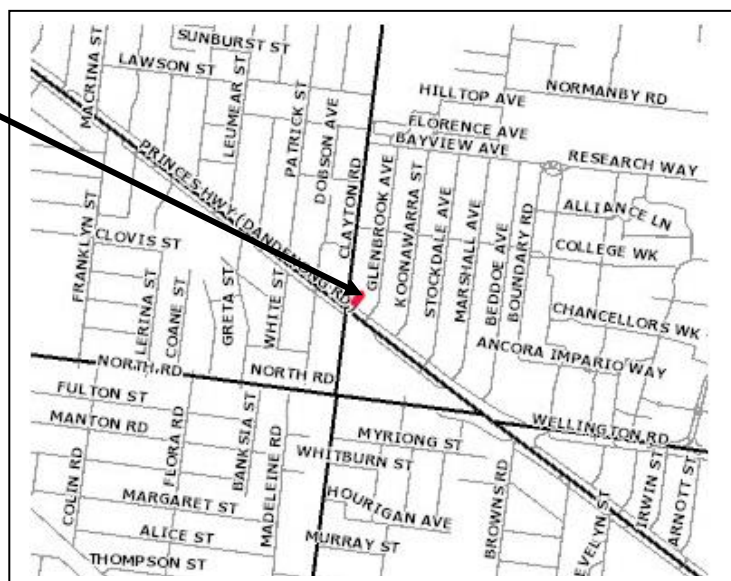
<b>RESPONSIBLE DIRECTOR:</b>	<b>Peter Panagakos</b>
<b>RESPONSIBLE MANAGER:</b>	<b>Natasha Swan</b>
<b>RESPONSIBLE PLANNER:</b>	<b>Jeanny Lui</b>
<b>WARD:</b>	<b>Oakleigh</b>
<b>PROPERTY ADDRESS:</b>	<b>1899-1901 Dandenong Road, Clayton</b>
<b>ZONING:</b>	<b>Commercial 1 Zone</b>
<b>OVERLAY:</b>	<b>No Overlay</b>
<b>EXISTING LAND USE:</b>	<b>Single storey commercial premises</b>
<b>RELEVANT LEGISLATION</b>	<b>Section 69 of the <i>Planning and Environment Act 1987</i></b>

### LOCALITY PLAN



**SUBJECT SITE**

### NEIGHBOURHOOD PLAN



1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement

**RECOMMENDATION:**

That Council resolves to issue an **extension of time** to Planning Permit No. **TPA/42833/A** for the construction of a four storey building comprising shops and dwellings including a reduction in the applicable car parking requirement at 1899-1901 Dandenong Road, 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 of the development be extended for a further one year. Accordingly, the development must be commenced by 12 May 2022 and completed by 12 May 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 minor non-compliance with Clause 58 of the Monash Planning Scheme.

**BACKGROUND:****History**

Planning permit TPA/42833 was issued on the 12 May 2015 allowing the construction of a three storey building comprising two shops and seven dwellings. This permit has been extended on two occasions, on 7 June 2017 and 15 August 2018.

Concurrent with the permit extension, an amended Planning Permit TPA/42833A was issued on 15 August 2018. The amended permit allows the construction of a four storey building comprising two shops and 12 dwellings. Development plans were endorsed pursuant to the requirements of condition 1 of the permit on 8 August 2019. The permit was extended a third time on 2 June 2020 to allow for the commencement of the development by 12 May 2021, which is the current expiry date of the permit.

The current extension of time request was made on 22 June 2021 which is within 6 months of the expiry date in accordance with the requirements of the *Planning and Environment Act 1987*.

A copy of the approved endorsed plans can be found at Attachment 1.

**The Site and Surrounds**

The site is located on the north side of Dandenong Road immediately east of the Clayton Road intersection. The site has a frontage of 10.97 metres, a depth of 38.58 metres and an overall site area of 423.2 square meters. The site contains a single

storey commercial building and is currently vacant. There are a number of outbuildings at the rear of the building. The rear section of the site is paved to allow for on-site car parking for 3 vehicles. There is no significant vegetation present and the land has a fall of approximately 2.3 metres from north to south.

A sealed, 3.0 metre wide laneway runs along the north-eastern (rear) boundary of the land. The laneway links through Glenbrook Avenue to the east with Clayton Road to the west.

### **PROPOSAL:**

The applicant has requested an extension of the permit's start and completion dates for a further two (2) years due to the delay in financing the development caused by the COVID-19 pandemic and consequential delays in the commencement of works.

### **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 22 June 2021 which is less than 6 months after the development was due to be commenced. Accordingly, Council is able to consider a further extension to the commencement and completion dates 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 original permit was issued there has been one significant state amendment affecting the land through Amendment VC136. The amendment was gazetted in April 2017 and introduced Clause 58 into Planning Schemes for apartment developments.

Transitional arrangements apply to this application, as the original permit application was lodged prior to the introduction of Amendment VC136. Whilst clause 58 does not apply to any subsequent amendments to the planning permit, an assessment against this provision is provided below given the length of time that has passed since the original issue of the permit.

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

The total lapsed time between the date of issue of the original permit and the date of the request to extend the permit is six (6) 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 8 August 2019; and an amended application submitted to Council on 4 June 2021 seeking modification to the architectural presentation of the building, along with some minor internal re-arrangement of the apartment layouts. The amendment application was subsequently withdrawn on 27 July 2021 as the Permit Applicant was advised that the amended application could not proceed until such time that an extended permit is issued.

Whilst a considerable period of time has passed since the original approval, it is acknowledged that the current COVID-19 pandemic has caused delays in obtaining financial approval and commencement of building projects.

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 has resulted in delays in the commencement of finalising documentation, including obtaining financial approval to fund the commencement of works.

The applicant has indicated a clear intent to commence the development promptly upon approval of an extension of time. Furthermore, the applicant has indicated that this will be the final request for a permit extension.

The total elapse of time.

