

Form 2

NOTICE OF AN APPLICATION FOR PLANNING PERMIT

The land affected by the application is located at:	26 Lakeshore Drive NUNGURNER 3909 Lot: 2 PS: 524068
The application is for a permit to:	Removal of a Restrictive Covenant AC929224J
The applicant for the permit is:	Development Solutions Victoria Pty Ltd
The application reference number is:	5.2023.322.1
You may look at the application and any documents that support the application on the website of the responsible authority.	COVID-19 Omnibus (Emergency Measures) Bill 2020 now modifies the requirement of Form 2 so that <i>Planning documents previously required to be physically available to view at local government offices are now only required to be available for online inspection.</i>

This can be done anytime by visiting the following website:

<https://www.eastgippsland.vic.gov.au/building-and-development/advertised-planning-permit-applications>

Any person who may be affected by the granting of the permit may object or make other submissions to the responsible authority.

An objection must

- ♦ be made to the Responsible Authority in writing,
- ♦ include the reasons for the objection, and
- ♦ state how the objector would be affected.

The Responsible Authority will not decide on the application before:	Subject to applicant giving notice
--	------------------------------------

If you object, the Responsible Authority will tell you its decision.

The responsible authority must make a copy of every objection available at its office for any person to inspect during office hours free of charge until the end of the period during which an application may be made for review of a decision on the application.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

Page 1 of 1

VOLUME 10804 FOLIO 499

Security no : 124107752408V
Produced 20/07/2023 12:02 PM

LAND DESCRIPTION

Lot 2 on Plan of Subdivision 524068S.
PARENT TITLE Volume 09470 Folio 864
Created by instrument PS524068S 31/05/2004

REGISTERED PROPRIETOR

Estate Fee Simple
TENANTS IN COMMON

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT K328610 13/04/1983
Expiry Date 31/12/2032

COVENANT AC929224J 18/06/2004

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE PS524068S FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 36A LAKESHORE DRIVE NUNGURNER VIC 3909

