7.1.4 1 IVANHOE STREET GLEN WAVERLEY

Responsible Manager:	Catherine Sherwin, Manager City Planning
Responsible Director:	Peter Panagakos, Director City Development

EXECUTIVE SUMMARY

This application is for an extension of time to Planning Permit TPA/41807 for the development of five (5) double storey dwellings on land at 1 Ivanhoe Street Glen Waverley.

The original permit was issued on the 6 May 2014.

The permit has been extended on three (3) previous occasions. The latest extension of time was granted on 7 July 2022 for completion of the development. The current permit expired on 6 May 2024 as the development was not completed. Construction of the development is nearing completion and is at lock-up stage.

The reason for presenting this report to Council is this is the fourth extension of time request sought for this permit, and the period of time sought to extend the permit exceeds six (6) years.

The proposed extension of time is considered consistent with the relevant provisions of the Monash Planning Scheme. It is recommended that an extension of one (1) year be granted to complete the development.

RESPONSIBLE DIRECTOR:	Peter Panagakos, Director City Development			
RESPONSIBLE MANAGER:	Catherine Sherwin			
RESPONSIBLE PLANNER:	Danielle Loh			
WARD:	Glen Waverley			
PROPERTY ADDRESS:	1 Ivanhoe Street Glen Waverley			
ZONING:	Neighbourhood Residential Zone (Schedule 2)			
	Public Use Zone 6			
OVERLAY:	Special Building Overlay			
EXISTING LAND USE:	Residential			
RELEVANT LEGLISLATION	Section 69 of the <i>Planning & Environment Act 1987</i>			
RELEVANT POLICY:	Planning Policy Framework			
	Clause 11.01-1R - Settlement – Metropolitan Melbourne			
	Clause 15.01-1S&R - Urban Design			
	Clause 15.01-2S - Building Design			
	Clause 15.01-4S&R - Healthy Neighbourhoods			
	Clause 15.01-5S - Neighbourhood Character			
	Clause 15.02-1S - Energy and Resource Efficiency			
	Clause 16.01-1S&R - Housing supply			

Clause 16.01-2S - Housing affordability

Local Planning Policy Framework

Clause 21 - Municipal Strategic Statement (Introduction)

Clause 21.04 - Residential Development

Clause 22.04 - Stormwater Management Policy

Clause 22.13- Environmentally Sustainable Development Policy

Particular Provisions

Clause 55 - Two or more dwellings on a lot and residential buildings

Clause 65 - Decision Guidelines

LOCALITY PLAN



& NEIGHBOURHOOD PLAN



RECOMMENDATION

That Council resolves to issue an Extension of time to Planning Permit No. TPA/41807 for the development of five (5) double storey dwellings with basement car parking and building and works on land subject to a Special Building Overlay (SBO1) at 1 Ivanhoe Street Glen Waverley, 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 completion of the development be extended by a further one (1) year. The development must be completed by 6 May 2025.

COUNCIL PLAN STRATEGIC OBJECTIVES

Sustainable City

Ensure an economically, socially, and environmentally sustainable municipality.

Enhanced Places

Pursue a planning framework that meets Monash needs.

BACKGROUND

Planning Permit TPA/41807 was issued on 6 May 2014 for the development of five (5) double storey dwellings with basement car parking and building and works on land subject to a Special Building Overlay (SBO1).

The original application was decided under delegation and there were four (4) objections to the proposal. Development and landscape plans were endorsed on 30 October 2015. A planning permit (TPA/54734) for subdivision of the land into five lots was issued on 26 April 2023 and the Plan of Subdivision (TPS/14039) has not yet been certified.

The permit has been extended on three (3) previous occasions, being 7 July 2016, 10 April 2018 and 7 July 2022. The current expiry date for completion of the development was 6 May 2024. The current extension of time request was made on 26 March 2024.

Attachment 1 and 2 details approved plans forming part of the application.