Six years have passed since the permit was issued, which is sufficient to have enabled the commencement and completion of the development. This is not fatal to the application in isolation.

Whether the time limit originally imposed was adequate

The original time limit originally imposed was two years for commencement, which is a standard condition of approval and considered adequate for a development of this nature.

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.

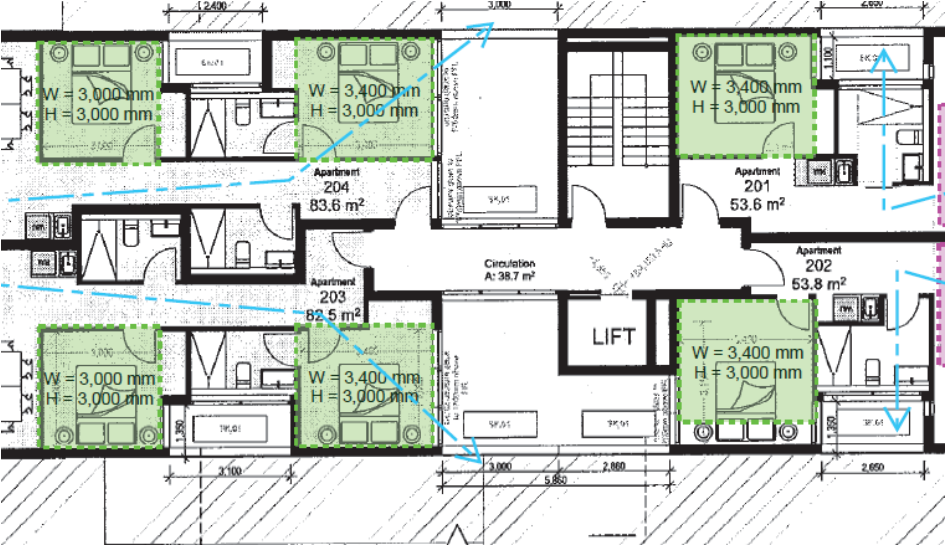
No submissions were lodged by the applicant to expand the economic considerations under this test.

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

Any new proposed development would be assessed against Clause 58 of the Monash Planning Scheme should a fresh application be made. The approved development was not subject to consideration under Clause 58 of the Monash Planning Scheme as it was lodged prior to the gazettal of Amendment VC136.

An assessment of the approved development against Clause 58 is provided in the table below, and demonstrates that the development can generally meet the objectives of Clause 58.

<b>Apartment Development Requirements under Clause 58 (where relevant)</b>	<b>Assessment against Clause 58 of approved plans</b>
D3- Dwelling diversity objective	Objective satisfied- The current proposal provides for 6 one bedroom and 6 two bedroom apartments which meets the objective to provide dwellings with a different number of bedrooms.
D5- Integration with the street objective	Objective satisfied- Pedestrian access to the apartments are provided on the street frontage.
D9- Safety objective	Objective satisfied- Entrance to the apartments are not obscured or isolated from the street.
D10 & D12- Access & Parking location objective	Objectives satisfied- Vehicle access is provided via the rear laneway. Pedestrian access is provided from the car park to the building.
D13- Integrated water and stormwater management objective	Objective satisfied- The development has incorporated a water tank.
D15- Internal views objective	Objective satisfied- The development has been designed to prevent internal overlooking.
D16- Noise impacts objective	Objective satisfied- Noise sources such as the car stacker system is not located near the bedrooms of the apartments.
D17- Accessibility objective	Objective satisfied- Details of door opening, design and circulation area are not provided on the current version of the plans however the applicant has confirmed in writing that 50% of the apartments comply with the requirement of Standard D17.
D18- Building entry and circulation objective	Objective satisfied- Entries to the shops and the residential lobby are clearly differentiated and easily identifiable.
D19- Private open space objective	Objective satisfied - Each apartment is provided with a balcony of 12.7 to 16.3 square metres, having a minimum width of 2.2 metres.
D20- Storage objective	Objective satisfied - Storage areas are provided on ground level near the bicycle parking area. Additional storage spaces are also provided within the apartments which satisfies the requirements under this standard.

D21- Common Property objective	Objective satisfied- Common property is appropriately designed which is practical and easily maintained.
D22- Site services objective	Objective satisfied- Site services are appropriately located on the ground level.
D23- Waste and recycling objective	Objective satisfied- Waste storage is located on ground level. A Waste management plan is required for Council’s approval under Condition 16 of the planning permit.
D24- Functional layout objective	<p><b>Objective not satisfied</b> - The development generally complies with the minimum size and dimensions of the living room.</p> <p>Bedrooms are marginally smaller than the required internal width by approximately 300-350mm (a wall’s thickness). The plan below highlights the area with the required internal dimensions for bedrooms. It shows that the bedrooms are slightly less than the required internal width.</p>  <p>Although slightly less than the required room size, the bedrooms are regular in shape, considered functional and will provide reasonable amenity to future residents. It is however recommended this be the last extension of time that be supported, and that it is extended for the shorter period of one year.</p>
D25- Room depth objective	Objective satisfied- All rooms do not exceed 2.5 times of the ceiling height and the layout of the rooms are functional.
D26- Windows objective	Objective satisfied- All habitable rooms have a window on the external wall of the building and do not rely on saddleback to ensure rooms will receive adequate daylight.
D27- Natural ventilation objectives	Objective satisfied- All apartments have window openings on different orientations to provide natural ventilation of the apartments.

