

7.1.6 TPA/45077 - 2A BLETCHLEY ROAD HUGHESDALE - EXTENSION OF TIME OF PERMIT FOR THE DEVELOPMENT OF A DOUBLE STOREY DWELLING AT THE SIDE OF THE EXISTING DWELLING

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| Responsible Manager: | Kaitlyn Zeek, Manager City Planning |
| Responsible Director: | Peter Panagakos, Director City Development |

EXECUTIVE SUMMARY

This application is for an extension of time to Planning permit TPA/45077 for the development of a double storey dwelling at the side of the existing dwelling

The original permit was issued on 7 January 2016.

The permit has been extended on three (3) previous occasions. The latest extension of time was granted on 21 December 2022 which allowed for an additional two years to complete the development. The current permit expired on 7 January 2025 as the development has commenced but has not been completed.

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.

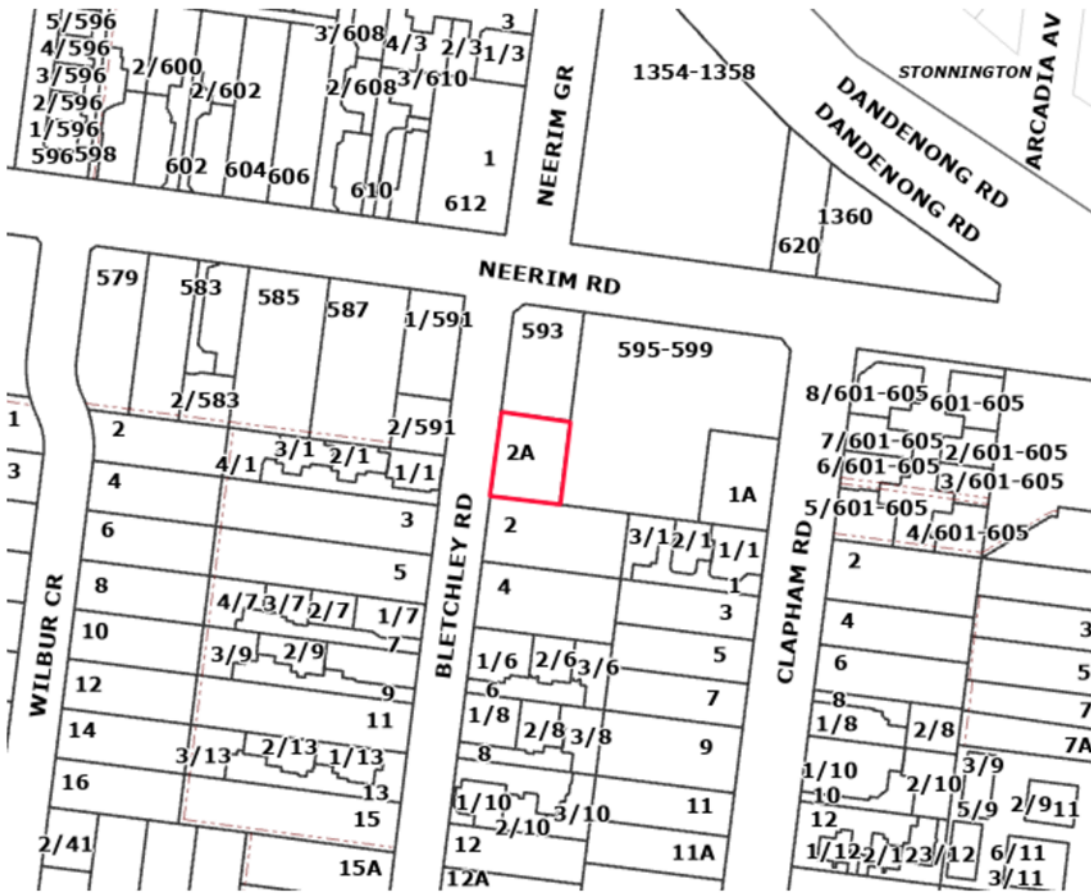
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| RESPONSIBLE PLANNER: | Melissa Hansford |
| WARD: | Warrigal |
| PROPERTY ADDRESS: | 2A Bletchley Road Hughesdale |
| ZONING: | General Residential Zone, Schedule 2 |
| OVERLAY: | No Overlays |
| EXISTING LAND USE: | Development under construction |
| RELEVANT LEGISLATION: | Section 69 of the <i>Planning and Environment Act 1987</i> |
| RELEVANT POLICY: | <p><u>Planning Policy Framework</u></p> <p>Clause 11.01-1R - Settlement – Metropolitan Melbourne</p> <p>Clause 11.02-1S - Supply of Urban Land</p> <p>Clause 15.01-1S&R - Urban Design</p> <p>Clause 15.01-2S - Building Design</p> |

