

## 7.1.2 59 BRANDON PARK DRIVE WHEELERS HILL

<b>Responsible Manager:</b>	Catherine Sherwin, Manager City Planning
<b>Responsible Director:</b>	Peter Panagakos, Director City Development

### EXECUTIVE SUMMARY

This application is for an extension of time to Planning Permit TPA/42948 for the construction of two (2) double storey dwellings at 59 Brandon Park Drive Wheelers Hill.

The original permit was issued on the 18 February 2015.

The permit has been extended on three (3) previous occasions. The latest extension of time was granted on 16 December 2020. The current permit expired on 18 February 2023.

Construction of the development has not commenced.

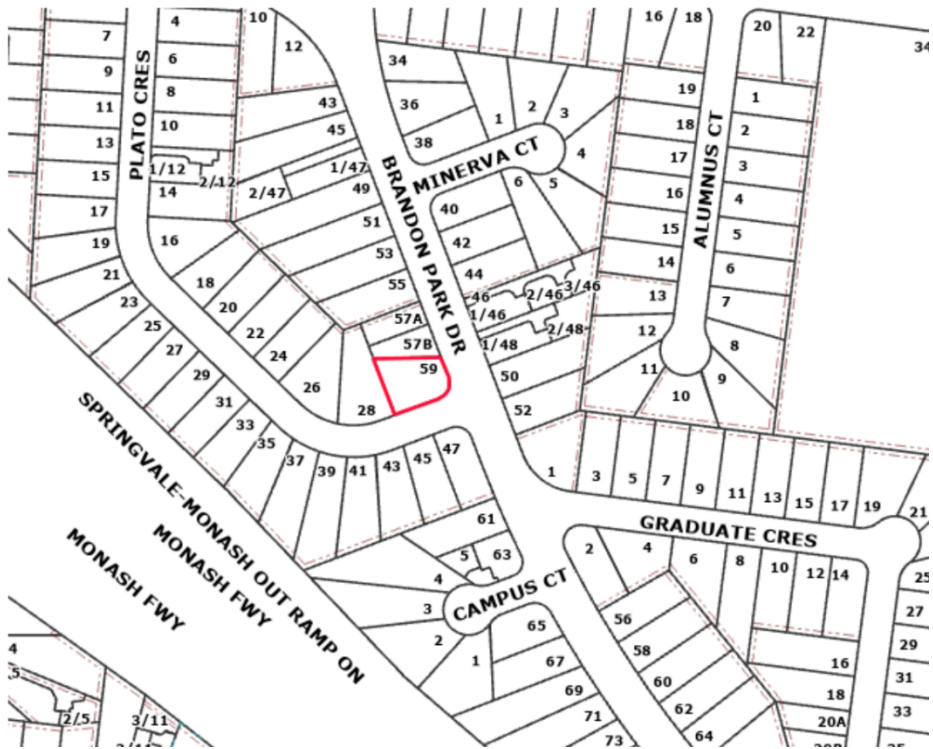
The reason for presenting this report to Council is this is the fourth extension of time request sought for this permit and the time period elapsed since the issue of the permit exceeds 6 years.

**The proposed extension of time is considered to be consistent with the relevant provisions of the Monash Planning Scheme. It is recommended that a two (2) year extension to the permit is granted.**

RESPONSIBLE DIRECTOR:	Peter Panagakos, Director City Development
RESPONSIBLE MANAGER:	Catherine Sherwin
RESPONSIBLE PLANNER:	Lisa Groenewegen
WARD:	Mulgrave
PROPERTY ADDRESS:	59 Brandon Park Drive WHEELERS HILL
ZONING:	General Residential Zone (Schedule 2)
OVERLAY:	No Overlays
EXISTING LAND USE:	Residential
RELEVANT LEGISLATION:	Section 69 of the P&E Act 1987
RELEVANT POLICY:	<p><b><u>Planning Policy Framework</u></b></p> <p>Clause 11.01-1R - Settlement – Metropolitan Melbourne</p> <p>Clause 15.01-1S&amp;R - Urban Design</p> <p>Clause 15.01-2S - Building Design</p> <p>Clause 15.01-4S &amp; R - Healthy Neighbourhoods</p> <p>Clause 15.01-5S - Neighbourhood Character</p>

