

**1.2 178 LAWRENCE ROAD, MOUNT WAVERLEY  
EXTENSION OF TIME - TWO DOUBLE STOREY DWELLINGS AND REMOVAL OF  
VEGETATION  
TPA/44929/B**

**EXECUTIVE SUMMARY:**

An application has been received for an extension of time to Planning Permit TPA/44929 for the development of two double storey dwellings. The original permit was issued on 11 February 2016. The permit has been extended on three previous occasions, each extended for one year.

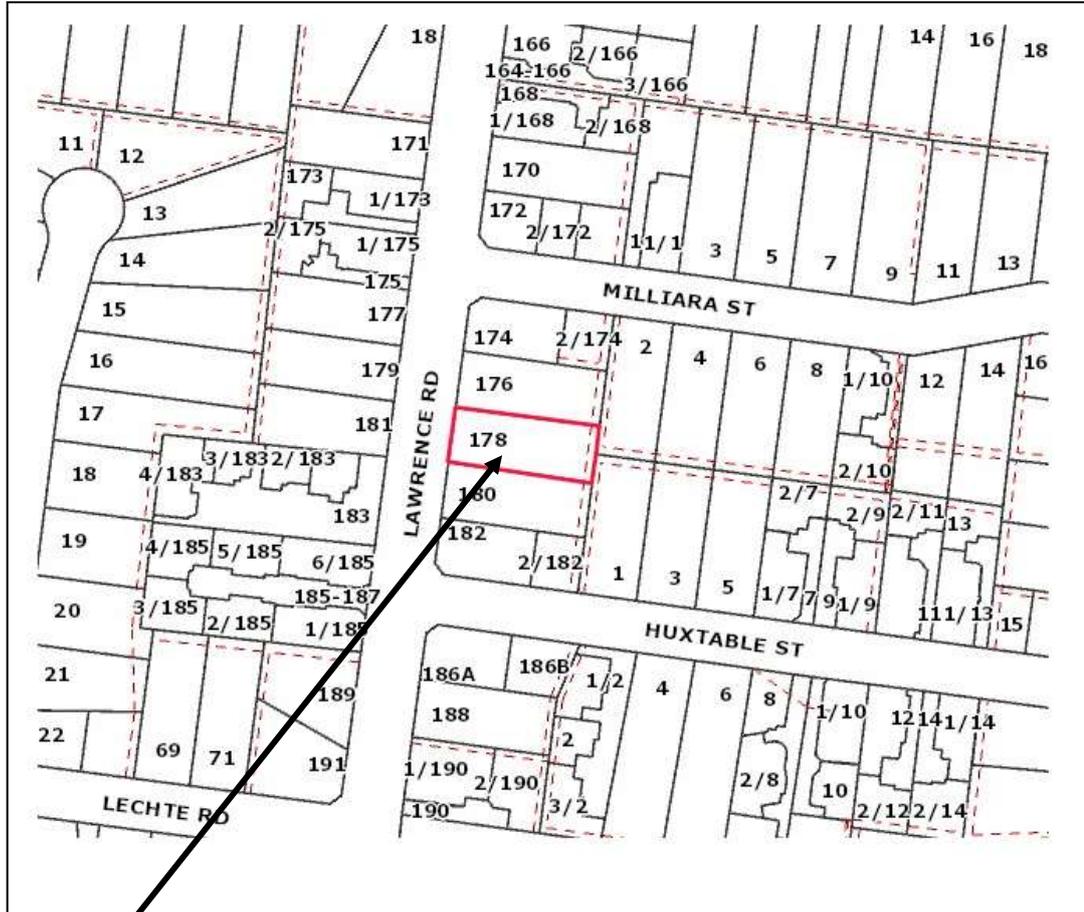
Construction of the development has not commenced.

**The reason for presenting this report to Council is this is the fourth extension of time request sought for this permit.**

**The proposed extension of time is appropriate and it is recommended that a two (2) year extension to the permit is granted accordingly.**

