

7.1.2 TPA/45026 - 36 MELINGA CRESCENT, CHADSTONE - EXTENSION OF TIME

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EXECUTIVE SUMMARY

This application is for an extension of time to Planning Permit TPA/45026 for the development of two double storey dwellings at 36 Melinga Crescent, Chadstone.

The original permit was issued on 11 May 2016.

The permit has been extended on three (3) previous occasions. The latest extension of time was granted on 5 July 2023 requiring the development to be completed by 11 May 2025. The development is partially complete, with the rear dwelling at lock up stage and the front dwelling at frame stage.

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 one (1) year be granted to complete the development.

RESPONSIBLE PLANNER:	Tiffany Neofitou
WARD:	Mayfield Ward
PROPERTY ADDRESS:	31 Melinga Crescent, Chadstone
ZONING:	General Residential Zone, Schedule 3
OVERLAY:	N/A
EXISTING LAND USE:	Residential
RELEVANT POLICY:	<u>Planning Policy Framework</u> Clause 11.01-1R - Settlement – Metropolitan Melbourne Clause 11.02-1S - Supply of Urban Land Clause 15.01-1S&R - Urban Design Clause 15.01-2S - Building Design Clause 15.01-4S & R - Healthy Neighbourhoods

That Council resolves to issue an Extension of time to Planning Permit No. TPA/45026 for the construction of two double storey dwellings at 36 Melinga Crescent, Chadstone pursuant to the provisions of Section 69 (2) of the Planning and Environment Act 1987.

- ## COUNCIL PLAN STRATEGIC OBJECTIVES

Ensure an economically, socially, and environmentally sustainable municipality.

Pursue a planning framework that meets Monash needs.

BACKGROUND

History

Planning Permit TPA/45026 was issued on 11 May 2016 for the construction of two double storey dwellings.

The original application was decided under delegation and the development plans were endorsed on 2 August 2016.

The permit has been extended on three (3) previous occasions being June 2018, June 2021 and July 2023. The current expiry date for completion of the approved development was 11 May 2025.

This extension of time request was made on 5 May 2025, which is before the expiry date of the permit and in accordance with the requirements of the *Planning and Environment Act 1987*.

Attachment 1 details the approved plans forming part of the application.

Site and Surrounds

The subject site is located on the northern side of Melinga Crescent in Chadstone. The site is rectangular in shape and has an overall site area of approximately 650 square metres.

The site was previously developed with a single storey fibro sheet dwelling with tiled pitch roof. A crossover is located on the south-western corner of the site. Abutting land uses are residential and comprise of single and double storey dwellings.

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 site and surrounding land.

PROPOSAL

The applicant has requested an extension of the permit completion date by a further two (2) years, stating reasons for the significant delays being due to financial constraints and the rising cost of labour and building costs.

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 5 May 2025, before the permit expired. Accordingly, Council can consider a further extension to the completion date for the development under the provisions of 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 9 years.

The Supreme Court decision *Kantor v Murrindindi Shire Council 18 AATR 285 (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.
- 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, amendments which may have an effect on the proposal include:

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 development. The proposal can meet the mandatory garden area requirement, with an assessment demonstrating that it is at 38% which is in excess of the 30% required for lots between 500-650 square metres.

Amendment VC267 gazetted on 6 March 2025 changed the Victoria Planning Provisions (VPP) and all Planning Schemes in Victoria by implementing new residential development planning assessment provisions. This reform is a part of a larger reform initiative aimed at streamlining the planning process and increasing housing supply. The Townhouse and Low-Rise Code (a new and replaced Clause 55) applies to developments involving two or more dwellings on a lot and includes low rise apartments up to three storeys in height. The resulting code has reduced restrictions for development and removes third party appeal rights from applications which comply with the code. These changes do not affect the consideration of this extension of time request.

Whether the landowner 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.

Whilst a considerable period of time has passed since the original approval, it is acknowledged that the COVID-19 pandemic has caused significant delays in building construction. The increase in building costs is also a contributing factor to the delay in completing any approved building works.

Considering this, it would be difficult to show that the owner has no intention of completing the development with Unit 1 at frame stage and Unit 2 almost complete.

The total elapse of time.

Nine (9) years have elapsed between the time that the planning permit was issued and this 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 four years for completion, which is a standard condition of approval and considered adequate for this development.

The economic burden imposed on the landowner by the permit.

It is not considered that any conditions of the permit would have placed additional economic burden that could have affected the completion of this development. The conditions are standard for this sort of development.

It is acknowledged that there would likely be an economic burden on the landowner if the permit was not extended, considering the stages that the units are currently at 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

Whilst a full assessment against the new Clause 55 (Townhouse and low-rise code) provisions has not been undertaken, it is likely that a permit would issue should a fresh application be made, considering the recent changes introduced by Amendment VC267 are less restrictive, particularly in terms of overlooking, front and rear setbacks and private open space provision.

The development demonstrated a high level of compliance with ResCode at the time of approval, with an appropriate scale and form and providing a suitable response to neighbourhood character. The development also meets the mandatory garden area requirements (introduced after the original development was approved.)

The conditions on the existing permit issued are still valid and would be similar to those placed on any permit should it be issued today.

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.

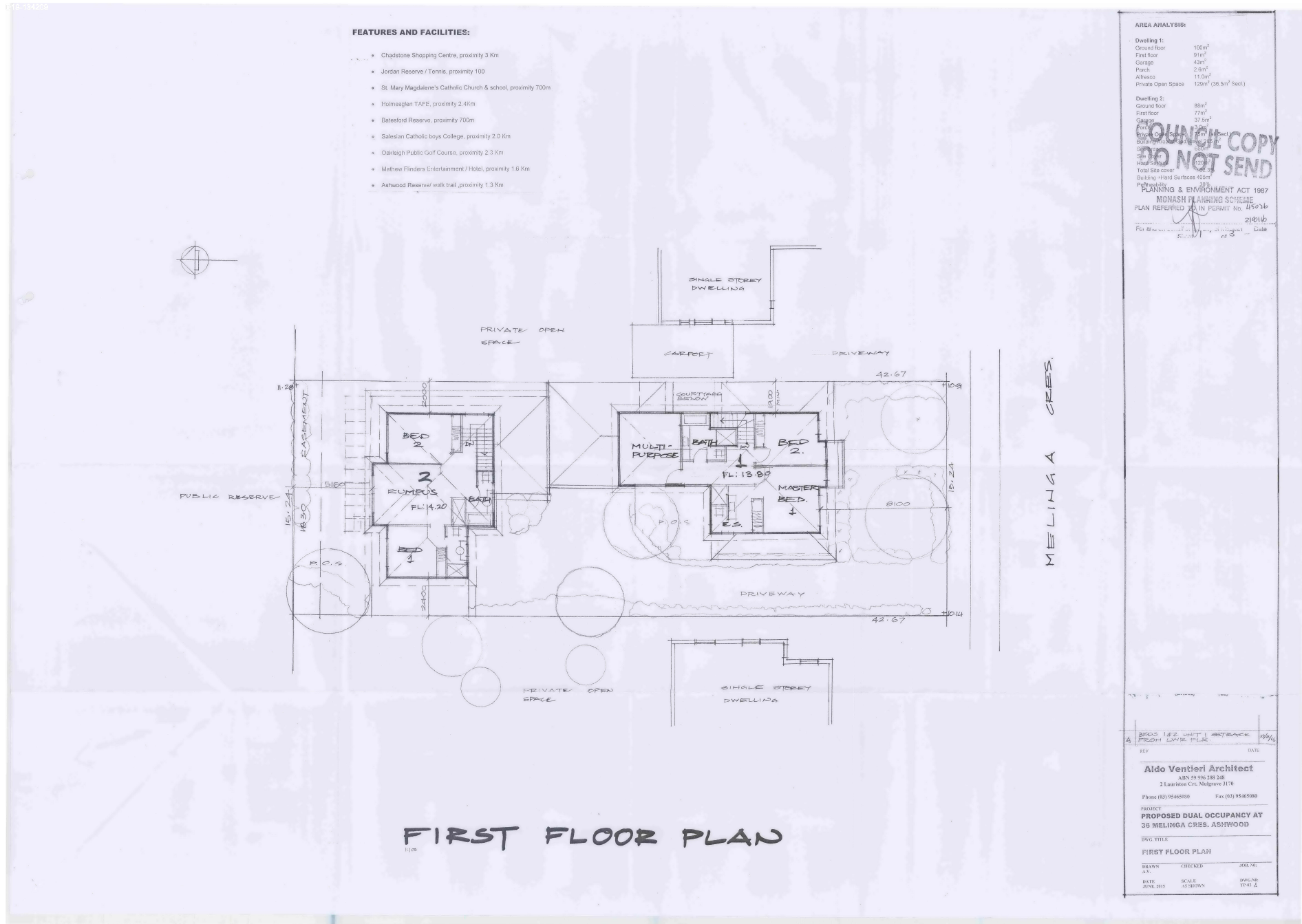
The proposal on balance meets the tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*.