	<p>Clause 15.02-1S - Energy and Resource Efficiency</p> <p>Clause 16.01-1S &amp;R - Housing supply</p> <p>Clause 16.01-2S - Housing affordability</p> <p><b><u>Local Planning Policy Framework</u></b></p> <p>Clause 21 - Municipal Strategic Statement (Introduction)</p> <p>Clause 22.01- Residential Development and Character Policy</p> <p>Clause 22.04 - Stormwater Management Policy</p> <p>Clause 22.13- Environmentally Sustainable Development Policy</p> <p><b>Particular Provisions</b></p> <p>Clause 55 - Two or more dwellings on a lot and residential buildings</p>
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**LOCALITY PLAN**



**NEIGHBOURHOOD PLAN**



## RECOMMENDATION

That Council resolves to issue an Extension of time to Planning Permit No. TPA/42948 for construction of two (2) double storey dwellings at 59 Brandon Park Drive Wheelers Hill, 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 two (2) years. Accordingly, the development must be commenced by 18 February 2025 and Completed by 18 February 2027.
2. That the applicant be advised that a further request for extension of time may not be granted given the time that has elapsed since the original permit was granted.

## COUNCIL PLAN STRATEGIC OBJECTIVES

### Sustainable City

Ensure an economically, socially, and environmentally sustainable municipality.

### Enhanced Places

Pursue a planning framework that meets Monash needs.

## BACKGROUND

Planning Permit TPA/42948 was issued on the 18 February 2015 allowing Construction of two (2) double storey dwellings on a lot.

The original application was decided under delegation and there were three (3) objections to the proposal. Development plans were endorsed on 8 April 2015.

Council has extended the permit on three previous occasions (21 April 2017, 19 October 2018 and 16 December 2020). The permit expiry date was 18 February 2023. The current extension of time request was made on 9 March 2023 within 6 months of the planning permit the expiry date in accordance with the requirements of the *Planning and Environment Act 1987*. Consideration of the application was delayed as a result of an administrative error. There have been numerous discussions with the applicant regarding this delay as well as to better understand the reasons for the delay in the commencement of the construction, as well as advising them that this may be the last time that a favourable recommendation to extend the permit is made, given the length of time since the original issue of the permit and the lack of progress with the proposed development. The applicant is aware that the request is to be considered at the February 2024 Council Meeting.

Attachment 1 details plans forming part of the application.

### **Site and Surrounds**

The subject site is located on the western side of Brandon Park Drive in Wheelers Hill. The land is a corner allotment, irregular in shape with a frontage of approximately 15 metres to Brandon Park Drive, 22.8 metres to Plato Crescent and rear boundary of 28.9 metres, yielding an overall site area of 707 square metres. The site has a gradual fall of almost one metre from the rear (west) down to the front (east) of the site. The site is not encumbered by any easements.

Abutting land uses are residential and comprise of single and double storey dwellings which include multi dwelling developments. The area can be characterised as attached and detached, brick / brick veneer dwellings with pitched tiled roofs in a garden setting.

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 subject site and surrounding land.

### **PROPOSAL**

The applicant has requested an extension for a further two (2) years to commence construction of the development. The applicant has requested this time due to difficulties obtaining finance and a builder.

### **PERMIT TRIGGERS:**

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 9 March 2023 which was within 6 months of the permit expiring. Accordingly, Council can consider a further extension to the commencement and completion date for the development under 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 eight (8) years.**

The Supreme Court decision *Kantor v Murrindindi Shire Council (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 request to extend the planning permit. In summary:

**Amendment VC110** gazetted on 27 March 2017 impacts the development with regard to garden area requirements and mandatory controls relating to height.

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 it is limited to two storey and a height of 7 metres. The development plans have a garden area calculation of approximately 44% which exceeds the requirement of 35% for lots over 650 square metres. The approved development complies with the mandatory building height and garden area requirements applicable to the General Residential Zone.

**Amendment C125 Part 2** was gazetted in November 2019 in which Residential policies (Clause 21.04 and 22.01) were changed. The zoning however has remained unchanged and is still zoned General Residential Zone, Schedule 2.

The site now falls within Neighbourhood character area – Garden City suburbs – Southern Area within Clause 22.01. This character area envisages “Modest dwellings with simple pitched rooflines and articulated facades will continue the prevailing development themes, new development will complement the scale and siting of the original housing within the area. In doing so, it will enhance the generous spacious, open, landscaped character of the area. This character area will be notable for its spacious garden settings, tall canopy trees, consistency in front setbacks and the maintenance of setbacks from at least one boundary and from the rear of the site. New dwellings will address the street and upper levels will be recessed and/or articulated to minimise the impression of building scale.” The development will sit comfortably within the streetscape and meets the amended neighbourhood character vision.

#### 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.

It is considered that the owner is not seeking to warehouse the permit. Whilst a considerable period of time has passed since the original approval, the prolonged impacts of the COVID-19

Pandemic on the building sector and the financial sector have impacted the owner being able to secure finance and a builder since the issue of the last extension.

Given this, it is considered reasonable to allow an extension of time. The owner has indicated they are committed to undertaking the development.

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

The owner details that the development has not commenced due to a shortage of labour associated with the effects of COVID-19 pandemic on the building industry, increased building costs and delays in obtaining finance for the development.

The total elapse of time.

Eight (8) years have elapsed between the time of the planning permit being issued and the extension of time application being lodged. This is not fatal to the application in isolation, given the broad compliance with current planning policy and objectives seeking provision of additional housing along with increased residential density.

Whether the time limit originally imposed was adequate

The original time limit imposed was two years for commencement and two years to complete, 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 commencement or completion of the construction. The conditions are standard for this type of development. It is acknowledged that labour shortages, increased materials prices and supply chain delays have resulted in increased construction costs and delays in construction project commencement and 13 straight rate rises in the past year and half has compounded the issue of obtaining finance.

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 detailed in the original approval, the proposal achieves a high level of compliance with Clause 55, appropriate scale and form, compliance with setback and open space requirements, and provides a suitable response to neighbourhood character. The development meets the mandatory height and garden areas requirements (introduced after the original development was approved.)

The development will sit comfortably within the streetscape and meets the amended neighbourhood character vision of “modest dwellings with simple pitched rooflines and articulated facades within a spacious garden setting” with introduced by C125 part 2.

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.

## CONCLUSION

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



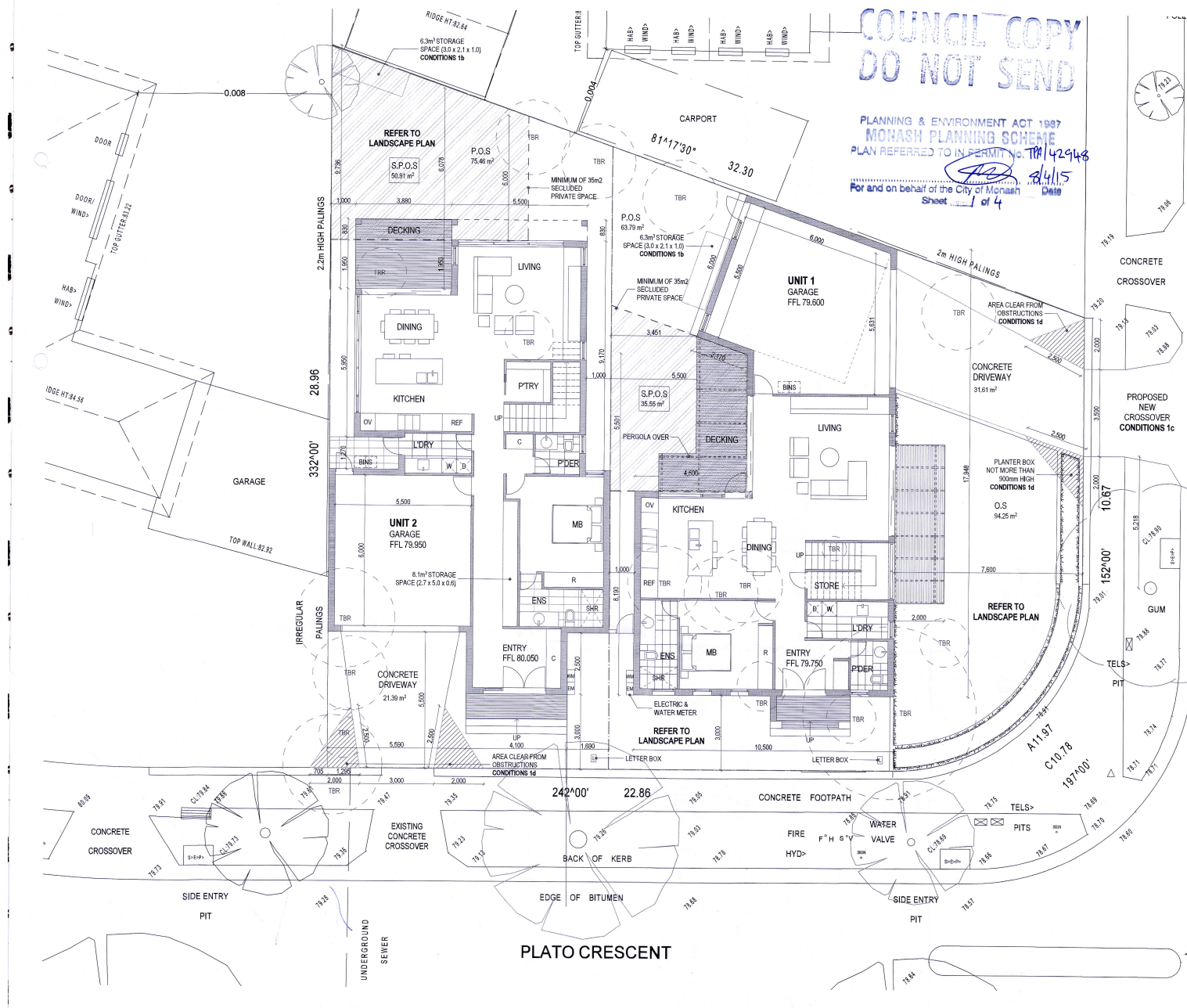
The proposal on balance meets the majority of tests established in the Supreme Court decision *Kantor v Murrindindi Shire Council (1997)*, including and most importantly consistency with current planning policy objectives.

The development outcome is appropriate, the built form will be consistent with the desired future outcome and the permit remains current and relevant.

It is recommended the Council approve an extension of two (2) years for the commencement of the development.

#### ATTACHMENT LIST

1. Attachment 1 - Proposed Development Plans - 59 Brandon Park Dve [7.1.2.1 - 7 pages]
2. Attachment 2 - Aerial Photograph - 59 Brandon Park Dve [7.1.2.2 - 1 page]
3. Attachment 3 - Zoning and Overlays Map - 59 Brandon Park Dve [7.1.2.3 - 1 page]



**AREA SCHEDULE**

SITE	707.54m <sup>2</sup>
SITE COVERAGE	317.66m <sup>2</sup> or 44.90%
SITE PERMEABILITY	336.50m <sup>2</sup> or 47.56%

**UNIT 1**

GROUND FLOOR	109.69m <sup>2</sup>
FIRST FLOOR	130.29m <sup>2</sup>
GARAGE	47.87m <sup>2</sup>
<b>TOTAL FLOOR AREA</b>	<b>287.85m<sup>2</sup></b>
SECLUDED PRIVATE OPEN SPACE	35.55m <sup>2</sup>
PRIVATE OPEN SPACE	28.24m <sup>2</sup>
OPEN SPACE	94.25m <sup>2</sup>
BALCONY	13.72m <sup>2</sup>
<b>TOTAL P.O.S</b>	<b>171.76m<sup>2</sup></b>
STORAGE	6.30m <sup>3</sup>

**UNIT 2**

GROUND FLOOR	123.46m <sup>2</sup>
FIRST FLOOR	125.70m <sup>2</sup>
GARAGE	36.64m <sup>2</sup>
<b>TOTAL FLOOR AREA</b>	<b>285.80m<sup>2</sup></b>
SECLUDED PRIVATE OPEN SPACE	50.91m <sup>2</sup>
PRIVATE OPEN SPACE	24.55m <sup>2</sup>
BALCONY	10.25m <sup>2</sup>
<b>TOTAL P.O.S</b>	<b>85.71m<sup>2</sup></b>
STORAGE	8.10m <sup>3</sup>

- LEGEND**
- EXISTING TREE TO BE RETAINED
  - EXISTING TREE TO BE REMOVED

NOTE: UNIT 1 & UNIT 2 TO BE CONSTRUCTED IN BRICK OR BRICK VENEER ONLY

**TOWN PLANNING** 5/03/2015  
**PROPOSED 2 UNITS DEVELOPMENT AT**  
**59 BRANDON PARK DRIVE WHEELERS HILL**

**TP03**  
**PROPOSED SITE PLAN/ GROUND FLOOR PLAN**  
 SCALE 1:100@A2

**ST Architects** REVISION C  
 thlan@st-architects.com.au 0401299975

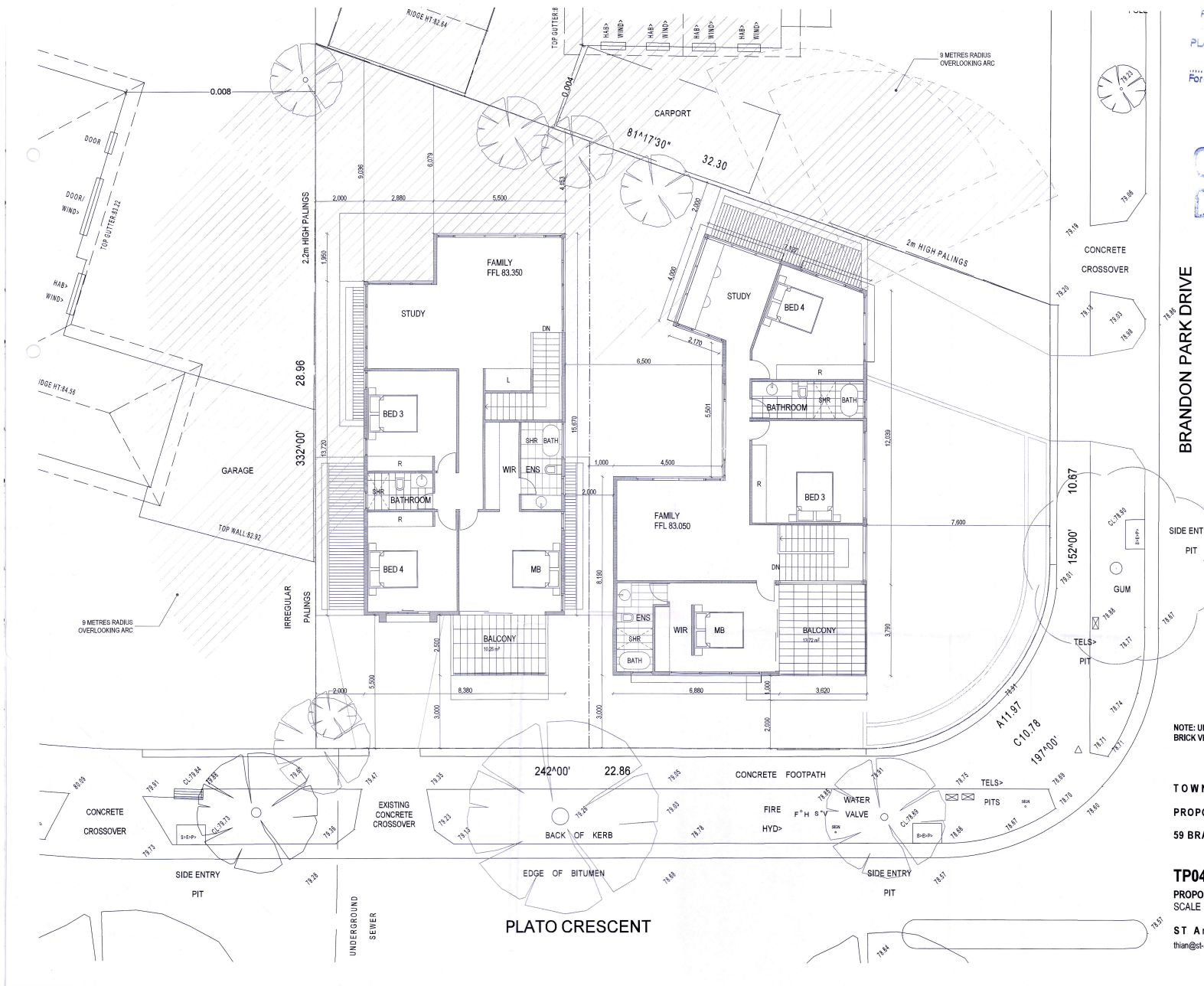




MONASH CITY COUNCIL  
 RECEIVED: 5 MAR 2015  
 PREPARED BY:  
 CHECKED BY:  
 APPROVED BY:  
 ESTABLISHED BY:

PLANNING & ENVIRONMENT ACT 1987  
 MOHASH PLANNING SCHEME  
 PLAN REFERRED TO IN PERMIT No. TPA42948  
 For and on behalf of the City of Moohash Date 8/4/15  
 Sheet 2 of 4

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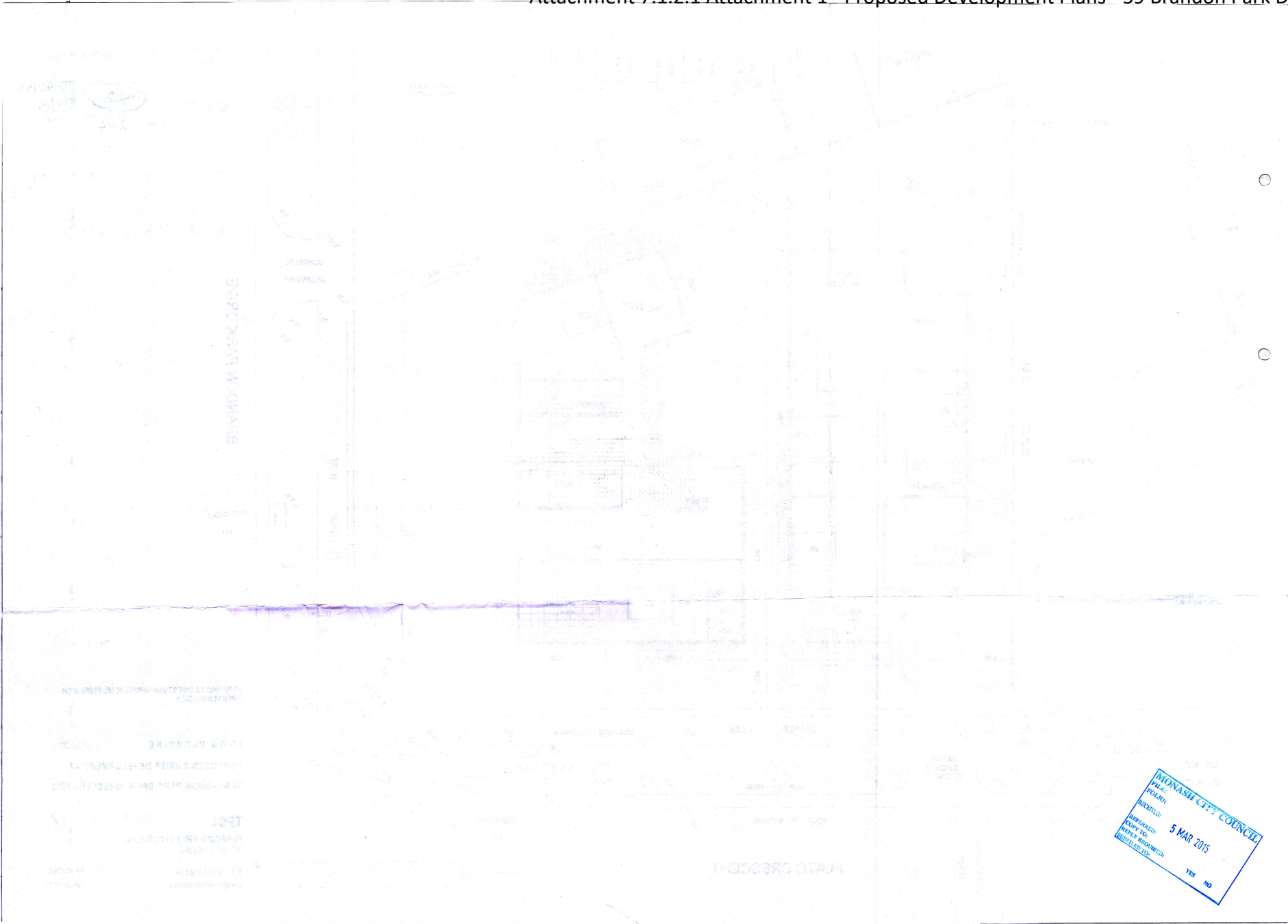


NOTE: UNIT 1 & UNIT 2 TO BE CONSTRUCTED IN BRICK OR BRICK VENEER ONLY

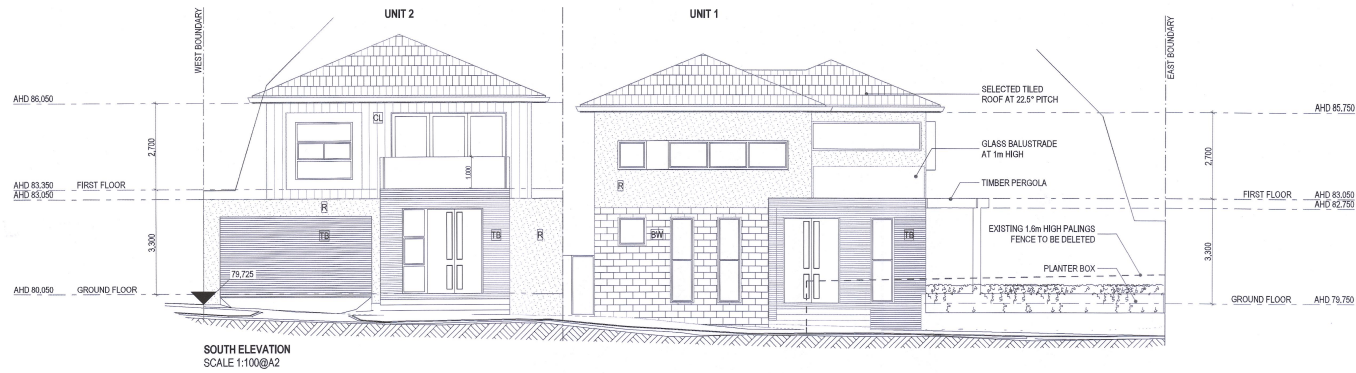
TOWN PLANNING 5/03/2015  
 PROPOSED 2 UNITS DEVELOPMENT AT  
 59 BRANDON PARK DRIVE WHEELERS HILL