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/45077 for the development of a double storey dwelling at the side of the existing dwelling, 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 7 January 2027.**

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/45077 was issued 7 January 2016 for the development of a double storey dwelling at the side of the existing dwelling. Endorsed plans were issued at this time.

A Secondary Consent amendment was lodged to make minor changes to the approved development plans seeking changes to the construction materials and external finishes of the dwelling. In addition, the proposed pergolas sought to be converted to verandahs using different materials. This application was approved with endorsed amended plans issued 1 December 2016.

As part of the submission of the landscaping plan for endorsement, further minor amendments were made to the plans. The Landscape plan and amended development plans were issued 17 January 2020.

The permit has been extended on three (3) previous occasions being 8 May 2018, 4 December 2018 and 21 December 2022. The current expiry date for completion of the development is 7 January 2025. The current extension of time request was made on 25 November 2024.

Attachment 1 includes the current endorsed development plans.

Site and Surrounds

The subject site is located on the east side of Bletchley Road in Hughesdale. The land is irregular in shape with a frontage of 25.7m, a north boundary of 21.6m, an east (rear) boundary of 25.5m, a southern boundary of 21.3m and an overall site area of 539m².

Construction of the new dwelling is almost complete. Construction works were also required to be carried out to the existing dwelling and these works remain incomplete, together with landscaping and the resolution of drainage matters. It is expected that construction will be complete within 18 to 24 months.

Abutting land uses are primarily residential, with the exception of a car park for the car retailer associated with No. 1354-1358 Dandenong Road, Hughesdale located to the east of the site at 595-599 Neerim Road.

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 subject 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 issues have occurred with the construction of the new dwelling, resulting in the engaged builder abandoning the build and the owner taking the matter to VCAT. A new builder has now been engaged.

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 25 November 2024, within twelve (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 seven (7) 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 39% 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. There are no planning overlays affect the subject property.

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.

Given the stage of the constructed development, it is clear that the owner is not seeking to warehouse the Permit.

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 the development has been significantly delayed. The development is now well progressed and the new dwelling is almost completed.

The total elapse of time.

Seven (7) 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

The application is generally consistent with the changes to policy which have occurred since the issue of the planning permit. 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.

