

10 February 2021

[REDACTED]
John Street
Eltham, VIC 3095
Australia
[REDACTED]

Mr Rosa Zouzoulis
Executive Manager Community Safety and Planning
Nillumbik Shire Council
strategic.planning@nillumbik.vic.gov.au

Dear Ms Zouzoulis,

Re: Nillumbik Planning Scheme (NPS) Amendment No C126 to Partially Rezone the Eastern End of John Street, Eltham from Neighbourhood Residential Zone Schedule 1 to Public Park and Recreation Zone.

We refer to the above matter and to Council's letter to us, dated 7 January 2021, and confirm we write in response to Council's invitation for submissions regarding this matter. We confirm our submission as follows:

1. We are [REDACTED], both of [REDACTED] John Street, Eltham.
2. We are writing to object to the Council's current proposal to partially rezone the eastern end of John Street, Eltham ("The Proposal").
3. We refer to:
 - (a) the attached survey sketch plan of the eastern end of John Street, as prepared by Lawlor & Loy ("Appendix 1");
 - (b) the Plan of Survey prepared by the Webster Survey Group ("Appendix 2");
 - (c) the 2016 copy of a LANDATA Plan of Consolidation of the property being [REDACTED] John Street, Eltham ("Appendix 3");
 - (d) an explanatory letter authored by Mr Neil Webster of the Webster Survey Group ("Appendix 4").
4. We wish to object to the Proposal because the area to be rezoned as Public Park and Recreation Land (edged red on "Appendix 1") includes land that we have been occupying as part of our garden for more than 30 years, as approximately indicated on the Lawlor & Loy Sketch Plan ("Appendix 1") with an accompanying annotation "This Area Occupied by No. 86". The attached Webster Group Plan of Survey, ("Appendix 2"), refers to "This Area Occupied by No. 86" with the annotation "B": herein referred to as "the Occupied Land". Both the Lawlor & Loy Sketch Plan and the Webster Group Survey Plan clearly indicate the 'star picket and wire' fence that can be identified as having formed the physical boundary of the Occupied Land for a period of at least 43 years. From the time of the 1974 subdivision, the Occupied Land: (a) has been held in the name of the sub-divider who is a private entity, and (b) has never been managed by Nillumbik Shire Council (NSC) as has been indicated in their communications and

public notices. The Occupied Land has never been open to pedestrian or vehicular traffic: it has never served an Open Space function as has been misleadingly stated in Council communications related to both this matter and the John Street Eltham Road Discontinuance proposal.

5. We request that Council remove the Occupied Land from the proposed NPS Amendment No C126 to Partially Rezone the Eastern End of John Street, Eltham from Neighbourhood Residential Zone Schedule 1 to Public Park and Recreation Zone.
6. We believe that we have acquired the right to make this request based on (a) our continued and exclusive ownership, occupation and use of the [REDACTED] John Street, Eltham property, and (b) the fact that we will be adversely affected by the C126 Amendment that is the subject of this submission. During our exclusive and continued use of the Occupied Land over a period of 33 years we have never received any complaints or objection to our occupation.
7. We are concerned that any attempts to open up the Occupied Land to recreational use and pedestrian access would have a detrimental effect on our security, privacy and quiet enjoyment of our home and garden. Should the rezoning amendment succeed, the public would have open access to our garden and be within a few metres of our home and living area: a Bush Garden Overlay applies to the Eastern end of John Street and security or privacy fencing would be disallowed as such wouldn't comply with the Neighbourhood Residential SLO 3 Zoning (NRZ - SLO3) requirements.

Background

8. We purchased the property at [REDACTED] John Street in 1987. At the time that we purchased the property, the Occupied Land had already been enclosed and occupied by the previous owner.
9. We were therefore under the impression when we purchased the property in 1987 that the physical boundaries represented the boundary of [REDACTED] John Street. The boundary fences have not been moved and therefore the current boundary fences of [REDACTED] John Street are as they were at the time we purchased the property in 1987.
10. We then proceeded to complete the existing mudbrick dwelling and over time we landscaped the garden, which included the Occupied Land.
11. It was only in October 2016 that we became aware that our northern boundary fence was not sited on the title boundary as shown in the plan to our title [REDACTED] ("Appendix 3"). The circumstances around this discovery are explained in the attached letter from our surveyor Neil Webster, dated 23 November, 2020 ("Appendix 4").
12. Our exclusive occupation of the Occupied Land has therefore existed for more than 30 years without causing any issues for our neighbours, pedestrians, or other members of the public and we have never received any complaints. Furthermore, our occupation does not conflict with the Council's wish to preserve the land coloured blue on Appendix 1 as a reserve; in fact, our using the Occupied Land as a landscaped garden aligns with the Council's wish that the land not be used as a road.

