

**1.2 155 WANDA STREET, MULGRAVE
EXTENSION OF TIME - CONSTRUCTION OF TWO (2) DWELLINGS ON A LOT (NEW
DOUBLE STOREY DWELLING TO REAR OF EXISTING)
TPA/42175**

EXECUTIVE SUMMARY:

An application has been received for an extension of time to Planning Permit TPA/42175 for construction of two (2) dwellings on a lot (new double storey dwelling to rear of existing). The original permit was issued on 11 March 2014. The permit has been extended on three previous occasions.

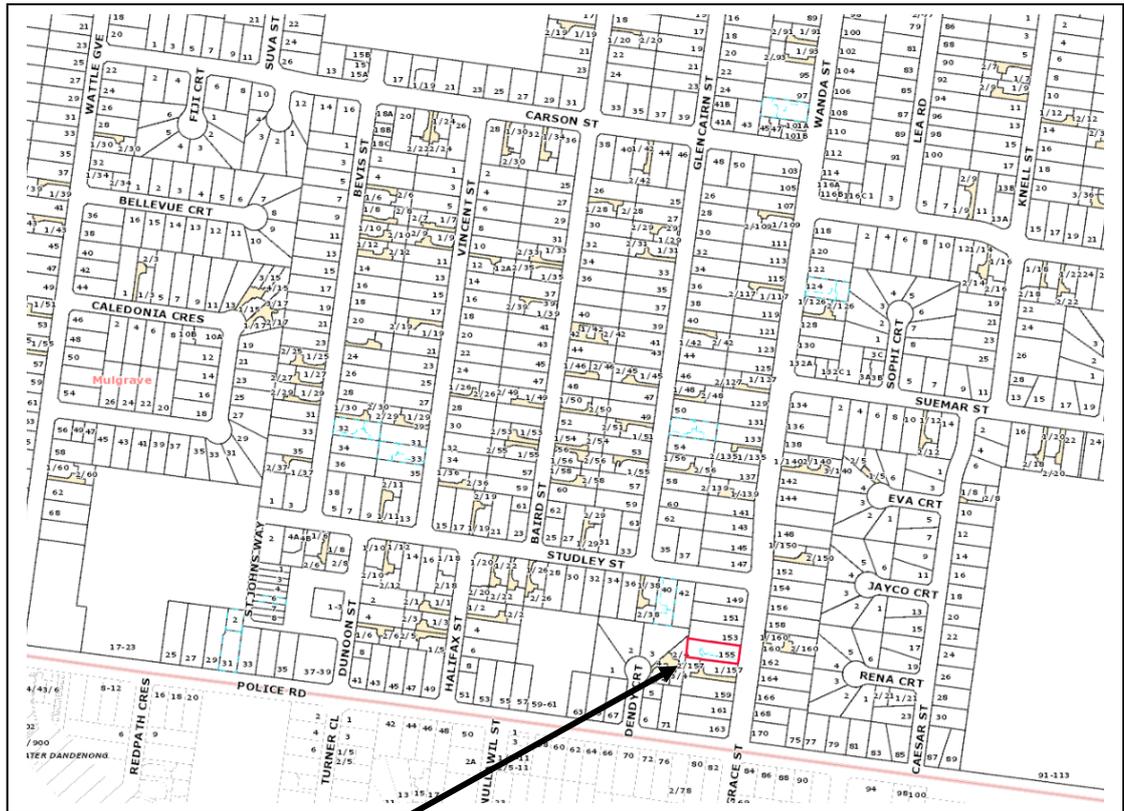
Construction of the development has not commenced.

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

The proposed extension of time is not considered appropriate as the proposal is now inconsistent with the relevant provisions of the Monash Planning Scheme and it is recommended that the application be refused.