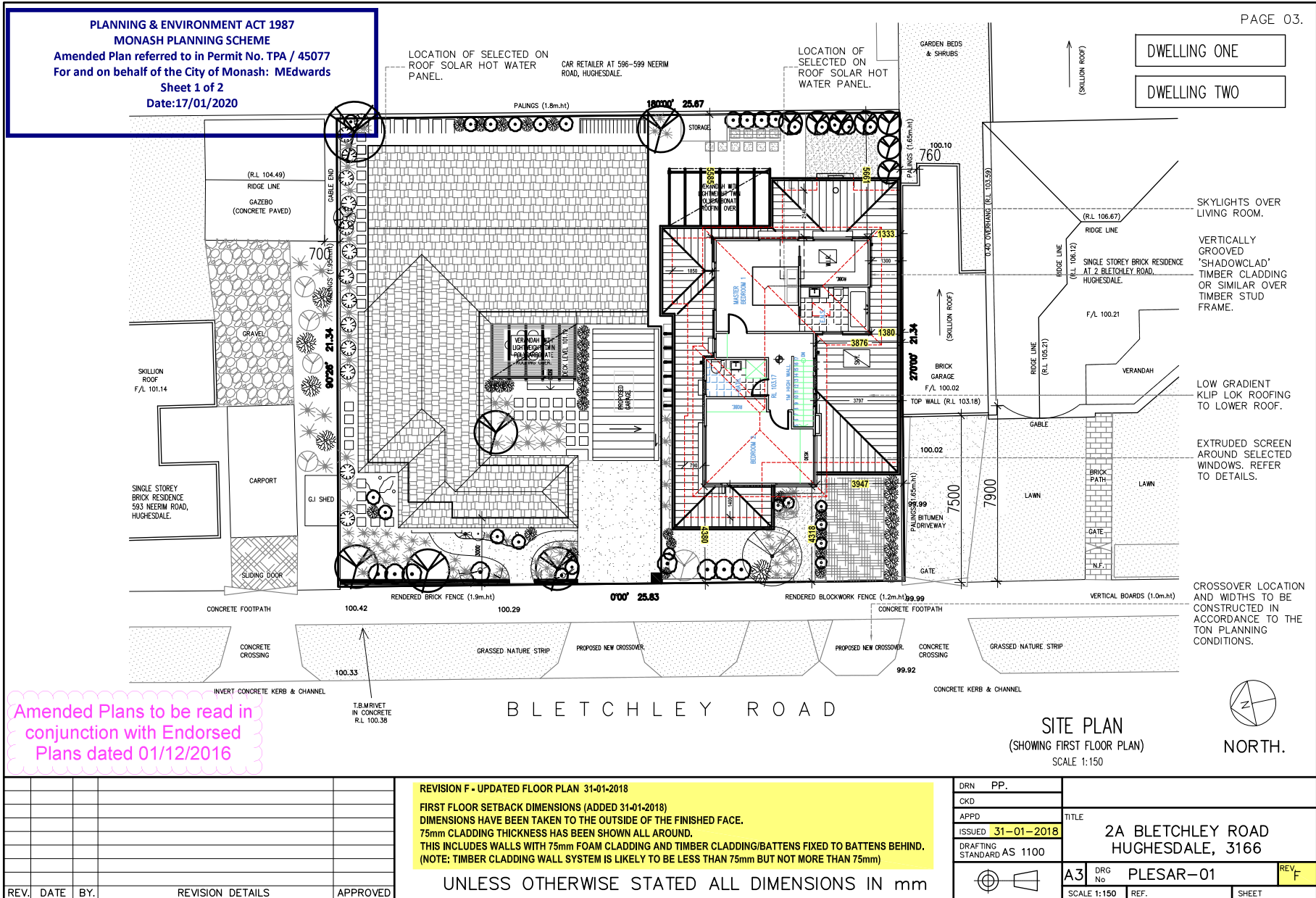
CONCLUSION

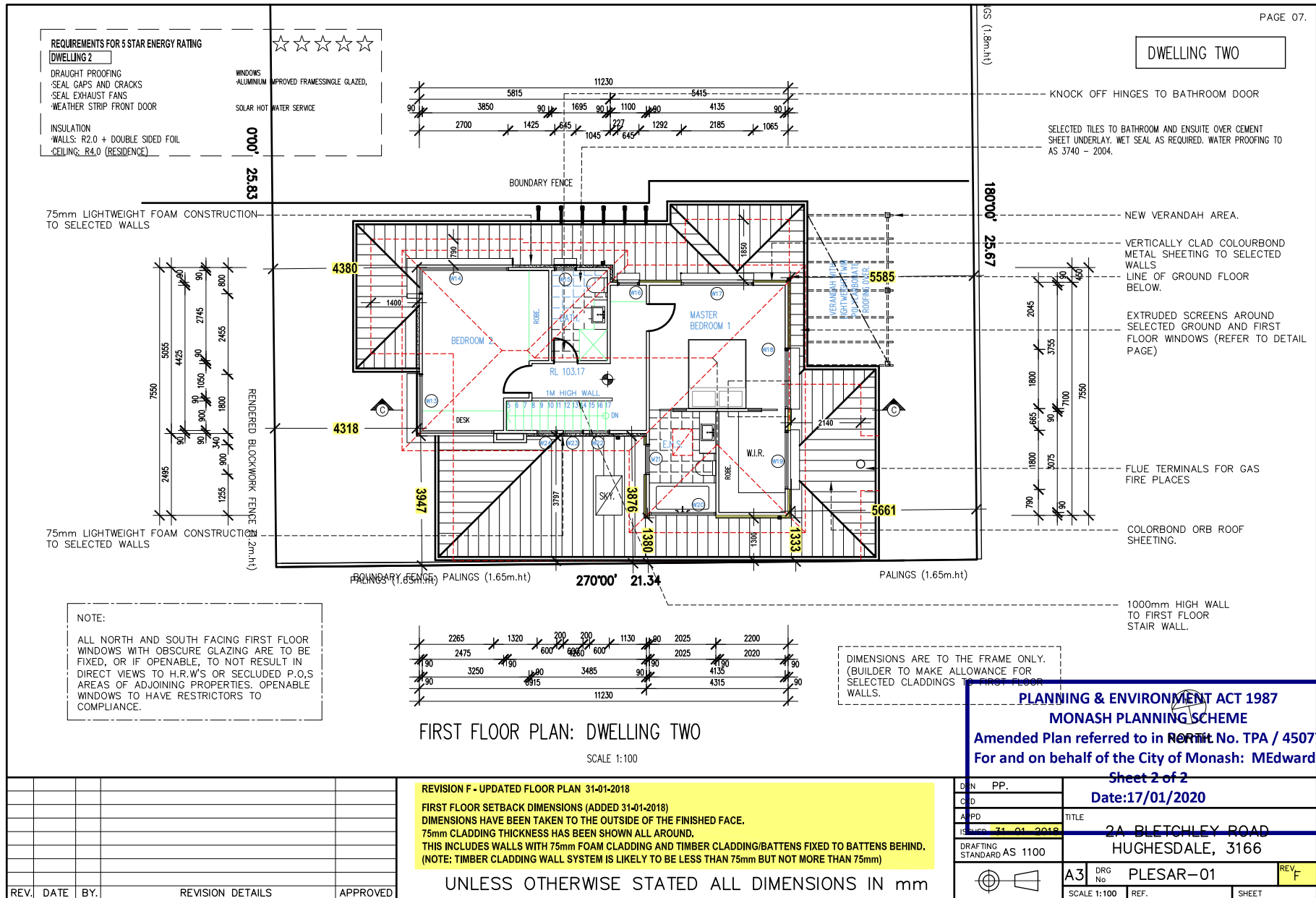
It is considered appropriate to grant a further extension of time to the permit.

The proposal on balance meets the tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, and as the application is to extend a permit and the development is in an advanced state of construction it is considered appropriate to extend the Permit to allow for completion. Having regard to all the circumstances, it is recommended that Council approve the extension of time application.

ATTACHMENT LIST

1. Approved Amended Endorsed Plans - 2 A Bletchley Rd [7.1.6.1 - 2 pages]
2. Aerial Photograph - 2 A Bletchley Rd [7.1.6.2 - 1 page]
3. Zoning and Overlays Map - 2 A Bletchley Rd [7.1.6.3 - 1 page]