DOCUMENT END

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Document Type	Plan
Document Identification	PS524068S
Number of Pages (excluding this cover sheet)	2
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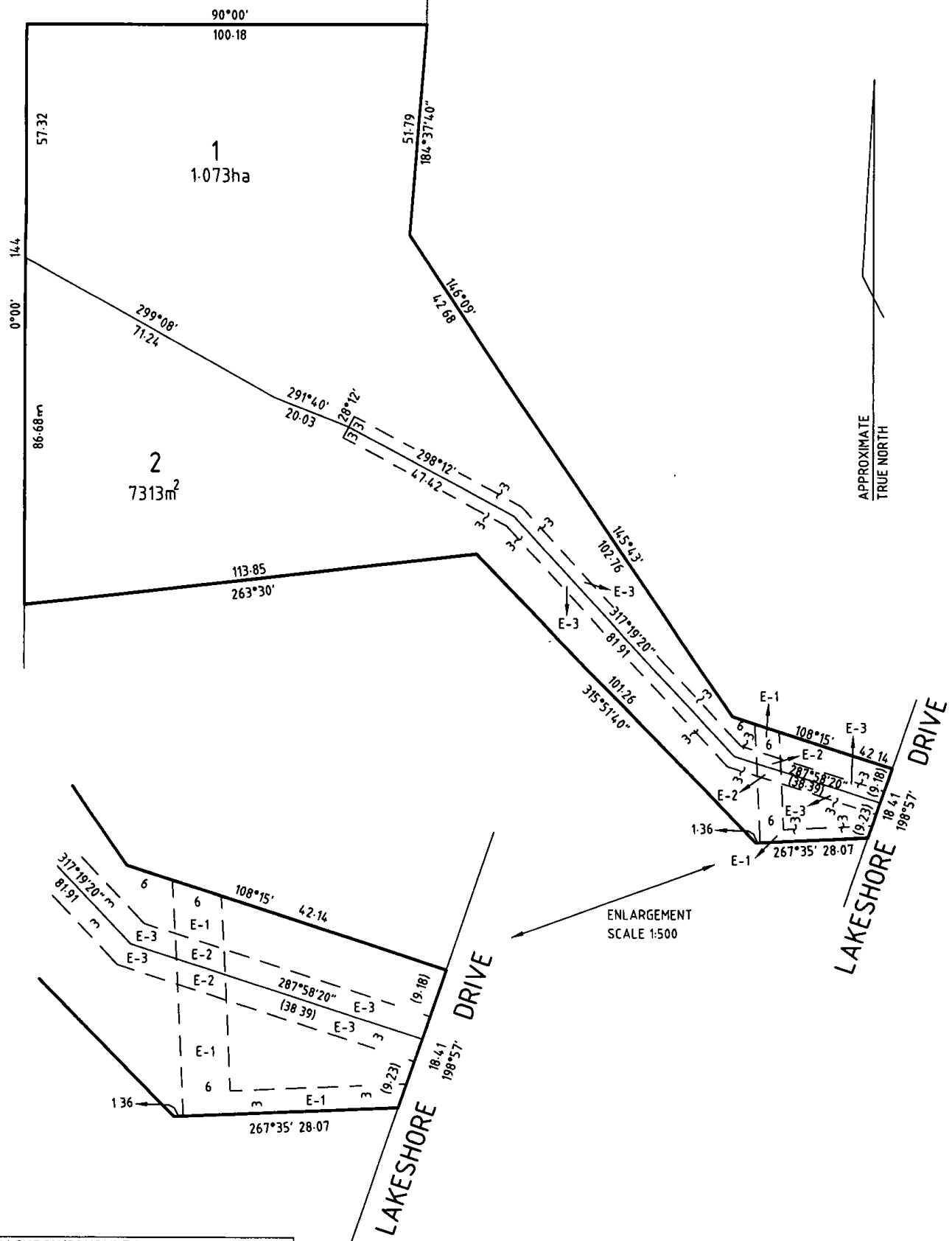
PLAN OF SUBDIVISION		STAGE No. PLAN NUMBER																												
<p>LOCATION OF LAND</p> <p>PARISH: COLQUHOUN</p> <p>TOWNSHIP: _____</p> <p>SECTION: C</p> <p>CROWN ALLOTMENT: 1F (PART)</p> <p>CROWN PORTION: _____</p> <p>TITLE REFERENCE: VOL 9470 FOL 864</p> <p>LAST PLAN REFERENCE/S: LP137683 (LOT 17)</p> <p>POSTAL ADDRESS: LAKESHORE DRIVE NUNGURNER, VIC. 3909</p> <p>AMG Co-ordinates: E 577770 ZONE: 55 (of approx. centre of land in plan) N: 5806610</p>		<p>COUNCIL CERTIFICATION AND ENDORSEMENT</p> <p>COUNCIL NAME: EAST GIPPSLAND SHIRE 6/2004/CRT</p> <p>1. This plan is certified under Section 6 of the Subdivision Act 1988.</p> <p>2. This plan is certified under Section 11(7) of the Subdivision Act 1988.</p> <p>Date of original certification under Section 6: / /</p> <p>3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.</p> <p>OPEN SPACE:</p> <p>(i) A requirement for public open space under Section 18 of the Subdivision Act 1988 has has not been made.</p> <p>(ii) The requirement has been satisfied.</p> <p>(iii) The requirement is to be satisfied in stage: </p> <p>Council Delegate Council Seal Date: 26/3/04</p> <p>Re-certification under Section 11(7) of the Subdivision Act 1988.</p> <p>Council Delegate Council Seal Date: / /</p>																												
<p>VESTING OF ROAD AND / OR RESERVE</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 20%;">IDENTIFIER</th> <th>COUNCIL / BODY / PERSON</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">NIL</td> <td style="text-align: center;">NIL</td> </tr> </tbody> </table>		IDENTIFIER	COUNCIL / BODY / PERSON	NIL	NIL	<p style="text-align: center;">NOTATIONS</p> <p>STAGING This is not a staged subdivision. Planning permit No. 02/00374/DS</p> <p>DEPTH LIMITATION: DOES NOT APPLY</p> <p style="text-align: center;">LOT 2 ONLY IS SUBJECT TO SURVEY. THE AREA OF LOT 1 HAS BEEN OBTAINED BY DEDUCTION FROM TITLE.</p> <p style="text-align: center;">SURVEY THIS PLAN IS BASED ON SURVEY</p> <p style="text-align: center;">THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARK No. _____ IN PROCLAIMED SURVEY AREA No. _____</p>																								
IDENTIFIER	COUNCIL / BODY / PERSON																													
NIL	NIL																													
<p style="text-align: center;">EASEMENT INFORMATION</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">LEGEND</th> <th style="width: 30%;">A - Appurtenant Easement</th> <th style="width: 30%;">E - Encumbering Easement</th> <th style="width: 30%;">R - Encumbering Easement (Road)</th> </tr> </thead> <tbody> <tr> <td>Easement Reference</td> <td>Purpose</td> <td>Width (Metres)</td> <td>Origin</td> </tr> <tr> <td>E-1 & E-2</td> <td>DRAINAGE</td> <td>SEE DIAGRAM</td> <td>LP137683</td> </tr> <tr> <td>E-2 & E-3</td> <td>WAY</td> <td>3</td> <td>THIS PLAN</td> </tr> <tr> <td></td> <td></td> <td></td> <td>Land Benefited / In favour Of</td> </tr> <tr> <td></td> <td></td> <td></td> <td>LOTS ON LP137683</td> </tr> <tr> <td></td> <td></td> <td></td> <td>LOTS ON THIS PLAN</td> </tr> </tbody> </table>		LEGEND	A - Appurtenant Easement	E - Encumbering Easement	R - Encumbering Easement (Road)	Easement Reference	Purpose	Width (Metres)	Origin	E-1 & E-2	DRAINAGE	SEE DIAGRAM	LP137683	E-2 & E-3	WAY	3	THIS PLAN				Land Benefited / In favour Of				LOTS ON LP137683				LOTS ON THIS PLAN	<p>LTO USE ONLY</p> <p>STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT</p> <p>RECEIVED <input checked="" type="checkbox"/></p> <p>DATE 19/5/04</p> <p>LTO USE ONLY</p> <p>PLAN REGISTERED</p> <p>TIME 1:38pm</p> <p>DATE 31/5/04</p> <p style="text-align: right;"> Assistant Registrar of Titles</p> <p style="text-align: center;">SHEET 1 OF 2 SHEETS</p>
LEGEND	A - Appurtenant Easement	E - Encumbering Easement	R - Encumbering Easement (Road)																											
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<p>KLUGE JACKSON CONSULTANTS PTY. LTD. SURVEYORS AND ESTATE PLANNERS</p> <p>45 MACALISTER STREET, SALE, 3850 (03) 5144 3877 29 BREED STREET, TRARALGON, 3844 (03) 5174 4808 119 JOHNSON STREET, MAFFRA, 3860 (03) 5147 2126</p>		<p>LICENSED SURVEYOR HANS PETER KLUGE</p> <p>SIGNATURE DATE 3/12/03</p> <p>REF: 02098 VERSION 1</p>	<p style="text-align: center; color: red; font-weight: bold;">Printed 30/08/2023</p> <p style="text-align: center; color: red; font-weight: bold;">Page 4 of 32</p> <p>DATE: / /</p> <p>COUNCIL DELEGATE SIGNATURE</p> <p>ORIGINAL SHEET SIZE A3</p>																											

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PLAN OF SUBDIVISION

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PS 524068S



KLUGE JACKSON CONSULTANTS PTY. LTD.
SURVEYORS AND ESTATE PLANNERS
 45 MACALISTER STREET, SALE, 3850 (03) 5144 3877
 29 BREED STREET, TRARALGON, 3844 (03) 5174 4808
 119 JOHNSON STREET, MAFFRA, 3860 (03) 5147 2126

SCALE

10 0 10 20 30 40 50

LENGTHS ARE IN METRES

ORIGINAL

SCALE	SHEET SIZE
1:1000	A3

LICENSED SURVEYOR HANS PETER KLUGE

SIGNATURE _____ DATE 3/12/03.

REF: 02098

VERSION: 1

Printed 30/08/2023

Page 5 of 32

DATE / /

COUNCIL DELEGATE SIGNATURE

ORIGINAL SHEET SIZE	A3
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TRANSFER OF LAND

Section 45 Transfer of Land Act 1958

Lodged by:

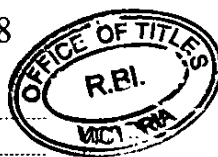
Name: DAVID KOMESAROFF LL.B.

Phone: 9510 1424

Address: 13 Chapel Street, Windsor

Ref.: DK

Customer Code: 1078 D



MADE AVAILABLE/CHANGE CONTROL

Land Titles Office Use Only

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed—

- together with any easements created by this transfer;
- subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and
- subject to any easements reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land: *(volume and folio reference)*

Volume 10804 Folio 499

Estate and Interest: *(e.g. "all my estate in fee simple")*

All my estate in fee simple

Consideration:

\$300,000.00



Transferor: *(full name)*

BEVERLY ANNE WEBB

Transferee: *(full name and address including postcode)*

STANLEY HAM and HEATHER ROSE both of 7 Gordon Grove, South Yarra 3141 as tenants in common in equal shares.

Directing Party: *(full name)*

Creation and/or Reservation and/or Covenant:

See annexure

Continued on T2 Page 2

Approval No. 002926L

ORDER TO REGISTER

Please register and issue title to

T2

Signed

Cust. Code:



STAMP DUTY USE ONLY

Original Transfer of Land
Stamped with: \$13,660.00
Trn: 1823833 18-JUN-2004
SRO Victoria

Printed 30/08/2023

Page 7 of 32

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RB 18.6.04

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And the Transferee with the intent that the benefit of this covenant shall be attached to and run at law and in equity with lot 1 on plan of subdivision No.524068S and that the burden of this Covenant shall be annexed to and run at law and in equity with the Land hereby transferred DO HEREBY for the transferee, his/her transferees, executors, administrators and assigns and as a separate covenant COVENANTS with the Transferor and his/her transferees, successors and assigns and other registered proprietor or proprietors for the time being of Lot 1 on the said Plan of Subdivision that he shall not at any time:-

- (a) allow or cause to be constructed or placed any building of any nature or description;
- (b) allow or cause any earthworks, tracks/driveways save and except for the purpose of paving; and/or
- (c) allow or cause to be planted any vegetation having a height greater than:
 - (i) one and a half (1.50 metres with a fifteen (15) metre arc and
 - (ii) one (1) metre with a fifteen (15) to thirty (30) metre arc from engineering peg RL 98.83 ^{RELATIVE} to TBM Bolt and steps as shown on the ^{PLAN SUCH PEG LIES 83 METRES FROM THE CORNER OF THE} western and southern boundaries of Lot 2 on the said Plan
- (d) have trees or shrubs planted that are allowed to grow higher than four (4) metres above the natural ground line in the area beginning thirty (30) metres down (east of the western boundary line of Lot 2 on both the northern and southern boundaries, and continuing until it reaches the front ^{BOUNDARY} fence. ^{ML}

Dated: AND IT IS INTENDED that this Covenant shall appear on the certificate of title to issue for the Land hereby transferred.

Execution and attestation:

Dated this 7th day of June 2004.

SIGNED by the Transferor
In the presence of:





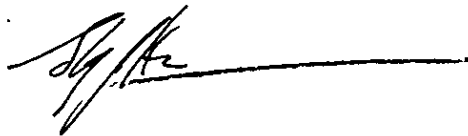
SIGNED by the Transferees
In the presence of:

H.R.

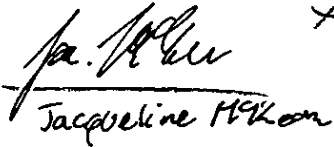
Heather N. Rose

X

S.H.



WITNESSE


Jacqueline McKean

AC929224J

18/06/2004 \$828 45

Approval No. 002926L

T2 Page 2



DAC929224J-2-2

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K328610

CONVERTED

Westpac Banking Corporation
IRENE J. KEESER

VICTORIA

TRANSFER OF LAND

GYTON PROPERTY HOLDING PTY. LTD. the registered office of which is
situate at 8 Maribyrnong Road Footscray being registered as the
proprietor of an estate in fee simple in the land hereinafter
described subject to the encumbrances notified hereunder IN
CONSIDERATION of the sum of THIRTY-THREE THOUSAND TWO HUNDRED AND
FIFTY DOLLARS (\$33,250.00) paid to it by JEFFERY RICHARD COLLINSON
Navy and JO-ANN CATHERINE COLLINSON Clerk both of Flat 17, 131 Baddock
Street South Coogee DO HEREBY TRANSFER to the said Jeffery Richard
Collinson and Jo-Ann Catherine Collinson as joint tenants all its
estate and interest in ALL THAT piece of land being Lot 17 on Plan
of Subdivision No. 137683 Parish of Colquhoun being the land
comprised in Certificate of Title Volume 9470 Folio 864 AND the
Transferees with the intent that the benefit of this covenant shall
be attached to and run at law and in equity with the whole of the land
comprised in Plan of Subdivision number 137683 (other than the land
hereby transferred) and each and every part thereof until the 31st
December, 2032 and that the burden of this Covenant will be annexed
to and run at law and in equity with the land hereby transferred and
each and every part thereof until the 31st December 2032 and be set out as
an encumbrance at the foot of the Certificate of Title to be issued
pursuant to this Transfer HEREBY for themselves their respective heirs
executors administrators and transferees COVENANT with the said Gyton
Property Holdings Pty. Ltd. its successors and transferees and other the
registered proprietor or proprietors for the time being of the whole
of the land comprised in the said Plan of Subdivision and each and every
part thereof (other than the land hereby transferred) that they the
transferees will not prior to the 31st December, 2032:

(a) erect, place, permit, licence or authorize on the said lot:

- (i) any main building with walls of fibro cement or with a roof
of galvanised iron;
- (ii) any building unless constructed with new materials save for
second hand bricks;



DK328610-1-3

Printed 30/08/2023

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X J. Collinson
X Jo-ann Collinson
[Signature]

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WESTPAC BANKING CORPORATION

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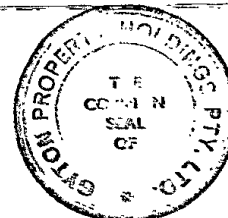
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- (iii) any outbuilding unless painted with two coats of first quality paint in brown or green tonings;
- (iv) any building with a wall or roof of a reflective material unless treated or painted to avoid such reflection.
- (b) extract or remove or permit the extraction of any soil, gravel or other earth material from the said land except for the purpose of excavating for the foundations of a building, swimming pool, dam, tennis court or garden landscaping.
- (c) use or permit the use of the said lot or any building thereon for the purpose of commercial breeding, boarding or training kennels for cats or dogs or to keep poultry in excess of ten birds.
- (d) use or permit the use of the said land for any offensive or noxious purpose.

DATED this 22nd day of February One thousand nine hundred and eighty-three.

The COMMON SEAL of GYTON PROPERTY HOLDING PTY. LTD was hereunto affixed in accordance with its Memorandum and Articles of Association in the presence of:



..... D. Vase Director
 Alan Secretary.

SIGNED in Victoria
 by the said JEFFERY RICHARD COLLINSON
 in the presence of:-
 ... Do. [Signature] ...

J. Collinson

SIGNED in Victoria
 by the said JO-ANN CATHERINE COLLINSON
 in the presence of:-
 ... Do. [Signature] ...

Jo-ann Collinson

ENCUMBRANCES REFERRED TO:

As set out at the foot of the said Certificate of Title and Covenant contained in this Transfer.

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GYTON PROPERTY HOLDING PTY. LTD.

-to-

J.R. & J.C. COLLINSON

TRANSFER OF LAND

IRENE J. KEISEN

Solicitor,

32-34 Grandview Road,
WHEELERS HILL: 3150

TELEPHONE: 560-4384

Memorandum of the within instrument
has been entered in the Register Book



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AUG
20
23



APPLICATION FOR PLANNING PERMIT

REMOVAL OF A RESTRICTIVE COVENANT

36A LAKESHORE DRIVE, NUNGURNER
STAN HAM AND HEATHER ROSE
REF: 23076

CONTENTS

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2	Site Context	5
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4	Zones and Overlays	12
5	Planning Assessment	17
6	Conclusion	19

APPENDIX

A	Copy of Title and Plan of Subdivision
B	Restrictive Covenants

DOCUMENT REVISION

1	Draft Report	DAC	04/08/2023
2	Final Report	CMC	15/08/2023

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1. INTRODUCTION

Development Solutions Victoria Pty Ltd act on behalf of Stan Ham and Heather Rose, the owners of land and the applicants for the planning permit application seeking the removal of a restrictive covenant at 36A Lakeshore Drive, Nungurner.

This application seeks approval to remove restrictive covenant **AC929224J** dated 18/06/2004 in order to have no restrictions for future residential development on the subject site.

There are three options for seeking to remove a covenant:

- Supreme Court under the *Property Law Act 1958* – Section 84
- Amend a Planning Scheme – Part 3 of the *Planning and Environment Act 1987*.
- Planning Permit – Part 4 of the *Planning and Environment Act 1987*.

It is under Part 4 of the *Planning and Environment Act 1987* that we seek to remove the restrictive covenant applicable to this land.

The proposal is consistent with the objectives of the East Gippsland Planning Scheme and will result in an appropriate planning outcome.

Address	36A Lakeshore Drive, Nungurner
Site Description	Lot 2 on Plan of Subdivision 524068S
Title Particulars	Vol 10804 Fol 499
Site Area	7,313m ²
Proposal	Removal of a Restrictive Covenant
Planning Scheme	East Gippsland Planning Scheme
Zone	Low Density Residential Zone
Overlays	Design and Development Overlay – Schedule 11 Erosion Management Overlay Vegetation Protection Overlay – Schedule 3
Aboriginal Cultural Heritage	Partly identified as an area of Cultural Heritage Sensitivity
Permit Triggers	Section 178A of the <i>Planning and Environment Act 1987</i>
Notice	No exemption available under the Low Density Residential Zone
Referrals	None
Planning and Environment Act 1987	Part 4
Planning Scheme requirements	Easements, Restrictions and Reserves – Clause 52.02 Decision guidelines – Clause 65

2. SITE CONTEXT

Site

The subject site is located at 36A Lakeshore Drive, Nungurner. A copy of the Title and Plan of Subdivision is contained in **Appendix A**. The title is affected by restrictive covenants;

K328610

This covenant restricts the use of specific materials and some uses of the site.

AC929224J.

This covenant being the subject of this planning application restricts the construction of any building, driveway and planting of vegetation with a growth height exceeding 1.5 metres.

A copy of the restrictive covenants is contained in **Appendix B**.

The site is irregular in shape with a total area of approximately 7,313m² and is currently vacant land. The site contains an existing ephemeral watercourse in the southeastern portion of the subject site.

The site is undulating in nature and contains scattered vegetation throughout. Details of the site are depicted in the photographs provided below.

Access to the site is existing via a shared grassed track directly from Lakeshore Drive.

The subject site in relation to Nungurner as well as the surrounding land, is shown in the locality plans in **Figure 1** and **Figure 2**.



Figure 1 – Locality Plan – 36A Lakeshore Drive, Nungurner (source: mapshare.vic.gov.au)



Figure 2 – Locality Plan – 36A Lakeshore Drive, Nungurner (source: mapshare.vic.gov.au)

Surrounds

The land surrounding the site comprises a combination of farming land and low density residential development.

North and south of the subject site comprises existing dwellings. East of the subject site comprises Lakeshore Drive, an existing dwelling and further east contains Lake King. West of the subject site comprises farming land.

Lakeshore Drive is a constructed bitumen sealed road with rollover kerb and channel traversing in a north to south direction. Nungurner Jetty Road and Nungurner Road are the main road networks connecting Nungurner to the surrounding areas. Lakeshore Drive connects to Nungurner Jetty Road north of the subject site.

The subject site is located approximately 16 kilometres northwest of the central business district of Lakes Entrance and 33 kilometres southeast of Bairnsdale.

The subject site in relation to Nungurner and surrounding area is shown in the aerial photograph below.



Photograph 1 – Aerial Photograph of the subject site and surrounding land
– 36A Lakeshore Drive, Nungurner (source: doi.vic.gov.au)
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purpose of enabling its consideration and review as
part of a planning process under the Planning and
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Photograph 2 – Subject site at 36A Lakeshore Drive, Nungurner.



Photograph 4 – Existing gate to access subject site.



Photograph 6 – Subject site facing northwest along the eastern boundary.



Photograph 3 – Existing access to subject site.



Photograph 5 – Subject site facing north.



Photograph 7 – Subject site facing east.



Photograph 8 – Subject site facing southeast.



Photograph 10 – Subject site facing east along the access gate to subject site.



Photograph 12 – Property directly opposite subject site at 31 Lakeshore Drive, Nungurner.



Photograph 9 – Subject site facing south along the western boundary.



Photograph 11 – Subject site facing west.



Photograph 13 – Neighbouring property along the southern boundary at 38 Lakeshore Drive, Nungurner.



Photograph 14 – Neighbouring property along the northern boundary at 36 Lakeshore Drive, Nungurner.



Photograph 16 – Lakeshore Drive facing north.



Photograph 15 – Neighbouring property along the northern boundary at 30 Lakeshore Drive, Nungurner.



Photograph 17 – Lakeshore Drive facing south.

3. THE PROPOSAL

This application seeks approval to remove a restrictive covenant registered on title as **AC929224J**. The covenant was created on 18/06/2004. A copy of the restrictive covenant is contained in **Appendix B**.

The above mentioned covenant was created with the subdivision of 36 Lakeshore Drive being Lot 17 on Lodged Plan 137683 in 2004. The covenant states that the *"the intent that the benefit of this covenant shall be attached to and run at law and in equity with lot 1 on plan of subdivision No 524068S"*.

The covenant prevents any buildings from being constructed, prevents the construction of a driveway and the planting of trees exceeding 1.5 metres in height in the eastern portion of the site. Whilst it appears that this was meant only to restrict development in the view lines of the adjoining property, the covenant and is ambiguous and as such is preventing sale of the property.

The removal of the covenant is unlikely to impact the amenity of the area particularly given the existing development surrounding. Any future development would be subject to the Design and Development Overlay

requirements and as such the amenity of the area is likely be protected by these provisions.

This covenant was solely created on this lot and there are no other properties in the area with this covenant registered on the title. A review of the titles of the surrounding properties has confirmed that no other lot within the area contains the same covenant.

The beneficiary of the covenant is Lot 1 on Plan of Subdivision 524068S. It is noted that this lot no longer exists and has been re-subdivided to create Lot 1 and 2 on Plan of Subdivision 542984.

Furthermore Lot 1 on Plan of Subdivision 524068S was sold and is no longer in the same ownership as when the covenant was created. This covenant is onerous and ambiguous and does not facilitate fair, orderly, economic and sustainable use and development of the land.

It is expected notice to adjoining land owners in addition to any that may be affected by the removal of the covenant will be undertaken during the application process.

And the Transferee with the intent that the benefit of this covenant shall be attached to and run at law and in equity with lot 1 on plan of subdivision No.524068S and that the burden of this Covenant shall be annexed to and run at law and in equity with the Land hereby transferred DO HEREBY for the transferee, his/her transferees, executors, administrators and assigns and as a separate covenant COVENANTS with the Transferor and his/her transferees, successors and assigns and other registered proprietor or proprietors for the time being of Lot 1 on the said Plan of Subdivision that he shall not at any time:-

- (a) allow or cause to be constructed or placed any building of any nature or description;
- (b) allow or cause any earthworks, tracks/driveways save and except for the purpose of paving; and/or
- (c) allow or cause to be planted any vegetation having a height greater than:
 - (i) one and a half (1.50 metres with a fifteen (15) metre arc and
 - (ii) one (1) metre with a fifteen (15) to thirty (30) metre arc

from engineering peg RL 98.83 to TBM Bolt and steps as shown on the western and southern boundaries of Lot 2 on the said Plan
- (d) have trees or shrubs planted that are allowed to grow higher than four (4) metres above the natural ground line in the area beginning thirty (30) metres down (east of the western boundary line of Lot 2 on both the northern and southern boundaries, and continuing until it reaches the front fence.

AND IT IS INTENDED that this Covenant shall appear on the certificate of title to issue for the Land hereby transferred.

4. ZONES AND OVERLAYS

Low Density Residential Zone

The purpose of the Low Density Residential Zone is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To provide for low-density residential development on lots which, in the absence of reticulated sewerage, can treat and retain all wastewater.

An extract of the Low Density Residential Zone Map is provided to the right in **Figure 4**:

A planning permit is not required to remove a covenant under the provisions of the Low Density Residential Zone and therefore these provisions are not addressed further.

The removal of the covenant will enable the land to be developed for residential purposes in the future consistent with the objectives of the Low Density Residential Zone.