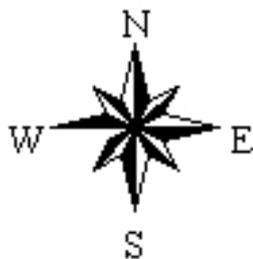
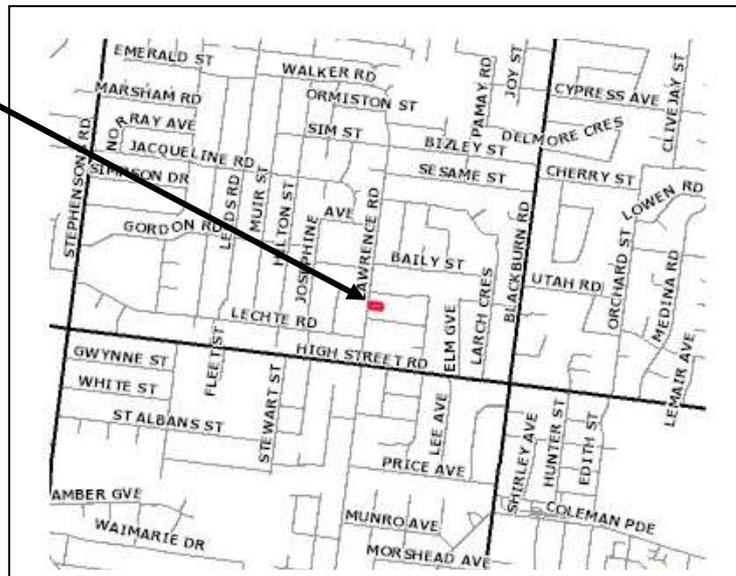
<b>RESPONSIBLE DIRECTOR:</b>	<b>Peter Panagakos</b>
<b>RESPONSIBLE MANAGER:</b>	<b>Natasha Swan</b>
<b>RESPONSIBLE PLANNER:</b>	<b>Moulisa Sahai</b>
<b>WARD:</b>	<b>Mount Waverley</b>
<b>PROPERTY ADDRESS:</b>	<b>178 Lawrence Road, Mount Waverley</b>
<b>ZONING:</b>	<b>General Residential Zone – Schedule 2</b>
<b>OVERLAY:</b>	<b>Vegetation Protection Overlay</b>
<b>EXISTING LAND USE:</b>	<b>Single Dwelling</b>
<b>RELEVANT LEGISLATION:</b>	<b>Section 69 of the Planning and Environment Act 1987</b>

### LOCALITY PLAN



**SUBJECT SITE**

### NEIGHBOURHOOD PLAN



**RECOMMENDATION:**

That Council resolves to issue an **extension of time** to Planning Permit No. **TPA/44929** for development of two double storey dwellings with associated double garages and removal of vegetation at 178 Lawrence Road, Mount Waverley 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 completion of the development be extended for a further 2 years. Accordingly, the development must be commenced by 11 February 2023 and completed by 11 February 2025.

**BACKGROUND:****History**

Planning permit **TPA/44929** was issued on the 11 February 2016 allowing two double storey dwellings and removal of vegetation.

The original application was decided under delegation and there were no objections to the proposal.

Council has extended the permit on three previous occasions. The current expiry date was 11 February 2021. The current extension of time request was made on 20 January 2021 which is within 6 months of the expiry date in accordance with the requirements of the *Planning and Environment Act* 1987.

Development plans were endorsed pursuant to the requirements of condition 1 of the permit on 1 June 2016. Further amendments to the planning permit and associated plans were subsequently approved with the most recent being on 7 May 2020.

**The Site and Surrounds**

The subject site is located on east side of Lawrence Road. The site has an area of 724.93 square metres and contains a single storey dwelling.

The surrounding land comprises the following:

North: Single storey dwelling  
South: Single storey dwelling  
East: Single storey dwelling  
West: Single storey dwelling

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 commencement date for two years due to delays encountered as a result of the COVID 19 restrictions.

**DISCUSSION:**

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

“Before the permit expires or within 6 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 January 2021 before the permit expiry date.

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 there has been one significant state amendment affecting the land and two local amendments through Amendment C125.

Amendment VC110 (gazetted March 2017) introduced a mandatory garden area requirement and height requirement applicable to the zone. The proposal provides for a Garden Area of 35.06% and continues to comply with the height requirements.

Through Amendment C125 there was no change to the zoning of the land and the land continues to be zoned General Residential Zone – Schedule 2.

More specifically, Amendment C125 Part 1 & 2 (gazetted April 2018 and November 2019) introduced new policies in Clause 21.04 Residential Development and Clause 22.01 Residential Development and Character Policy. Under Clause 21.04, the land is now within a Category 2 – Accessible Areas residential area which identifies areas within reasonable walking distance from an Activity centre which can accommodate moderate housing change serving as

a transition between commercial and residential areas. These areas will provide for a diverse range of housing types while retaining key aspects of the existing built form and landscape character of the area.

Under Clause 22.01, the land is now within the Garden City Suburbs (Northern) character area. The preferred future character statement makes reference to the development of well-designed unit development which takes place within a pleasant leafy framework and architecture will be secondary in visual significance when viewed from the street. Furthermore the built form will be unified by well planted front gardens.

It is considered that the form, scale and intensity of the development continues to be consistent with the policy objectives.

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

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. A review of Council records indicates that a Building Surveyor has recently been appointed for the project and a building permit for bore holes only has recently been issued.

