

**1.4 10 LEGON ROAD, OAKLEIGH SOUTH
EXTENSION OF TIME - DEVELOPMENT OF TWO (2) DOUBLE STOREY DWELLINGS
AT THE REAR OF THE EXISTING DWELLING
TPA/37785**

EXECUTIVE SUMMARY:

An application has been received for an extension of time to Planning Permit TPA/37785 for the development of two (2) double storey dwellings at the rear of the existing double storey dwelling (which is to be modified) with associated car parking and landscaping. The original permit was issued on the 12 March 2010. The permit has been extended on four (4) previous occasions.

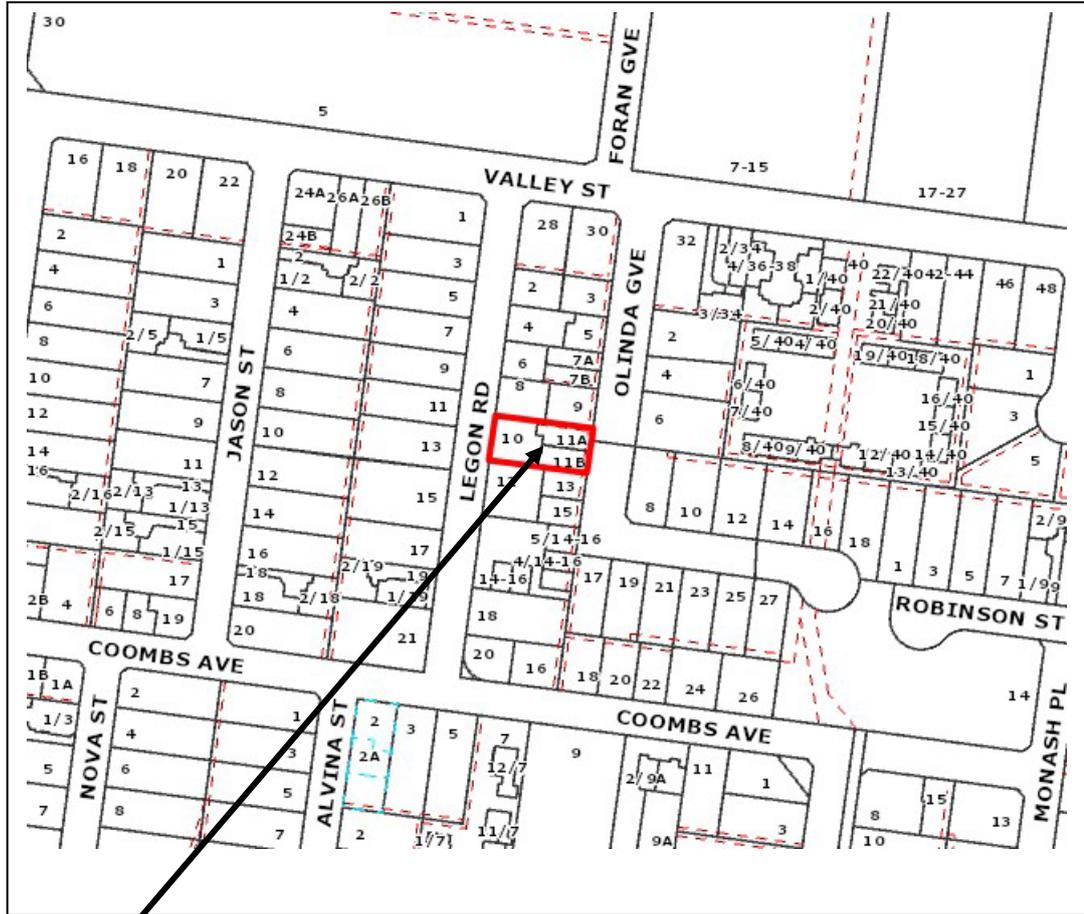
Construction of the development has commenced within time and is at lock up stage.

Public notification of the application for an extension of time is not considered necessary given the approved development is consistent with existing planning policy.

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

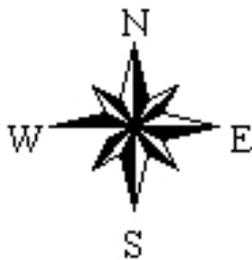
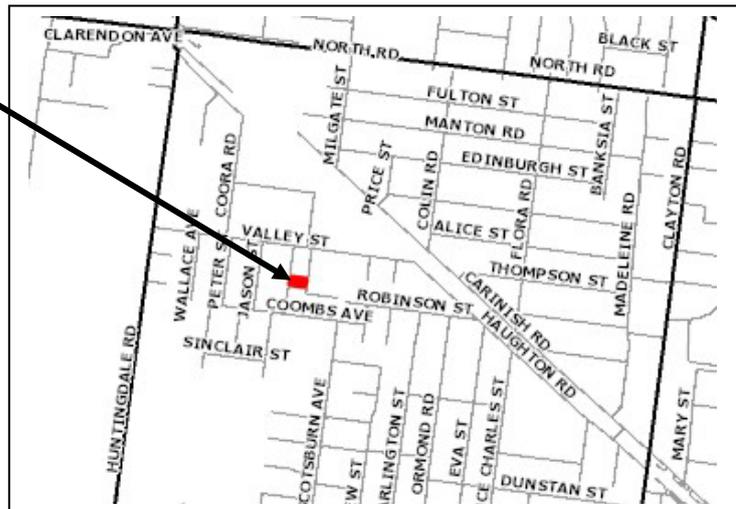
RESPONSIBLE DIRECTOR:	Peter Panagakos
RESPONSIBLE MANAGER:	Natasha Swan
RESPONSIBLE PLANNER:	Danielle Loh
WARD:	Oakleigh
PROPERTY ADDRESS:	10 Legon Road, Oakleigh South
ZONING:	General Residential Zone – Schedule 3
OVERLAY:	No Overlays
EXISTING LAND USE:	Dwellings
RELEVANT LEGISLATION:	Section 69 of the P&E Act 1987

LOCALITY PLAN



SUBJECT SITE

NEIGHBOURHOOD PLAN



10 Legon Road, Oakleigh South - Extension Of Time - Development Of Two (2) Double Storey Dwellings At The Rear Of The Existing Dwelling

RECOMMENDATION:

That Council resolves to issue an **Extension of time** to Planning Permit No. **TPA/37785** for development of two (2) double storey dwellings at the rear of the existing double storey dwelling (which is to be modified) with associated car parking and landscaping at 10 Legon Road, Oakleigh South, 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 completed by 12 March 2022.
- That the applicant be advised it is unlikely a further extension of time will be granted given the time that has elapsed since the permit was granted.

BACKGROUND:**History**

Planning Permit TPA/37785 was issued on the 12 March 2010 for the development of two (2) double storey dwellings at the rear of the existing double storey dwelling. The two new dwellings front Olinda Grove. The original application was decided under delegation and there were no objections to the proposal.

Planning permit TPA/41111 was issued on 13 February 2013 for a three (3) lot subdivision. Statement of Compliance was issued 6 February 2014.

The development had commenced within the time frame and the two additional dwellings have been constructed and are at lock up stage. The driveways and landscaping provisions have yet to be completed.

Council has extended the permit on four (4) previous occasions. The revised expiry date for completion was 12 March 2020. The current extension of time request was made within 12 months of the expiry date in accordance with the requirements of the *Planning and Environment Act 1987*. The current extension of time request was made on 14 July 2020.

The Site and Surrounds

The subject site is located on the eastern side of Legon Road. The subject site measures 19 metres by 40.8 metres, with a total site area of 728 square metres. Construction of the development has commenced and is at lock up stage.

Land surrounding the subject site features mainly residential dwellings, comprising of both single and double storey dwellings. At the northern end of Legon Road, is the Oakleigh South Industrial 1 Zone along Valley Street.

PROPOSAL:

The applicant has requested an extension of the permit's completion date for a further two (2) years. This is due to delays associated with the builders for the project, one of whom went into liquidation part way through and the current COVID-19 situation.

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 14 July 2020, within 12 months after the expiry date in accordance with the requirements of the *Planning and Environment Act 1987*. 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.

Since the permit was issued, a mandatory garden area requirement and height requirement has been introduced by the state- initiated Amendment VC110, which was gazetted on 27 March 2017. Further to this, the zoning has changed to General Residential Zone 3, introduced by Amendment C125 Part 2 which was gazetted in November 2019. In addition, our new policy Clause 22.01 Residential Development and Character Policy was also introduced at this time.

The changes introduced by Amendment VC110 are mandatory to the consideration of a development. The proposal meets the mandatory height requirement of 11 metres or 3 storeys as the proposal is limited to double storey and a height of 8.1 metres. In terms of the Garden Area, an assessment of the

assessed development plans, the garden area calculation is approximately 35% which meets the requirement of 35% (for lots over 650 square metres).

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, canopy tree provisions, private open space and front fence height. An assessment of the proposal against the changes to the schedule is provided as follows:

Standard	Requirement	Provided	Assessment
Street setback	7.6 metres	N/A - Existing dwelling is being retained.	N/A
Site coverage	50%	44.29%	Complies
Permeability	30%	36.4%	Complies
Landscaping	Provision for 3 canopy trees	Provision for at least 3 canopy trees	Complies
Side and rear setbacks	5 metre rear setback	As Dwelling 2 and 3 are behind Dwelling 1 and there being 2 street frontages, there is no rear setback.	Complies
Private open space	75 square metres, including 35 square metres SPOS with minimum width of 5 metres	At least 75 square metres, including 35 square metres SPOS with minimum width of 5 metres	Complies
Front fence	Maximum 1.2 metre high front fence	Existing front fence to be reduced in height to 1.2 metres maximum height.	Complies

Overall, building bulk and massing, landscaping opportunities, car parking, private open space and amenity impacts are considered appropriate and in keeping with the area and the objectives of the zone.

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. Council's records indicate that the development is nearly complete. Therefore, it would be difficult to show that the owner has no intention of completing the development.

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

The owner was unable to complete the development within the time due to delays associated with the builder and impact of COVID-19. Construction of the development was at the initial stages at the time of the previous extension application and approval in 2018. The ground floor slab has been laid and the frame work had been erected for the two additional dwellings. Since then, the dwellings have been constructed to lock up stage. The driveways and landscaping

are yet to be completed. The reasons for the delays given by the applicant were that the architect prolonged the initial design work and then the first appointed builder only completed the first stage of the development in the extended permit time period as they then went into liquidation. The new builder was appointed to complete the work and the dwellings are now at lock up stage.

The total elapse of time.

The total elapse time to complete the development has been 6 years.

Whether the time limit originally imposed was adequate.

The time limit originally imposed was two years to commence and two years to complete, which are standard conditions of a permit and considered an adequate time to commence and complete a development which proposes two new dwellings.

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

There would likely be a significant economic burden on the land owner if the permit was not extended considering the cost of the aforementioned activities completed by the owner/developer.

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 broadly consistent with current planning policy as discussed above.

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 consistency with current planning policy objectives. The development outcome is appropriate, the built form is consistent with the neighbourhood character and objectives of the zone.

It is considered that the development has been substantially completed and an extension of time to the completion date of the permit would allow the remaining works, including the provision of landscaping, and required inspections to be completed.

It is recommended the Council approve an extension of two years for the completion of the development despite the modest amount of works required to complete, given the uncertainty regarding Covid-19. The permit holder will have until 12 March 2022 to complete the works. However, considering the elapsed time, the applicant be advised a further extension of time may not be granted.

ATTACHMENT 1 (Continued)

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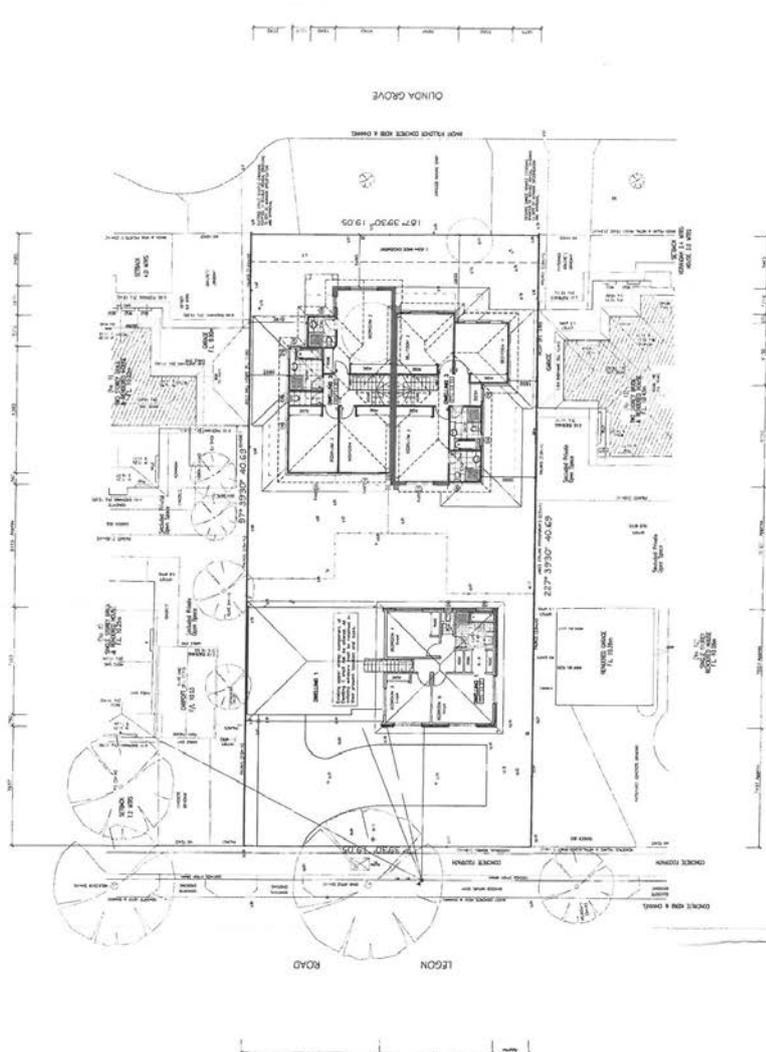


DEVELOPMENT SUMMARY

INCLAS 1	INCLAS 2	INCLAS 3	INCLAS 4	INCLAS 5	INCLAS 6	INCLAS 7	INCLAS 8	INCLAS 9	INCLAS 10	INCLAS 11	INCLAS 12	INCLAS 13	INCLAS 14	INCLAS 15	INCLAS 16	INCLAS 17	INCLAS 18	INCLAS 19	INCLAS 20
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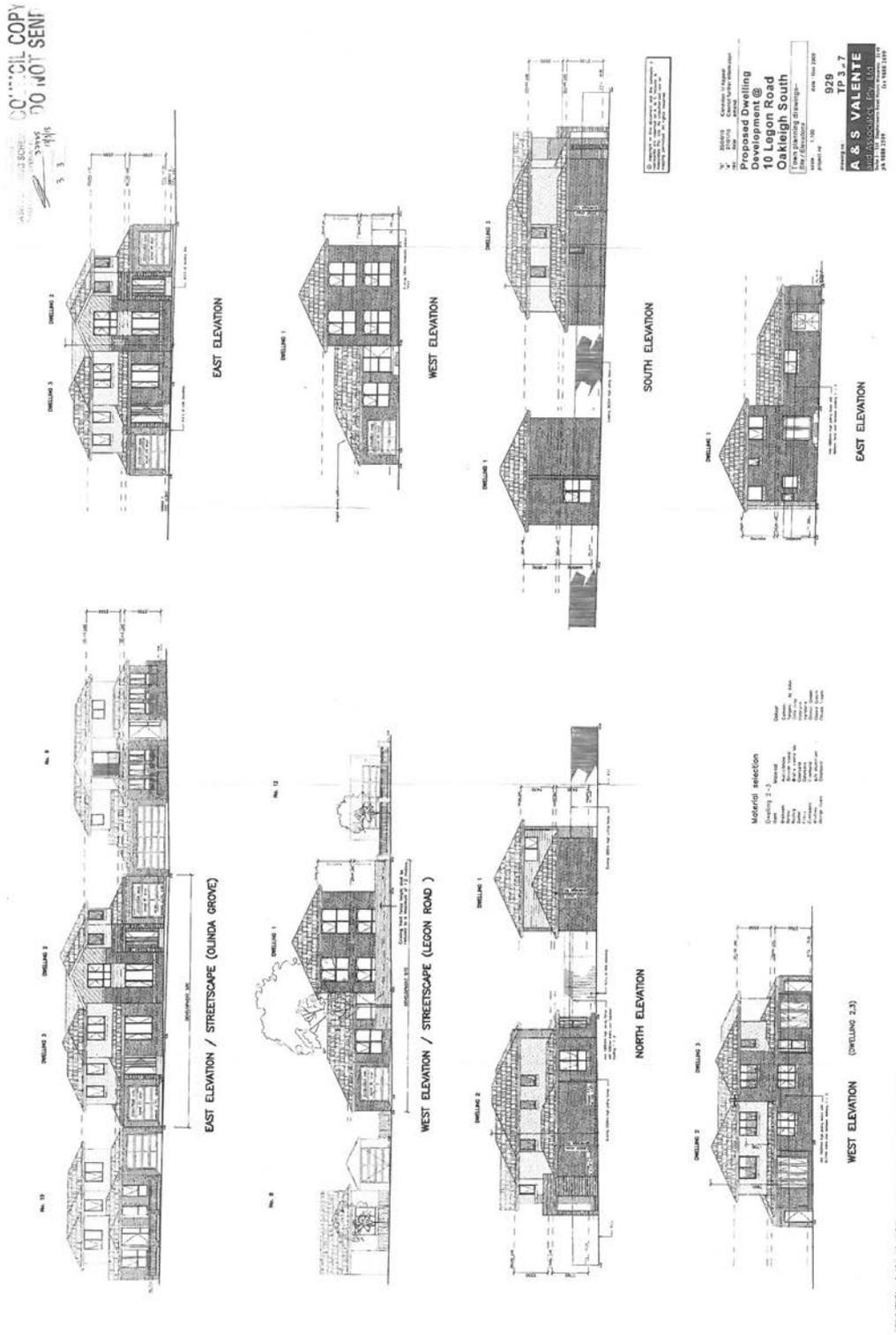
PROPOSED DEVELOPMENT

929
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10 LEGON ROAD
OAKLEIGH SOUTH
VIC 3166
PH: 03 9594 1188
WWW.AANDSVALENTE.COM.AU



FIRST FLOOR PLAN

ATTACHMENT 1 (Continued)



10 Lecon Road, Oakleigh South - Extension Of Time - Development Of Two (2) Double Storey Dwellings At The Rear Of The Existing Dwelling