**CONCLUSION:**

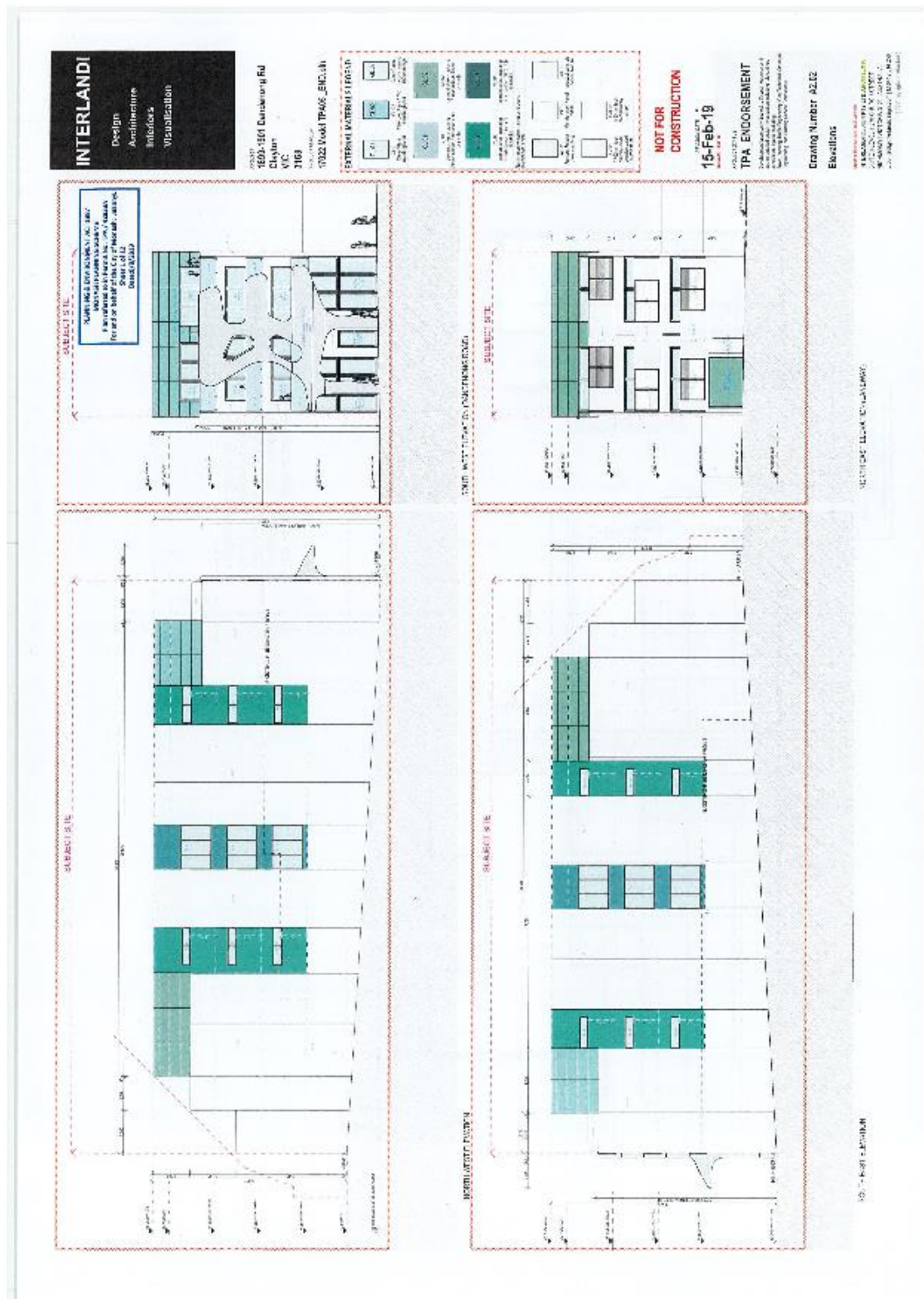
It is considered appropriate to grant a further extension of time to the permit for one year.

The proposal on balance meets the tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council* (1997). The development provides an acceptable

outcome with the built form being consistent with the desired future outcome. Whilst the application benefits from transitional provisions which exempt its assessment from Clause 58, the minor non-compliance with bedroom dimensions does not meet the objectives of Standard D24 of Clause 58.07-1, which would be a critical assessment should a new permit application be lodged. As such, it is recommended that the applicant be advised it is unlikely a further extension of time will be granted and that Council approve a final extension of one year for the commencement and completion of the development.



ATTACHMENT 1



ATTACHMENT 1 (Continued)

PLANNING & ENVIRONMENT ACT 1987  
MUNICIPAL PLANNING SCHEME  
This document is prepared for the 7th A/D/DA  
of the Planning and Environment Act 1987  
Shard 2 of 12  
Shard 2/0002

**INTERLANDI**  
Design  
Architecture  
Interiors  
Visualisation

PROJECT: 1899/1901 Dandenong Rd  
Clayton  
VIC  
3168

PROJECT NUMBER: T1022 Merch TPAGS, BND, BH

**EXTERNAL MATERIALS LEGEND**

CL-10	CL-11	CL-12	CL-13	CL-14	CL-15	CL-16	CL-17	CL-18	CL-19	CL-20	CL-21	CL-22	CL-23	CL-24	CL-25	CL-26	CL-27	CL-28	CL-29	CL-30	CL-31	CL-32	CL-33	CL-34	CL-35	CL-36	CL-37	CL-38	CL-39	CL-40	CL-41	CL-42	CL-43	CL-44	CL-45	CL-46	CL-47	CL-48	CL-49	CL-50	CL-51	CL-52	CL-53	CL-54	CL-55	CL-56	CL-57	CL-58	CL-59	CL-60	CL-61	CL-62	CL-63	CL-64	CL-65	CL-66	CL-67	CL-68	CL-69	CL-70	CL-71	CL-72	CL-73	CL-74	CL-75	CL-76	CL-77	CL-78	CL-79	CL-80	CL-81	CL-82	CL-83	CL-84	CL-85	CL-86	CL-87	CL-88	CL-89	CL-90	CL-91	CL-92	CL-93	CL-94	CL-95	CL-96	CL-97	CL-98	CL-99	CL-100
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**NOT FOR CONSTRUCTION**