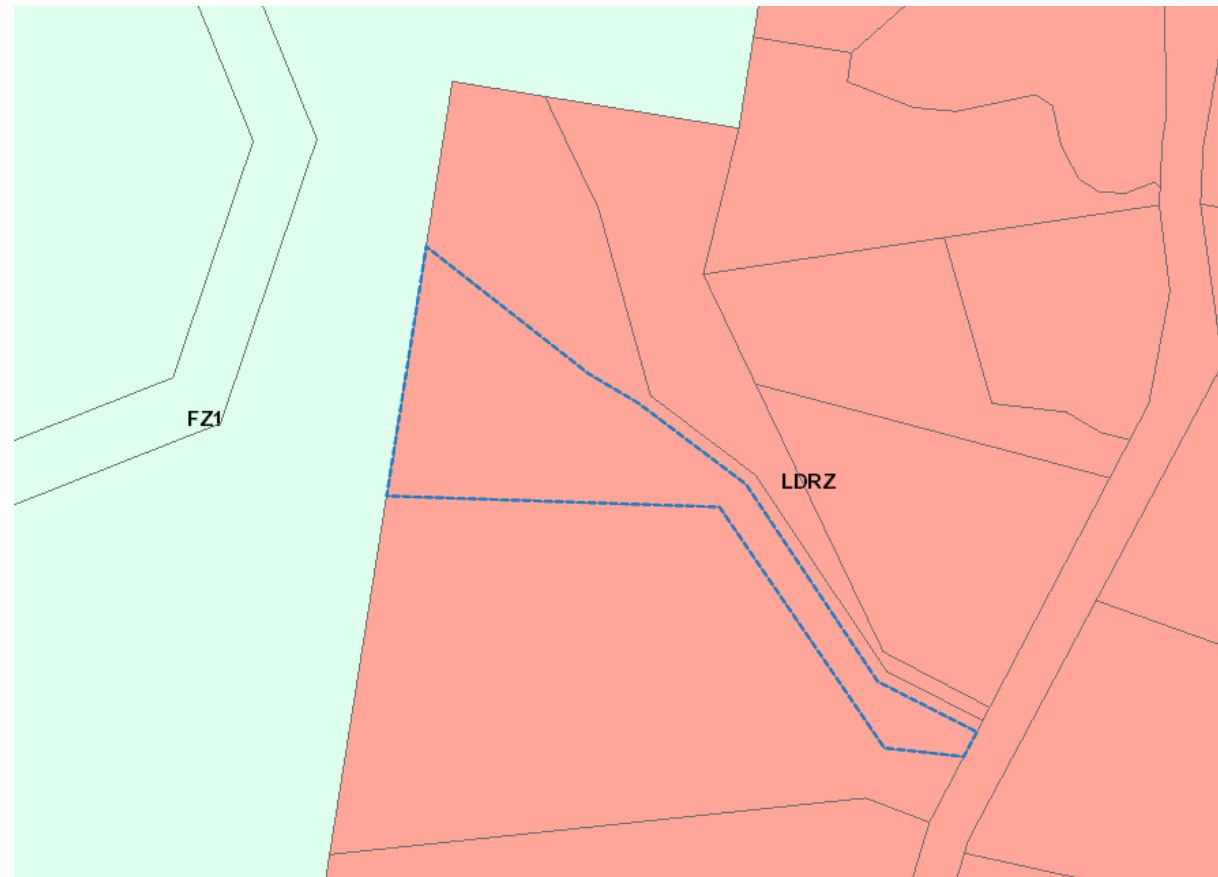


Figure 4 – Zoning Map – (source - mapshare.vic.gov.au)

Design and Development Overlay – Schedule 11

The purpose of the Design and Development Overlay is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To identify areas which are affected by specific requirements relating to the design and built form of new development.

An extract of the Design and Development Overlay Map is provided below in **Figure 5**:

A planning permit is not required to remove a covenant under the provisions of the Design and Development Overlay and therefore these provisions are not addressed further.

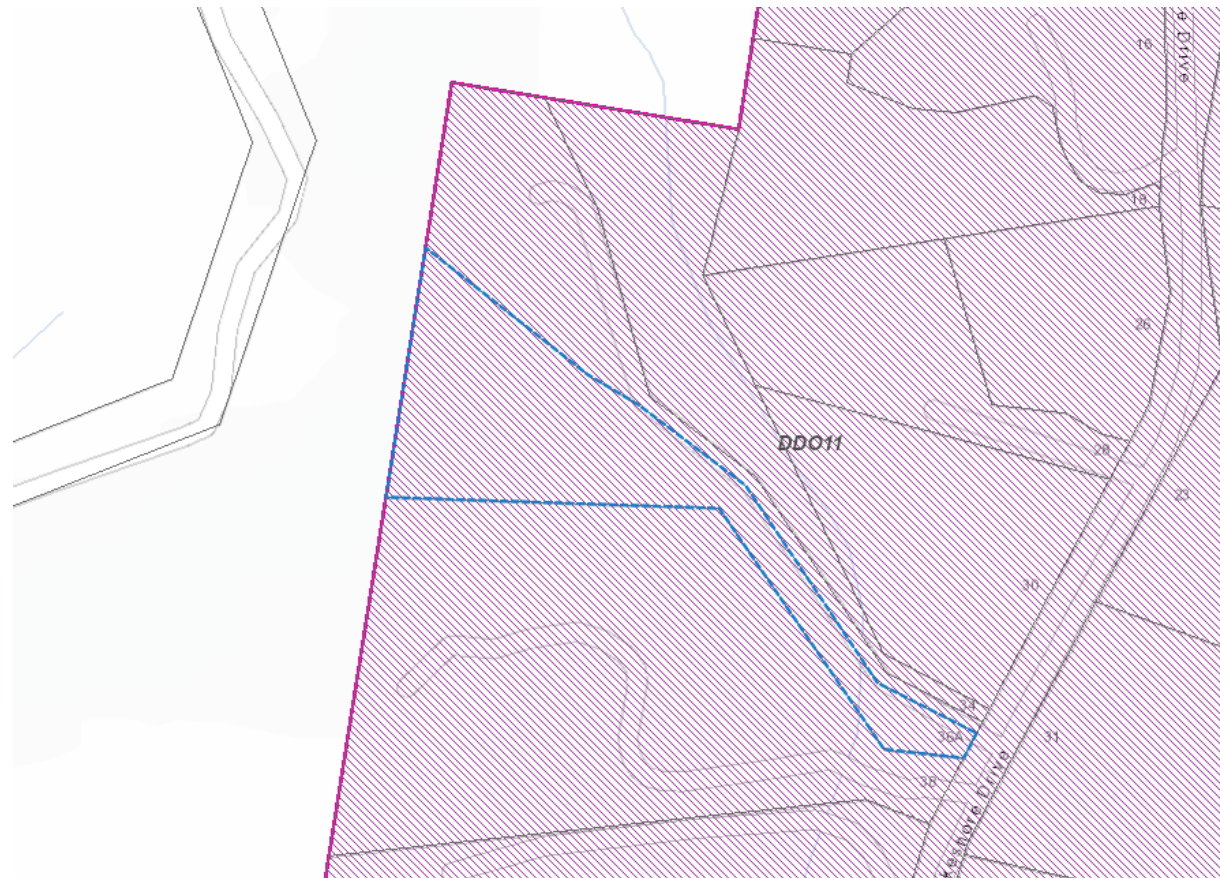


Figure 5 – Design and Development Overlay – (source - mapshare.vic.gov.au)

Erosion Management Overlay

The purpose of the Erosion Management Overlay is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To protect areas prone to erosion, landslip, other land degradation or coastal processes by minimising land disturbance and inappropriate development.*

An extract of the Erosion Management Overlay Map is provided below in **Figure 6**:

A planning permit is not required to remove a covenant under the provisions of the Erosion Management Overlay and therefore these provisions are not addressed further.



