

**1.1 26 ASHWOOD DRIVE, ASHWOOD  
EXTENSION OF TIME - CONSTRUCTION OF TWO DOUBLE-STOREY DWELLINGS  
TPA/43409**

**EXECUTIVE SUMMARY:**

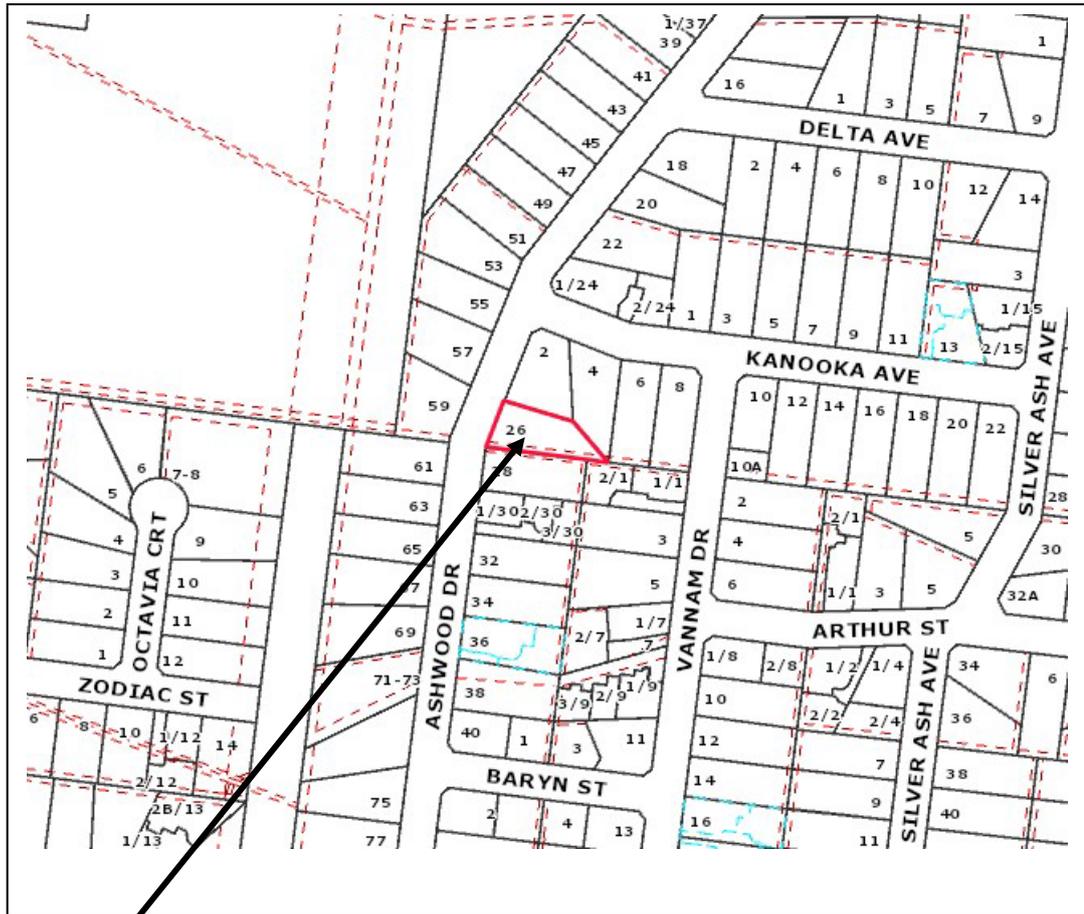
An application has been received for an extension of time to Planning Permit TPA/43409 for the construction of two double storey dwellings with basement and associated car parking and landscaping. The original permit was issued on 8 April 2015. The development has not yet commenced. The existing dwelling still exists. The permit has been extended on three (3) previous occasions.

Public notification of the application for an extension of time is not considered necessary.

**The proposed extension of time is considered appropriate and is consistent with the relevant provisions of the Monash Planning Scheme and it is recommended that a two (2) year extension to the permit to commence the development is granted.**

