

7.1.4 21 BANKSIA STREET CLAYTON - EXTENSION OF TIME - CONSTRUCTION OF TWO DOUBLE-STOREY DWELLINGS

Responsible Manager:	Catherine Sherwin, Manager City Planning
Responsible Director:	Peter Panagakos, Director City Development

EXECUTIVE SUMMARY

This application is for an extension of time to Planning Permit TPA/39858 for the development of two double-storey dwellings.

The original permit was issued on the 7 November 2012.

Construction of the development has commenced and the approved dwellings are substantially complete.

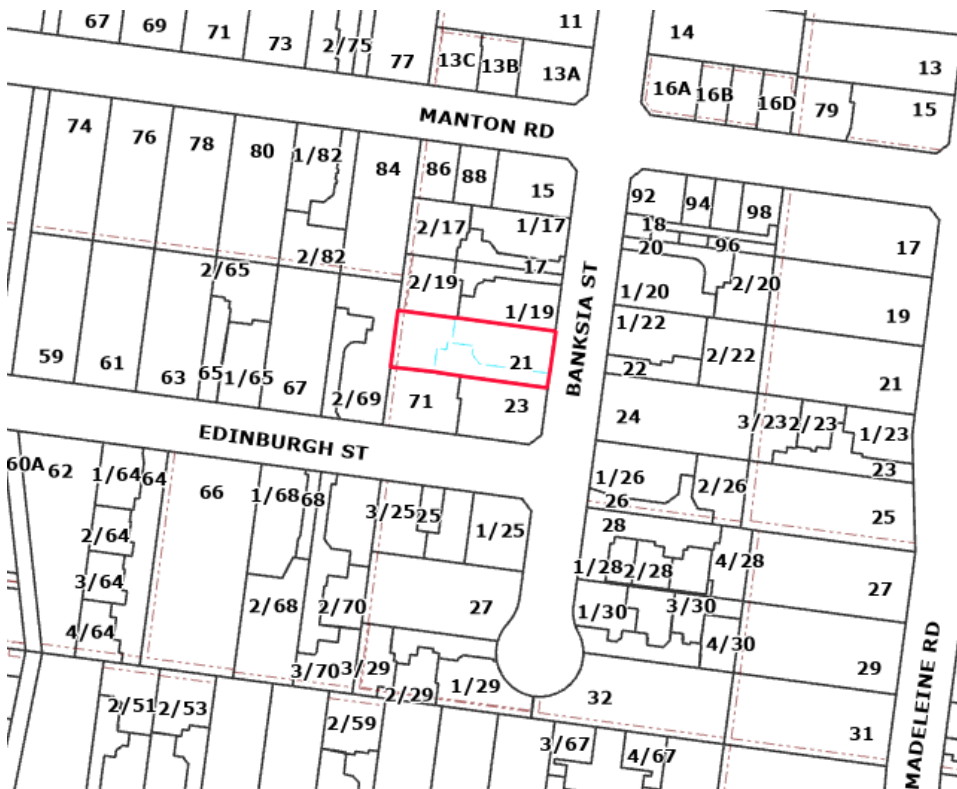
The permit has been extended on five (5) previous occasions. The latest extension of time was granted on 22 June 2023 for completion of the development. The current permit expired on 7 November 2023 as the development was not completed. The reason for presenting this report to Council is this is the sixth 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 a one (1) year extension to the permit be granted to complete the development.

RESPONSIBLE DIRECTOR:	Peter Panagakos, Director City Development
RESPONSIBLE MANAGER:	Catherine Sherwin
RESPONSIBLE PLANNER:	Sylvia Chan
WARD:	Oakleigh
PROPERTY ADDRESS:	21 Banksia Street, Clayton
ZONING:	General Residential Zone (Schedule 3)
OVERLAY:	No Overlay
EXISTING LAND USE:	Residential
RELEVANT POLICY:	<p><u>Planning Policy Framework</u></p> <p>Clause 11.01-1R - Settlement – Metropolitan Melbourne</p> <p>Clause 15.01-1S&R - Urban Design</p> <p>Clause 15.01-2S - Building Design</p> <p>Clause 15.01-4S & 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 & R - Housing supply</p> <p>Clause 16.01-2S - Housing affordability</p>

	<p>Local Planning Policy Framework</p> <p>Clause 21 - Municipal Strategic Statement (Introduction) Clause 22.01- Residential Development and Character Policy Clause 22.04 - Stormwater Management Policy Clause 22.13- Environmentally Sustainable Development Policy</p> <p>Particular Provisions</p> <p>Clause 55 - Two or more dwellings on a lot and residential buildings</p>
RELEVANT LEGISLATION	Section 69 of the Planning & Environment Act 1987

LOCALITY PLAN



NEIGHBOURHOOD PLAN



RECOMMENDATION

That Council resolves to issue an extension of time to Planning Permit No. TPA/39858 for the construction of two (2) double-storey dwellings at 21 Banksia 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 completion of the development be extended for a further one (1) year. Accordingly, the development must complete by 7 November 2024.
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

Enhanced Places

Pursue a planning framework that meets Monash needs.

BACKGROUND

Planning Permit TPA/39858 was issued on 7 November 2012 for the construction of two (2) double-storey dwellings.