Figure 6 – Erosion Management Overlay – (source - mapshare.vic.gov.au)

Vegetation Protection Overlay – Schedule 3

The purpose of the Vegetation Protection Overlay is:

- To implement the Municipal Planning Strategy and the Planning Policy Framework.
- To protect areas of significant vegetation.
- To ensure that development minimises loss of vegetation.
- To preserve existing trees and other vegetation.
- To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance.
- To maintain and enhance habitat and habitat corridors for indigenous fauna.
- To encourage the regeneration of native vegetation.

An extract of the Vegetation Protection Overlay Map is provided below in **Figure 7**:

A planning permit is not required to remove a covenant under the provisions of the Vegetation Protection Overlay and therefore these provisions are not addressed further.

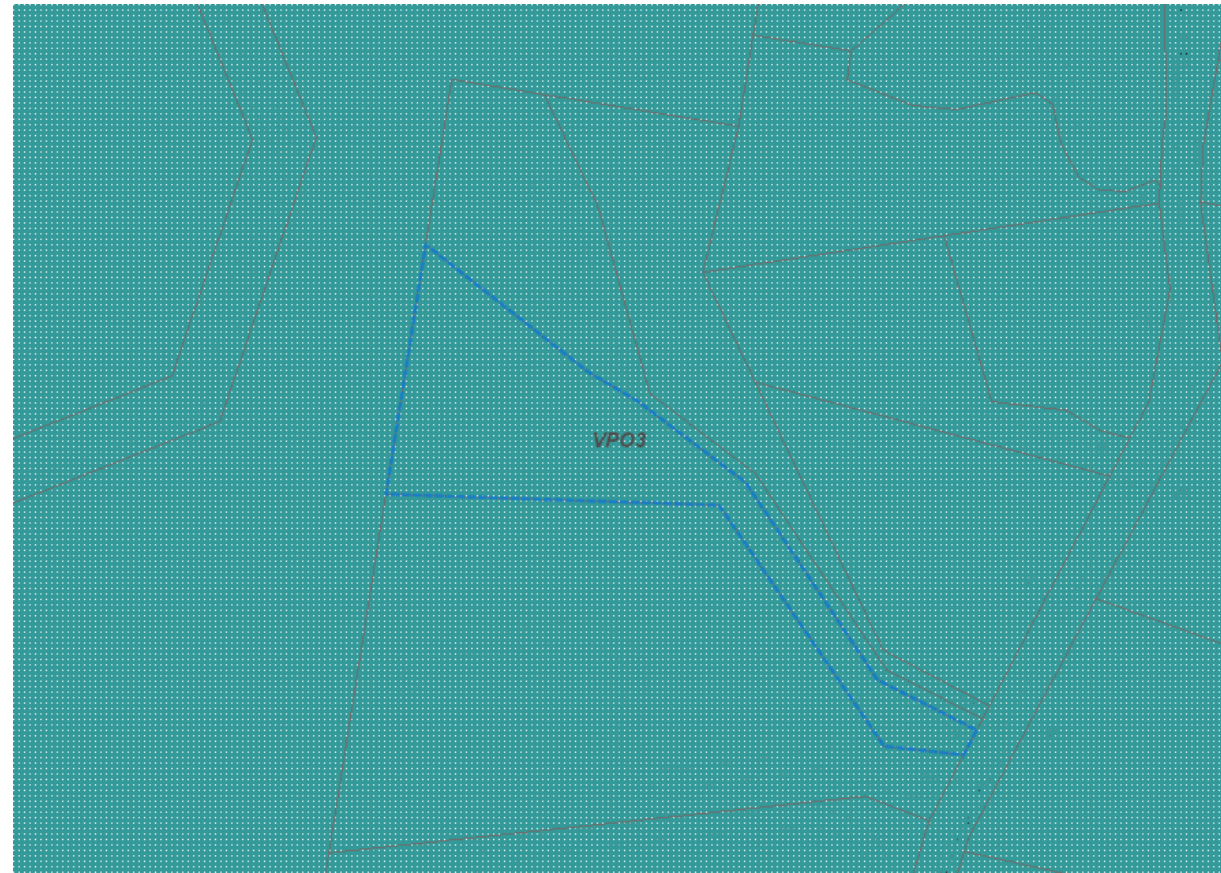


Figure 7 – Vegetation Protection Overlay – (source - mapshare.vic.gov.au)

Aboriginal Cultural Heritage

Under the provisions of the *Aboriginal Heritage Act 2006* the subject site is partly recognised as being within an area of Aboriginal Cultural Heritage Sensitivity.

The removal of a Restrictive Covenant does not require any works and therefore is an exempt activity and as such a Cultural Heritage Management Plan is not required.

An extract of the Aboriginal Cultural Heritage Overlay Map is provided below in **Figure 8**:

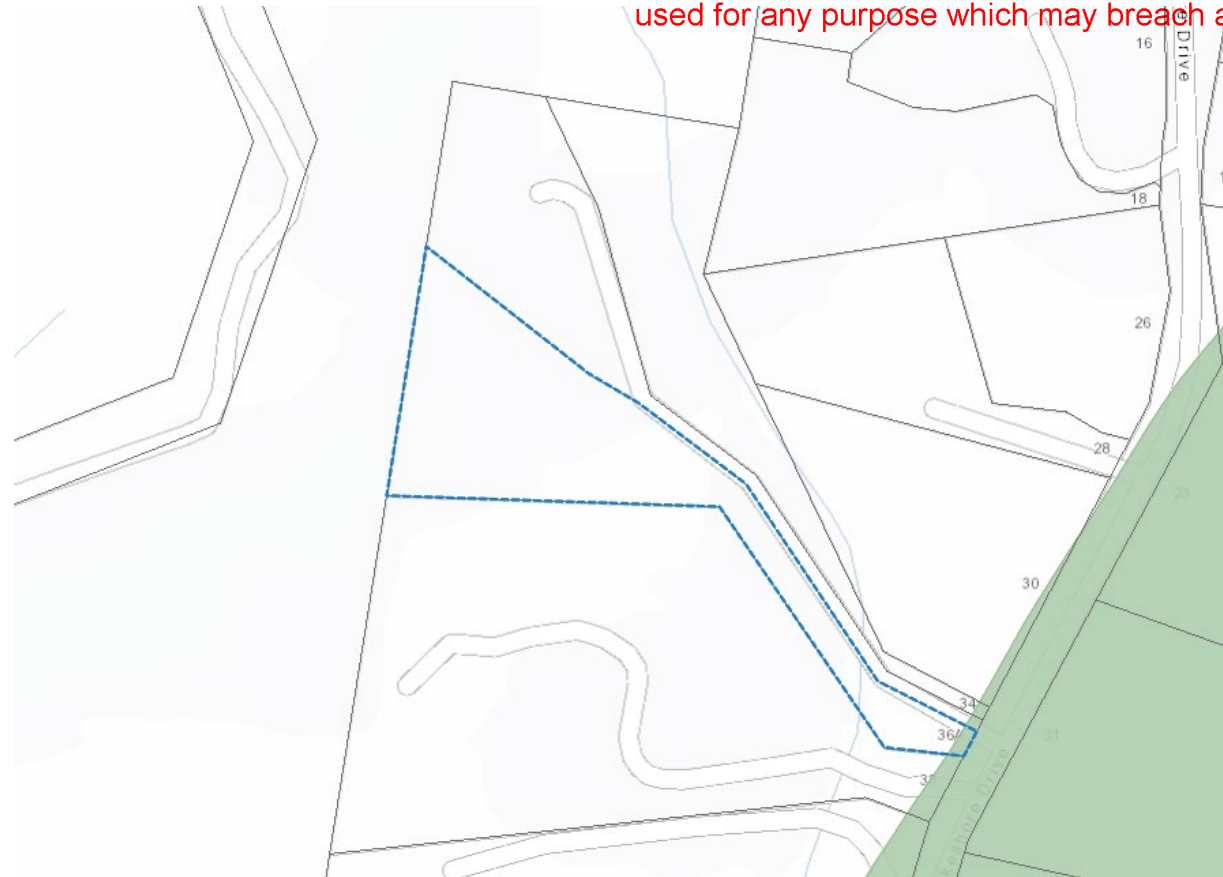


Figure 8 – Aboriginal Cultural Heritage Map – (source - mapshare.vic.gov.au)

5. PLANNING ASSESSMENT

There are limited specific requirements in the East Gippsland Planning Scheme that are relevant to this proposal, as such a permit is not required to remove a covenant under the provisions of the General Residential Zone, Design and Development Overlay or the Vegetation Protection Overlay which are applicable to the subject site.

A planning permit is required to remove a covenant or restriction under the provisions of Clause 52.02 – Easements, Restrictions and Reserves.

The *Planning and Environment Act 1987* at S.3(1) provides the definition of a covenant is:

“registered restrictive covenant” means a restriction within the meaning of the Subdivision Act 1988.

The *Subdivision Act 1988* at S.3(1) provides the definition of restriction is:

“restriction” means a restrictive covenant or a restriction which can be registered, or recorded in the Register under the Transfer of Land Act 1958.

Section 60 (2) of the *Planning and Environment Act 1987* provides:

(2) The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer –

- (a) Financial loss; or*
- (b) Loss of amenity; or*
- (c) Loss arising from change to the character of the neighbourhood; or*
- (d) Any other material detriment –*

as a consequence of the removal or variation of the restriction.

Section 60 (5) of the *Planning and Environment Act 1987* provides:

(5) The responsible authority must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that –

(a) the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and

(b) if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith.

This submission and supporting documentation provides evidence which supports that no person will suffer any detriment as a result of the proposed removal of the covenant. This is particularly evident given the majority of the lots within the estate are already developed, and any development that exceeds the requirements of the Design and Development Overlay would require approval that is likely to be advertised to the surrounding property owners.

This proposal has been assessed against the objectives and standards of applicable clauses of the East Gippsland Planning Scheme and it is considered that the proposal is appropriate for the following reasons:

- The proposal meets the requirements of **Clause 52.02** easements, restrictions and reserves.
- The covenant in question is registered on title as **AC929224J** which restricts any buildings from being constructed, the construction of any driveways and the planting of vegetation that exceeds 1.5 metres in height in the eastern portion of the site.
- Whilst it may be interpreted that there is a portion of the site that can be developed, this is ambiguous and as such is preventing the land from being sold.
- The covenant was created to protect the views of the adjoining allotment, however this lot has since been further subdivided and it is expected that a dwelling could be developed in the future that respects the existing views of the adjoining dwelling.
- The proposed removal of the restrictive covenant will result in an allotment that can be developed in the future and meet the objectives of the Low Density Residential Zone. The allotment is covered with the

Design and Development Overlay and as such any future development will be required to address the relevant provisions of the overlay ensuring adjoining allotments are not detrimentally impacted.

- The remaining covenant will retain the restrictions that are relevant to all other lots in the area and will restrict the materials and colours of future buildings.
- This submission has addressed the decision guidelines of **Clause 65** and the proposal supports orderly planning of the area and has taken into consideration the potential effect on adjoining land owners and the amenity of the area.
- There is no natural hazards associated with the site that will be impacted by removing this restriction from the title or that make the site unsuitable for future residential development.

6. CONCLUSION

This submission is in support of a planning permit application for the removal of a covenant at 36A Lakeshore Drive, Nungurner.

The relevant provisions of the *Planning and Environment Act 1987* and the East Gippsland Planning Scheme have been addressed and it has been ascertained that the proposed removal of the restrictive covenant is appropriate for the subject site and in this location. It is requested that the proposal be supported for the following reasons:

- The proposal is consistent with the objectives and strategies outlined in the Municipal Planning Strategy and the Planning Policy Framework.
- The proposed removal of the covenant will not result in any loss to any beneficiary of the covenant.
- The removal of the restrictive covenant is unlikely to impact adjoining land owners.
- The subject site will be able to be developed with a dwelling in the future.

It is requested that a planning permit be granted for the proposed removal of the covenant.

Development Solutions Victoria

Disclaimer:

This document has been prepared for planning permit application purposes only. The report has been made with careful consideration and with the best information available to Development Solutions Victoria Pty Ltd at the time.

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