

**1.4 426-452 Highbury Road, Mount Waverley  
EXTENSION OF TIME - DEVELOPMENT OF LAND FOR 118 DWELLINGS AND  
SUBDIVISION  
TPA/24806/J**

**EXECUTIVE SUMMARY:**

An application has been received on 2 October 2020 to extend the completion date to Planning Permit TPA/24806. The permit allows development and subdivision of 118 dwellings now known as ‘Sienna Mount Waverley’. The original permit was issued on 25 January 1999. The permit has been extended on five previous occasions.

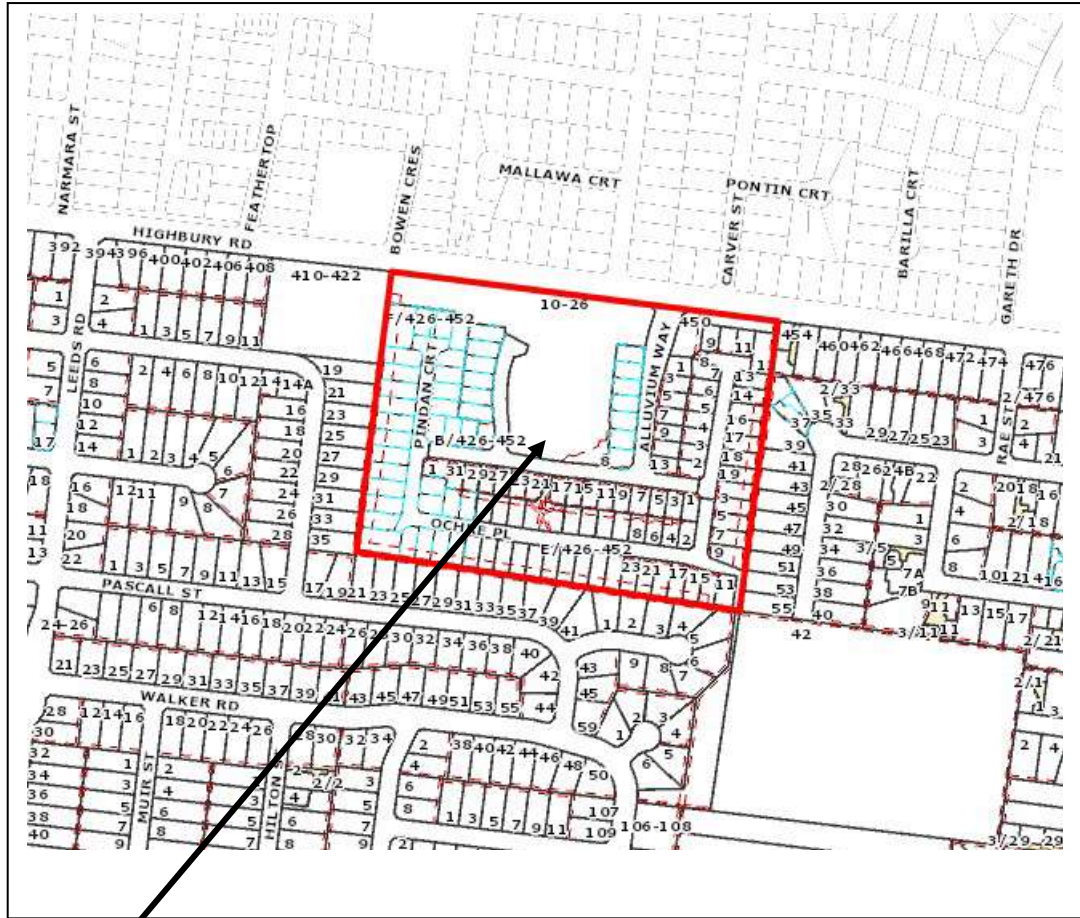
The development and subdivision has largely been finished with only the final stage comprising of 7 dwellings/lots to be completed.

Public notification of the application for an extension of time is not considered necessary given that the approved development is consistent with existing applicable planning controls and policy, and is nearing completion.