Conclusion

13. We object to the re-zoning proposal on the on the basis that the Occupied Land:
 - a. has never been open to pedestrian or vehicular traffic;
 - b. has never been managed by Nillumbik Shire Council;

- c. is held in the names of the original sub-dividers;
- d. has been cared for by us as responsible custodians during our period of occupation;
- e. has been fenced to the exclusion of the public for at least 43 years;
- f. currently acts as a buffer between our living area and a public open space (the loss of which would negatively impact on our privacy, security and quiet enjoyment of our property, considering the architectural and landscaping layout);
- g. if rezoned, would leave the entire 46m frontage of our home un-fenced and exposed to the roaming public, a few metres from our open-plan residence living areas (the NRZ Bush Garden Precinct SLO3 requirements would preclude the erection of a security fence).

14. We respectfully ask the Council to support our request to remove the Occupied Land from the proposed NPS Amendment No C126.

15. We are happy to provide any further information the Council requires.

Yours sincerely,

[REDACTED]

Att: Appendix 1 – Lawlor & Loy survey sketch plan
Appendix 2 – Plan of Survey
Appendix 3 – [REDACTED]
Appendix 4 – Letter from Neil Webster

PLAN OF SURVEY

LOCATION OF LAND

PARISH: NILLUMBIK

TOWNSHIP:

SECTION: 4

CROWN ALLOTMENT: 12 (PART)

CROWN PORTION:

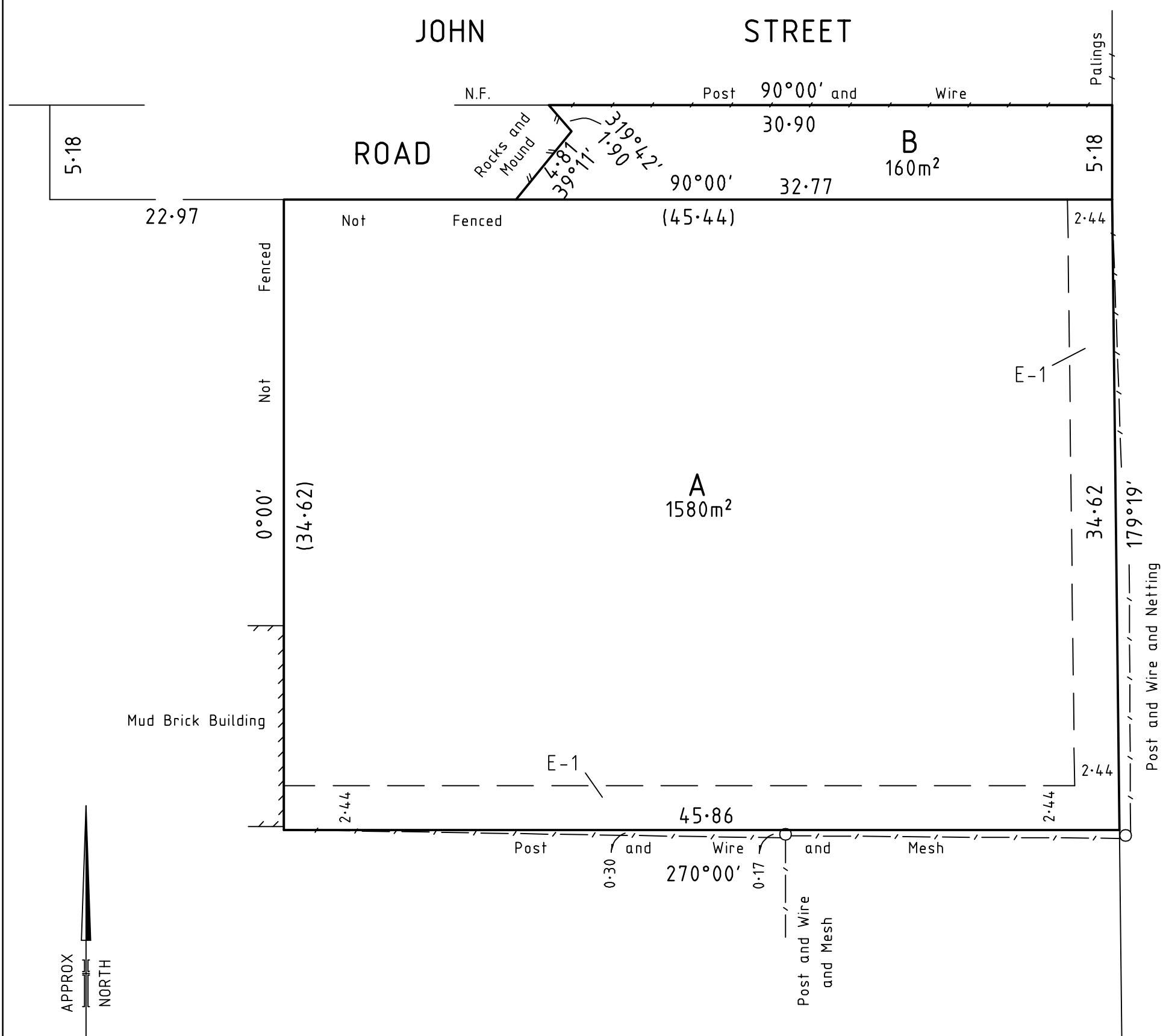
LAST PLAN REFERENCE:

TITLE REFERENCE:

NOTATIONS

The land under survey is shown enclosed by continuous thick lines.