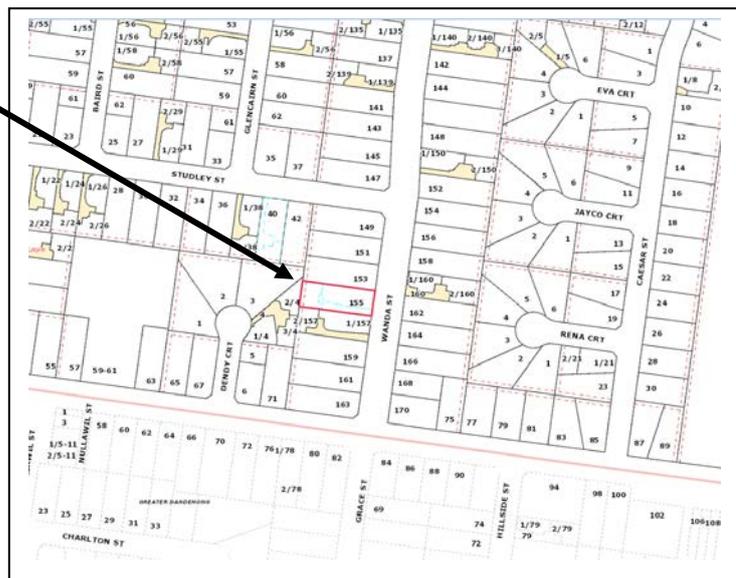
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Christopher Marulli
WARD:	Mulgrave
PROPERTY ADDRESS:	155 Wanda Street, Mulgrave
ZONING:	General Residential Zone – Schedule 3
OVERLAY:	No Overlay
EXISTING LAND USE	Dwelling
RELEVANT LEGISLATION:	Section 69 of the Planning and Environment Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



155 Wanda Street, Mulgrave - Extension Of Time - Construction Of Two (2) Dwellings On A Lot
(New Double Storey Dwelling To Rear Of Existing)

RECOMMENDATION:

That Council resolves to refuse an **extension of time** to Planning Permit No. **TPA/42175** for construction of two (2) dwellings on a lot (new double storey dwelling to rear of existing) at 155 Wanda Street, Mulgrave, pursuant to the provisions of Section 69(2) of the *Planning and Environment Act 1987*.

The grounds of refusal are as follows:

1. The approved development is inconsistent with the Monash Housing Strategy and planning policy requirements adopted by Amendment C125 – Part 2 to the Monash Planning Scheme.
2. The total elapse time is considered more than sufficient to have enabled commencement of the development.
3. The development fails to comply with the garden area requirements of Clause 32.08-4 of the Monash Planning Scheme.
4. It is unlikely that a permit would be issued should a fresh application be made.

BACKGROUND:**History**

Planning permit TPA/42175 was issued on 11 March 2014 allowing the construction of two (2) dwellings on a lot (new double storey dwelling to rear of existing).

The original application was decided under delegation and there were no objections to the proposal. Development plans were endorsed on 10 October 2014.

A planning permit for subdivision of two lots was issued on 23 December 2015.

Council has extended the permit on three previous occasions. The current expiry date for commencement of the development was 11 March 2020. The current extension of time request was made on 11 March 2020.

In approving the last extension of time Officers advised the permit holder that a further extension may not be granted due to the changes that have occurred in the planning scheme requirements.

The Site and Surrounds

The subject site is located on the western side of Wanda Street approximately 75 metres north of the intersection with Police Road. The subject site has a 17.4 metre wide frontage and 48.6 metres depth, with a total site area of 854.7 square metres. The site contains the original single storey brick dwelling with an associated garage.

The surrounding land comprises of the following:

North: Single dwelling

South: Multi-dwelling development (2 dwellings on a lot)

East: Wanda Street

West: Multi-dwelling development (3 dwellings on a lot)

The area can be characterised as predominately brick or 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 dates for a further one (1) year due to personal medical issues.

The previous request made on 13 May 2019 cited delays with financing and the requirement of further approvals with subdivision.

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 11 March 2020, which was on 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 General Residential Zone 3 and a 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 7.72 metres. In terms of Garden Area, approximately 33% garden area is provided which would not meet the required 35% pursuant to Clause 32.08-4 of the Monash Planning Scheme. This equates to 17 sq.m.

The General Residential Zone – Schedule 3 introduced a number of changes to the schedule to the zone including front setback, site coverage, permeability, landscaping, side and rear setback, private open space and front fence height. An assessment of the proposal against the changes to the Schedule is provided as follows:

Standard	Requirement	Provided	Assessment
Street setback	7.6 metres	9.1 metres	Complies
Site coverage	50%	40.2% (Area covered by buildings 343.7 m ² to site area 854.7 m ²)	Complies
Permeability	30%	30.1%	Complies
Landscaping	Provision for 3 canopy trees	Provision of 2 canopy trees to the front setback of the development	Does not comply
Side and rear setbacks	5 metre rear setback	See discussion below	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	1.2 metre front fence	1.5 metre picket fence	Does not comply

Side and rear setbacks

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

- To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.

- To support new development that minimises building mass and visual bulk in the streetscape through generous front and side setbacks, landscaping in the front setback and breaks and recesses in the built form.

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

A rear setback of 3.2m is proposed to the west of Dwelling 2 which does not comply with the newly varied Standard B17 (Side and Rear Setbacks) of Clause 55 – ResCode. However the development to the west at 4 Dendy Court is built to the boundary, and the development to the south at 157 Wanda Street is partly built to the rear boundary. While this context may allow for some variation from the 5.0m, the objective of a “well landscaped and spacious gardens that include canopy trees” would require changes to the design. This would also support future development, particularly to existing single dwellings not yet developed along Wanda Street, achieving the policy objective.

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. It could be considered that the applicant has shown intentions to act on the permit by finalising the subdivision of the subject site into 2 separate lots. Moreover, a Section 173 Agreement was reached with Council with subdivision release provided by Council’s Engineering Department on 4 August 2018. A minor build over easement application was approved on 1 October 2018. Development and landscape plans were endorsed by Council on 10 October 2014.

It appears from aerial records that the rear of the site has been partially cleared of some vegetation, but otherwise there has been little activity.

Although no further activity has occurred in the last 12 months since the issuing of the Statement of Compliance for the subdivision, it would be difficult to show that the owner has no intention of commencing the development, but it is evident we are at a tipping point in terms of warehousing.

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

The owner was unable to commence the development within time due to delays with family health matters.

The total elapse of time.

The total elapse time to commence the development has been six years which is a significant period of time for such a modest development and certainly considered more than sufficient to have enabled commencement of the development. While this is not fatal to the application in isolation, given the broader non-compliance with current planning policy, an extension of time is not supported.

Whether the time limit originally imposed was adequate

The time limit originally imposed was two years to commence construction, which is a standard condition of permit and considered an adequate time to commence a development which proposes one new dwelling. The further extensions that have been granted subsequent to the original approval provided further and adequate time for this development to be commenced and completed.

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.

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 construction. The conditions imposed 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 not be issued should a fresh application be made considering the proposal is broadly not consistent with current planning policy as discussed above.

The approved development fails to comply with a number of the requirements under the Monash Planning Scheme due to the changes of planning policies since the permit was originally issued in March 2014. The development will no longer be consistent with the development objectives of the Monash Planning Scheme.

The development fails to provide the mandatory 35% garden area required pursuant to Clause 32.08-4 of the Monash Planning Scheme introduced by the State wide Amendment VC110 subsequent to the granting of the original permit. This test alone does not restrict the granting of an extension of time.

Amendment C125 – Part 2 also amended Clause 22.01 (Residential Development and Character Policy) of the Monash Planning Scheme. Pursuant to Clause 22.01-3 (Site Coverage and Permeability), it is encouraged to limit hard surfacing and synthetic surfaces. Synthetic turf is proposed within the private open space areas to both dwellings with no proposed canopy tree planting which would be unlikely to be supported if the application were to be received today. However these matters could be addressed in any future decision.

While individually, these matters may not restrict the granting of a planning permit, it is considered that the development fails to meet a number of recent amendments to the planning scheme since the initial approval of the

development. As such, it is likely that a planning permit would not be granted if a fresh application were to be made.

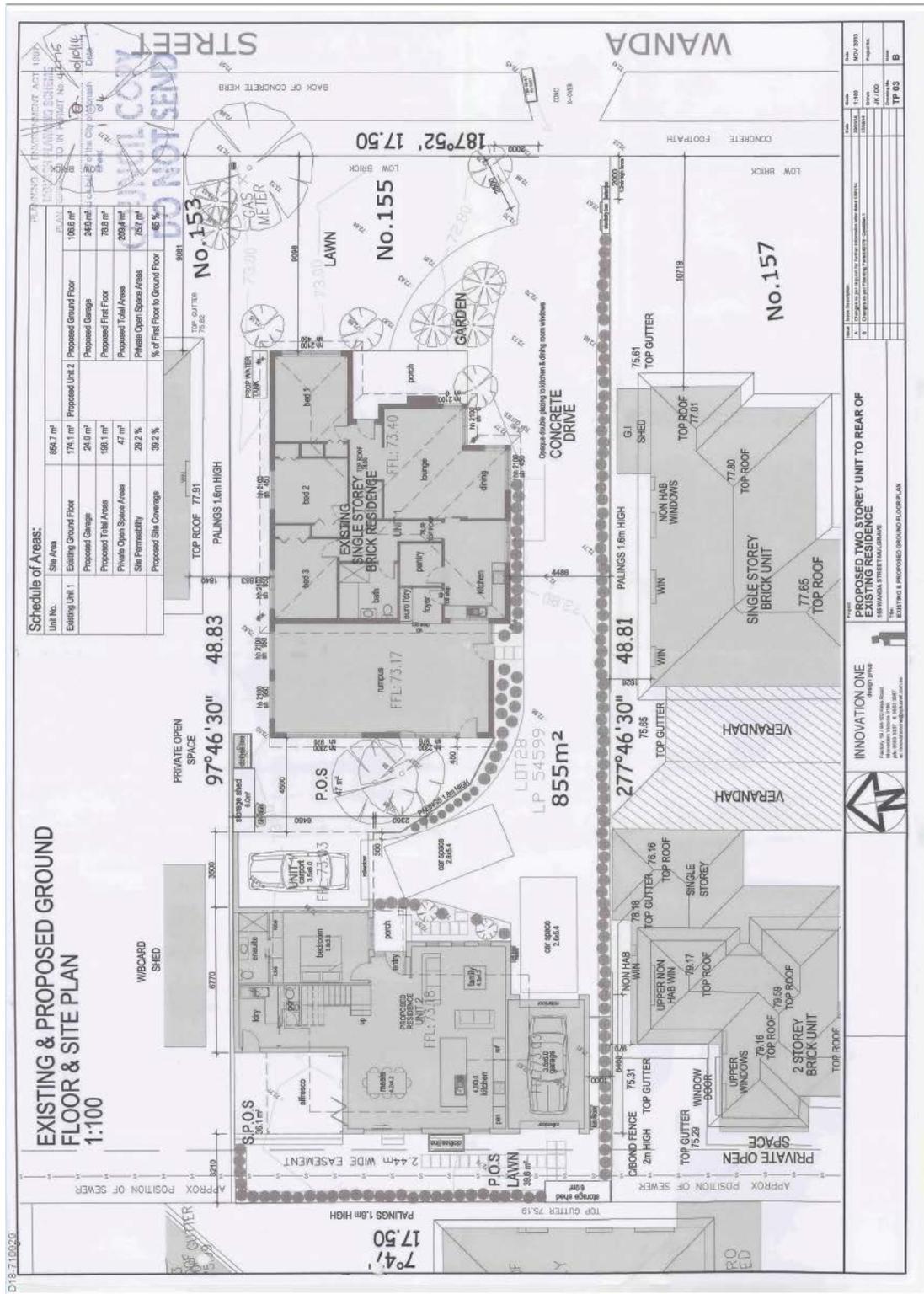
CONCLUSION:

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

The proposal on balance does not meet the majority of tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, including consistency with current planning policy objectives.