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

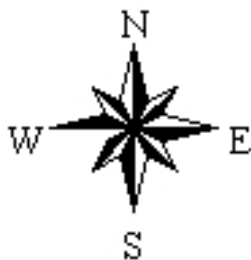
<b>RESPONSIBLE DIRECTOR:</b>	<b>Peter Panagakos</b>
<b>RESPONSIBLE MANAGER:</b>	<b>Natasha Swan</b>
<b>RESPONSIBLE PLANNER:</b>	<b>Michael Edwards</b>
<b>WARD:</b>	<b>Mount Waverley</b>
<b>PROPERTY ADDRESS:</b>	<b>426-452 Highbury Road, Mount Waverley</b>
<b>ZONING:</b>	<b>General Residential Zone – Schedule 3</b>
<b>OVERLAY:</b>	<b>None</b>
<b>EXISTING LAND USE:</b>	<b>Residential</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/24806/J** for development of land for 118 dwellings together with associated earthworks and landscaping and subdivision generally in accordance with the plans at 426-452 Highbury Road, Mount Waverley pursuant to the provisions of Section 69(2) of the *Planning and Environment Act 1987*.

The permit expiry dates extended as follows:

- 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 1 year. Accordingly, the development must be completed before 25 January 2022.
- 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/24806** was issued on the 25 January 1999 allowing development of land for 118 dwellings together with associated earthworks and landscaping and subdivision generally in accordance with the plans.

The development commenced between 1999 and 2001. The overall development is largely complete with only the construction and associated subdivision of 7 dwellings remaining.

Council has extended the permit on five previous occasions. The last extension was granted on 29 October 2019 to extend the completion date by two (2) years. The current expiry date for completion of the development was 25 January 2021. The current extension of time request was made within 12 months of the expiry date and can be considered in accordance with the requirements of the *Planning and Environment Act 1987*.

**The Site and Surrounds**

The subject site is located on the southern side of Highbury Road, approximately 500 metres west of the intersection of Highbury and Blackburn Roads in Mount Waverley.

Formerly a disused quarry, the land is now known as 'Sienna Mount Waverley'. Land surrounding the subject site is residential in nature.

Commencement of the development occurred well before the initial planning permit expiry date, with the majority of the development now complete.

The remaining seven dwellings (Stage 1A) are currently under construction to a point where framework and roofing of 4 dwellings has been completed and foundations established for the remaining 3 dwellings.

**PROPOSAL:**

The applicant has requested an extension of the permit's completion date for a further two (2) years due to unforeseen circumstances and restrictions on construction sites throughout the Victorian State Governments response to the Coronavirus (COVID-19) pandemic. The applicant intends to complete the remaining 7 lots by 2022.

**DISCUSSION:**

Pursuant to the provisions 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 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 2 October 2020 which is less than 12 months after the development was due to be completed. Accordingly, Council is able to consider a further extension to the 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.**

The zoning has changed several times since the permit was granted in 1999.

Since the issue of the original permit, the State initiated Amendment VC110 has been gazetted as of March 2017 and Amendment C125 Part 2 to the Monash Planning Scheme was approved November 2019.

The changes introduced by Amendment VC110 are mandatory to the consideration of a development. The table below outlines compliance with Amendment VC110;

<u>Garden Area applicable</u>	<u>Garden Area provided</u>
35%	47.1%

In accordance with the changes in Amendment C125 Part 2, the approved changes are to be considered with any new development. Under Amendment C125 Part 2, the new residential zone for the subject site is General Residential Zone — Schedule 3 (GRZ3).

Whether the land owner is seeking to "warehouse" the permit.

The land owner is not seeking to “warehouse” the permit as the owner is and has been actively working on the land over the past 20 years.

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

The applicant has advised that due to COVID-19 restrictions, further delays have prevented the completion of the final seven dwellings within the prescribed timeframe. COVID-19 restrictions have permitted the number of workers on site, and resulted in supply chain delays for construction materials.

The total elapse of time.

It has been 21 years since the original permit approval. Initial stages of the development suffered extensive delays as a consequence of engineering issues, and required substantial design modifications. Substantive works commenced in 2007-2008 and has been progressively developed over time. Despite the elapse of time it is considered reasonable to allow one last extension of 12 months for completion. It is unlikely that any subsequent request would be supported.

Whether the time limit originally imposed was adequate.