It is considered reasonable to support an extension at this point in time.

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

The owner was unable to commence the development within time due to delays experienced due to the COVID-19. The applicant has indicated that the property is currently tenanted and that an additional 3-4 months is required to allow the property to be vacated.

The total elapse of time.

Five years have passed since the permit was issued, which is sufficient to have enabled completion of the development. This is not fatal to the application in isolation, given the compliance with current planning policy.

Although this report is coming to Council as a fourth extension, it is noted that previously one year extensions were given as Amendment C125 was being considered by the Minister casting some uncertainty of the approved controls. Normally a 2 year extension of time would be supported where there is no proposed changes to planning policy, which would mean this is similar to a third request.

Whether the time limit originally imposed was adequate.

The time limit originally imposed was two years to commence and four years to complete, which is a standard condition of permit and considered adequate for a two dwelling development.

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

Considering development has not commenced, the degree to which the owner is economically committed to the permit is limited.

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

No submissions were lodged by the applicant to expand the economic considerations under this test.

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 consistent with current planning policy as discussed above. Further the conditions included in the permit are consistent with those still used for developments of this nature.

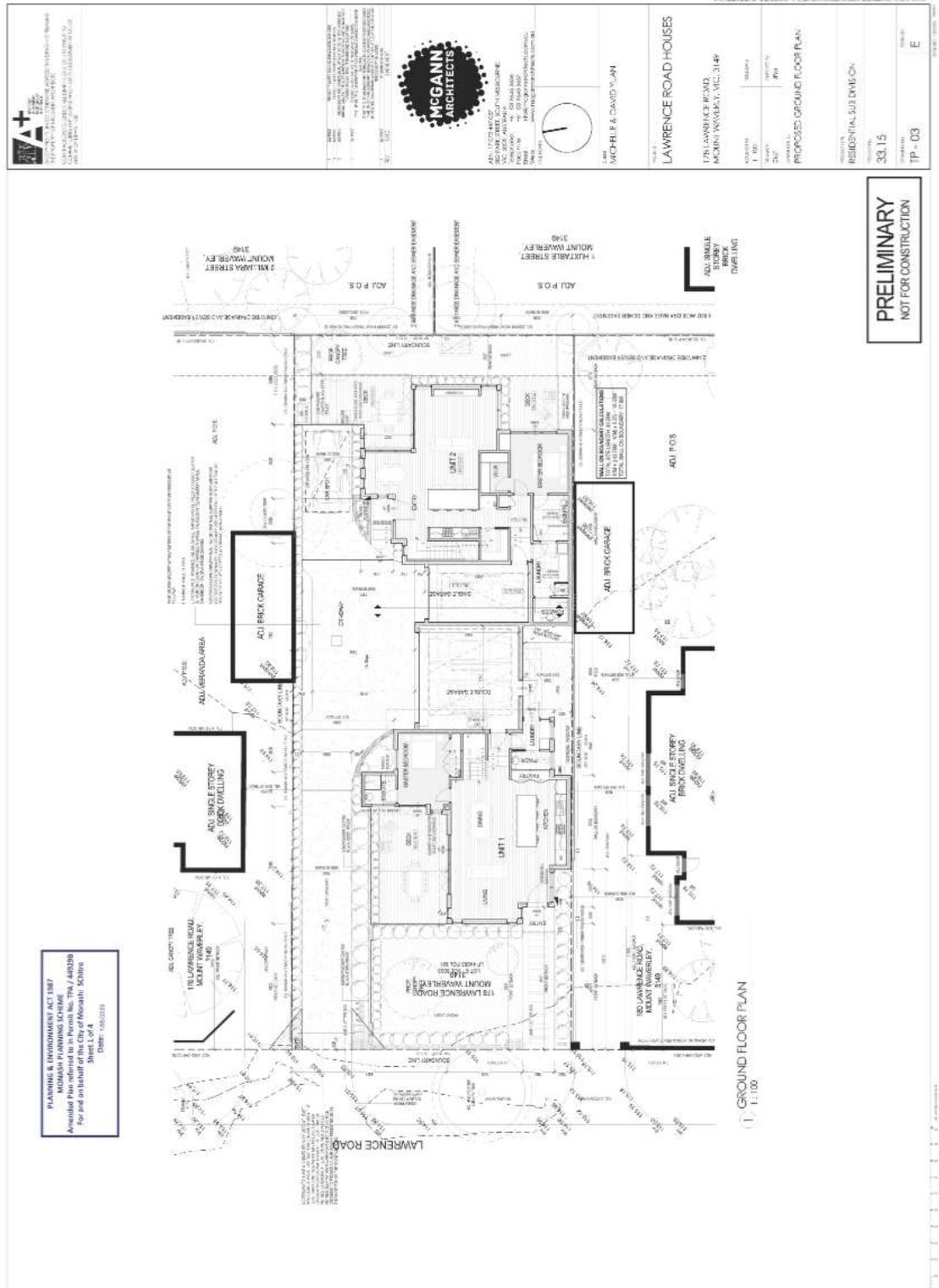
**CONCLUSION:**

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

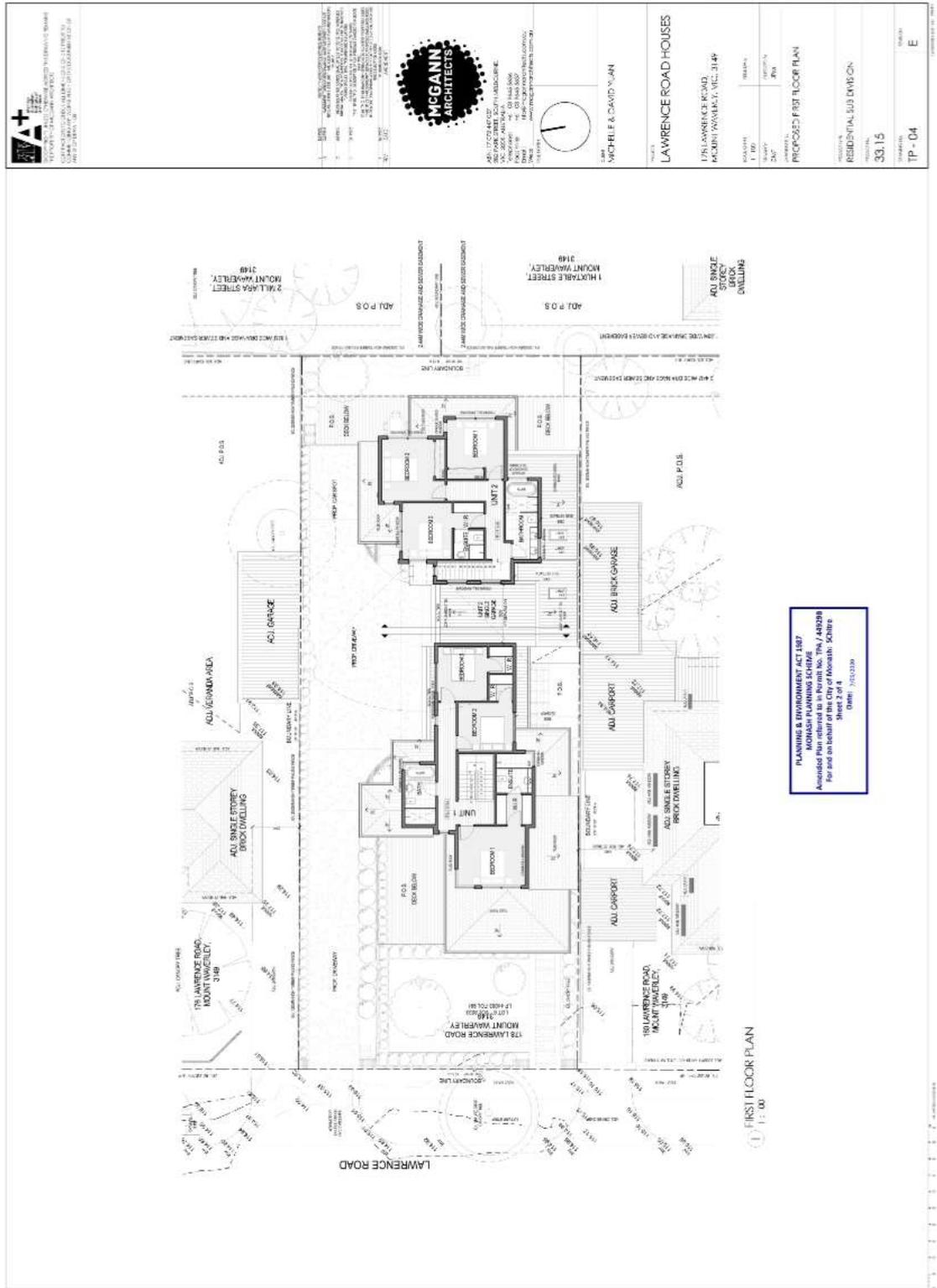
The proposal on balance meets the majority of tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, including and most importantly consistency with current planning policy objectives.

It is recommended the Council approve an extension of two years for the commencement and completion of the development

ATTACHMENT 1



ATTACHMENT 1 (Continued)



178 Lawrence Road, Mount Waverley - Extension Of Time - Two Double Storey Dwellings And Removal Of Vegetation