15-Feb-19

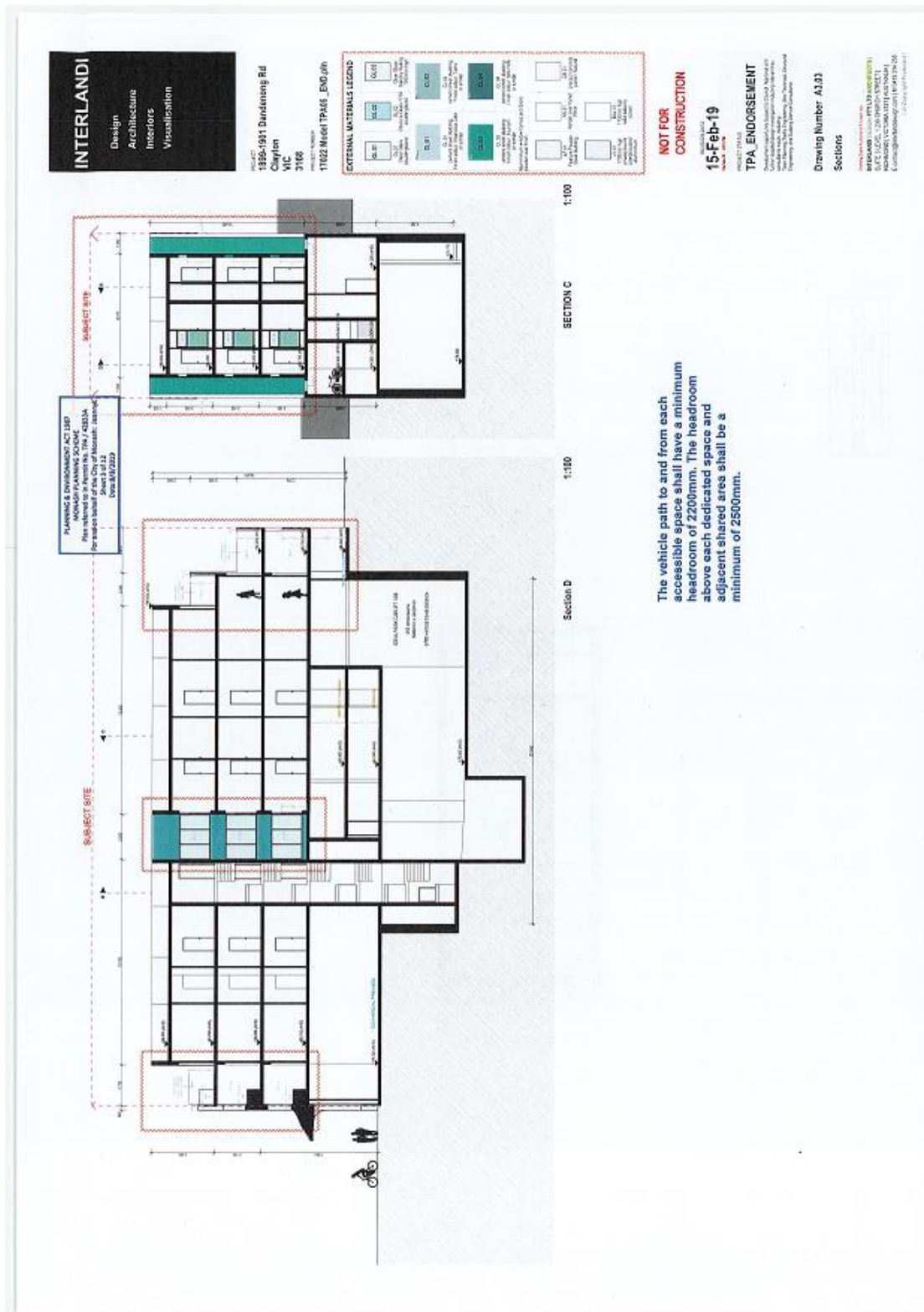
TPA ENDORSEMENT

Drawing Number A3.82

Sections

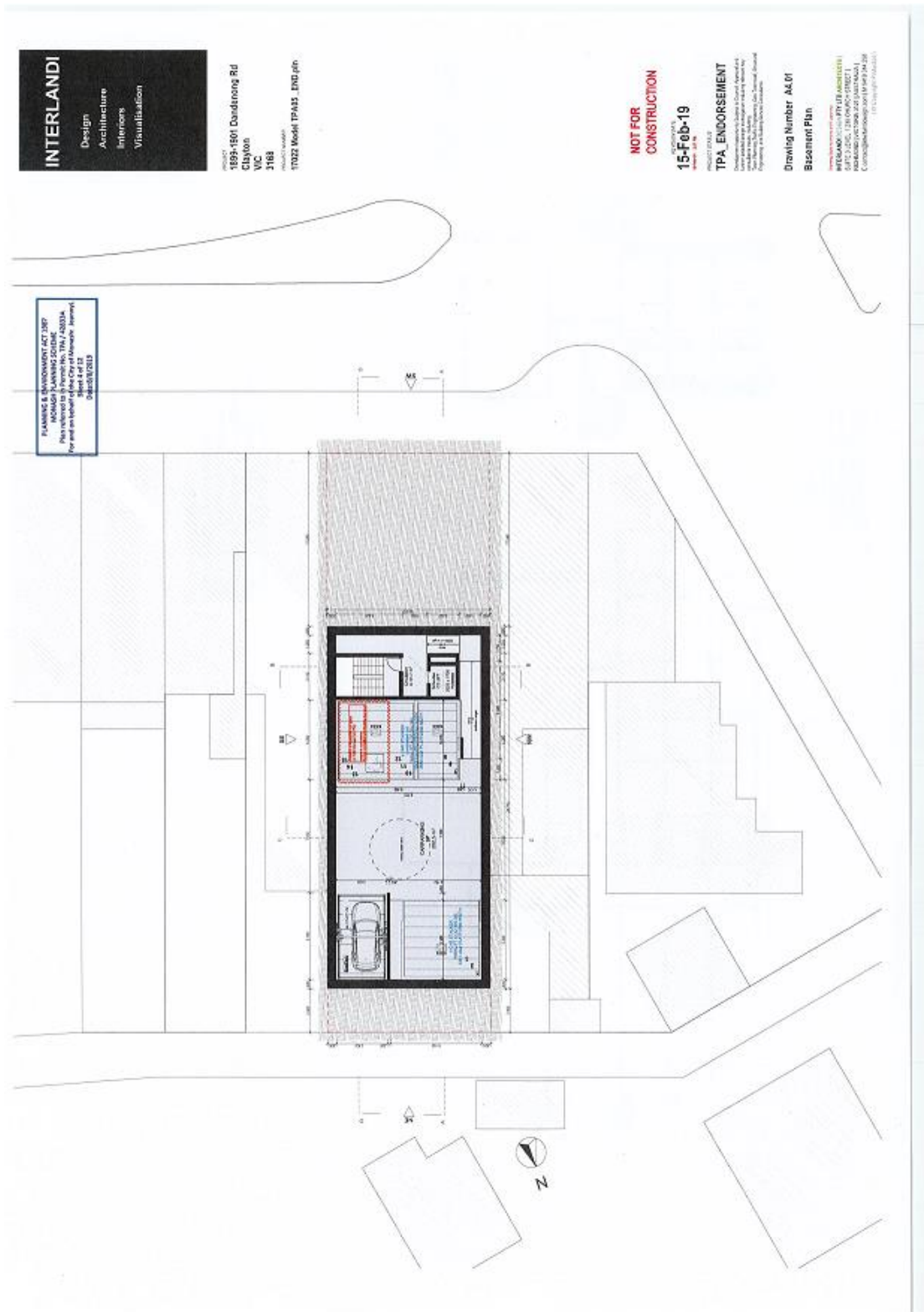
The vehicle path to and from each accessible space shall have a minimum headroom of 2200mm. The headroom above each dedicated space and adjacent shared area shall be a minimum of 2500mm.

