

5.4 EXTENSION OF TIME FOR PLANNING PERMITS

(TP26:BG:RB)

Ward : Municipal wide

Responsible Director: Don Cameron

Reason for Council Consideration: Councillor request

RECOMMENDATION

1. *That, Part 7 of the Guidelines for Instrument of Delegation in respect of Extensions of Time for Planning permits be modified to state:-*
 - 7 *The Coordinator Statutory Planning may authorise the first, second and third, one year requests for an extension of time and shall refer any subsequent request to Council for determination.*
2. *That, the Guide to Extension of Time for Planning Permits, attached to this report (Attachment 1), be adopted.*

BACKGROUND

Council, at its meeting in November 2007, considered an application for an extension of time for commencement of use and development in respect of a Planning Permit for an office development. Council enquired as to the maximum number of extensions that should be granted to an applicant.

Council's Guidelines for Extension of Time Applications, part of the adopted Instrument of Delegation for the Planning and Environment Act 1987, are attached. [Attachment 2].

Part 7 of the Guideline states:

- “7. The Coordinator Statutory Planning may authorise the first request for an extension of time and any subsequent requests”.

This has been Council's Guideline since 1996. A similar Guideline, dated 1989, existed with delegation to the City Planner.

Council reviewed the Delegations and Conditions relating to the Instrument of Delegation at its meeting of 12 December 2006.

Case law, based on both Supreme Court and VCAT decisions, have defined the criteria to be considered in determining whether or not an extension should be granted. In simple terms they are:-

- whether the original time limit was in all circumstances reasonable and adequate taking into account the steps which would be necessary before the development could actually commence,
- whether any intervening circumstances have rendered it unreasonable that the applicant should be held to the time originally fixed,

- whether since the issue of the original permit there have been any changes in town planning policy which would militate against the grant of a permit to the proposed development at the time that the application for extension of the time limit is considered,
- as a factor tending against the grant of an extension, any material which suggested the owner of the land is seeking to “warehouse” a permit.

DISCUSSION

The majority of planning permits issued have a 2 year time limit for commencement of the permitted use and/or development.

The Planning & Environment Act allows an applicant to apply to Council to extend the commencement date. In recent years, a 12 month “first” extension of time has been readily granted.

In a number of cases, and for a variety of reasons, a “second” and subsequent request to extend the time for commencement, have been received. In consideration of these applications, the following matters have been considered:-

- Any change to State or Council policy,
- Any amendment or proposed amendment to the relevant Monash Planning Scheme provisions,
- Any substantial changes in the area, i.e. uses and/or developments
- Any change in ownership of properties surrounding the site that may be impacted by the proposed use/development.

The last dot point above is particularly difficult to manage, because there is no legislative provision that gives any third party rights of objection or appeal on applications to extend a Planning Permit. The Victorian Civil and Administrative Tribunal have consistently determined that no third party appeal rights are created and that applications for extension of time should not be subject to formal notification.

Council, as part of its duty of care and to be fully informed, can investigate the views of the local community, specifically nearby property owners/occupiers, informally, prior to making a decision. However, this can result in a feeling of frustration because the owners/occupiers have a basic expectation and understanding of objection/appeal rights in planning applications that do not actually exist for extensions of time matters.

The issues in consideration are not about the detail and design of the proposed use and/or development, but whether or not circumstances have changed that make the proposal no longer suitable.

It is common practice, and should be mandatory, that new residents to Monash, prior to purchase of any property, contact Council to enquire about any proposed use and/or development on abutting land. Planning Officers regularly respond to these enquiries.

While Council’s Guidelines for Extension of Time Applications have allowed the nominated Delegate to approve extension of time applications, a number have been referred directly to Council for determination because of their significance either as a major application proposal or community interest.

All Delegate decisions for extensions of time for Planning Permits are reported to the next council meeting in the Delegation Schedule.

An analysis of the planning data has been undertaken for the period 2005 to 2007. This analysis shows that on average, 85 “first” extension requests were approved each year. This is on average, 8% of Planning Permits issued for the previous year.

However, the number of “fourth or more” extensions are minimal. An average of 3 per year.

Extension of Planning Permits - Issued – 2005-2007

	1 st extension	2 nd extension	3 rd extension	4 th or more
2005	82	15	3	2
2006	78	35	8	4
2007	93	27	17	3

The Planning and Environment (Fees) Regulations set a statutory fee of \$90.00 for an application to extend a Planning Permit.

LEGAL REVIEW OF GUIDELINES

The proposed Guidelines have been reviewed by a senior Barrister practising in Planning law. That advice has confirmed the basis of this report and suggested wording changes to the Guideline document to enhance its clarity. These changes have been incorporated into the attached Guideline document. [Attachment 1]

The advice received states there is no power to amend the Monash Planning Scheme to incorporate a policy relating to applications to extend time. Section 6 of the Planning and Environment Act defines those matters that can be included in a Planning Scheme. Extension of time is not a matter listed.

CONCLUSION

It is considered that the current method of dealing with extensions of time could be modified to refer all extensions after the third extension of time to Council for determination. The new Part 7 of the Guidelines would read as follows: