

**1.2 26 ASHWOOD DRIVE, ASHWOOD
EXTENSION OF TIME - CONSTRUCTION OF TWO DOUBLE-STOREY DWELLINGS
WITH BASEMENT AND ASSOCIATED CAR PARKING AND LANDSCAPING
TPA/43409/A**

EXECUTIVE SUMMARY:

An application has been received for an extension of time to Planning Permit TPA/43409/A for the construction of two double storey dwellings with basement and associated car parking and landscaping. The original permit was issued on 8 April 2015. The existing dwelling remains on the land. The permit has been extended on four (4) previous occasions.

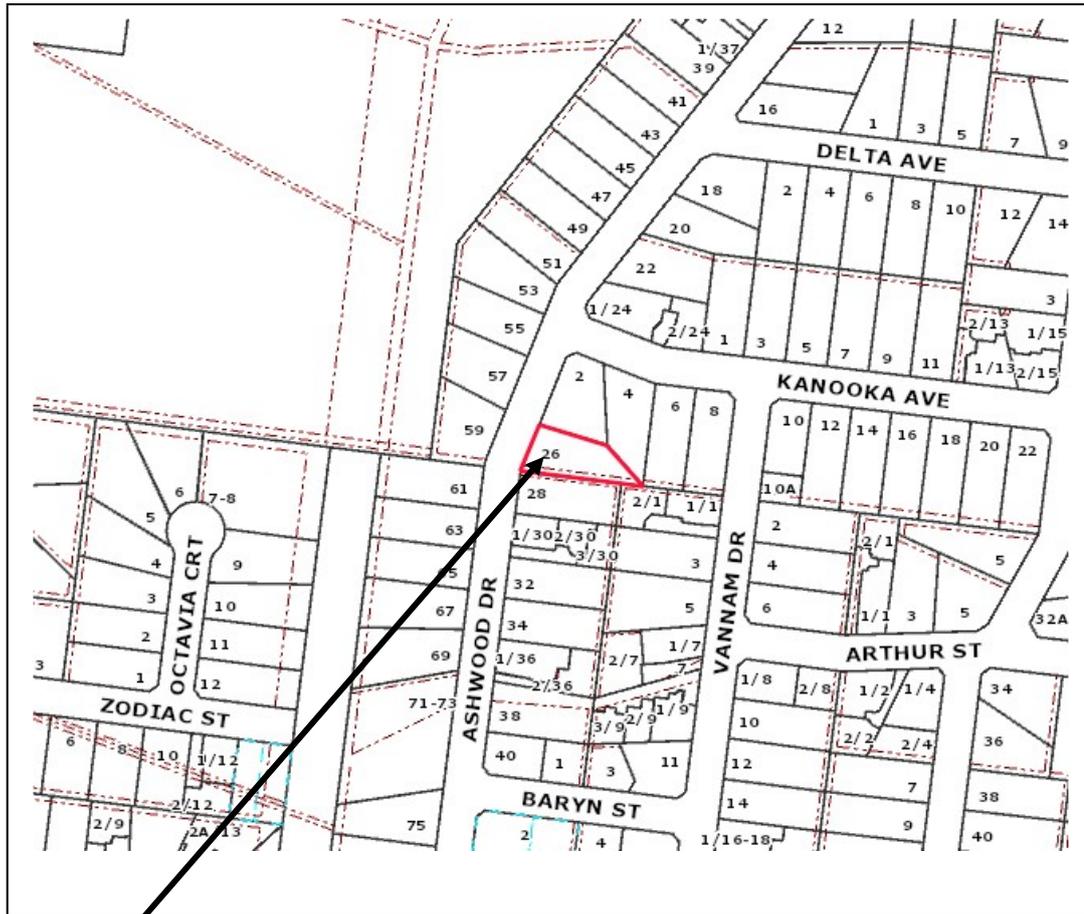
Construction of the development has not commenced.