Site and Surrounds

The subject site is located on the west side of Ivanhoe Street in Glen Waverley. The land is irregular in shape and has an overall area of 1,298 square meters. The development commenced construction in mid 2020. The dwellings have been substantially constructed to lock up stage, with internal fit out, minor finishing and landscaping works yet to be completed. The current status of the development is shown in the photos below:





Photos provided by Applicant on 5 April 2024

Abutting land uses are residential and comprise single and double storey dwellings which include multi dwelling developments. The area can be characterised as dwellings with pitched tiled roofs in a garden setting.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 3).

Attachment 4 details the zoning and overlays applicable to the subject site and surrounding land.

PROPOSAL

The applicant has requested an extension of a further one year to complete the development. The applicant has requested this time as there were delays with the builder and in obtaining a new builder to complete the work. This has made the progression of the project difficult.

PERMIT TRIGGERS

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

"The owner or occupier of land to which a permit for a development applies may ask the responsible authority for an extension of time to complete the development or a stage of the development if:

- a) The request for an extension of time is made within 12 months after the permit expires; and
- b) The development or stage started lawfully before the permit expired".

The request was made on 26 March 2024, within 12 months of the permit expiry. The development commenced lawfully prior to the permit expiry. Accordingly, Council can consider a further extension to the completion date for the development under the *Planning and Environment Act* 1987.

ASSESSMENT

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.

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 landowner 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 landowner by the permit; and
- 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 there have been significant state, regional and local amendments affecting the land. These changes were considered and assessed as part of the previous requests to extend the planning permit. In summary:

Amendment VC110 gazetted on 27 March 2017 impacts the development with regard to garden area requirements and mandatory controls relating to height. The changes introduced by Amendment VC110 are mandatory to the consideration of a development.

The proposal meets the mandatory height requirement of 9 metres or 2 storeys as the proposal is limited to a height of 9 metres.

Amendment C125 Part 2 was gazetted in November 2019 in which Residential policies (Clause 21.04 and 22.01) were changed. The zoning for the land changed to Neighbourhood Residential Zone Schedule 2.

The Neighbourhood Residential Zone Schedule 2 introduced a number of changes to the schedule to the zone including minimum lot size, minimum street setback, site coverage, permeability, landscaping, side and rear setback, walls on boundaries, private open space and front fence height.

An assessment of the proposal against the changes to the schedule is provided as follows:

Standard	Requirement/Variation	Provided	Assessment
Minimum subdivision area	The minimum lot size for subdivision is 300 square metres	Lots are less 300 square metres.	This requirement is exempt pursuant to Clause 32.09-3 of the Planning Scheme as the development approval pre-dates the approval date of the planning scheme amendment that introduced the minimum lot size requirement into the Scheme (31 July 2018). In addition, a planning permit for the subdivision was issued in 2023 and remains valid.
Minimum Street Setback (Standard B6)	Minimum setback from front street – 7.6 metres	7.6 metres provided.	Complies
Site Coverage (Standard B8)	40%	35%	Complies
Permeability (Standard B9)	40%	43%	Complies
Landscaping (Standard B13)	Retain or provide at least one canopy tree plus one canopy tree per 5 metres of site width with a minimum mature height equal to the height of the roof. The species of canopy trees should be native, preferably indigenous.	Provision of 7 trees on the site – 2 new canopy trees in the front setback and one along the driveway, and retaining 4 significant trees in the SPOS areas of the dwellings.	Complies
Side and Rear Setbacks (Standard B17)	Side setbacks – 1 metre, plus 0.3 metres for every metre of height over 3.6 metres up to 6.9 metres, plus 1 metre for every	Setbacks comply.	Complies