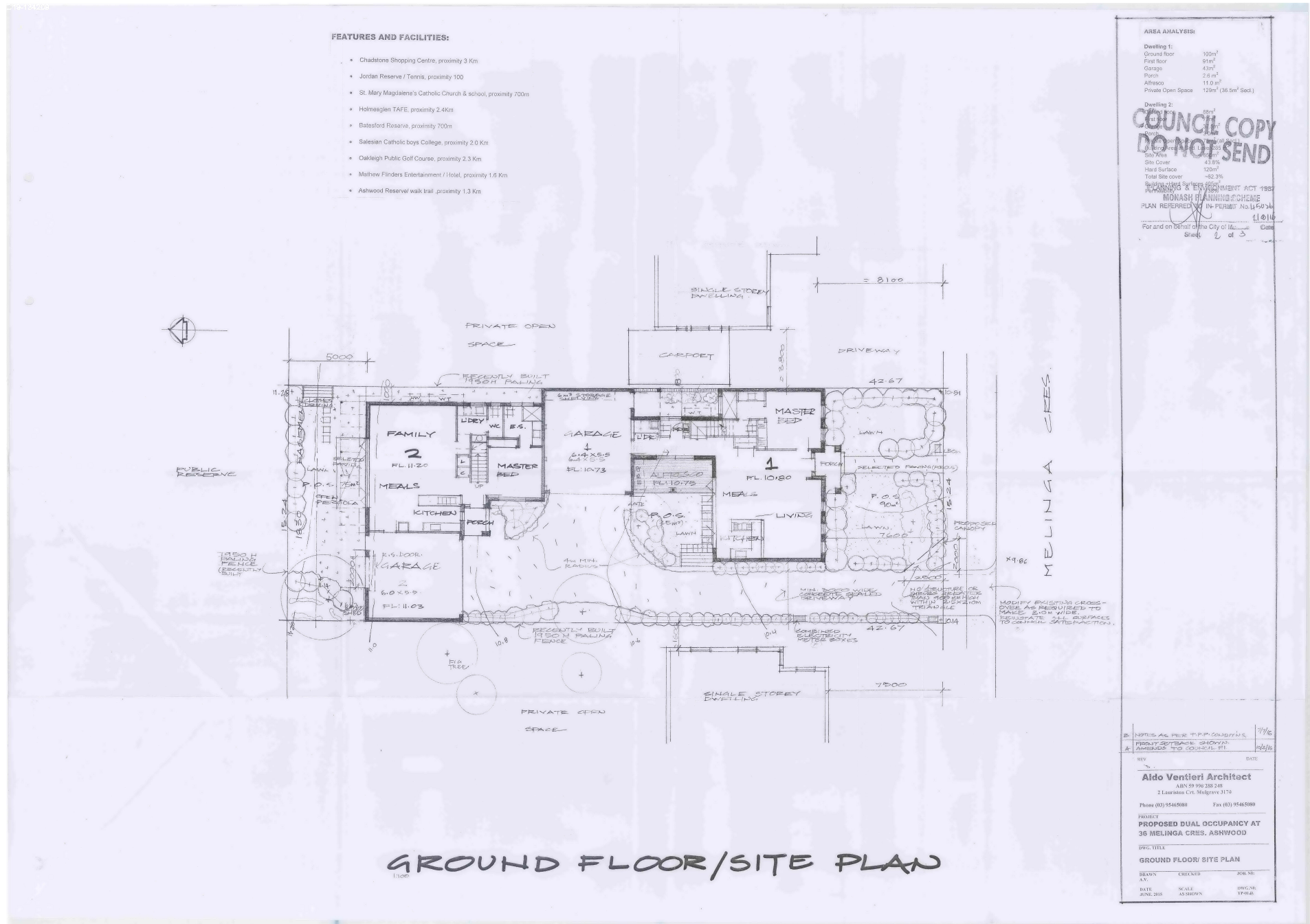
The development outcome is appropriate, and the permit conditions remain current and relevant.

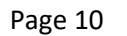
Given the time elapsed since the grant of the original permit and that construction has progressed on the site, it is recommended that Council approve the extension for one year for the completion of the development.

ATTACHMENT LIST

1. Development Plans - 36 Melinga Cres [**7.1.2.1** - 3 pages]
2. Aerial Photograph - 36 Melinga Cres [**7.1.2.2** - 1 page]
3. Zoning and Overlay Map - 36 Melinga Cres [**7.1.2.3** - 1 page]











Planning Overlays and Zones