ATTACHMENT 1 (Continued)



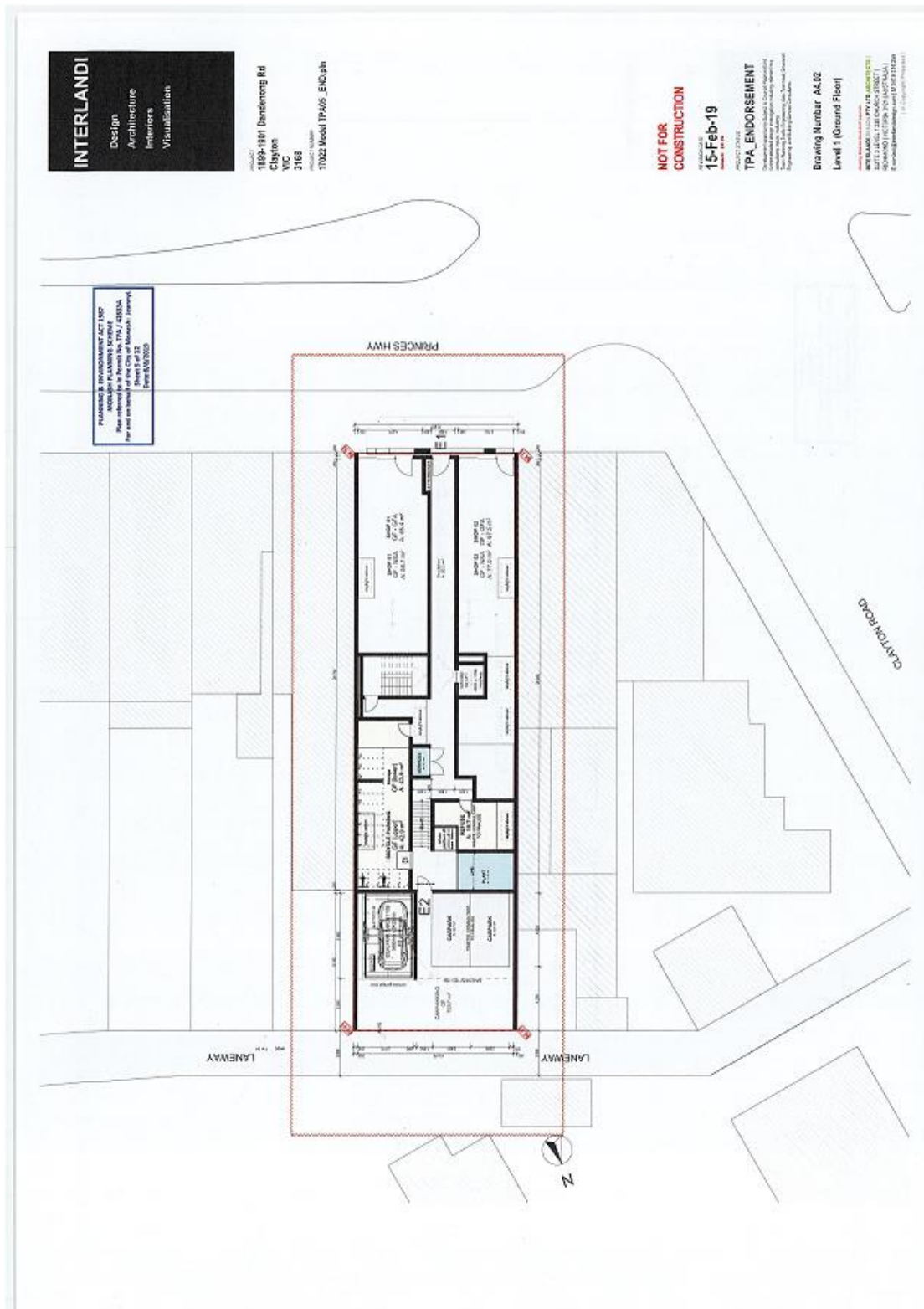
1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