	metre of height over 6.9 metres. Rear setbacks – 7 metres	Rear setback of Unit 4 is 2.76 metres.	Does not comply – see discussion below.
Walls on boundaries (Standard B18)	A wall on a side boundary should not exceed 6.5 metres plus 25% of the remaining length of the boundary of an adjoining lot or where there are existing or simultaneously constructed walls or carports abutting the boundary on an abutting lot, the length of the existing or simultaneously constructed walls or carports, whichever is the greater. Walls should not be	No walls proposed on the title boundaries.	Complies
	constructed on rear boundaries.		
Private Open Space (Standard B28)	An area of 75 square metres, with one part of the private open space to consist of secluded private open space at the side or the rear of the dwelling or residential building with a minimum area of 35 square metres, a minimum dimension of 5 metres, convenient access from a living room and clear of all structures and services	A minimum 75 square metres, including 35 square metres of SPOS with a minimum width of 5 metres.	Complies
Front Fence Height (Standard B32)	Streets in a Transport Zone 2 – 1.2 metres Other streets – 0.6 metres	1.2 metre high rendered brick fence	Does not comply – see discussion below.

Rear Setback (Standard B17)

Unit 4's closest point of the dwelling to the rear title boundary is 2.76 metres at ground floor and therefore does not comply with the 7-metre rear setback requirement of the NRZ2. The

development approval however predates the introduction of the rear setback requirement into the Planning Scheme. As the development is almost completed, it is impractical for this requirement to be assessed, or even if desirable that the development could be modified to accommodate a greater setback than that currently provided. The angled nature of the rear property boundary means that the development rear setback varies, and on balance is considered appropriate.

Front Fence Height (Standard B32)

The 1.2 metre high front fence to Ivanhoe Street exceeds the preferred height requirement of 0.6 metres. There is a mix of fence heights on immediately surrounding properties, including examples of taller fencing. The 1.2 metre high front fence is considered acceptable in this location and was appropriate at the time of approval.

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.

Whilst a considerable period of time has passed since the original approval, the prolonged impact of the COVID-19 Pandemic on the building and financial sectors, have impacted on the owners ability to complete the development.

Considering the recent continuation of completing the building works within the past year and progression to near completion stage, it would be difficult to demonstrate that the owner has no current intention of completing the development.

The owners have indicated that the project will continue once the extended permit is issued.

<u>Intervening circumstances bearing on the grant or refusal of the extension</u>

The owner has detailed issues with the original builder going into liquidation and financial difficulties that have impacted the completion of the development. Pleasingly they have recently re-commenced completion of the development.

The total elapse of time

Ten (10) years have elapsed between the time the planning permit was issued and the extension of time application being lodged. 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 original time limit imposed was two years for commencement and two years to complete, which is a standard condition of approval and considered adequate for this development.

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

It is acknowledged that there would likely be an economic burden on the land owner if the permit was not extended, considering the cost of the works to date and the cost of making a new application should the extension not be supported.

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 generally consistent with current planning policy. As detailed in the original approval, the proposal achieves a high level of compliance with Clause 55, appropriate scale and form, and provides a suitable response to neighbourhood character. The development meets the mandatory height and garden area requirements (introduced after the original development was approved.)

The conditions on the existing permit issued are still valid and would be similar to those placed on any permit should it be issued today.

CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

CONCLUSION

It is considered appropriate to grant a further extension of time to the permit to enable the development to be completed.

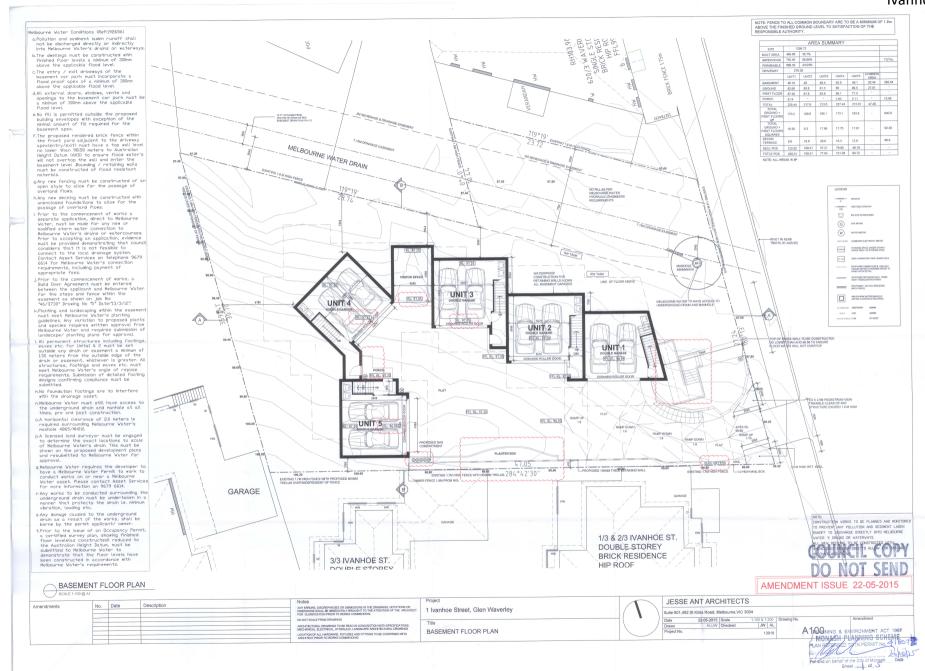
The proposal on balance meets the tests established in the Supreme Court decision Kantor v Murrindindi Shire Council (1997), including and most importantly consistency with current planning policy objectives.