E-1: Drainage and Sewerage Easement

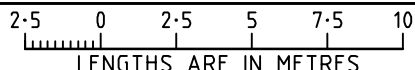


ORIGINAL SHEET SIZE: A3

CERTIFICATION BY SURVEYOR

SHEET 1 OF 1

SCALE
1:250



SURVEYORS FILE REF: 15658R



WEBSTER SURVEY GROUP
 ABN: 35 456 993 855
 662 Main Road, Eltham 3095
 P.O Box 291, Eltham 3095
Telephone: (03) 9439 4222
Facsimile: (03) 9439 5288
webstergroup.com.au

NEIL ALFRED WEBSTER, VERSION 01

WARNING THE IMAGE OF THIS DOCUMENT OR REGISTER HAS BEEN DIGITALLY AMENDED
NO FURTHER AMENDMENTS ARE TO BE MADE TO THE ORIGINAL DOCUMENT OF THE REGISTER

PLAN OF CONSOLIDATION OF
PART OF CROWN ALLOTMENT 12

SECTION 4

PARISH: NILLUMBIK

COUNTY: EVELYN

Measurements are in METRES

APPROP

Shire Ref 76/66

APPROVED

ENCUMBRANCES

AS TO THE LAND MARKED E-1
THE EASEMENTS (IF ANY) EXISTING OVER
THE SAME BY VIRTUE OF SECTION 98 OF
THE TRANSFER OF LAND ACT

John Street
25/7/76 P.S.
9177 FOL 227

JOHN

STREET

ROAD

90° 0'

ROAD

22.97

45.44

2.44

E-1

0° 0'

34.62

179° 19'

SECT 4

E-1

2.44

270° 0'

45.86

2.44

SEC 5

Plan of consolidation was approved
by Eltham Shire Council on the
5th day of July 1976
As witness thereto, the Common Seal
of the President, Councillors and Ratepayers
of the Shire of Eltham was affixed here-
to on the 5th day of July 1976
In the presence of

President

Councillor

DRAINAGE & SEWERAGE
EASEMENT VIDE L P 1111947

Sealed Pursuant to the provisions of Sec
569 AB of the Local Govt Act

CONSENT OF COUNCIL	SURVEYORS CERTIFICATION
THIS PLAN OF CONSOLIDATION OF TITLE WAS APPROVED BY THE COUNCIL OF THE SHIRE OF ELTHAM ON THE DAY OF AND HAS BEEN SEALED PURSUANT TO THE PROVISIONS OF SECTION 569 AB OF THE LOCAL GOVERNMENT ACT	I CERTIFY THAT THIS PLAN HAS BEEN MADE BY ME AND ACCORDS WITH TITLE. <i>Michael J. Loy</i> LICENSED SURVEYOR DATE 8/6/1976 REF. 2302/929

CP 105426

23 November, 2020

Reference: 15658

Chief Executive Officer
Nillumbik Shire Council
Civic Drive
GREENSBOROUGH 3088

Dear Sir,

RE: [REDACTED] John Street, Eltham

We act on behalf of [REDACTED] with regard to their property at [REDACTED] John Street, Eltham.

Originally from interstate, they purchased the unfinished property in 1987.

When they purchased the property there was a boundary fencing in place and their expectation was that the existing fencing represented the boundary of the parcel of land they had purchased.

[REDACTED] then proceeded to complete the mudbrick dwelling and over a period of time they maintained, improved and nurtured their house and garden area for a period of 33 years to date.

The home represents a fine example of the iconic Eltham mudbrick house.

In October 2016 our office was instructed to carry out a title boundary survey of the property in order to confirm the true line for a replacement fence along the southern boundary. As part of our survey we identified that the John Street boundary fence was on the original John Street alignment however the fence line did not represent the current title boundary. [REDACTED] property was created in a Plan of Subdivision approved in May 1974 (LP 111947). Around that time, any re-subdivision in the smaller streets such as John Street, which were initially set aside with the width of 33 feet, were required to show a widening strip so as to increase the overall width to 50 feet.



However, continuity of the widening was never achieved and therefore no longer practical.

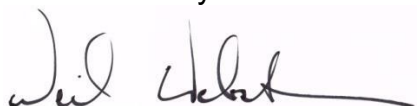
It came as somewhat of a shock to [REDACTED] when they were informed that land they had been maintaining for more than 30 years' was not part of their title .

Due to ongoing recent events it is now becoming most important that the matter is resolved especially to protect their privacy, security and quiet enjoyment of the land.

It is noted that the strip of land does have a "Road" status and therefore we request your assistance in providing a letter to Land Registry stating that the Road is not required for that specific purpose and the Road status can be removed.

We look forward to your further communication in this matter however should you require further information please do not hesitate to contact our office.

Yours faithfully

A handwritten signature in black ink, appearing to read "Neil Webster", written over a light pink rectangular background.

Neil Webster
Director

Cc: [REDACTED]