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

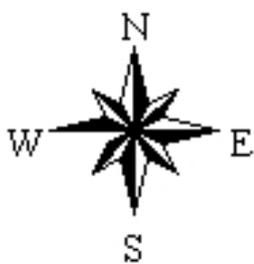
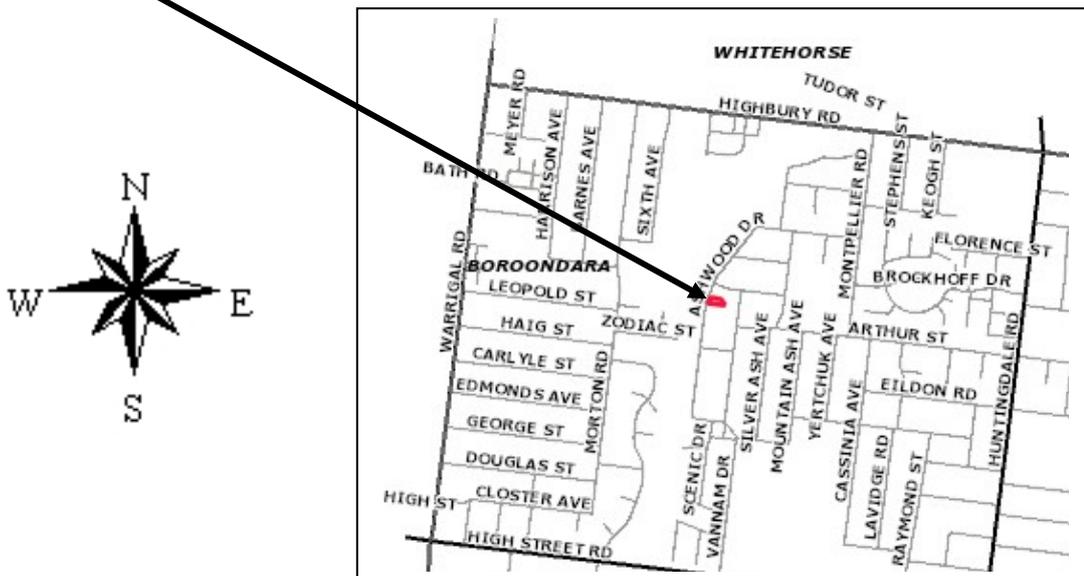
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Catherine Sherwin
RESPONSIBLE PLANNER:	Danielle Loh
WARD:	Mount Waverley
PROPERTY ADDRESS:	26 Ashwood Drive, Ashwood
ZONING:	Neighbourhood Residential Zone – Schedule 3
OVERLAY:	No Overlays
EXISTING LAND USE:	Dwelling
RELEVANT LEGISLATION:	Section 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/43409** for the construction of two double storey dwellings with basement and associated car parking and landscaping at 26 Ashwood Drive, Ashwood, 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 2 years. Accordingly, the development must be commenced by 8 April 2024 and completed by 8 April 2026.
2. That the applicant be advised that it is unlikely a further extension of time will be granted given the time that has passed since the permit was granted.

BACKGROUND:**History**

Planning Permit TPA/43409 was issued on 8 April 2015 for the construction of two double storey dwellings.

The original application was decided under delegation and there were ten (10) objections to the proposal.

A Section 72 amendment application was approved by Council on 25 November 2021, which amended Conditions 1b and 1e. Public notification of the amended application was carried out during the course of the application and no objections were received.

The advertised plans included all the remaining condition 1 requirements and therefore plans were endorsed on the same day of amended permit issue.

Drainage Plans are currently under assessment by Council's Engineering Department.

Council has extended the permit on four previous occasions. The first three extensions granted an additional 1 year for commencement of construction and the fourth granted two years. The current expiry date for commencement of the development was 8 April 2022. The current extension of time request was made on 20 April 2022.

The Site and Surrounds

The site is located on the east side of Ashwood Drive in Ashwood. It is irregular in shape having a frontage of 21.34 metres, a depth along the northern boundary of 29.97 metres, a depth along the southern boundary of 51.82 metres and an angled width across the rear (east) of 22.66 metres. The

total area measures approximately 709 square metres. A 2.44 metre wide drainage and sewerage easement exists along the southern boundary. A single-storey brick dwelling with a flat metal roof occupies the subject site.

The surrounding land comprises the following:

North: Single dwellings
South: Single dwellings and multi-dwellings developments.
East: Single dwellings and multi-dwellings developments.
West: Single dwellings

The area can be characterised as attached and detached, brick veneer dwellings with pitched tiled roofs in a garden setting.

PROPOSAL:

The applicant has requested an extension of the permit's start and completion date by a further two (2) years. This is due to delays in obtaining finance and a builder, as well as other personal reasons stated.

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 20 April 2022, which is within the 6 months of the expiry date for the development to commence. 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:

- Whether there has been a change of planning policy.
- Whether the land owner is seeking to "warehouse" the permit.
- Intervening circumstances bearing on the grant or refusal of the extension.
- The total elapse of time.
- Whether the time limit originally imposed was adequate.
- The economic burden imposed on the land owner by the permit.
- The probability of a permit issuing should a fresh application be made.

These tests must be considered on balance, meaning that an application does not necessarily need to meet all tests. These tests are considered in detail below.

Whether there has been a change of planning policy.

Since the permit was issued, the zoning has changed from General Residential Zone 2 (GRZ2) to Neighbourhood Residential Zone 3 (NRZ3), introduced by Amendment C125 Part 1 which was gazetted in April 2018. The objectives of the NRZ3 zone are:

- To ensure that new development transitions down in scale towards the creeks, respecting and reinforcing the natural topography; and,
- To ensure development is defined by its spacious and generous garden settings, tall canopy trees and consistent build form and setbacks.

Amendments VC110 and C125 have also been significant amendments affecting the land since the permit was issued.

The changes introduced by Amendment VC110 (reformed residential zones) are critical to the consideration of a development as mandatory controls relating to height and garden area were introduced. The proposal meets the mandatory height requirement of 9 metres or 2 storeys as the proposal is limited to double storey and a height of 7 metres. The development plans have a garden area calculation of approximately 44% which exceeds the requirement of 35% for lots over 650 square metres. The approved development therefore complies with the mandatory building height and garden area requirements applicable to NRZ3.

The Neighbourhood Residential Zone 3 (NRZ3) was gazetted in November 2019 as part of Amendment C125 Part 2. This amendment introduced a number of changes to the schedule to the zone including front setback, site coverage, permeability, landscaping, side and rear setback, canopy tree provisions, private open space front fence height and minimum subdivision lot size. An assessment of the proposal against the changes to the schedule are provided as follows:

Standard	NRZ3 Requirement	Proposed	Assessment
Street setback	7.6 metres	7.6 metres (Dwelling 1) 7.6 metres (Dwelling 2)	Complies
Site coverage	50%	42%	Complies
Permeability	30%	36.8%	Complies
Landscaping	Provision for 3 canopy trees	Provision for at least 3 canopy trees	Complies
Side and rear setbacks	5 metre rear setback	Dwelling 1 – 1.85m to 7.93m Dwelling 2 – 7.93m to 18m	Does not comply with varied standard, however objective is met as detailed below.

Private open space	75 square metres, including 35 square metres SPOS with minimum width of 5 metres	At least 75 square metres, including 35 square metres SPOS with minimum width of 5 metres	Complies
Front fence	Maximum 0.6 metre high front fence	No front fence proposed	Complies

Side and rear setbacks

The schedule to the zone has the following decision guidelines, relevant to the rear setback requirement:

- Whether the proposed development incorporates a well considered landscape scheme that contributes to the ‘buildings in bushland setting’ which is preferred future character for the creek interface areas.
- Provides sufficient and well located open space areas, not encumbered by an easement, to provide for a large trees to be planted or retained within the front, side and rear setbacks, and open space areas.
- Whether the built form complements the landscape setting by a built form that is sufficiently recessed and articulated, as viewed from the creek reservation and neighbouring properties, to reduce visual bulk and ensure the vegetation provides the more dominant element as viewed from the creekland reserve, the street and adjoining properties.