**TP04**  
 PROPOSED FIRST FLOOR PLAN  
 SCALE 1:100@A2

ST Architects  
 thian@st-architects.com.au  
 REVISION C  
 0401299975



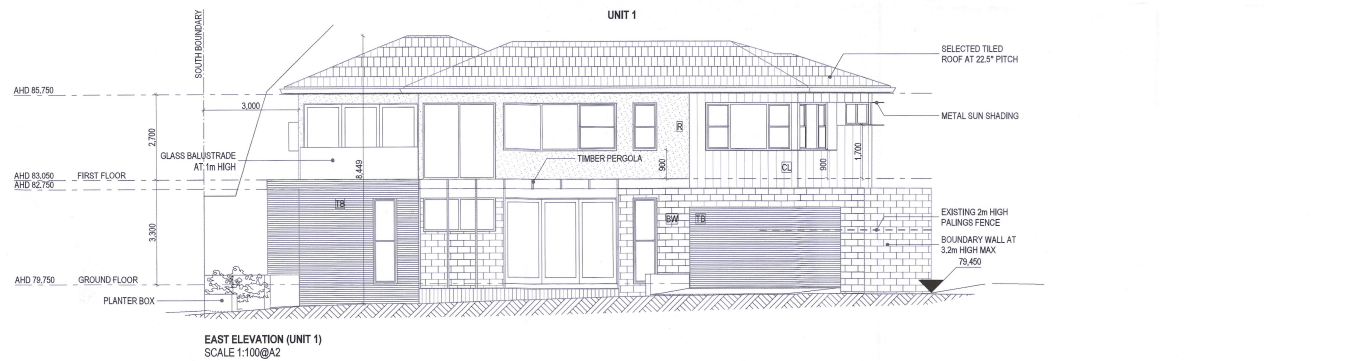
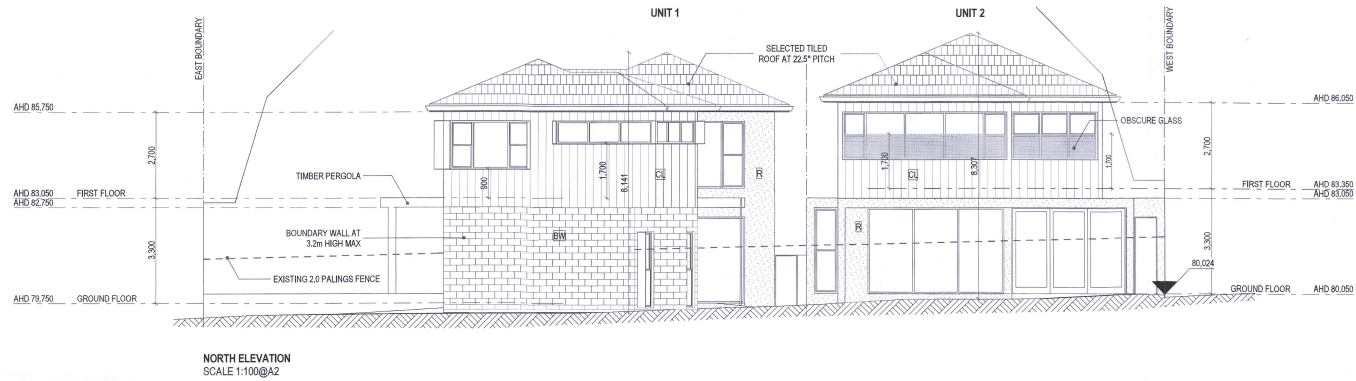
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- LEGEND FOR EXTERNAL FINISHES
- RF RENDER FINISH
  - SB SELECTED BRICK
  - TB SELECTED TIMBER CLADDING
  - ST SELECTED STONE CLADDING
  - CL JAMES HARDIE SCYON AXON PANEL OR SIMILAR
  - BW SELECTED BLOCKWORK

PLANNING & ENVIRONMENT ACT 1987  
MONASH PLANNING SCHEME  
PLAN REFERRED TO IN PERMIT TPA/42948  
For and on behalf of the City of Monash  
Date 8/4/15  
Sheet 3 of 4