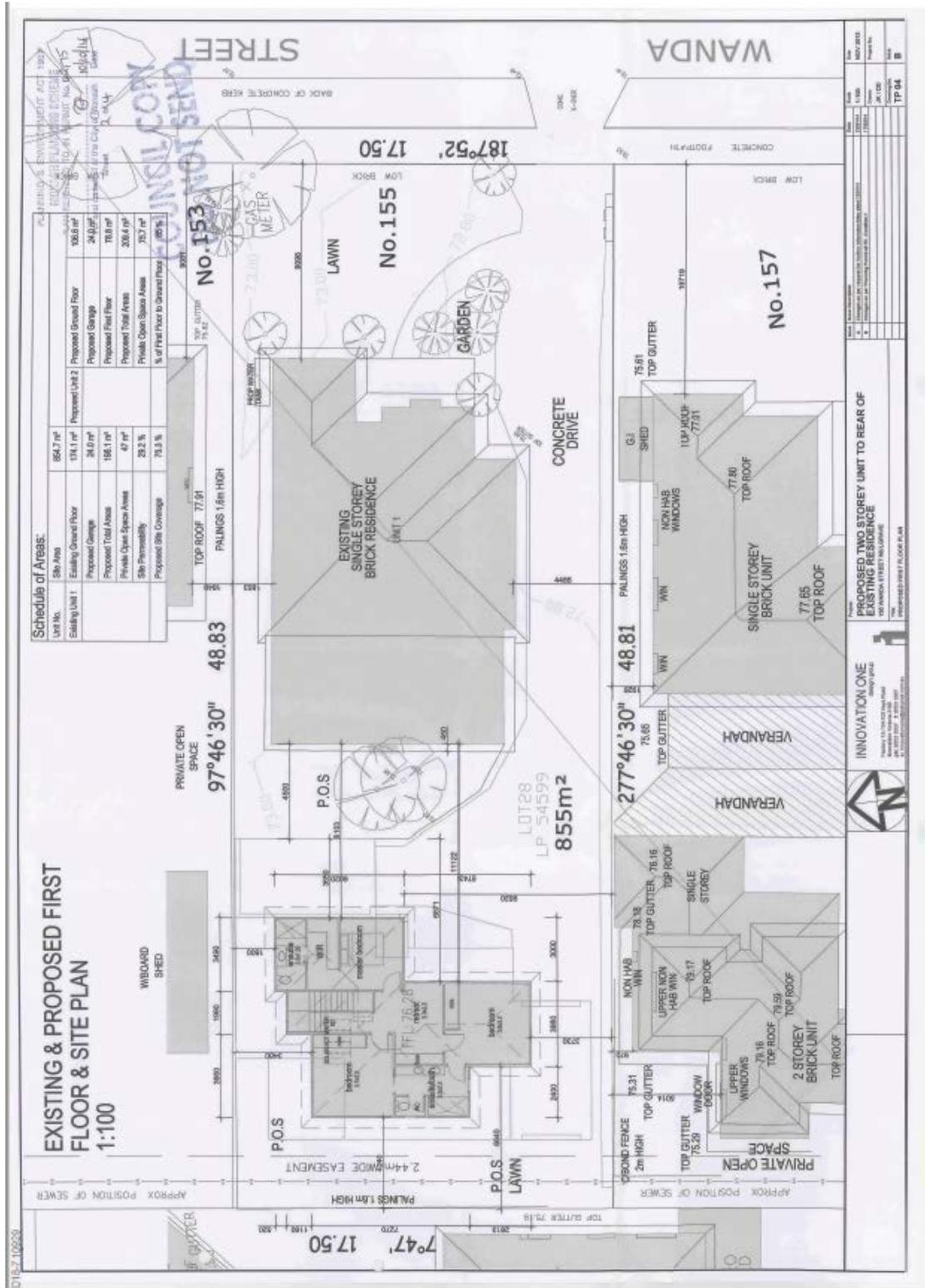
It is considered the development would not meet the current planning requirements in Council's approved Amendment C125- Part 2 and the proposal fails to demonstrate compliance of garden area required by the State Government under Amendment VC110. Given the total elapse of time for this planning permit is more than 6 years, it is recommended the Council refuses to grant an extension for the planning permit.

