

**1.2 21 KOONALDA AVENUE, GLEN WAVERLEY
EXTENSION OF TIME - DEVELOPMENT OF TWO (2) DOUBLE STOREY DWELLINGS
TPA/40362**

EXECUTIVE SUMMARY:

An application has been received for an extension of time to Planning Permit TPA/40362 for the development of two (2) double storey dwellings. The original permit was issued on 20 September 2012. 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 given that the approved development is consistent with existing planning controls and policy.

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

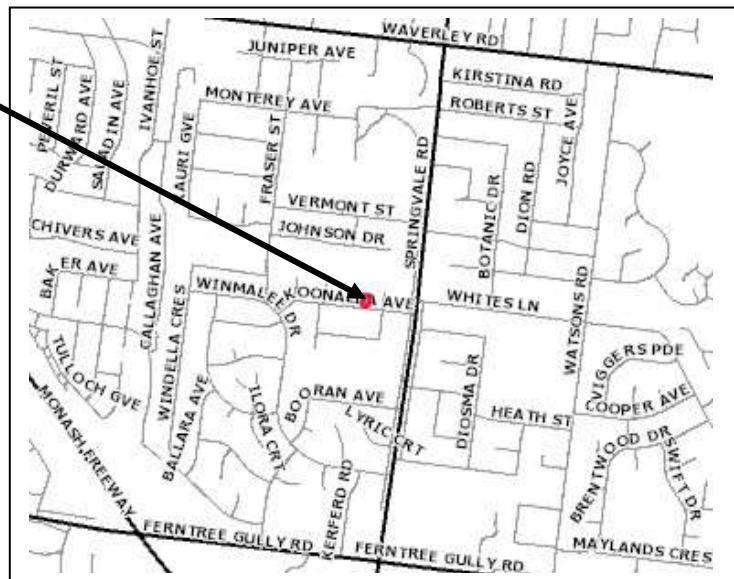
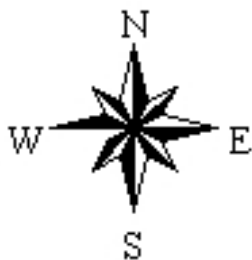
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Craig Smith
WARD:	Glen Waverley
PROPERTY ADDRESS:	21 Koonalda Avenue, Glen Waverley
ZONING:	General Residential Zone 3
OVERLAY:	None
EXISTING LAND USE:	Single dwelling
RELEVANT LEGISLATION:	Section 69 of the Planning and Environment Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



RECOMMENDATION:

That Council resolves to issue an **extension of time** to Planning Permit No. **TPA/40362** for development of two (2) new double storey dwellings with associated car parking and landscaping at 21 Koonalda Avenue, Glen 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 20 September 2022 and completed by 20 September 2024.
- That the applicant be advised it is unlikely a further extension of time will be granted given the time that has passed since the permit was granted.

BACKGROUND:**History**

Planning permit **TPA/40362** was issued on the 20 September 2012 for the development of two (2) double storey dwellings.

The original application was decided under delegation and there were two objections to the proposal.

Council has extended the permit on three previous occasions. The current expiry date was 20 September 2020. The current extension of time request was made on 8 September 2020 which was within 6 months of the expiry date in accordance with the requirements of the *Planning and Environment Act 1987*.

Development plans were endorsed on 28 September 2012.

The Site and Surrounds

The site is located on the north side of Koonalda Avenue. The site has an area of 654 square metres and contains a single storey dwelling.

The surrounding land comprises the following:

North: Single dwellings
South: Single dwellings
East: Single dwellings
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 commencement and completion date for a further two years. The permit was previously extended due to the ill health of the owner. The applicant advised that the owner is keen to commence development now, but is unable to relocate from the premises due to the COVID-19 restrictions. She is also elderly and therefore in a vulnerable group, making moving house unadvisable at the present time.

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 8 September 2020 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, the zoning has changed to General Residential Zone 3, introduced by Amendment C125, and the mandatory garden area requirement and height requirement has been introduced by the state- initiated Amendment VC110.

The changes introduced by Amendment VC110 are mandatory to the consideration of a development. The proposal meets the mandatory height requirement of no more than 11 metre or 3 storeys as the proposal is limited to double storey and a height of 7.8 metres. In terms of the Garden Area, 44% garden area is provided which would exceed the requirement of 35%.