The original application was decided under delegation and development plans and a landscape plan were endorsed on 3 June 2019 and 16 September 2019 respectively.

The permitted timeframe for commencement has been extended on five (5) previous occasions: December 2014 (2 years extension to commence); September 2016 (1 year extension to commence); November 2017 (1 year extension to commence); January 2019 (1 year extension to commence) and June 2023 (1 year extension for completion). The current expiry date for the completion of the development was 7 November 2023.

The current extension of time request was made on 9 November 2023 which is after the expiry date of the permit but within 12 months of the expiry date in accordance with the requirements of the *Planning and Environment Act 1987*.

Site and Surrounds

The subject site is located on the eastern side of Banksia Street. The subject site is a regular shape block, having a 15.8 metre wide frontage and a depth of 44.2 metres. The site area is 700 square metres.

The approved dwellings have been substantially constructed.
(Attachment 1 – Photos)

Land surrounding the subject site features mainly residential dwellings comprising of both single and double storey dwellings, many being multi-unit developments.

An aerial photograph of the subject site and surrounding land can be found attached to this report (Attachment 2).

PROPOSAL

The applicant has requested an extension of the permit completion date by a further two (2) years stating grounds of delay due to labour shortage as well as financial issues faced by the owner.

Attachment 3 contains the approved development plans forming part of the application.

Attachment 4 details the zoning and overlays applicable to the subject site and surrounding land.

PERMIT TRIGGERS:

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

“Before the permit expires or within 12 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 November 2023, within 12 months of 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 commencement and completion date for the development under the Act.

ASSESSMENT

The total elapsed time between the date of issue of the permit and the date of the request to extend the permit is eleven (11) 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; and
- 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.

Mandatory garden area and height requirements have been introduced by state-wide Amendment VC110, which was gazetted on 27 March 2017. Amendment C125 Part 1 & 2 (gazetted April 2018 and November 2019) also introduced new policies in Clause 21.04 Residential Development and Clause 22.01 Residential Development and Character Policy. This amendment also rezoned the land from General Residential Zone – Schedule 2 (GRZ2) to General Residential Zone 3 (GRZ3).

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 7.8 metres for Dwelling 1 and 7.7 metres for Dwelling 2. An assessment of the garden area calculation equates to 38% which is above the requirement of 35% for lots over 650 square metres.

The GRZ3 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 requirements. An assessment of the proposal against the changes to the schedule is provided below:

	Requirement GRZ3	Approved Development	Compliance of GRZ3 requirements
Minimum Street Setback	At least 7.6 metres from the front street.	7.6 metres.	Yes
Site Coverage	Should not exceed 50%.	39.63%.	Yes
Permeability	Should be at least 30%.	43.16%	Yes
Landscaping	Provide or retain at least one canopy tree plus at least one canopy tree per 5m of site width.	The proposal has the provision to plan at least four canopy trees within the development, with two trees within the front setback area.	Yes
Side & Rear Setbacks	A new wall not on or within 200mm of a rear boundary should be setback at least 5 metres.	Generally complies.	Yes – side setback No- rear setback – see discussion below.
Private Open Space	A dwelling or residential building should have private open space consisting of an area of 75 square metres with one part of the private open space to consist of secluded private open space at the side of the rear of the dwelling or residential building within a minimum area of 35 square metres, with minimum dimension of 5 metres and convenient access from a living room.	Each dwelling contains a private open space of more than 75 square metres with a secluded private open space area exceeding 35 square metres. Total Private Open Space: Dwelling 1: 149.13m2 Dwelling 2: 75.82m2	Yes
Front Fence	Should not exceed 1.2 metres in height.	No front fence proposed.	Yes

Rear setback

The schedule to the zone has the following objectives, relevant to the 5 metre rear setback requirement:

- To support new development that contributes to the preferred garden city character through well landscaped and spacious gardens that include canopy trees.
- To promote the preferred garden city character by minimising hard paving throughout the site by limiting the length and width of accessways and limiting paving within open space areas.

The current approval for Dwelling 2 (rear dwelling) provides for a varied rear setback ranging between 4.16 metres and 5 metres. The portion of dwelling that is setback 4.16 metres to the rear boundary is limited to 2.7 metres in length (20% of the overall dwelling wall). The rear private open space for Dwelling 2 provides for an area well-exceeding 35m² with a width of 5 metres provided for most part of the rear private open space of the site. This area will provide opportunity for the planting of canopy vegetation along the rear boundary.

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 since early 2020 has caused significant labour shortage and increased building cost in building constructions.

The development is substantially built and already in lock-up stage. It seems apparent the owners intend to complete the development.

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

The owner details that the development has not been completed due to a shortage of labour associate with the effects of COVID-19 pandemic on the building industry. Another reason for the delay in the completion of the development is due to the owner's financial difficulties given the increased building cost.

The total elapse of time.

The total elapse time to the development has been 11 years. This is not fatal to the application in isolation, given the broad compliance with current planning policy and the development is substantially constructed.

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 sort of development.

The probability of a permit issuing should a fresh application be made

The proposal is broadly consistent with current planning policy as discussed above, and the development is already in lockup stage, it is likely that a permit would issue should a fresh application be made.

CONCLUSION

It is considered appropriate to grant a further extension of time to the permit to complete the development. Whilst the applicant has requested a two year extension the development is substantially built and already at lock up stage. Whilst the applicant has expressed that they are having financial difficulties completing the development, two years is considered excessive given the stage of construction. It is considered appropriate to recommend a one year extension to the permit.

The proposal on balance meets the 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 recommended the Council approve an extension of one (1) year for the completion of the development until 7 November 2024.

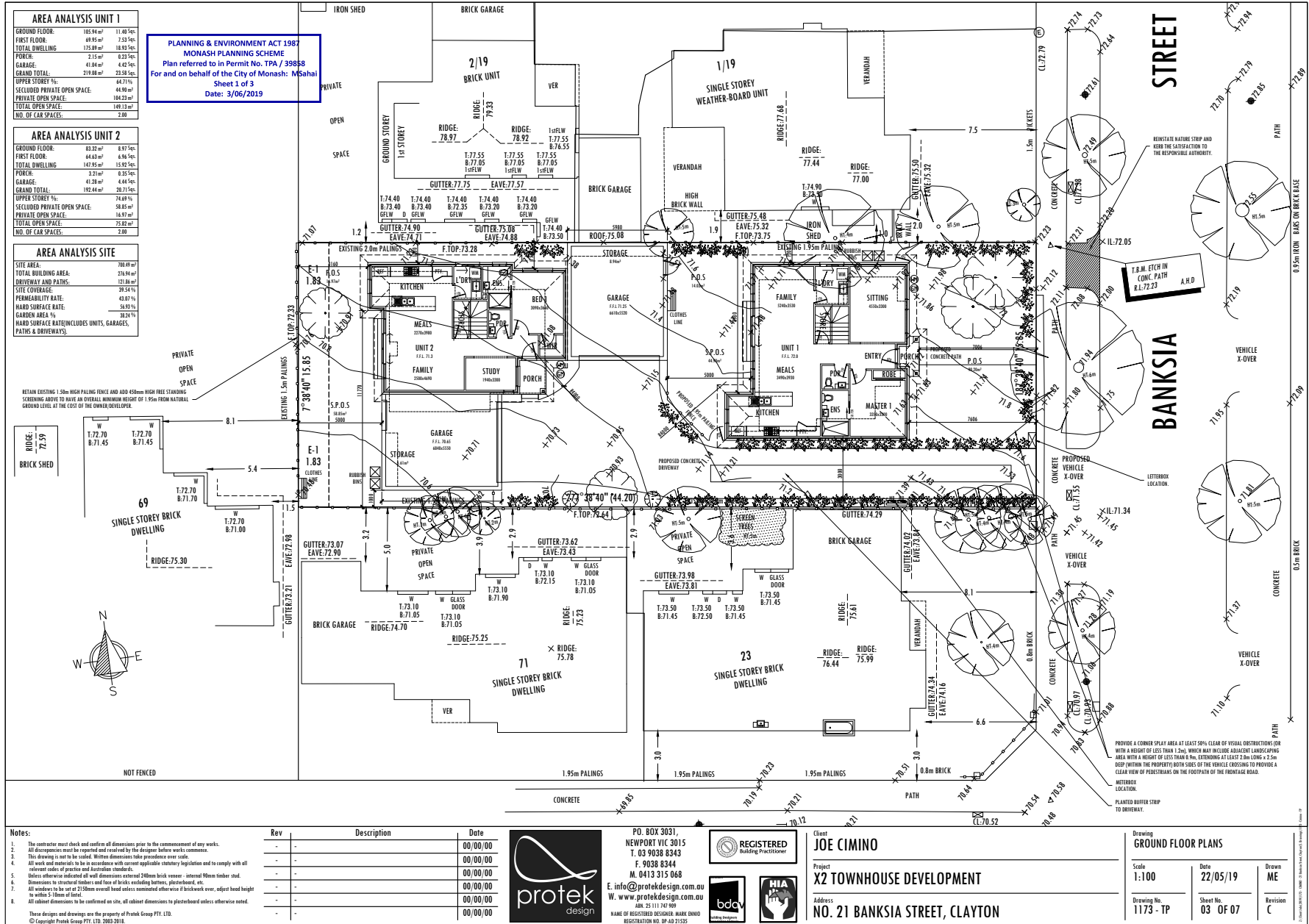
ATTACHMENT LIST

1. Attachment 1 - Extent of completed works - 21 Banksia Street [7.1.4.1 - 1 page]
2. Attachment 2 - Aerial Photograph - 21 Banksia St [7.1.4.2 - 1 page]
3. Attachment 3 - Endorsed Plans and Landscape Plan - 21 Banksia St [7.1.4.3 - 4 pages]
4. Attachment 4 - Zoning and Overlays - 21 Banksia St [7.1.4.4 - 1 page]

Attachment 7.1.4.1 Attachment 1 - Extent of completed works - 21 Banksia Street

Photographs taken of 21 Banksia Street, Clayton on 14 December 2023





AREA ANALYSIS UNIT 1

GROUND FLOOR:	102.84 m ²	11.40 54%
FIRST FLOOR:	49.95 m ²	7.53 54%
TOTAL DWELLING:	175.89 m ²	18.93 54%
PORCH:	2.15 m ²	0.23 54%
GARAGE:	41.88 m ²	4.42 54%
GRAND TOTAL:	219.08 m ²	23.58 54%
UPPER STOREY %:	14.71%	
SCULDED PRIVATE OPEN SPACE:	46.90 m ²	
PRIVATE OPEN SPACE:	184.23 m ²	
TOTAL OPEN SPACE:	149.13 m ²	
NO. OF CAR SPACES:	2.00	

AREA ANALYSIS UNIT 2

GROUND FLOOR:	83.32 m ²	8.37 54%
FIRST FLOOR:	44.43 m ²	6.96 54%
TOTAL DWELLING:	147.85 m ²	15.92 54%
PORCH:	3.21 m ²	0.33 54%
GARAGE:	41.28 m ²	4.44 54%
GRAND TOTAL:	192.44 m ²	20.71 54%
UPPER STOREY %:	7.69%	
SCULDED PRIVATE OPEN SPACE:	58.02 m ²	
PRIVATE OPEN SPACE:	167.87 m ²	
TOTAL OPEN SPACE:	75.62 m ²	
NO. OF CAR SPACES:	2.00	

AREA ANALYSIS SITE

SITE AREA:	708.40 m ²	
TOTAL BUILDING AREA:	276.94 m ²	
DRIVEWAY AND PATHS:	121.86 m ²	
SITE COVERAGE:	39.34%	
PERMEABILITY RATE:	42.87%	
HARD SURFACE RATE:	58.83%	
GARDEN AREA %:	38.24%	
HARD SURFACE RATE (INCLUDES UNITS, GARAGES, PATHS & DRIVEWAYS):		

**PLANNING & ENVIRONMENT ACT 1987
MONASH PLANNING SCHEME**
Plan referred to in Permit No. TPA / 39858
For and on behalf of the City of Monash: MsSahai
Sheet 1 of 3
Date: 3/06/2019

RETAIN EXISTING 1.5m HIGH PALING FENCE AND ADD 650mm HIGH FREE STANDING SCREENING ABOVE TO HAVE AN OVERALL MINIMUM HEIGHT OF 1.95m FROM NATURAL GROUND LEVEL AT THE COST OF THE OWNER/DEVELOPER.

Notes:

- The contractor must check and confirm all dimensions prior to the commencement of any works.
- All discrepancies must be reported and resolved by the designer before works commence.
- This drawing is not to be copied, reprinted, reproduced or used.
- All work and material to be in accordance with current applicable statutory legislation and to comply with all relevant codes of practice and Australian standards.
- Unless otherwise indicated all wall dimensions entered 240mm brick veneer - internal 90mm timber stud. Dimensions to structural timber and face of brick excluding battens, plasterboard, etc.
- All windows to be set at 2150mm overall head unless commented otherwise or brickwork cover, adjust head height to within 5' tolerances of level.
- All cabinet dimensions to be confirmed on site, all cabinet dimensions to plasterboard unless otherwise noted.

Rev	Description	Date
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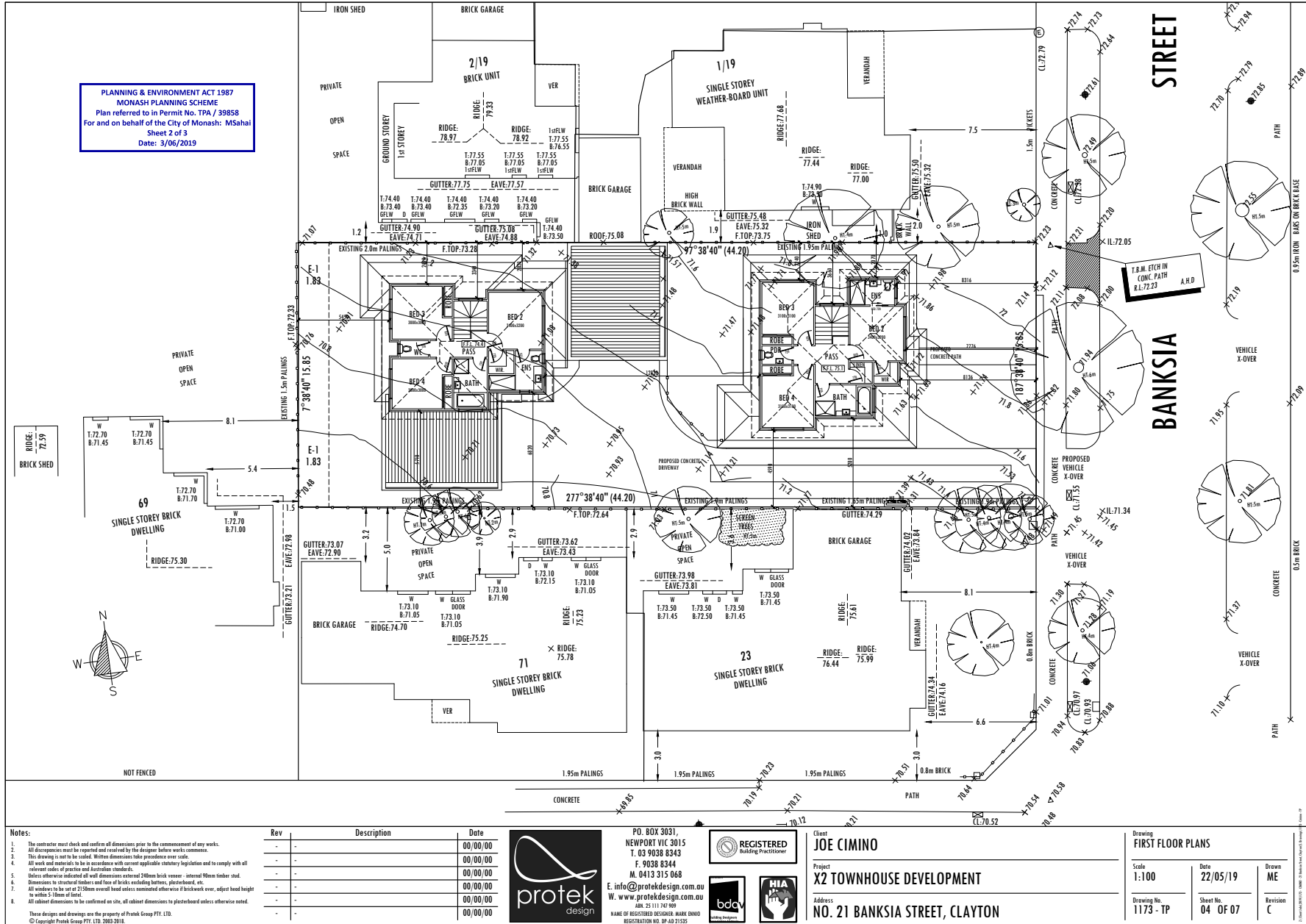
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NAME OF REGISTERED DESIGNER: MARK DENNO
REGISTRATION NO. DP AD 21535

REGISTERED Building Practitioner

Client: JOE CIMINO
Project: X2 TOWNHOUSE DEVELOPMENT
Address: NO. 21 BANKSIA STREET, CLAYTON

Drawing: GROUND FLOOR PLANS
Scale: 1:100
Date: 22/05/19
Drawn: ME
Revision: C
Drawing No.: 1173 - TP
Sheet No.: 03 OF 07



Notes:	Rev	Description	Date
1. The contractor must check and confirm all dimensions prior to the commencement of any works.	-	-	00/00/00
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6. Dimensions to structural timber and face of bricks excluding battens, plasterboard, etc.	-	-	00/00/00
7. All windows to be set at 2150mm overall head unless commented otherwise or brickwork over, adjust head height to within 5' floor of level.	-	-	00/00/00
8. All cabinet dimensions to be confirmed on site, all cabinet dimensions to plasterboard unless otherwise noted.	-	-	00/00/00
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AKN 25 117 747 005
 NAME OF REGISTERED DESIGNER: MARK DENIO
 REGISTRATION NO. DP AD 21535

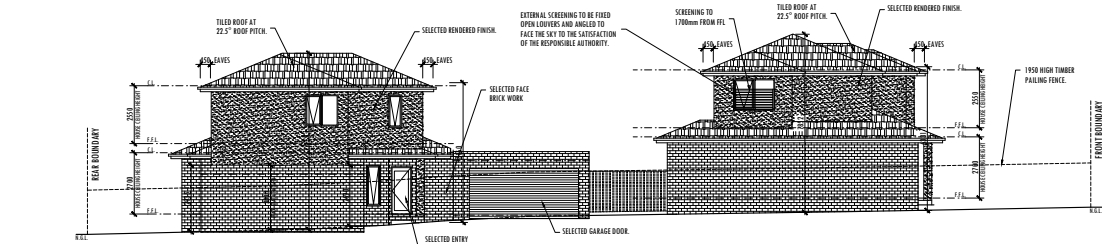
Client
JOE CIMINO

Project
X2 TOWNHOUSE DEVELOPMENT

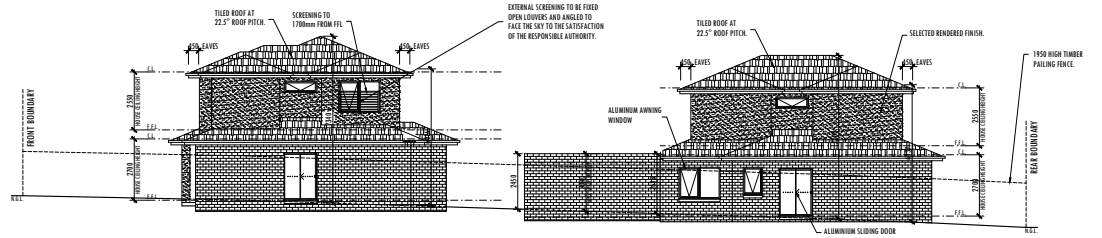
Address
NO. 21 BANKSIA STREET, CLAYTON

Drawing FIRST FLOOR PLANS	
Scale 1:100	Date 22/05/19
Drawing No. 1173 - TP	Sheet No. 04 OF 07
Drawn ME	Revision C