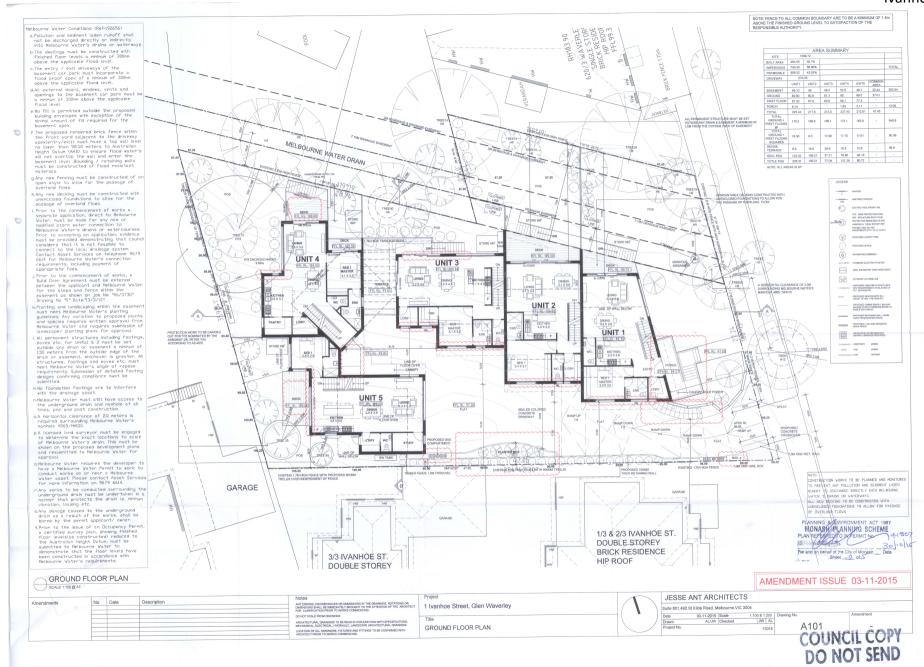
The development outcome is appropriate, the built form will be consistent with the desired future outcome and the permit remains current and relevant.

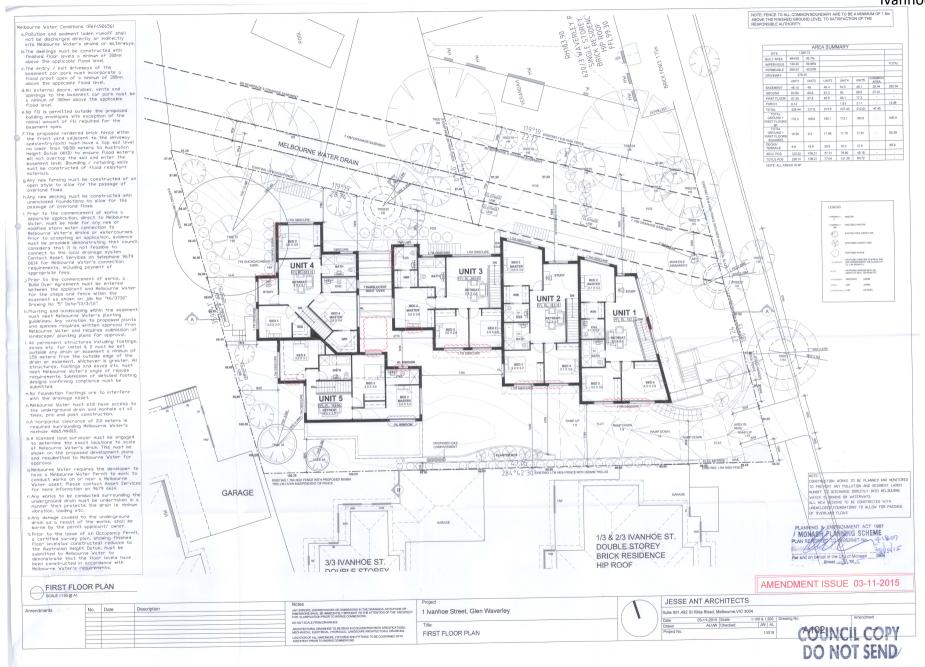
It is recommended the Council approve an extension of one 1) year for the completion of the development.

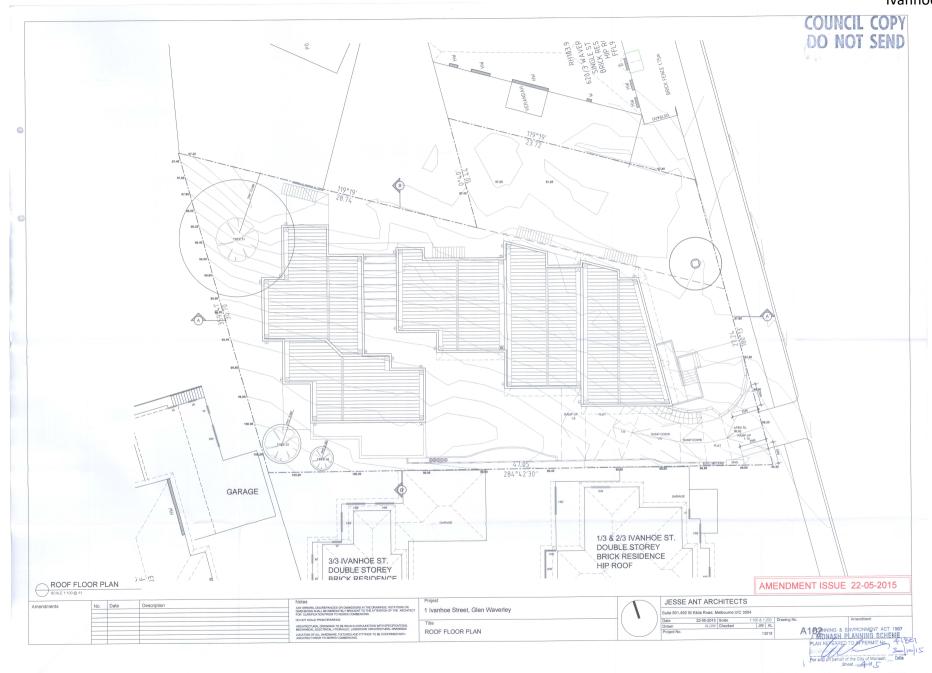
ATTACHMENT LIST

- 1. Attachment 1 Approved Endorsed Development Plan 1 Ivanhoe St [7.1.4.1 5 pages]
- 2. Attachment 2 Approved Endorsed Landscape Plan 1 Ivanhoe St [7.1.4.2 1 page]
- 3. Attachment 3 Aerial Photograph 1 Ivanhoe St [7.1.4.3 1 page]
- 4. Attachment 4 Zoning and Overlays Map 1 Ivanhoe St [7.1.4.4 1 page]

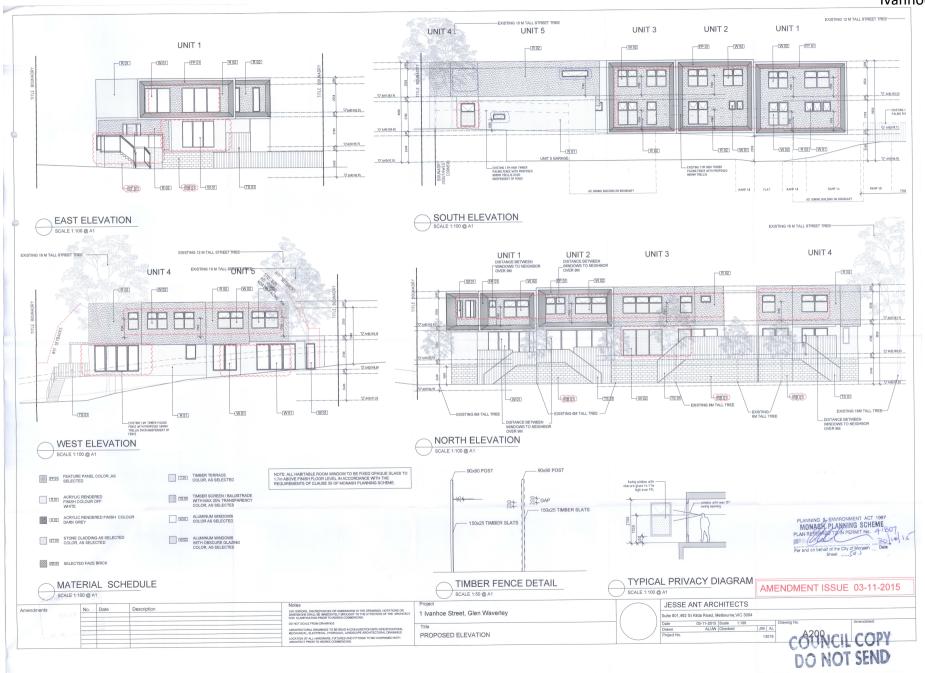




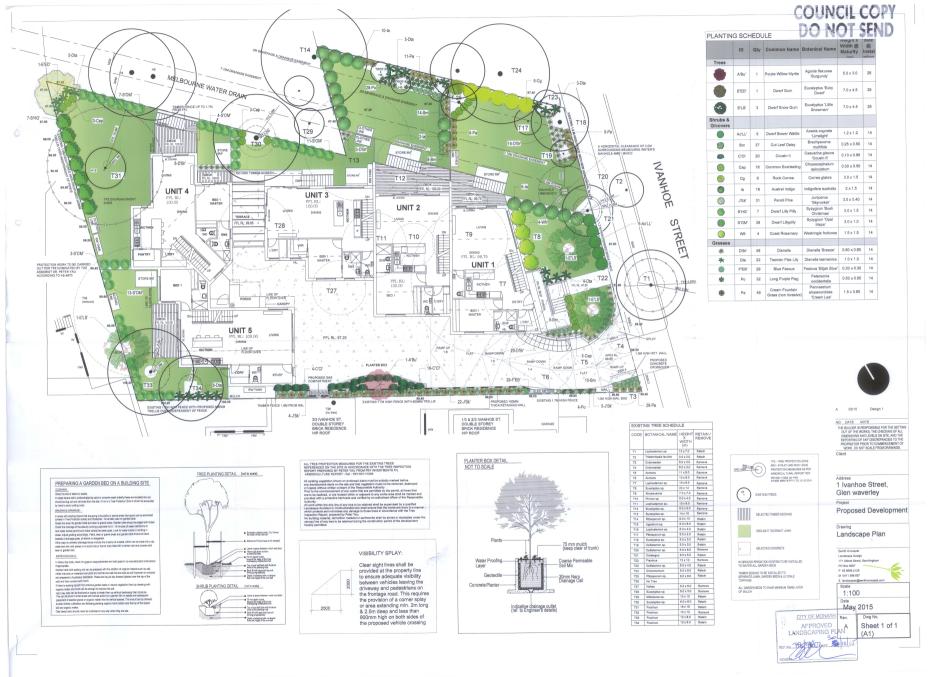


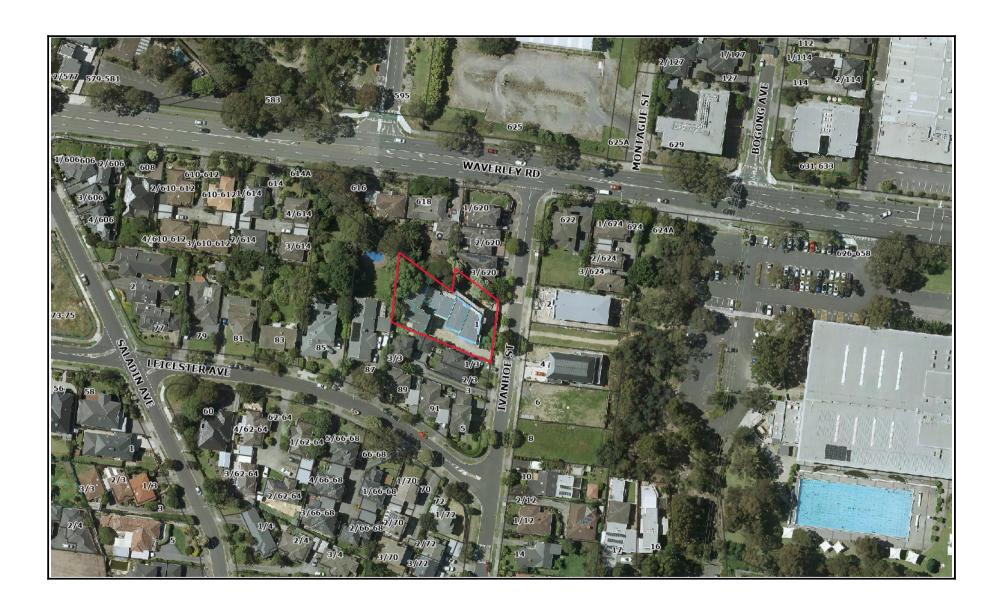


Attachment 7.1.4.1 Attachment 1 - Approved