

## 7.1.5 TPA/43046/A - 13 TUHAN STREET, CHADSTONE - EXTENSION OF TIME OF PERMIT FOR THE DEVELOPMENT OF TWO DOUBLE STOREY DWELLINGS

<b>Responsible Manager:</b>	Kaitlyn Zeeck, Manager City Planning
<b>Responsible Director:</b>	Peter Panagakos, Director City Development

### EXECUTIVE SUMMARY

This application is for an extension of time to Planning Permit TPA/43046/A for the development of two double storey dwellings at 13 Tuhan Street, Chadstone.

The original permit was issued on 28 November 2014.

The permit has been extended on three (3) previous occasions. The latest extension of time was granted on 20 October 2022 which allowed for an additional two years to complete the development. The current permit expired on 28 November 2024 as the development has not been completed.

The site has been cleared and 2 concrete pads required for the decks associated with the dwellings have been constructed and inspected by the appointed Registered Building Surveyor (RBS). A certificate for these works and dated 26 November 2020 has been issued by the RBS.

The reason for presenting this report to Council is that 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 two (2) years be granted to complete the development.**

RESPONSIBLE PLANNER:	Tiffany Neofitou
WARD:	Mayfield
PROPERTY ADDRESS:	13 Tuhan Street, Chadstone
ZONING:	General Residential Zone, Schedule 2
OVERLAY:	Vegetation Protection Overlay, Schedule 1
EXISTING LAND USE:	Vacant site with the exception of the footings that have been installed.
RELEVANT LEGISLATION:	Section 69 of the <i>Planning and Environment Act 1987</i>
RELEVANT POLICY:	<b>Planning Policy Framework</b> Clause 11.01-1R - Settlement – Metropolitan Melbourne Clause 11.02-1S - Supply of Urban Land

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 15.01-5L- Monash Preferred Neighbourhood Character  
Clause 16.01-1S &R - Housing supply  
Clause 16.01-2S - Housing affordability  
Clause 18.01-1S - Land Use and Transport Planning  
Clause 18.02-2R - Principal Public Transport Network

**Particular Provisions**

Clause 52.06 - Car Parking  
Clause 53.18 - Stormwater Management in Urban Development  
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 TPA/43046/A for the development of two double storey dwellings at 13 Tuhan Street, Chadstone, 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 two (2) years. The development must be completed by 28 November 2026.**

## 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/43046 was issued on 28 November 2014 for the development of two double storey dwellings.

An amended planning application (TPA/43046/A) was approved on 10 September 2015 and made changes to the plans with regards to the front setback and increases to dwelling and garage areas. There have also been a number of secondary consent amendments for minor changes to the plans. These secondary consent amendments were approved on 9 August 2021, 15 August 2022 and 4 October 2022.

The permit has been extended on three (3) occasions being 5 September 2016, 27 March 2018 and 20 October 2022. The current expiry date was 28 November 2024. This extension of time request was made on 1 November 2024.

Attachment 1 includes the current endorsed development plans dated 5 October 2022.

### **Site and Surrounds**

The site is located on the northern side of Tuhan Street in Chadstone. The land is regular in shape with a frontage of 15.24m, a depth of 39.28m and an overall area of 598.6sqm.

The site was previously occupied by a modest post war single storey dwelling however, is now vacant but for the concrete pads constructed for the deck areas. There is an existing vehicle crossing at the south-western corner of the frontage. Surrounding residential land use is characterised by other single storey, post war dwellings, with more recently constructed unit developments and double storey dwellings in the broader surrounding area. Gardens are open and front fencing is generally low.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 2)

Attachment 3 details the zoning and overlays applicable to the site and surrounding land.

## PROPOSAL

The applicant has requested an extension of a further two years to complete the development. The applicant has requested this time as a number of varying issues have made the progression of the project difficult, more recently issues with Yarra Valley Water and the engagement of a builder.

## PERMIT TRIGGERS

Pursuant to the provision 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, or another person with the written consent of the owner, 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 1 November 2024, within twelve (12) months of the permit expiry. The development commenced lawfully prior to the permit expiry with evidence of a first building inspection provided. 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. The changes introduced by Amendment VC110 are mandatory to the consideration of a new development. The development satisfies the Garden Area requirement providing 32% garden area.

**Amendment C125** Part 2 was gazetted in November 2019 in which Residential policies (Clause 21.04 and 22.01 now listed as Clause 15.01-5L and 16.01-1L-01) were changed. There was no change in zoning for the land, which remained General Residential Zone, Schedule 2. The site is covered by the Vegetation Protection Overlay, however is devoid of vegetation.

### 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 is not considered that the owner is not seeking to warehouse the Permit given that he has made many attempts to commence the development.

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

The commencement of the development was within time, however due to issues with the builder, constraints as a result of COVID 19 and finances the development has been significantly delayed.

### 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 including removal of the original dwelling 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

The approved development is generally consistent with the changes to policy which has occurred since the issue of the planning permit. Therefore, if a fresh application was made today for the current development, it is likely that a planning permit would be issued.

## **CONFLICT OF INTEREST**

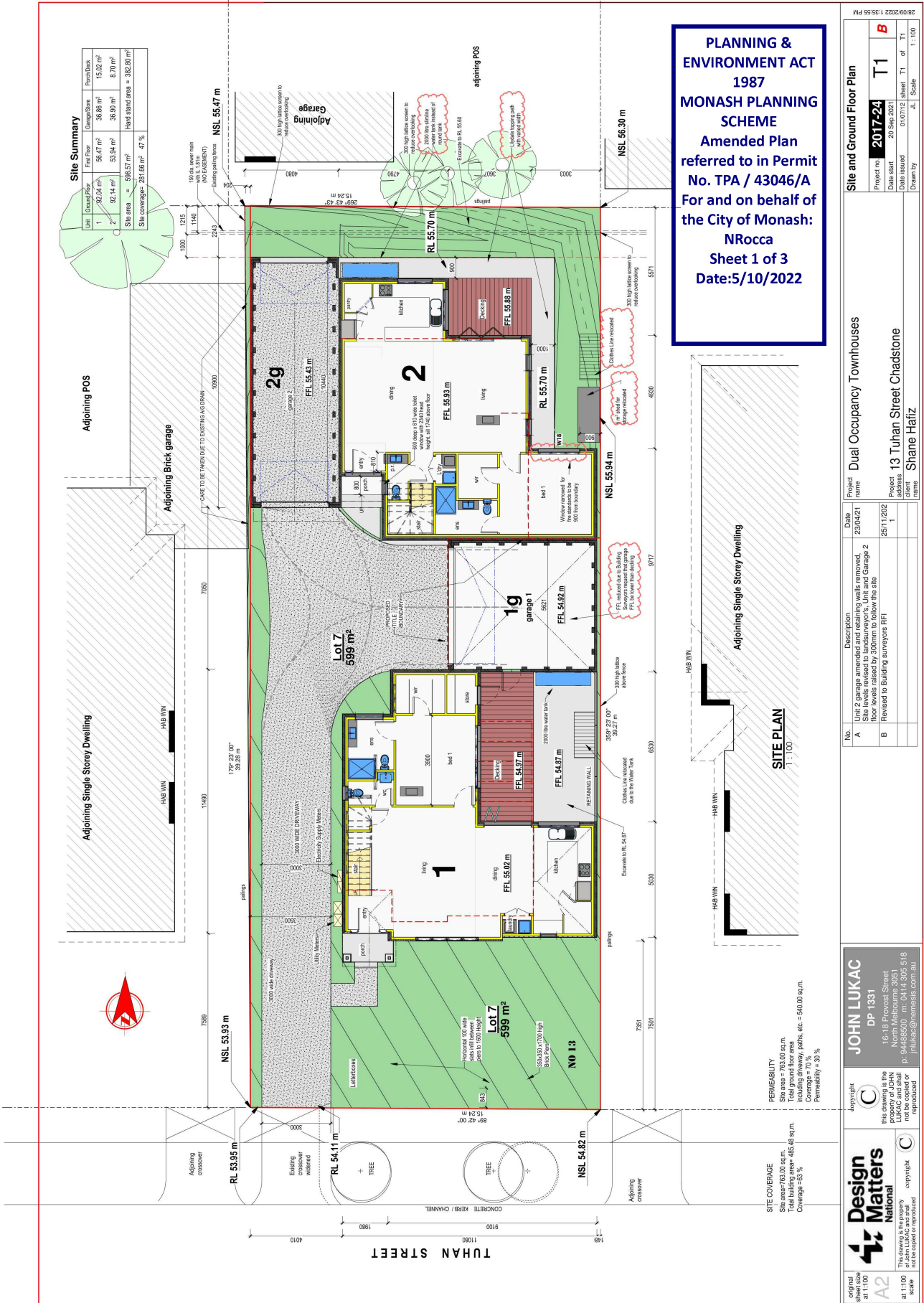
No officers involved in the preparation of this report have any direct or indirect conflict of interest in this matter.