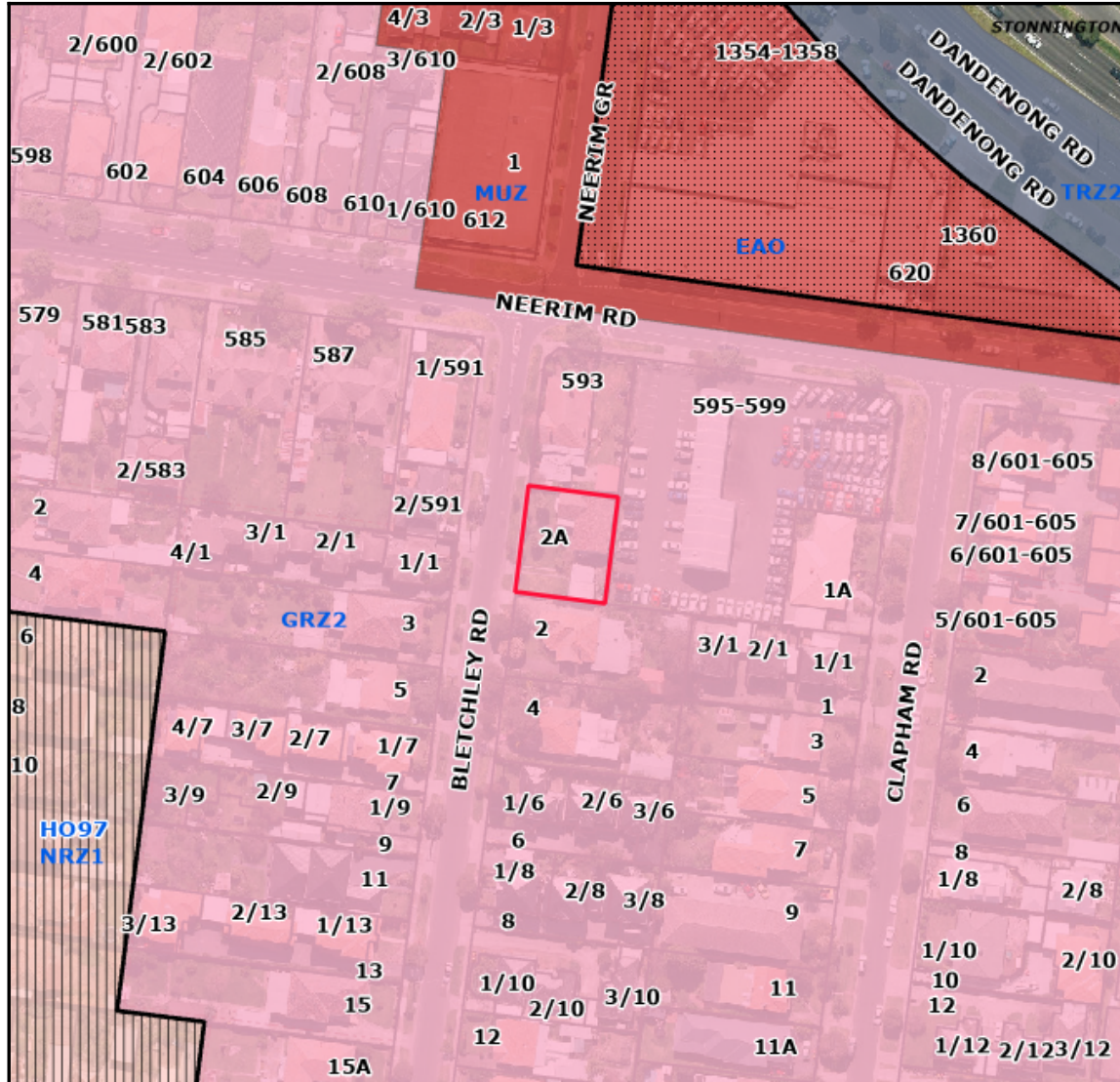








Planning Overlays and Zones



Legend

Planning Zones

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Planning Overlays

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Address

2A Bletchley Road HUGHESDALE VIC 3166

Base data is supplied under Licence from Land Victoria. This map is for general use only and may not be used as proof of ownership, dimensions or any other status. The City of Monash endeavours to keep the information current, and welcomes notification of omissions or inaccuracies.