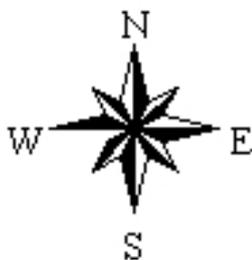
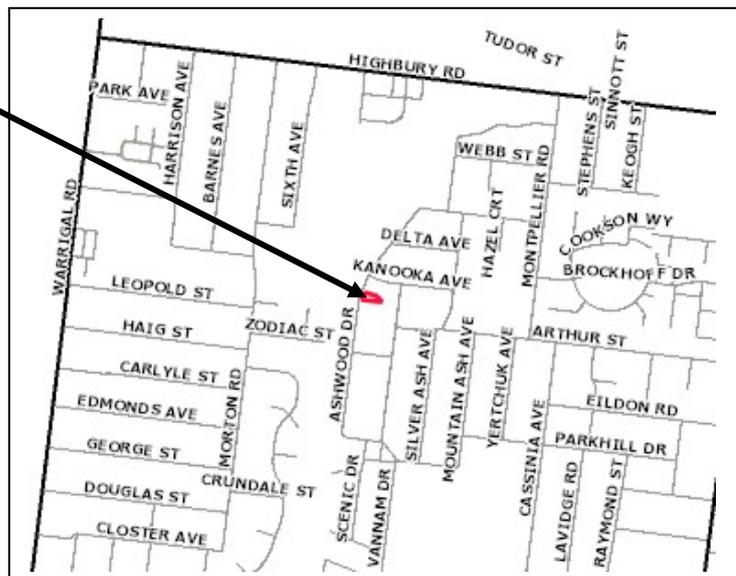
<b>RESPONSIBLE DIRECTOR:</b>	<b>Peter Panagakos</b>
<b>RESPONSIBLE MANAGER:</b>	<b>Natasha Swan</b>
<b>RESPONSIBLE PLANNER:</b>	<b>Danielle Loh</b>
<b>WARD:</b>	<b>Mount Waverley</b>
<b>PROPERTY ADDRESS:</b>	<b>26 Ashwood Drive, Ashwood</b>
<b>ZONING:</b>	<b>Neighbourhood Residential Zone – Schedule 3</b>
<b>OVERLAY:</b>	<b>No Overlays</b>
<b>EXISTING LAND USE:</b>	<b>Dwelling</b>
<b>RELEVANT LEGISLATION:</b>	<b>Section 69 of the P&amp;E Act 1987</b>

### LOCALITY PLAN



**SUBJECT SITE**

### NEIGHBOURHOOD PLAN



26 Ashwood Drive Ashwood - Extension of time - Construction of two double-storey dwellings with basement and associated car parking and landscaping

**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*:

- 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 2022 and completed by 2024.
- That the applicant be advised that a further request for extension of time may not be granted given the time that has elapsed 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 with basement and associated car parking and landscaping.

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

Plans have not been submitted nor endorsed in accordance with the permit conditions. Therefore, the development has not and is unable to commence until endorsed plans have been issued.

Council has extended the permit on three previous occasions. Each extension granted an additional 1 year for commencement of construction. The current expiry date for commencement of the development was 8 April 2020. The current extension of time request was made on 30 April 2020.

**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 for a further two (2) years. This is due to delays in obtaining finance and a builder, and other personal reasons.

**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 30 April 2020, which is within the 6 months afterwards 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. 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 permit was issued, a mandatory garden area requirement and height requirement has been introduced by the state- initiated Amendment VC110, which was gazetted on 27 March 2017. Further to this, the zoning has changed to Neighbourhood Residential Zone 3, introduced by Amendment C125 Part 1 which was gazetted in April 2018. Lastly our new policy Clause 22.01 Residential Development and Character Policy was introduced by Amendment C125 Part 2, which was gazetted in November 2019.

The changes introduced by Amendment VC110 are mandatory to the consideration of a development. The proposal meets the mandatory height requirement of 11 metres or 3 storeys as the proposal is limited to double storey and a height of 6.8 metres. In terms of the Garden Area, an assessment of the

assessed development plans, the garden area calculation is approximately 44% which exceeds the requirement of 35% (for lots over 650 square metres).

The Neighbourhood Residential Zone 3 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 is provided as follows:

Standard	Requirement	Provided	Assessment
Street setback	7.6 metres	7.6 metres (Dwelling 1) 7.6 metres (Dwelling 2)	Complies
Site coverage	50%	45% (Area covered by buildings 317 m <sup>2</sup> to site area 709 m <sup>2</sup> )	Complies
Permeability	30%	60%	Complies
Landscaping	Provision for 3 canopy trees	Provision for at least 3 canopy trees	Complies
Side and rear setbacks	5 metre rear setback	18 metre rear setback (Dwelling 1) 2.7 metre rear setback (Dwelling 2)	Does not comply
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 objectives, relevant to the rear setback requirement:

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

The current approval does not strictly comply with the desired 5m setback. This standard can be varied.

The context of the 'rear' can vary depending on the relationship of the adjoining properties which in turn affects the location of breaks and landscape character. The landscape open character is often created by traditional rear yards creating a landscaped open corridor however, for this site, this has been partially eroded

by surrounding developments. In addition the site has a unique irregular triangular shape to the rear portion of the land.

Dwelling 1 has been provided with a minimum rear setback of 2.7 metres and Dwelling 2 with a maximum 18 metres as measured at the respective side boundaries. The encroachment for Dwelling 1 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. The variation to the rear setback requirement is considered appropriate in this instance due to the extreme irregular shape of the rear boundary.