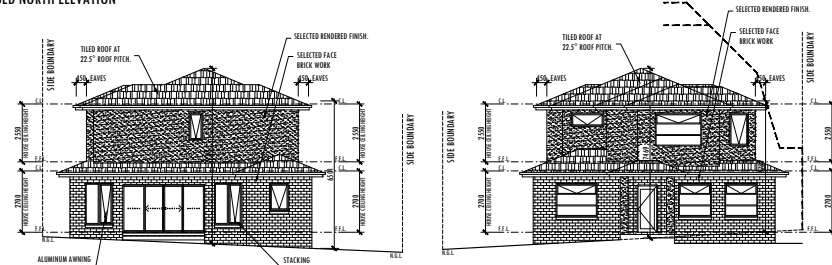
PLANNING & ENVIRONMENT ACT 1987
 MONASH PLANNING SCHEME
 Plan referred to in Permit No. TP9 / 30858
 For and on behalf of the City of Monash: MSahai
 Sheet 3 of 3
 Date: 3/06/2019



UNIT 1 & 2-PROPOSED SOUTH ELEVATION

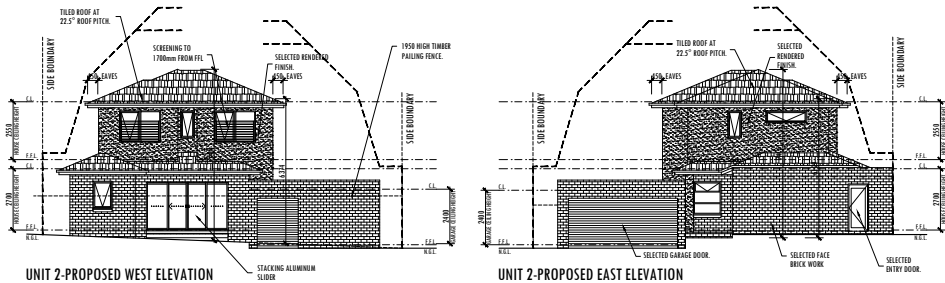


UNIT 1 & 2-PROPOSED NORTH ELEVATION



UNIT 1-PROPOSED WEST ELEVATION

UNIT 1-PROPOSED EAST ELEVATION



UNIT 2-PROPOSED WEST ELEVATION

UNIT 2-PROPOSED EAST ELEVATION

Notes:

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- This drawing is not to be copied, written, dimensions take precedence over scale.
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Rev	Description	Date
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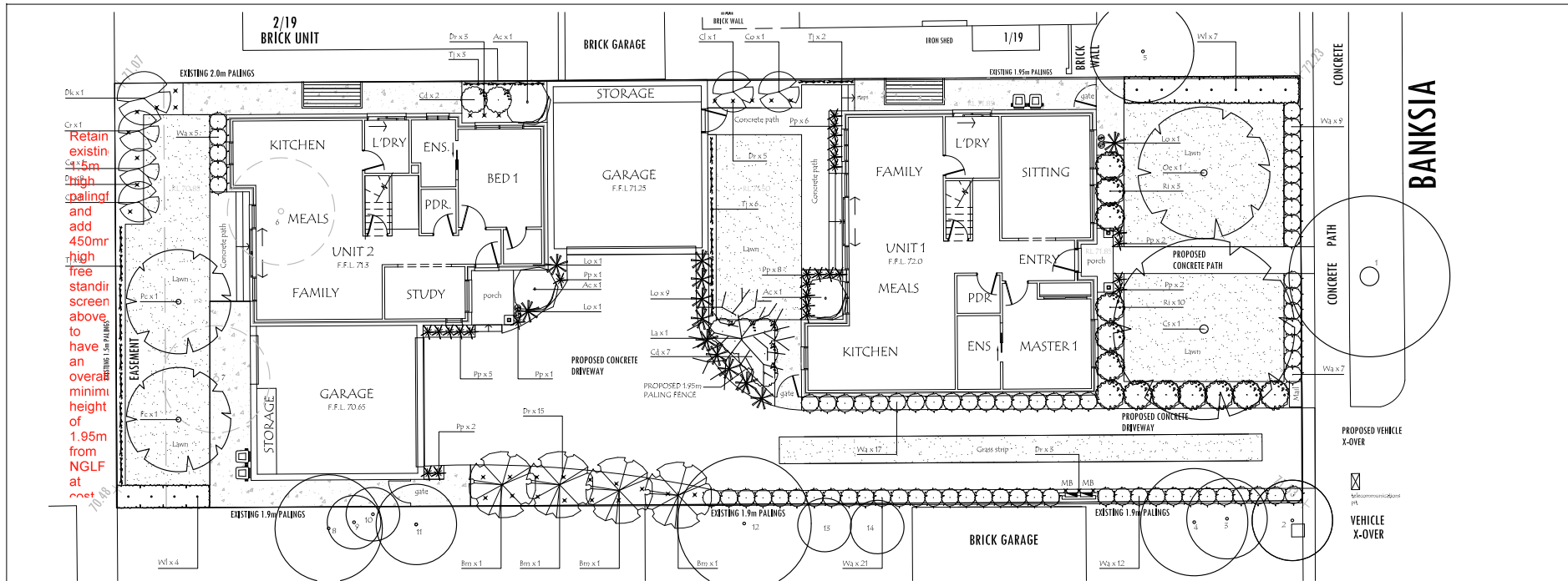
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 JAN 25 11 747 100
 NAME OF REGISTERED DESIGNER: MARK DENIO
 REGISTRATION NO. DP AD 21535