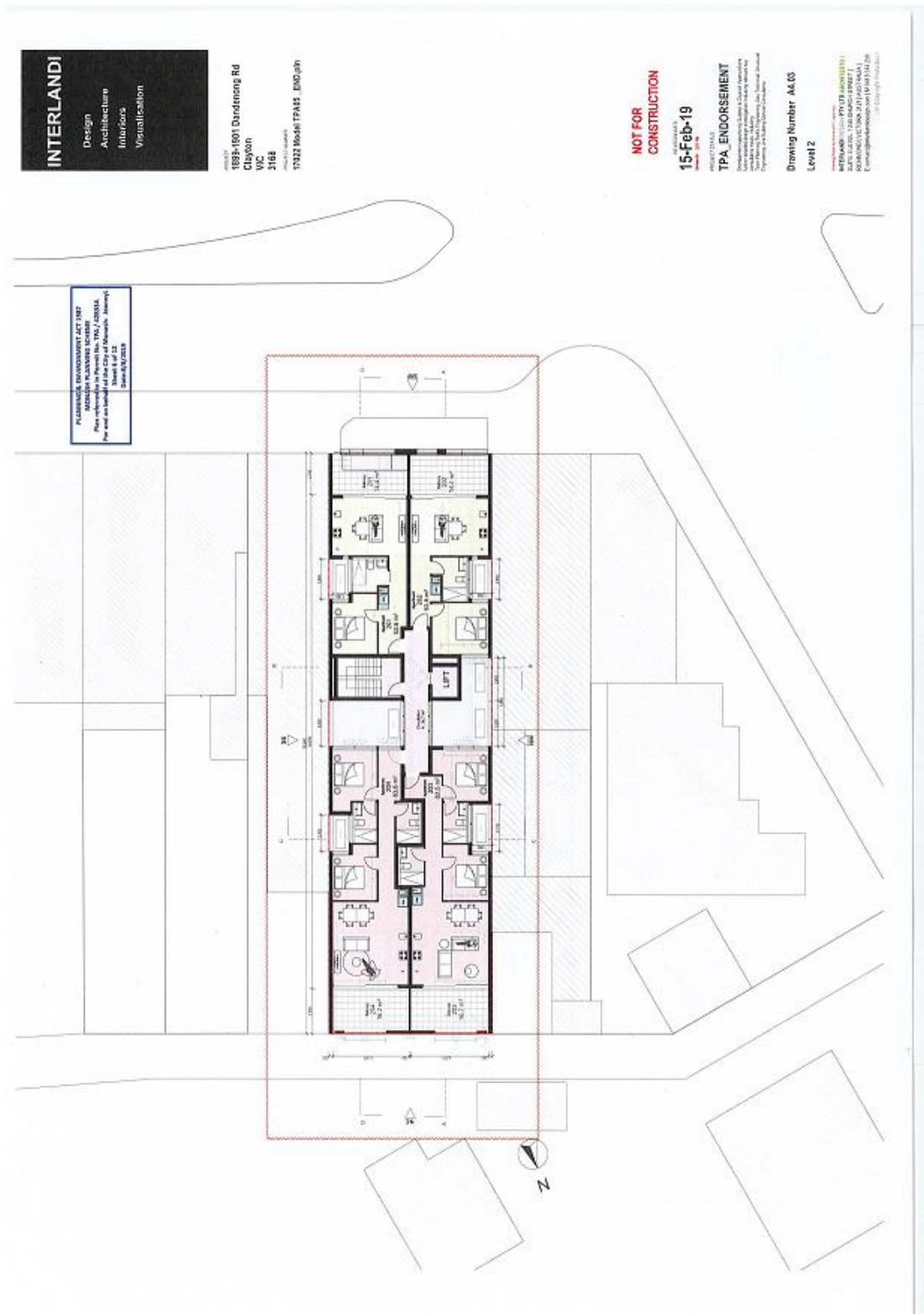
1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



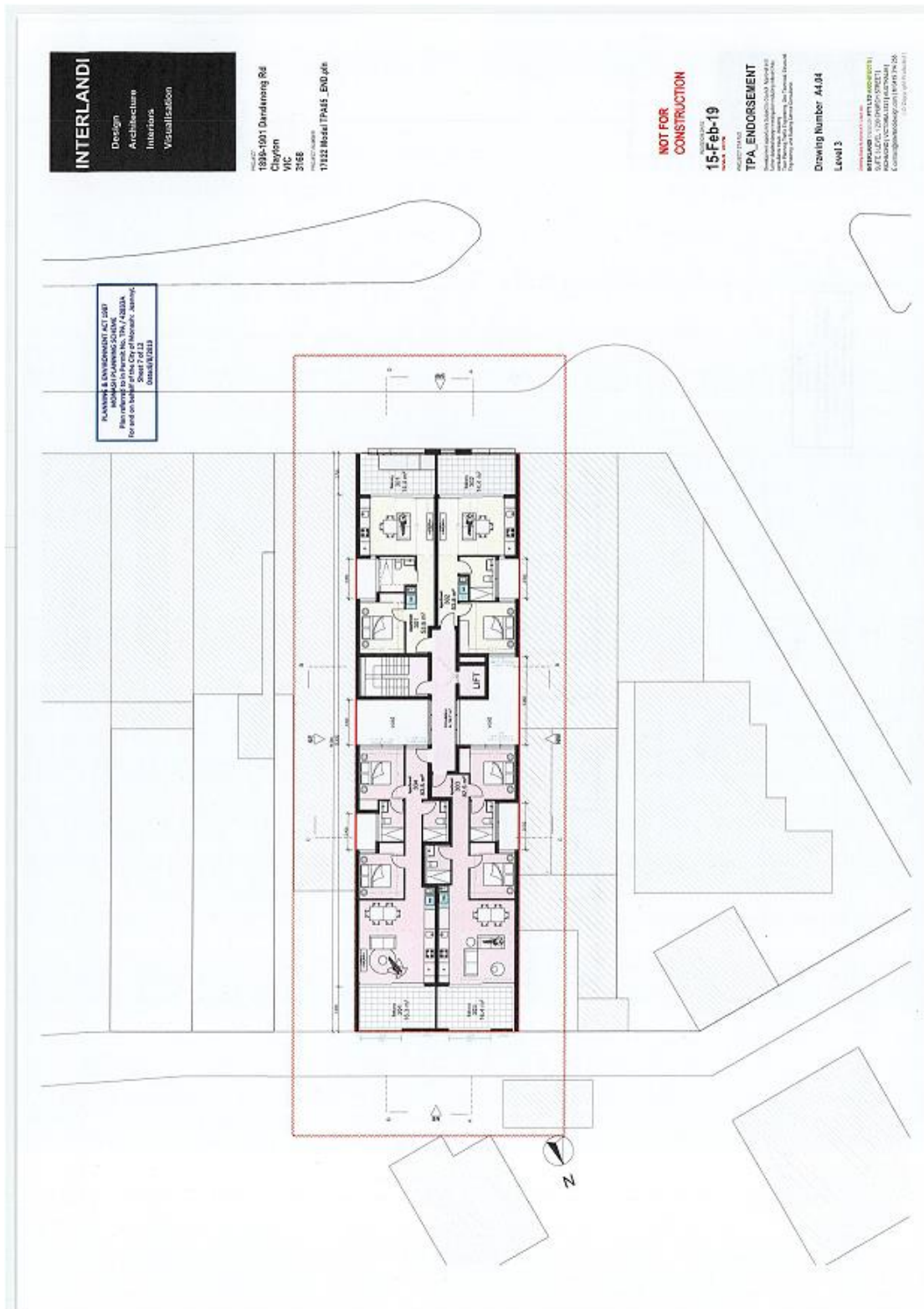
1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)