ATTACHMENT 1



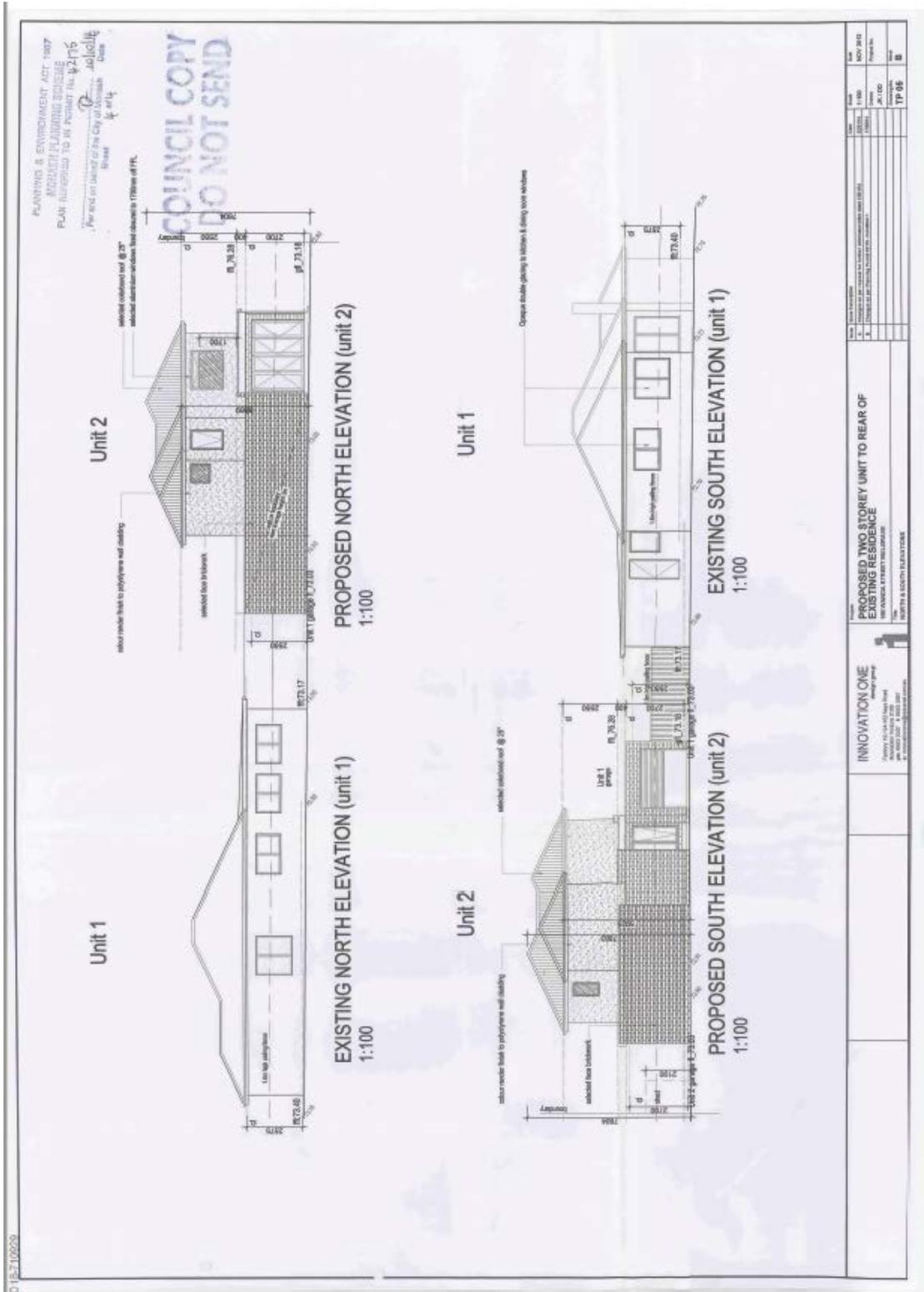
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ATTACHMENT 1 (continued)



155 Wanda Street, Mulgrave - Extension Of Time - Construction Of Two (2) Dwellings On A Lot (New Double Storey Dwelling To Rear Of Existing)

ATTACHMENT 1 (continued)



<p>INNOVATION ONE Planning & Environment 100 Wanda Street, Mulgrave VIC 3170 Tel: 03 9520 1000 Fax: 03 9520 1001 Email: info@innovationone.com.au</p>	<p>PROPOSED TWO STOREY UNIT TO REAR OF EXISTING RESIDENCE 100 WANDA STREET MULGRAVE NORTH & SOUTH ELEVATIONS</p>	<p>Scale: 1:100 Date: NOV 2015 Project No: TP 05</p>
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