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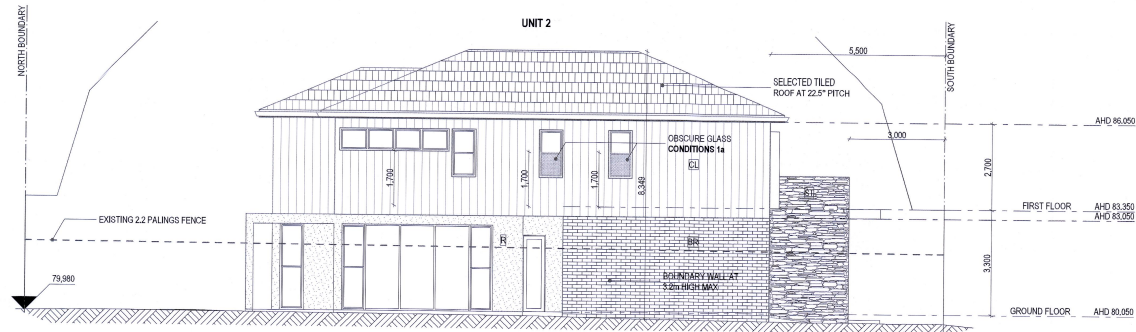
TOWN PLANNING 5/03/2015  
PROPOSED 2 UNITS DEVELOPMENT AT  
59 BRANDON PARK DRIVE WHEELERS HILL

TP06  
ELEVATIONS  
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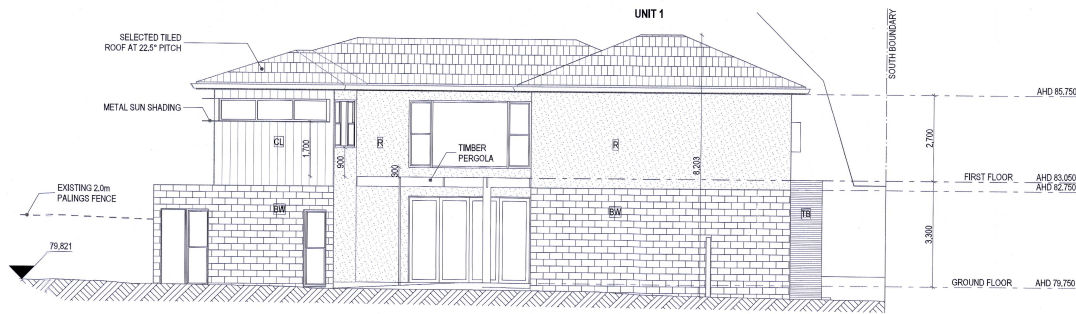
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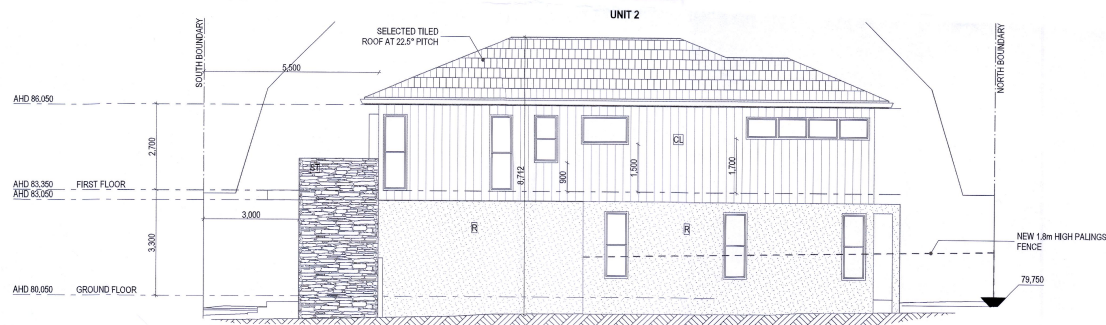
Attachment 7.1.2.1 Attachment 1 - Proposed Development Plans - 59 Brandon Park Dve



WEST ELEVATION (UNIT 2)  
SCALE 1:100@A2



WEST ELEVATION (UNIT 1)  
SCALE 1:100@A2



EAST ELEVATION (UNIT 2)  
SCALE 1:100@A2

LEGEND FOR EXTERNAL FINISHES

- RF RENDER FINISH
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- ST SELECTED STONE CLADDING
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TP07  
ELEVATIONS  
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ST Architects  
thian@st-architects.com.au

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SUBMITTED  
YES NO





## Planning Overlays and Zones



**Legend**  
**Planning Zones**


**Planning Overlays**


**Address**

59 Brandon Park Drive WHEELERS HILL VIC 3150



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