**INTERLANDI**  
Design  
Architecture  
Interiors  
Visualisation

PROJECT  
1899-1901 Dandenong Rd  
Clayton  
VIC  
3148  
PROJECT NUMBER  
11832 Model TP45\_BV0.dwg

PLANNING & ENDORSEMENT ACT 2015  
APPLICABLE TO PLANNING SCHEMES  
This reference to the Permit No. TP4 / A4384  
is for information only. For more information, contact  
Street 2 of 23  
0844810213

**NOT FOR  
CONSTRUCTION**

15 Feb 19

**TPA ENDORSEMENT**  
Endorsement of the TP4 / A4384 Permit No. TP4 / A4384  
is for information only. For more information, contact  
Street 2 of 23  
0844810213

Drawing Number A434  
Level 3

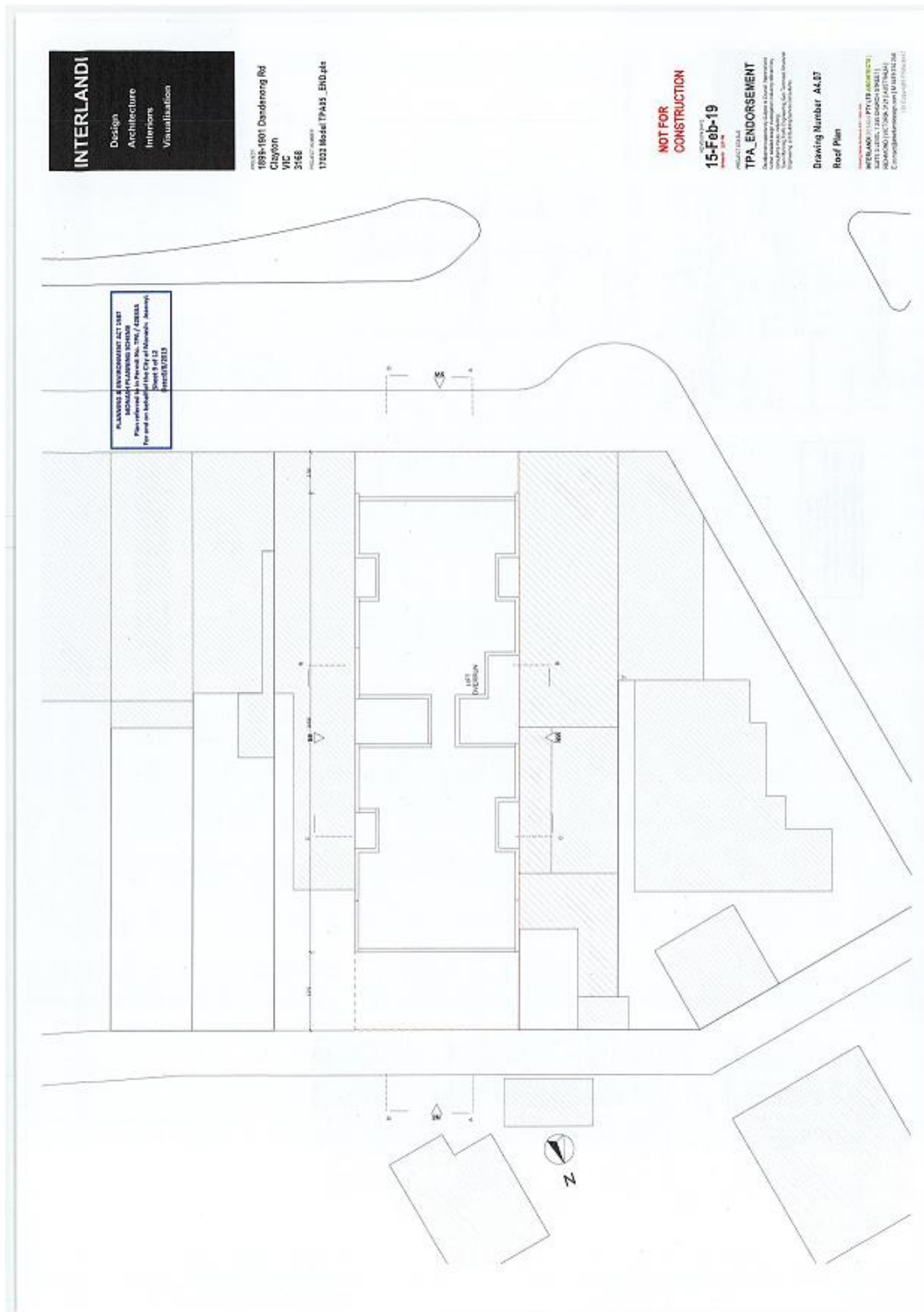
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1899-1901 Dandenong Rd  
Clayton  
VIC  
3148  
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1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement





ATTACHMENT 1 (Continued)



**INTERLANDI**  
Design  
Architecture  
Interiors  
Visualisation

PROJECT  
1899-1901 Dandenong Rd  
Clayton  
VIC  
3168  
PROJECT NUMBER  
17002 Model TPA45 - EN04a

**NOT FOR  
CONSTRUCTION**  
15-Feb-19

PROJECT TITLE  
**TPA ENDORSEMENT**  
Development of a four storey building  
comprising shops and dwellings including  
a reduction in the applicable car parking  
requirement at 1899-1901 Dandenong Road,  
Clayton, VIC 3168 (TPA45)

Drawing Number **A4.07**  
Roof Plan

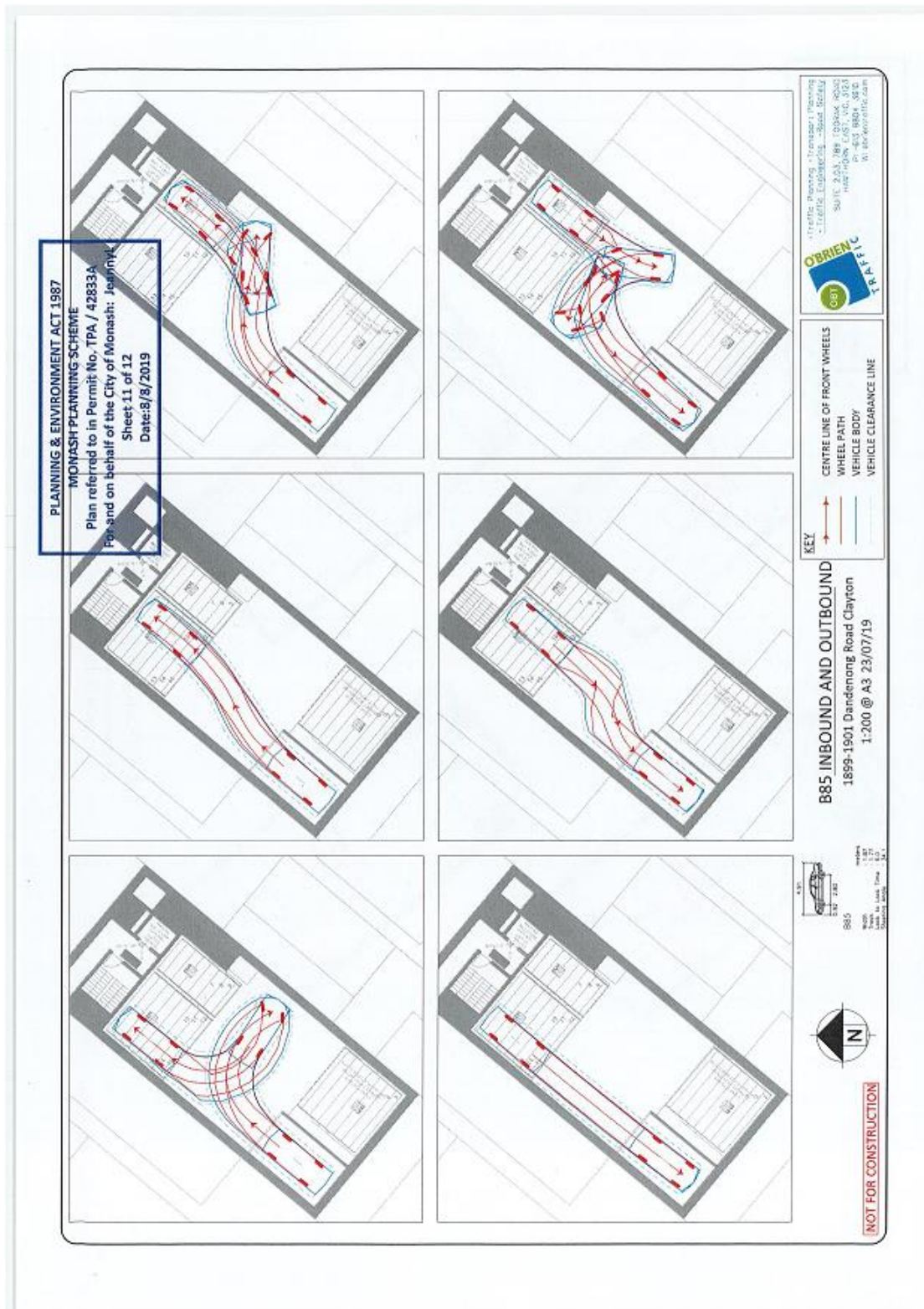
PLANNING PERMISSION NUMBER: 1711-1288  
APPLICABLE PERMITS: 1711-1288  
Plan reference: 1899-1901 Dandenong Rd, TPA45 / A4.07A  
For and on behalf of: Interlandi Pty Ltd  
18/02/2019

INTERLANDI PTY LTD (ABN 62 621 121 121)  
1899-1901 Dandenong Rd, Clayton VIC 3168  
Contact: 03 9594 1234  
www.interlandi.com.au

1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement



ATTACHMENT 1 (Continued)



1899-1901 Dandenong Road, Clayton - Extension Of Time - The Construction Of A Four Storey Building Comprising Shops And Dwellings Including A Reduction In The Applicable Car Parking Requirement

ATTACHMENT 1 (Continued)