Client
JOE CIMINO
 Project
X2 TOWNHOUSE DEVELOPMENT
 Address
NO. 21 BANKSIA STREET, CLAYTON

Drawing
ELEVATIONS PROPOSED

Scale 1:100	Date 22/05/19	Drawn ME
Drawing No. 1173 - TP	Sheet No. 05 OF 07	Revision C

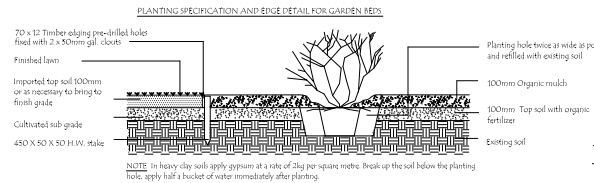


PLANTING SCHEDULE

Code	Botanical Name	Common Name	Maintained Size (mm)			Quantity
			Height	Width	Pot (mm)	
Ac	<i>Acacia cognata</i> 'Mooptop'		800	1500	200	3
Bm	<i>Banksia marginata</i>	Silver Banksia	3000	2300	200	4
Cd	<i>Coccoloba 'Dusky Bell'</i>	Native finch	500	1000	140	9
Cf	<i>Citrus limon</i>	Lemon	2500	1500	250	2
Co	<i>Citrus sinensis</i>	Orange	2500	1500	250	2
Cr	<i>Citrus reticulata</i>	Mandarin	2500	1500	250	1
Cs	<i>Citrus sativa</i>		10000	8000	400	1
Dk	<i>Diospyros kaki</i>		3000	2000	250	1
Dv	<i>Dichondra repens</i>	Kidney weed	Prostrate	1000	140	54
Fc	<i>Ficus carica</i>		8000	6000	400	1
La	<i>Laguncularia indica</i> 'Tascanora'	Cape Myrtle	5000	5000	400	1
Lo	<i>Leonardia 'Little Pal'</i>	Mat Rush	800	800	140	12
Oe	<i>Olea europaea subsp. europaea</i>		7000	5000	400	1
Pc	<i>Pyrus calleryana</i> 'Capri'		10000	4000	400	1
Pp	<i>Poa polystrima</i> 'Courtney'	Tussock Grass	500	500	140	27
Ru	<i>Rubus chingii</i> 'Oriental Pink'	Indian Hawthorn	1500	1000	140	15
Tj	<i>Trachelospermum jasminoides</i>	Chinese Star Jasmine	climbing		200	20
Va	<i>Westringia 'Aussie Box'</i>	Aussie Box	600	600	140	71
Vl	<i>Westringia longifolia</i>	Winged Westringia	2000	1500	200	11

EXISTING PLANTS

Code	Botanical Name	Height (mm)	Width (mm)	Comment	Recommendation
1	<i>Melaleuca linariifolia</i>	5000	6000	Street tree	Retain
2	<i>Phytolacca sp.</i>	3000	3000	Adjacent property	Retain
3	<i>Callistemon sp.</i>	4000	3000	Adjacent property	Retain
4	<i>Phytolacca sp.</i>	4000	4000	Adjacent property	Retain
5	<i>Pittosporum erogenodes</i> 'variegata'	3000	4000	Adjacent property	Retain
6	<i>Majus domestica</i>	3000	4000	Proposed dwelling	Remove
7	<i>Majus domestica</i>	3000	4000	Proposed dwelling	Remove
8	<i>Majus domestica</i>	3000	4000	Adjacent property	Retain
9	<i>Pittosporum tenuifolium</i>	3000	2000	Adjacent property	Retain
10	<i>Pittosporum tenuifolium</i>	4000	2000	Adjacent property	Retain
11	<i>Coprosma repens</i>	25000	3000	Adjacent property	Retain
12	<i>Majus domestica</i>	3000	5000	Adjacent property	Retain
15	<i>Pittosporum erogenodes</i> 'variegata'	3000	3000	Adjacent property	Retain
14	<i>Pittosporum tenuifolium</i>	4000	2000	Adjacent property	Retain

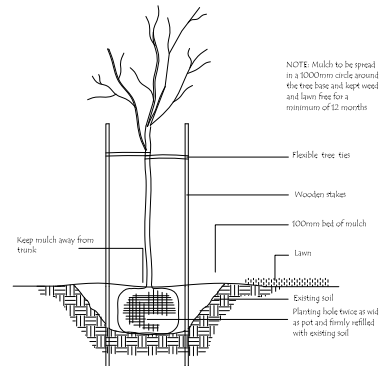
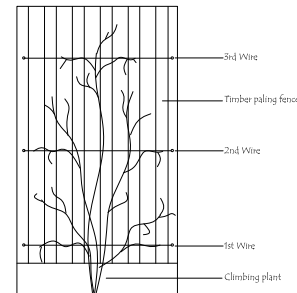


**PLANNING & ENVIRONMENT ACT 1987
MONASH PLANNING SCHEME**
Landscape Plan referred to in Permit No. TPA / 39858
For and on behalf of the City of Monash: msahai
Sheet 1 of 1
Date: 16/09/2019