Endorsed Development Plan - 1 Ivanhoe St



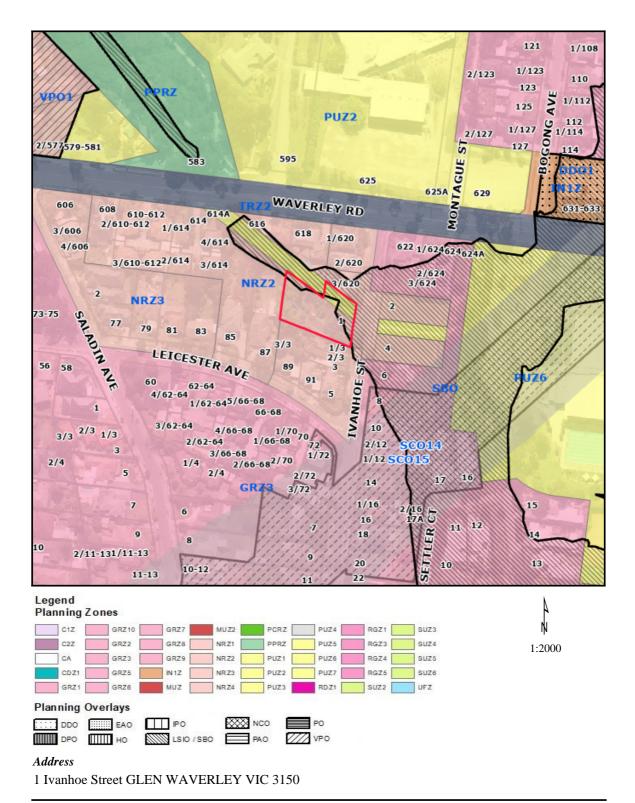








Planning Overlays and Zones



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