

Form 2

NOTICE OF AN APPLICATION FOR PLANNING PERMIT

The land affected by the application is located at:	36A Lakeshore Drive NUNGURNER 3909 Lot: 2 PS: 524068
The application is for a permit to:	Variation of a Restrictive Covenant AC929224J
The applicant for the permit is:	Development Solutions Victoria Pty Ltd
The application reference number is:	5.2024.130.1

You may look at the application and any documents that support the application free of charge at: <https://www.eastgippsland.vic.gov.au/building-and-development/advertised-planning-permit-applications>

You may also call 5153 9500 to arrange a time to look at the application and any documents that support the application at the office of the responsible authority, East Gippsland Shire. This can be done during office hours and is free of charge.

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 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.

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.

REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958 Page 1 of 1

VOLUME 10804 FOLIO 499

Security no : 124114409538K
Produced 23/04/2024 04:12 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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PLAN OF SUBDIVISION

STAGE No. _____ PLAN NUMBER _____

LOCATION OF LAND
 PARISH: COLQUHOUN
 TOWNSHIP: _____
 SECTION: C
 CROWN ALLOTMENT: 1F (PART)
 CROWN PORTION: _____

TITLE REFERENCE: VOL 9470 FOL 864

LAST PLAN REFERENCE/S: LP137683 (LOT 17)
 POSTAL ADDRESS: LAKESHORE DRIVE
 NUNGURNER, VIC. 3909

AMG Co-ordinates: E 577770 ZONE: 55
 (of approx. centre of land in plan) N: 5806610

COUNCIL CERTIFICATION AND ENDORSEMENT

COUNCIL NAME: EAST GIPPSLAND SHIRE 6/2004/CRT

- This plan is certified under Section 6 of the Subdivision Act 1988.
- ~~This plan is certified under Section 11(7) of the Subdivision Act 1988.~~
~~Date of original certification under Section 6: / /~~
- This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.

OPEN SPACE:
 (i) A requirement for public open space under Section 18 of the Subdivision Act 1988 ~~has~~ has not been made.
~~(ii) The requirement has been satisfied.~~
~~(iii) The requirement is to be satisfied in stage:~~

Council Delegate
~~Council Seal~~
 Date: 26/3/04

Re-certification under Section 11(7) of the Subdivision Act 1988.
 Council Delegate
 Council Seal
 Date: / /

VESTING OF ROAD AND / OR RESERVE

IDENTIFIER	COUNCIL / BODY / PERSON
NIL	NIL

NOTATIONS

STAGING This is not a staged subdivision.
 Planning permit No. 02/00374/DS

DEPTH LIMITATION: DOES NOT APPLY

LOT 2 ONLY IS SUBJECT TO SURVEY.
 THE AREA OF LOT 1 HAS BEEN OBTAINED BY DEDUCTION FROM TITLE.

SURVEY THIS PLAN IS BASED ON SURVEY

THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARK No. _____
 IN PROCLAIMED SURVEY AREA No. _____

EASEMENT INFORMATION

LEGEND	A - Appurtenant Easement	E - Encumbering Easement	R - Encumbering Easement (Road)	
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited / In favour Of
E-1 & E-2	DRAINAGE	SEE DIAGRAM	LP137683	LOTS ON LP137683
E-2 & E-3	WAY	3	THIS PLAN	LOTS ON THIS PLAN