The current approval does not provide the desired 5m rear setback. The site is irregular in shape resulting in an angled boundary to the rear (eastern) interface. The decision guidelines of the scheme also provide that where the dimensions of an irregular shaped lot make it difficult to meet side and rear setback, variation to the standards will be considered where the development proposal demonstrates that it contributes to garden city character.

Dwelling 1 has been provided with a rear setback ranging between 1.875-7.93 metres and Dwelling 2 a rear setback ranging from 7.93 metres to 18 metres. The partial encroachment of Dwelling 1 combined with Dwelling 2’s elongated rear setback is considered appropriate in this context as it maintains sufficient landscaping opportunities at the rear of the site and does not impose unreasonable visual bulk to surrounding properties. Furthermore, the rear setback has been measured to the rear pergola with the ground and first floors setback further from the rear boundary to minimise visual bulk. The variation to the rear setback requirement is considered appropriate in this instance due to the extreme irregular shape of the rear boundary and varied setback that is greater than 5 metres which allows the development to successfully contribute to the garden city character.

Overall, building bulk and massing, landscaping opportunities, car parking, private open space and amenity impacts are considered appropriate and in keeping with the area and the objectives of the zone.

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

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. Since the last approval for extension of time, the Applicant has sought a Section 72 amendment and had plans endorsed in conjunction with the remaining condition 1 requirements, as well as the approval of a landscape plan in November 2021. They are also currently seeking approval for their drainage plan.

Although demolition of the existing dwelling and construction of the two new dwellings has not commenced, it would be difficult to show that the owner has no intention of commencing and completing the development in light of the recent approvals and endorsements.

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

Although no activity has occurred on site in relation to the construction of the two new dwellings, steps towards obtaining the relevant approvals and endorsed plans have been made by the applicant demonstrating intention to commence works. The owner was unable to commence the development within the time due to delays in obtaining finance and a builder, and other stated personal reasons.

The total elapse of time.

The total elapse time to commence the development has been 7 years, which is a significant period for a modest development. However, this is not fatal to the application in isolation, given the broad compliance with current planning policy.

Whether the time limit originally imposed was adequate.

The time limit originally imposed was two years to commence, which is a standard condition of permit and considered an adequate time to commence a development which proposes two new dwellings.

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

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 the development. The conditions are standard for this sort of development.

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

It is likely that a permit would issue should a fresh application be made considering the proposal is broadly consistent with current planning policy, as discussed above. Furthermore, the conditions included on the permit are generally consistent with those still used for developments of this nature.

CONCLUSION:

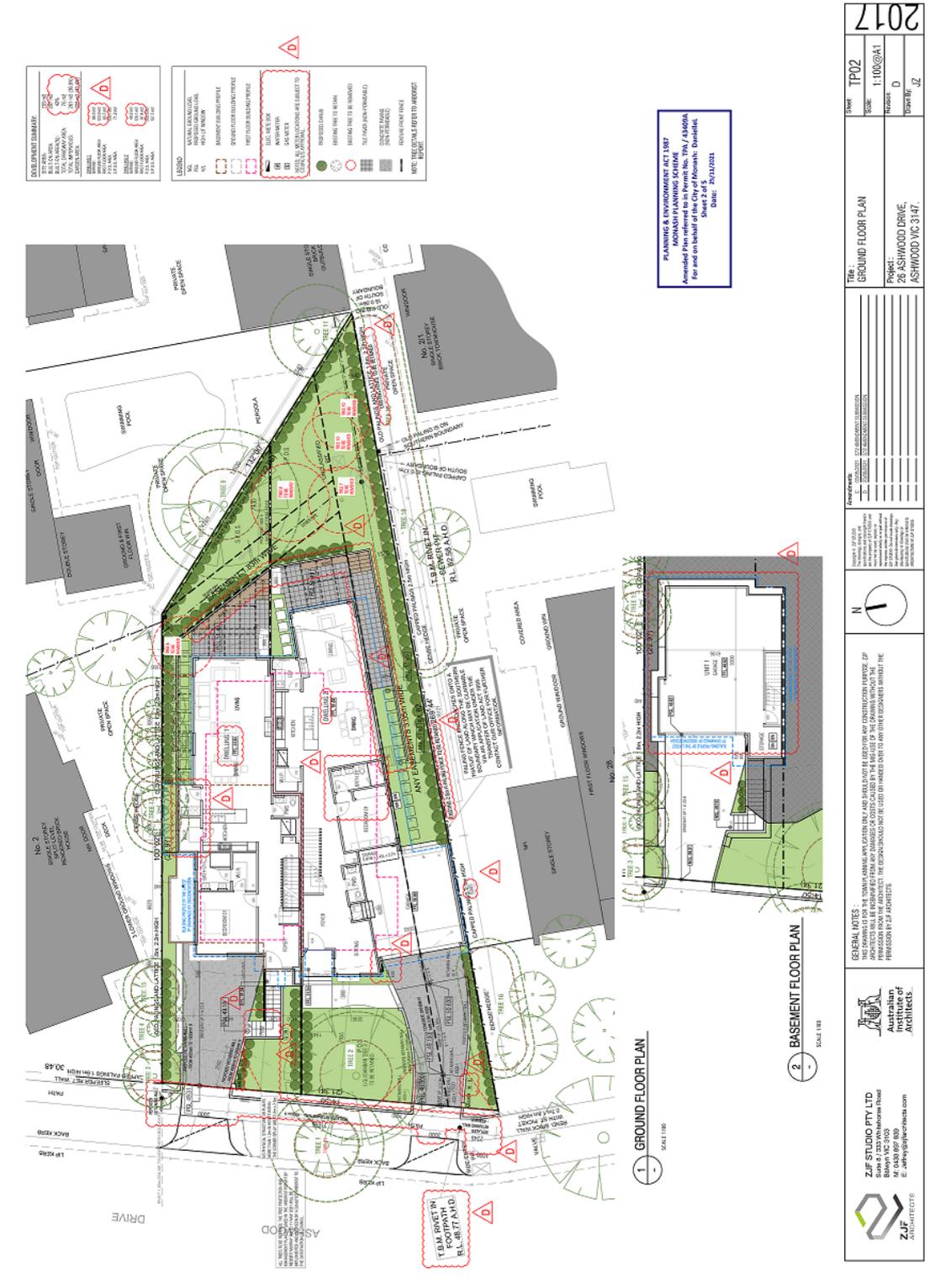
It is considered appropriate to grant a further extension of time to the permit.

The proposal on balance meets the majority of tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, including consistency with current planning policy objectives.

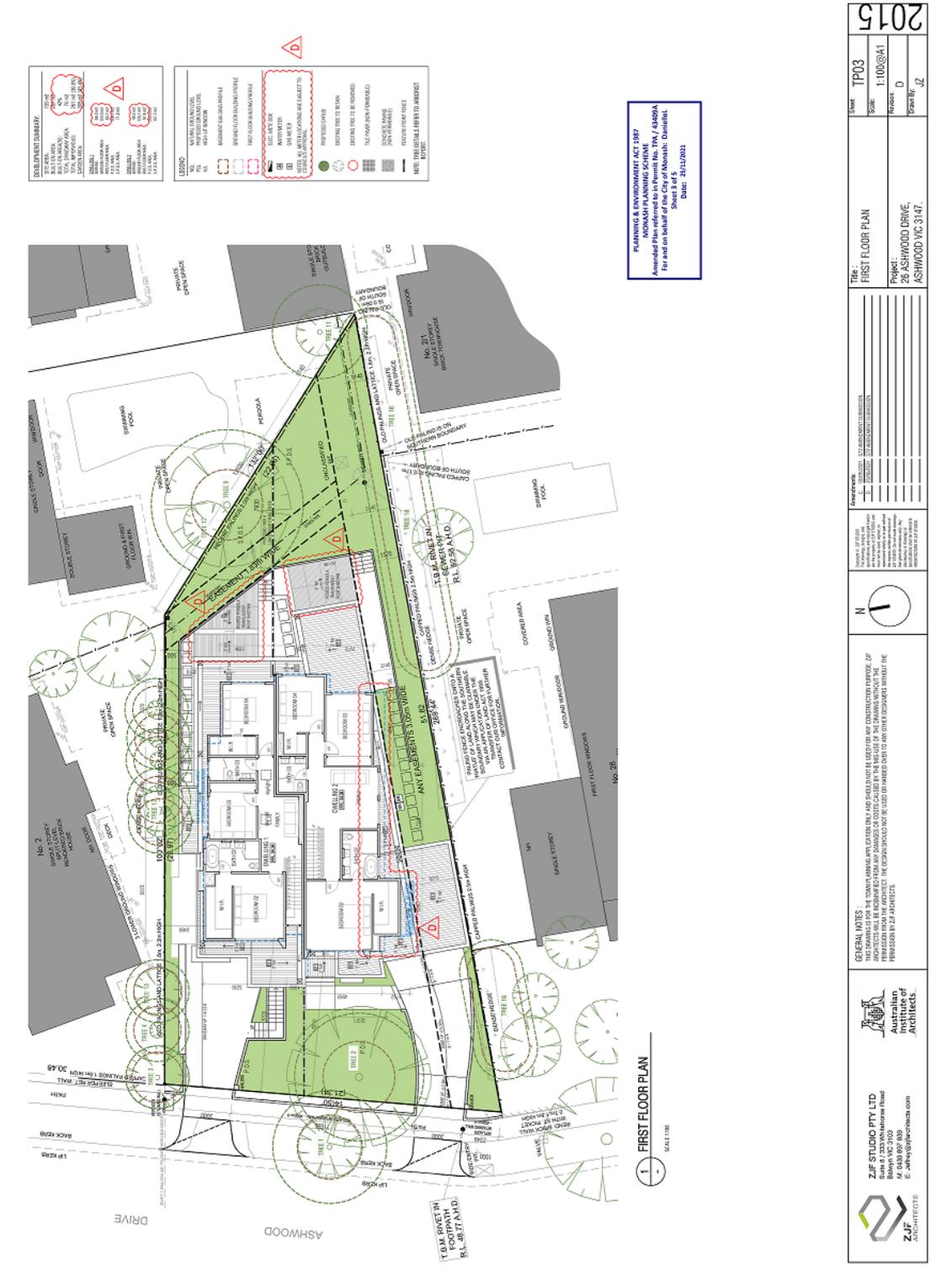
The development outcome is appropriate, the built form is consistent with the neighbourhood character and objectives of the zone.

It is therefore recommended that Council approves a further extension of two years for the commencement of the development until 8 April 2024, and completion to 8 April 2026. However, considering the elapsed time, it is recommended that the applicant be advised a further extension of time may not be granted.

Attachment 1 (continued)

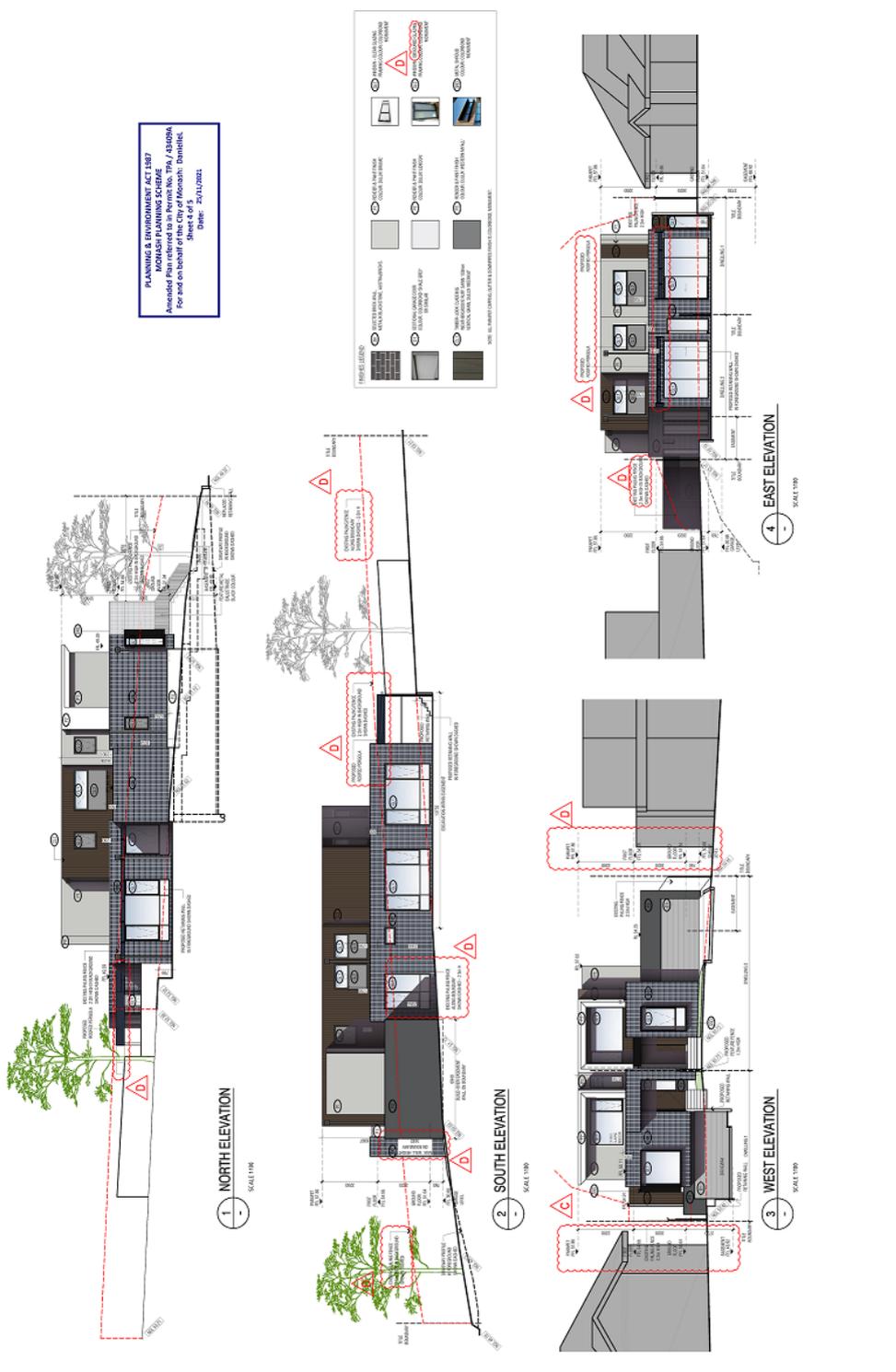


Attachment 1 (continued)



26 Ashwood Drive, Ashwood - Extension Of Time - Construction Of Two Double-Storey Dwellings With Basement And Associated Car Parking And Landscaping

Attachment 1 (continued)



PLANNING & ENVIRONMENT ACT 1987
MORNING PLANNING SCHEME
MORNING PLANNING SCHEME / PART 220
For and on behalf of the City of Monash: Daniel Bell
Sheet 4 of 5
Date: 20/11/2021

<p>GENERAL NOTES:</p> <p>1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>5. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>8. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>9. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p> <p>10. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE SPECIFIED.</p>	<p>PROJECT:</p> <p>26 ASHWOOD DRIVE ASHWOOD VIC 3147</p>	<p>DATE: TP04</p> <p>SCALE: 1:100@A1</p> <p>REVISION: D</p> <p>REVISION: JZ</p>	<p>2015</p>