## **CONCLUSION**

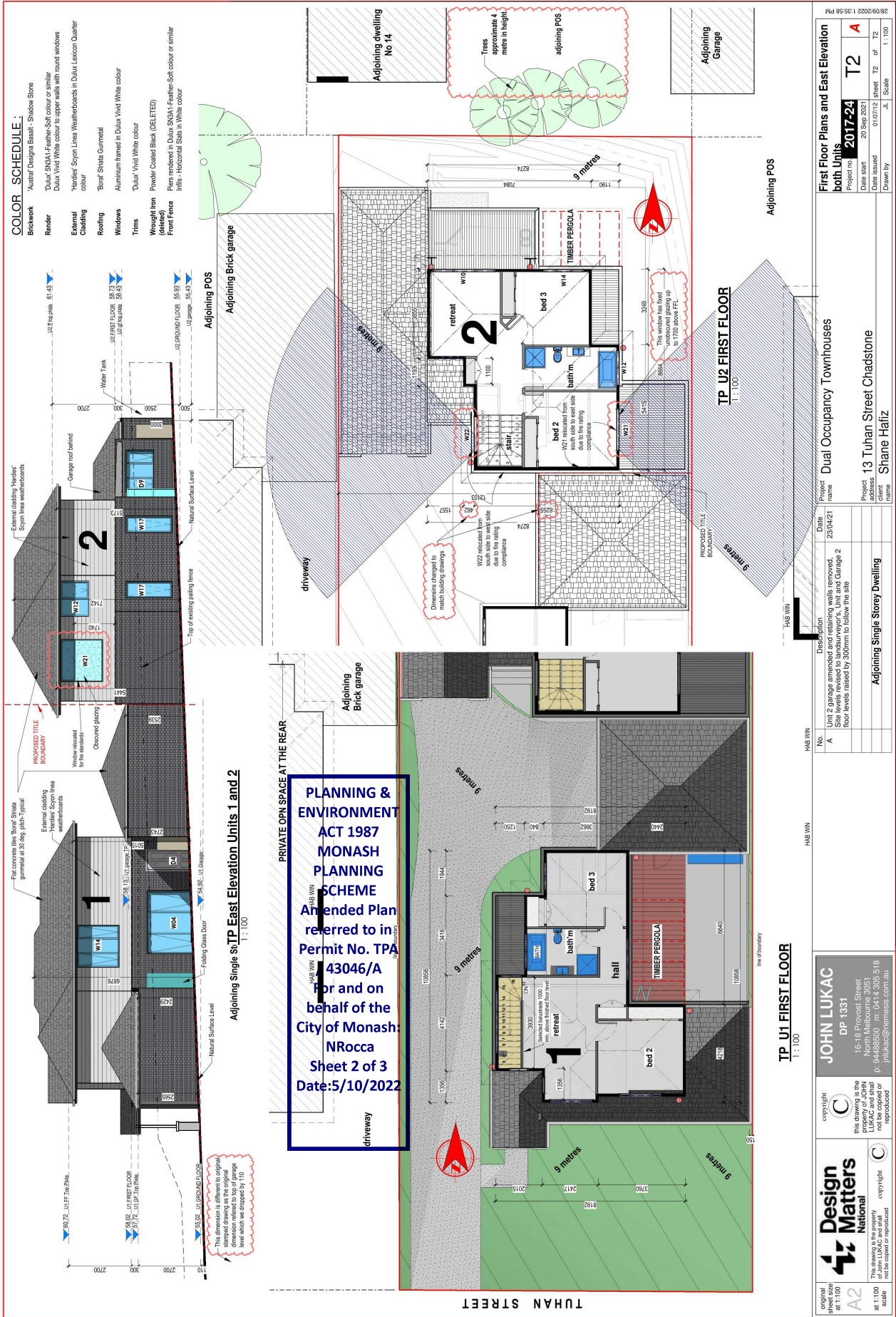
It is considered appropriate to grant a further extension of time for the permit. The proposal on balance meets the tests established in the Supreme Court decision Kantor v Murrindindi Shire Council (1997), It is considered that the completion of the development would not lead to a poor planning outcome. Having regard to all the circumstances, it is recommended that Council approve the extension of time application.

## **ATTACHMENT LIST**

1. Approved Endorsed Secondary Consent Development Plans - 13 Tuhun St [**7.1.5.1** - 3 pages]
2. Aerial Photograph - 13 Tuhun St [**7.1.5.2** - 1 page]
3. Zoning and Overlays Map - 13 Tuhun St [**7.1.5.3** - 1 page]







**PLANNING & ENVIRONMENT ACT 1987**  
**MONASH PLANNING SCHEME**  
**Amended Plan**  
**referred to in Permit No. TPA / 43046/A**  
**For and on behalf of the City of Monash:**  
**NRocca**  
**Sheet 3 of 3**  
**Date:5/10/2022**