The permit was subject to standard time limit conditions. Given the scale of development and how it has ended up being delivered in stages, it is considered reasonable to provide more time to allow completion.

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

The conditions of permit did not impose any unreasonable requirements that would cause an economic burden.

The development of the site has encountered a number of challenges and unforeseen delays due to its elevation and other site characteristics which have demanded additional engineering requirements. Additionally, the unforeseen circumstances and restrictions on construction sites throughout the Victorian State Governments response to the Coronavirus (COVID-19) pandemic has made it challenging to complete developments at such a scale to that of this application.

The probability of a permit issuing should a fresh application be made  
In the circumstances of a fresh application being made, it would most likely be approved as there is adequate justification for the remaining lots to be developed. Furthermore, the development would comply with current policy, including Amendment VC110 by exceeding the necessary garden area requirements.

#### Other factors

It is anticipated that construction of Stage 1A, which entails the last 7 lots to be developed out of the total 118 lots, is expected to be completed in 2022. An extension of one year is considered an acceptable time frame to enable completion of the development.

The remaining seven dwellings are currently under construction to a point where framework and roofing of 4 dwellings has been completed and foundations established for the remaining 3 dwellings.

The aerial photo below gives an indication of the current (7 September 2020) status of works on the land:



Source: Near Map 7 September 2020

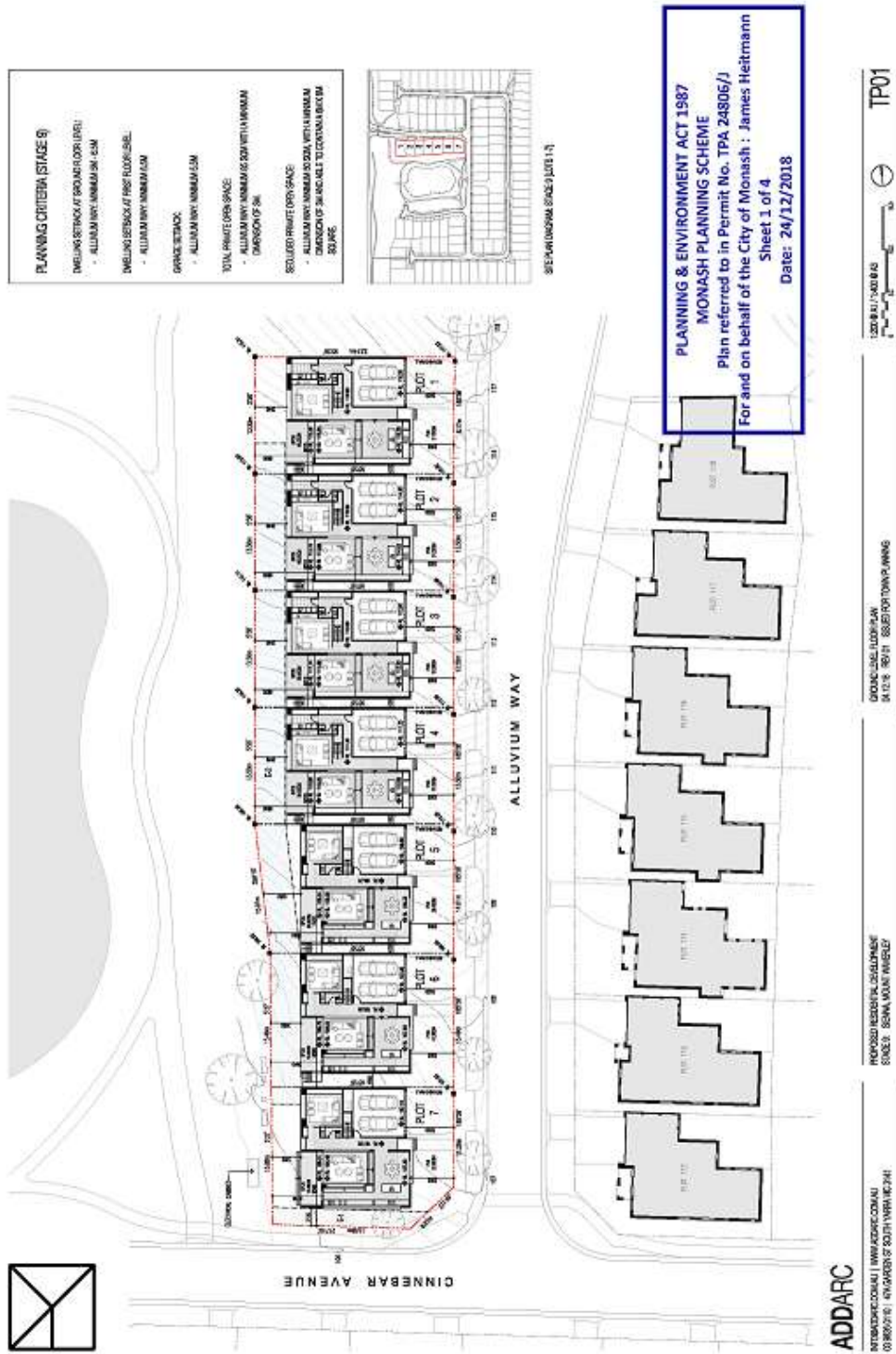
**CONCLUSION:**

It is considered appropriate to grant a further extension of time to the permit to allow for final completion of the development and subdivision. The development outcome is considered appropriate as this is the last stage of development, and the built form will be consistent with the other 111 dwellings that have been completed.

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 one last extension of one year for the completion of the final stage of the development. Considering the significant elapse of 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



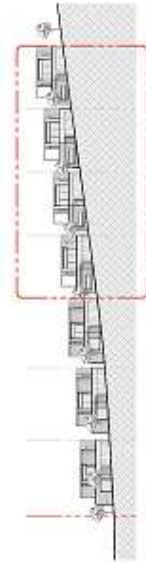
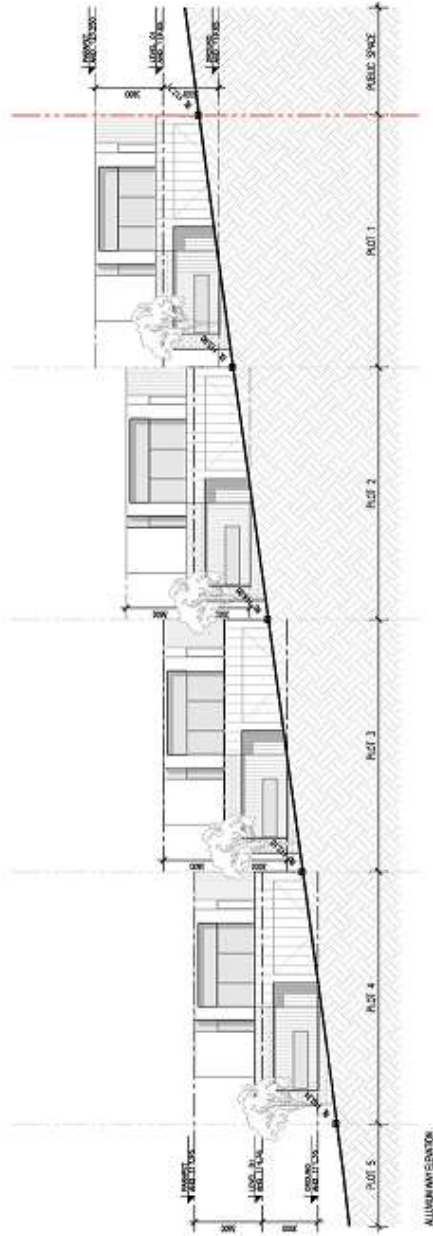


ATTACHMENT 1 (Continued)



ATTACHMENT 1 (Continued)

PLANNING & ENVIRONMENT ACT 1987  
 MONASH PLANNING SCHEME  
 Plan referred to in Permit No. TPA 24806/J  
 For and on behalf of the City of Monash : James Heitmann  
 Sheet 3 of 4  
 Date: 24/12/2018



