

**1.5 1 EVELYN STREET, CLAYTON
EXTENSION OF TIME - CONSTRUCTION OF A TWO LEVEL BUILDING PLUS
BASEMENT CAR PARKING COMPRISING EIGHT DWELLINGS
TPA/38345/A**

EXECUTIVE SUMMARY:

Council at its meeting of 29 June 2021 granted an extension of time to the permitted timeframe for commencement of development approved by Planning Permit TPA/38345 to construct a two level building plus basement car parking comprising of eight dwellings. The original permit was issued on the 6 May 2011.

Council resolved to grant a 3 month extension to the commencement date of the permit. Following the Council Meeting it has become apparent that the adopted recommendation included an error regarding specified dates for commencement and completion.

This report seeks to correct the specified dates and allow for a further extension as a consequence of the error.

The proposed extension of time is appropriate and it is recommended that a six month extension to the permit is granted accordingly to require commencement of the development by 6 November 2021.

RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Michael Edwards
WARD:	Oakleigh
PROPERTY ADDRESS:	1 Evelyn Street, Clayton
ZONING:	General Residential Zone 3
OVERLAY:	No overlay
EXISTING LAND USE:	Single dwelling
RELEVANT LEGISLATION:	Section 69 of the Planning and Environment Act 1987

RECOMMENDATION:

That Council resolves to issue an **Extension of time** to Planning Permit No. **TPA/38345/A** to develop the land by constructing a two level building plus basement car parking comprising of eight dwellings with associated landscaping at 1 Evelyn Street, Clayton, 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 commencement and completion of the development be extended for a **further 6 months**. Accordingly, the development must be **commenced by 6 November 2021** and **completed by 6 November 2023**.
2. 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 and the non-compliance with Council Policy.

BACKGROUND:**History**

Planning Permit TPA/38345 was issued on the 6 May 2011 allowing the development of the land by constructing a two level building plus basement car parking comprising of eight dwellings with associated landscaping. Development plans were endorsed pursuant to the requirements of condition 1 of the permit on 15 February 2018.

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

Council has extended the permit on four (4) previous occasions.

A further (fifth) request to extend the commencement date was received in April 2021. The matter was considered at the 29 June 2021 Council Meeting, being Item 1.6 on the meeting agenda.

At the meeting Council determined:

That Council resolves to issue an Extension of time to Planning Permit No. TPA/38345/A to develop the land by constructing a two level building plus basement car parking 9 comprising of eight dwellings with associated landscaping at 1 Evelyn Street, Clayton, 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 commencement and completion of the development be **extended for a further 3 months**. Accordingly,*

*the development must be **commenced by 6 August 2022** and **completed by 6 August 2024**.*

2. 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 and the noncompliance with Council Policy.

As emphasised above, it would appear that in drafting the recommendation, Council officers inadvertently specified the incorrect year in the dates for commencement and completion of the development well beyond the 3 months referred to in the recommendation and discussed throughout the body of the report considered by Council.

This report seeks to correct the error, clarify the extended dates and has regard for the additional delay suffered by the applicant.

DISCUSSION:

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

“Before the permit expires or within six 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 15 March 2019, before the 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*.

As previously indicated, an error was made by Council officers in drafting the adopted recommendation which specified the incorrect commencement and completion dates. This report seeks to correct the error and allow for an extension of six months from the expiry of the permit to allow for the time lost.

The report considered at the June Council Meeting included consistent reference to granting a 3 month extension to the permit, as referenced in the adopted recommendation. No doubt exists that the basis of Council’s approval was that it be limited to 3 months. The merits of the previous approved extension are not in dispute, and the basis of the previous extension considered to be sound.

The corrected timeframes will require commencement of the development 6 November 2021 and completion by 6 November 2023. Additional commencement time has been afforded to the applicant as a consequence of the additional delay experienced as a consequence of the error.

The applicant has been made aware of the error that has occurred and procedural requirements requiring the matter to be determined by Council. The applicant has advised that the modified timeframes are workable and the development should be capable of commencement by November 2021.

CONCLUSION:

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

It is recommended the Council approve an extension of six months from the expiry date of the permit for the commencement and completion of the development.