**TP North Elevation Unit 1**  
1 : 100

**TP North Elevation Unit 2**  
1 : 100

**TP South Elevation Unit 1**  
1 : 100

**TP South Elevation Unit 2**  
1 : 100

**TP West Elevation Units 1 and 2**  
1 : 100

No.	Description	Date
A	Unit 2 garage amended and retaining walls removed. Site levels revised to landscape's, Unit and Garage 2 floor levels raised by 300mm to follow the site.	23/04/21

**Project name:** Dual Occupancy Townhouses  
**Project address:** 13 Tuhan Street Chadstone  
**client:** Shane Hafiz

Elevations	
Project no.	2017-24
Date start	20 Sep 2021
Date issued	04/05/22 sheet T3 of T3
Drawn by	Author
Scale	1 : 100

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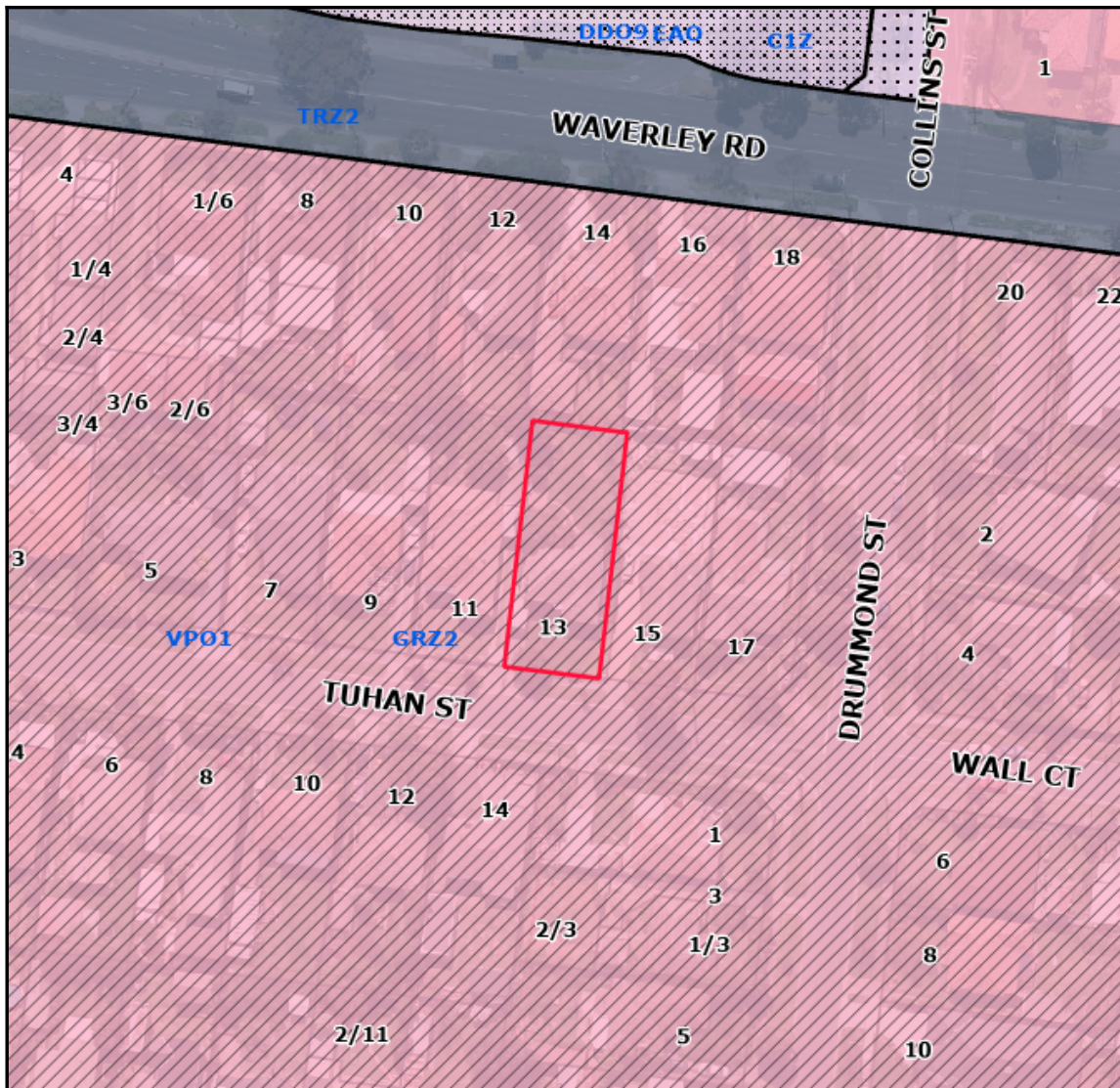
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## Planning Overlays and Zones



**Legend**  
**Planning Zones**


**Planning Overlays**




**Address**

13 Tuhau Street CHADSTONE VIC 3148

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