**ADDARC**

1078/2018/0041 | 1078/2018/0041  
 03/06/2018 | 4/11/2018 SOUTH VERRILLI

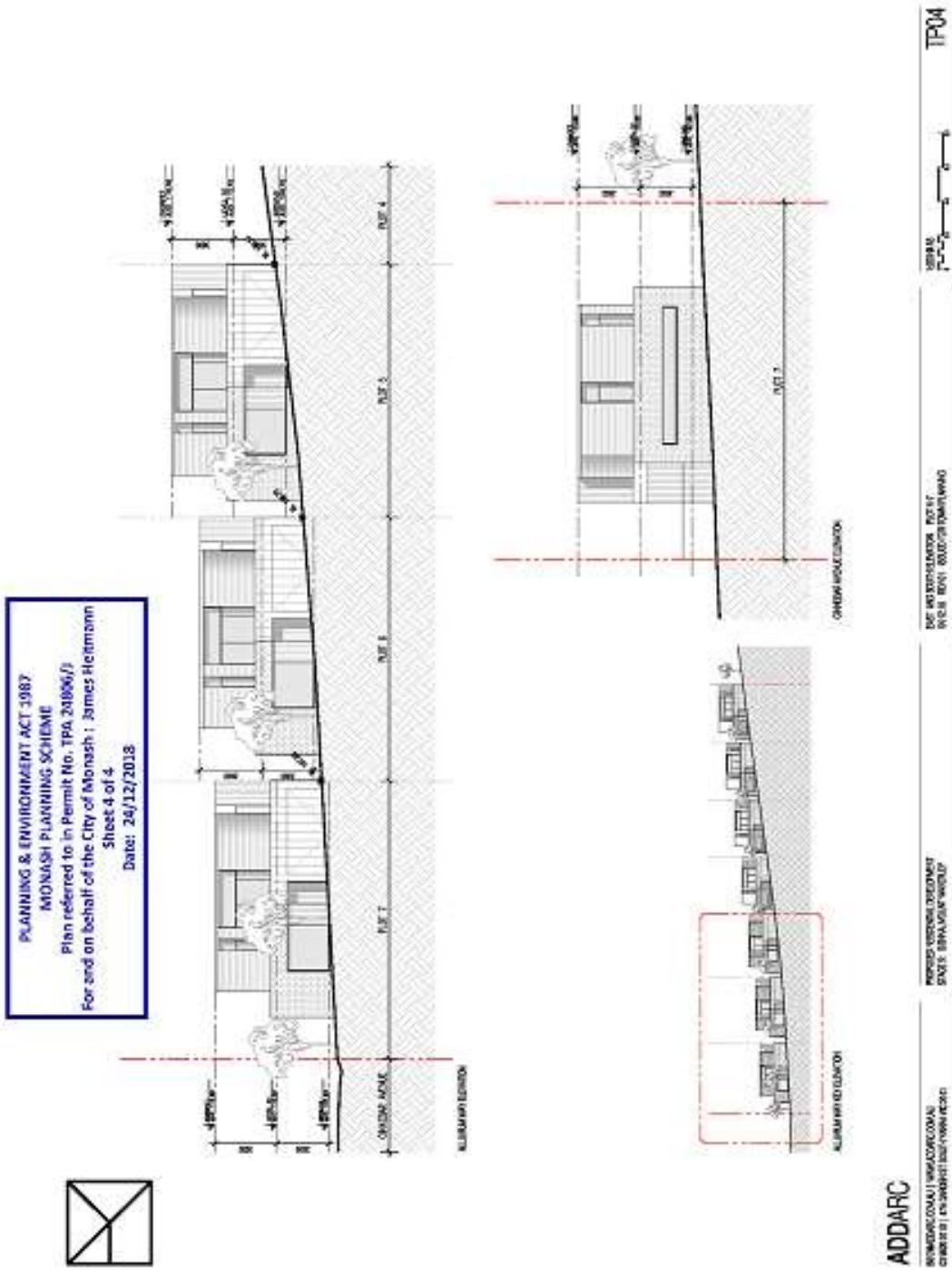
PROPOSED RESIDENTIAL DEVELOPMENT  
 STREET: BENA MOUNT WAYERLEY

SCALE ELEVATION: PLOT 1-4  
 DATE: 24/12/2018 ISSUED FOR TOWN PLANNING



TP03

ATTACHMENT 1 (Continued)



ATTACHMENT 1 (Continued)