N.B. Site coverage including buildings, driveway and paths is 59%

TREE PLANTING IN LAWN

CLIMBING PLANT DETAIL



Outward Design
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scapes@outwarddesign.com.au
PO Box 815, Somerville VIC 3912
outwarddesign.com.au

project: 21 Banksia Street, Clayton



scale: 1:100 @ A2

date: 17th December 2018

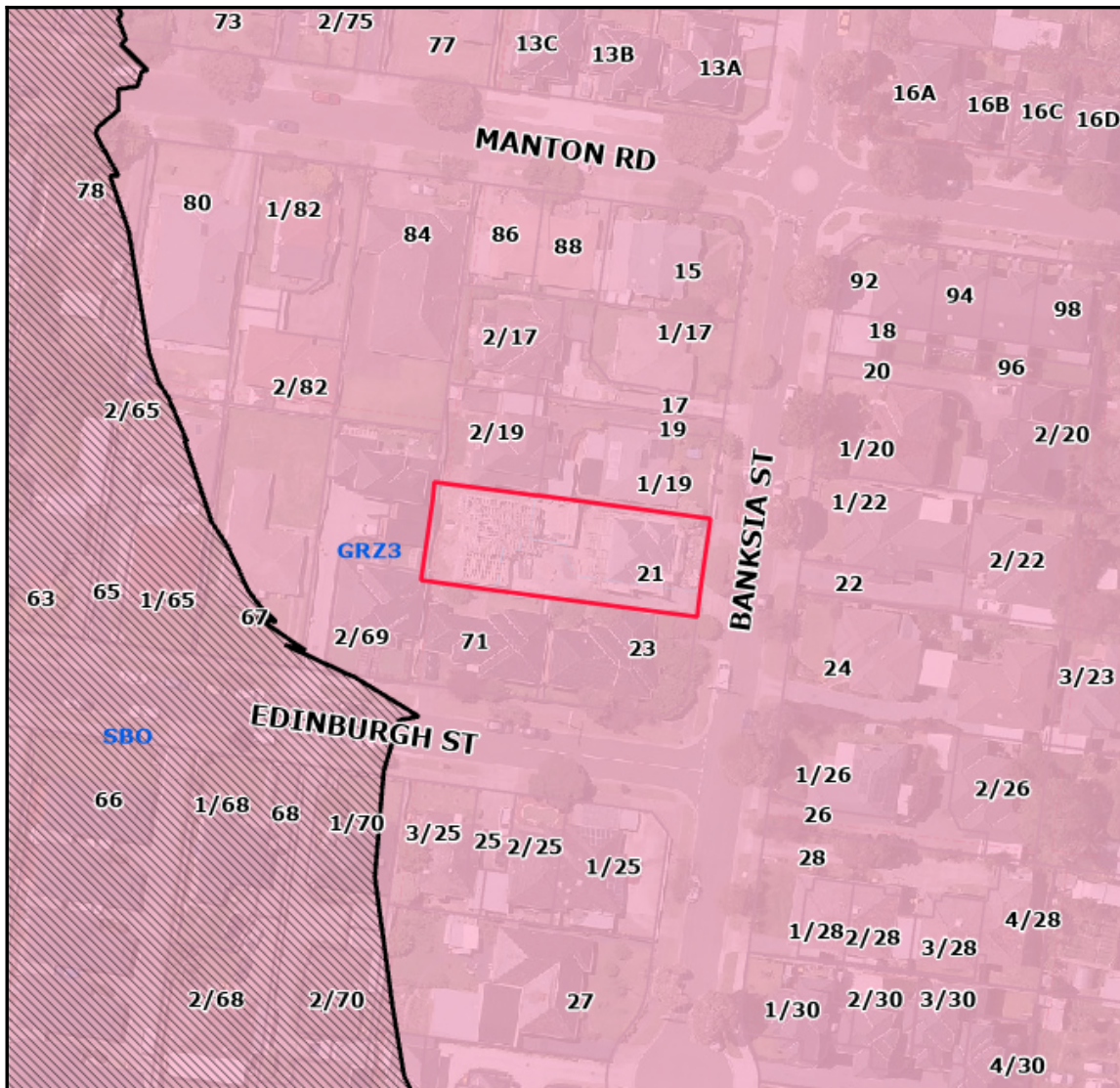
amend: 11th July 2019

drawing no: C018062





Planning Overlays and Zones



Legend

Planning Zones

C1Z	GRZ10	GRZ7	MUZ2	PCRZ	PUZ4	RGZ1	SUZ3
C2Z	GRZ2	GRZ8	NRZ1	PPRZ	PUZ5	RGZ3	SUZ4
CA	GRZ3	GRZ9	NRZ2	PUZ1	PUZ6	RGZ4	SUZ5
CDZ1	GRZ5	IN1Z	NRZ3	PUZ2	PUZ7	RGZ5	SUZ6
GRZ1	GRZ6	MUZ	NRZ4	PUZ3	RDZ1	SUZ2	UFZ

Planning Overlays

DDO	EAO	IPO	NCO	PO
DPO	HO	LSIO / SBO	PAO	VPO



Address

21 Banksia Street, Clayton

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