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. Council's records indicate that the applicant has not acted on the permit. No plans have been submitted as required in condition 1 of the permit which was issued in 2015. Although no further activity has occurred in the last 5 years, it would be difficult to show that the owner has no intention of commencing and completing the development.

Each previous extension to the permit only allowed for 1 year extensions pending resolution of Planning Scheme Amendment C125.

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

The owner was unable to commence the development within the time due to delays in obtaining finance and a builder, and other personal reasons.

The total elapse of time.

The total elapse time to commence the development has been 5 years.

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.

There would not likely be an economic burden on the land owner if the permit was not extended considering only the permit has been issued and no other activities such as a building permit or demolition of the existing dwelling has occurred.

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.

**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.

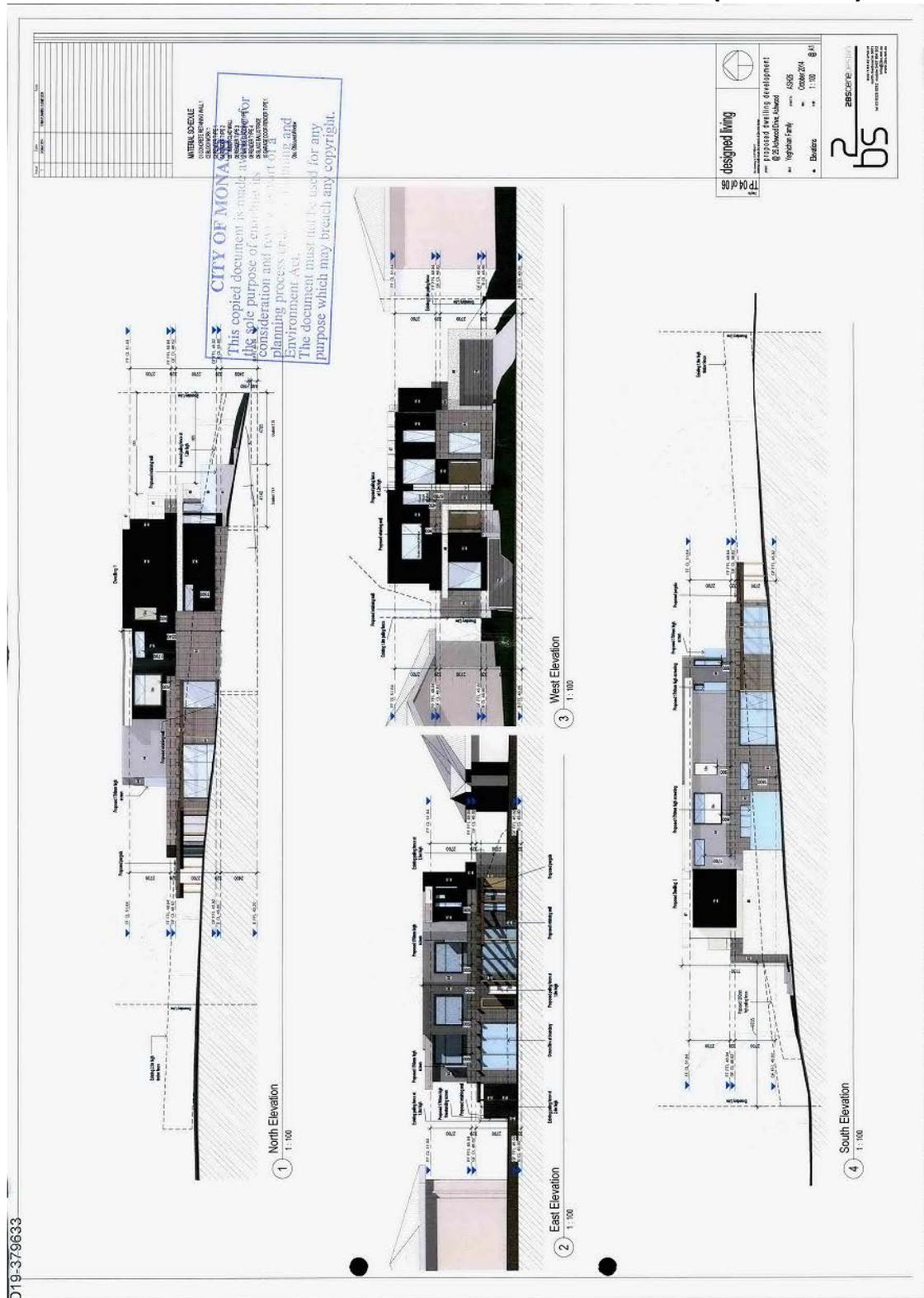
It is recommended the Council approve an extension of two years for the commencement of the development until 8 April 2022, and completion to 8 April 2024. However, considering the elapsed time, the applicant be advised a further extension of time may not be granted.







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)