The General 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, private open space and front fence height. The proposal complies with all standards of the zone. An assessment of the proposal against the changes to the schedule is provided as follows:

Standard	Requirement	Provided	Assessment
Street setback	7.6 metres	7.9 metres	Complies
Site coverage	50%	38%	Complies
Permeability	30%	41%	Complies
Landscaping	Provision for 5 canopy trees	Provision for at least 5 canopy trees	Complies
Side and rear setbacks	5 metre rear setback	5 metre rear setback	Complies
Private open space	75 square metres, including 35 square metres SPOS with minimum width of 5 metres	D1 - 187 square metres, including 45 square metres SPOS with minimum width of 5 metres D2 - 94 square metres, including 80 square metres SPOS with minimum width of 5 metres	Complies
Front fence	1.2 metre front fence	No fence	Complies

Overall, the proposed development is modest in scale and maintains the garden setting of the area.

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 would be difficult to show that the owner has no intention of commencing the development, but it is evident it is at a tipping point in terms of warehousing. Council does not have record of a builder being appointed or a building permit having been issued. Although an extension is supported at this time, no further extensions would be likely supported on this basis.

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

The owner was unable to commence the development within time due to ill health and being unable to relocate from the premises during the COVID-19 restrictions.

The total elapse of time.

Eight 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.

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.

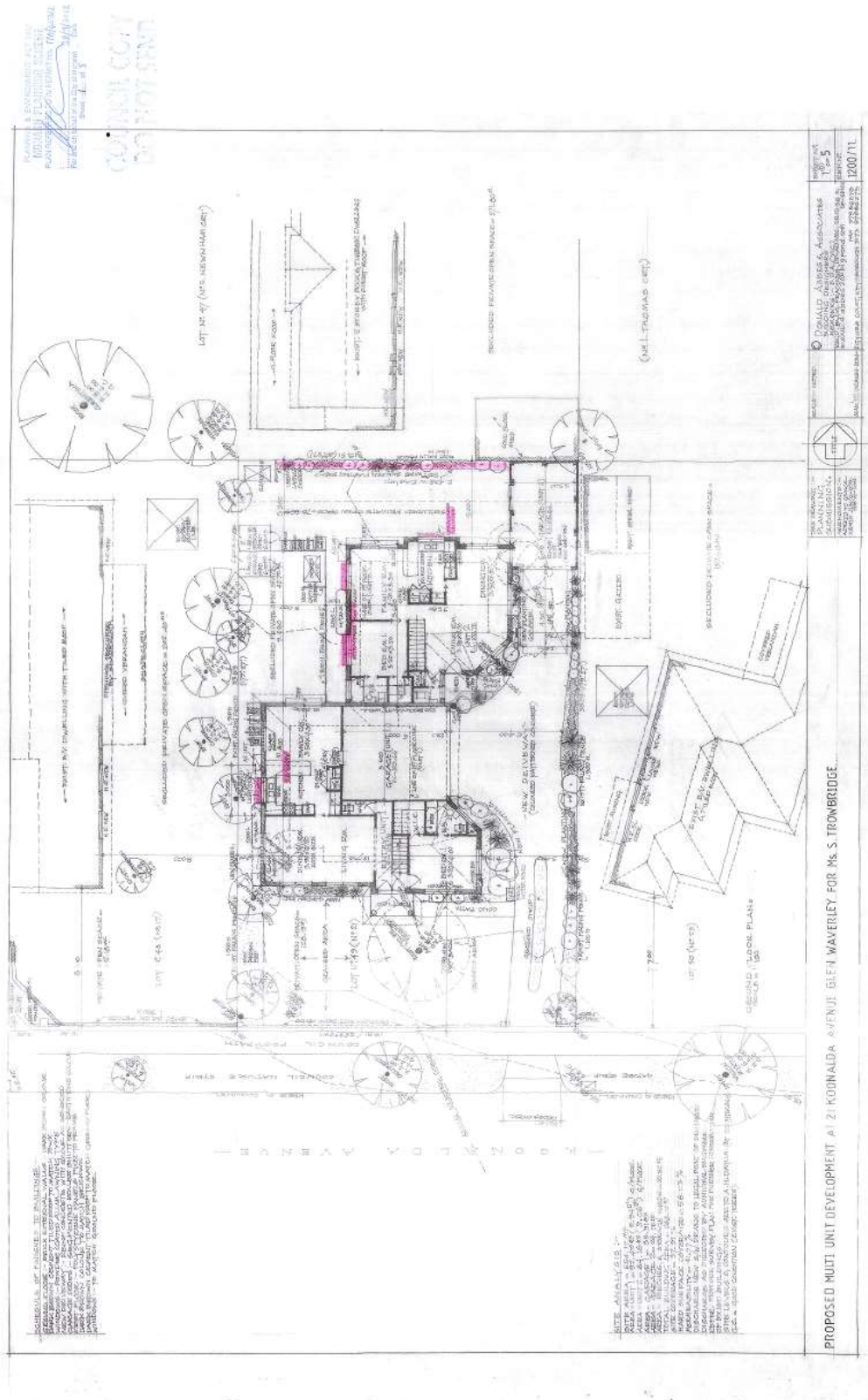
CONCLUSION:

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

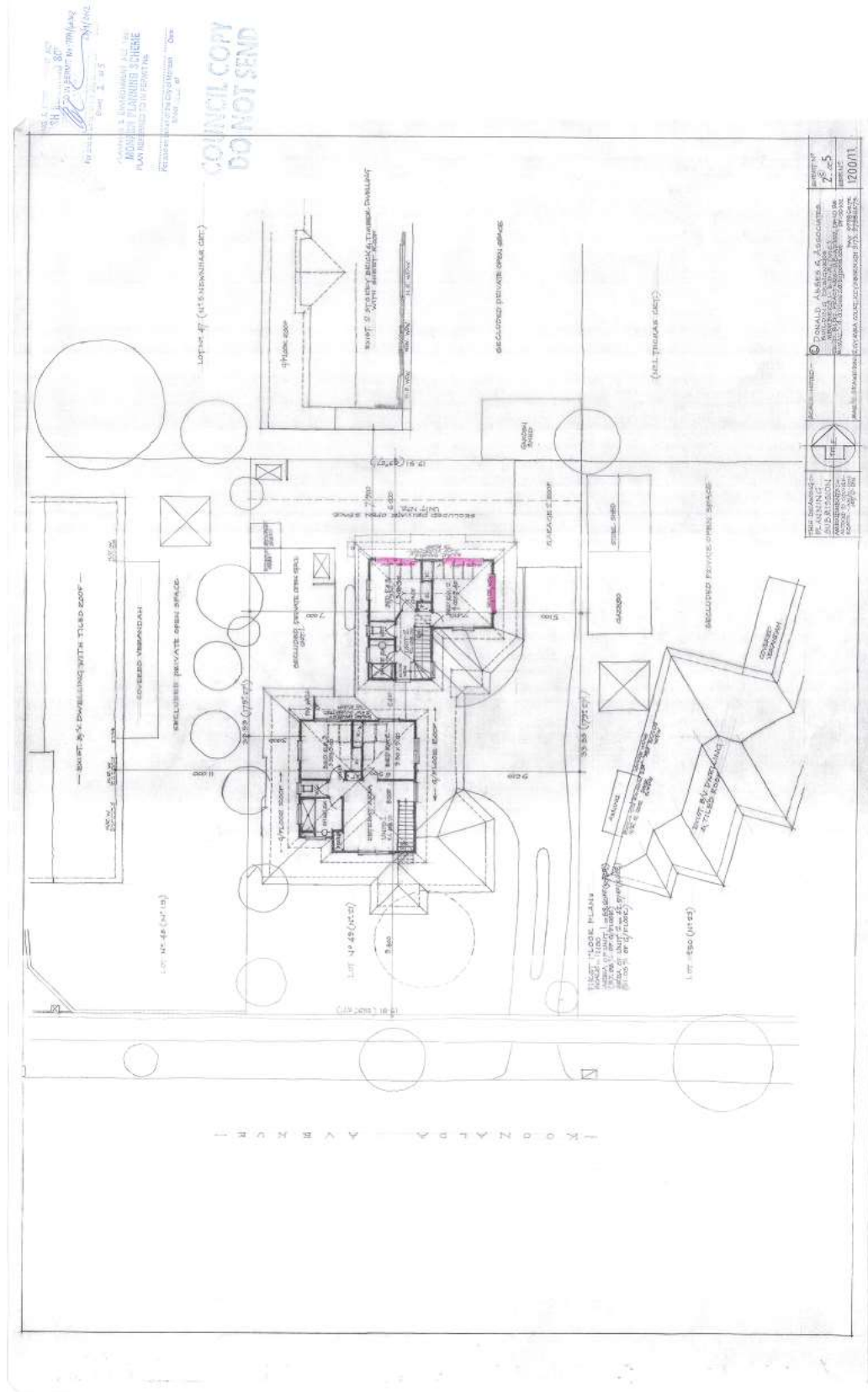
The proposal on balance meets the majority of tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, including and most importantly consistency with current planning policy objectives.

It is recommended the Council approve an extension of two years for the commencement and completion of the development. Considering the significant elapse time since the issue of the permit, it is recommended that the applicant be advised it is unlikely a further extension of time will be granted.

ATTACHMENT 1



ATTACHMENT 1 (Continued)



ATTACHMENT 1 (Continued)