LTO USE ONLY

STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT

RECEIVED

DATE 19/5/04

LTO USE ONLY

PLAN REGISTERED

TIME 1:38pm

DATE 31/5/04

[Signature]
 Assistant Registrar of Titles

SHEET 1 OF 2 SHEETS

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

LICENSED SURVEYOR HANS PETER KLUGE

SIGNATURE DATE 3/12/03

REF: 02098 VERSION 1

Printed 14/05/2024

DATE: / /

COUNCIL TITLE REGISTRATION

ORIGINAL SHEET SIZE A3

Page 4 of 34

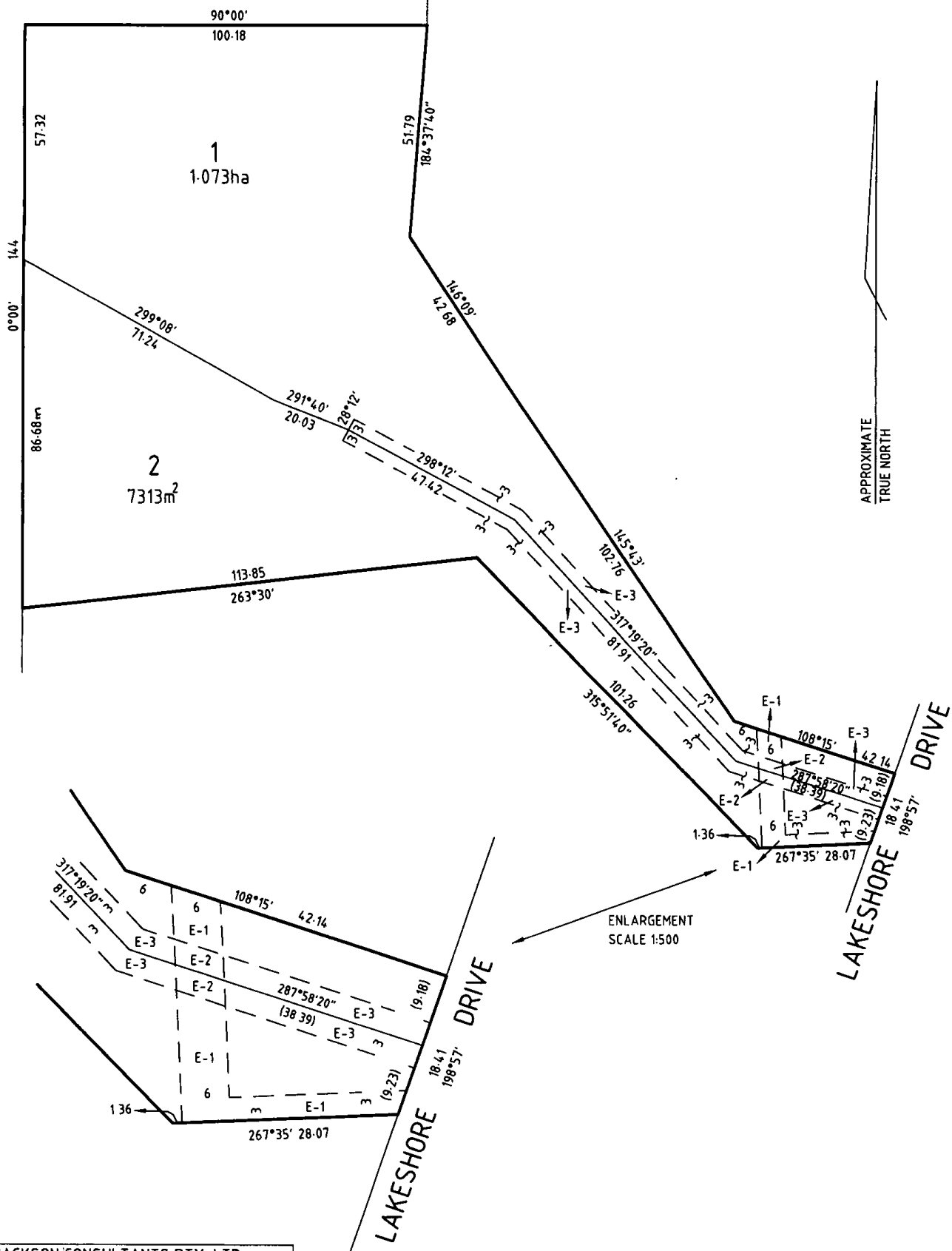
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PLAN OF SUBDIVISION

STAGE No.

PLAN NUMBER

PS 5240685



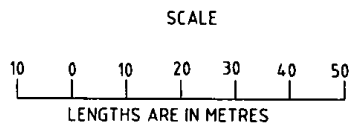
APPROXIMATE
TRUE NORTH

ENLARGEMENT
SCALE 1:500

LAKESHORE DRIVE

LAKESHORE DRIVE

KLUGE JACKSON CONSULTANTS PTY. LTD.
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 29 BREED STREET, TRARALGON, 3844 (03) 5174 4808
 119 JOHNSON STREET, MAFFRA, 3860 (03) 5147 2126



ORIGINAL
 SCALE SHEET SIZE
 11000 A3

LICENSED SURVEYOR HANS PETER KLUGE
 SIGNATURE DATE 3/12/03.
 REF: 02098 VERSION: 1

SHEET 2 OF 2 SHEETS
 Printed 14/05/2024
 DATE / /
 COUNCIL OF PLANNING AND ENVIRONMENT
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18/06/2004 \$828 45 fee

TRANSFER OF LAND

Section 45 Transfer of Land Act 1958

Lodged by:

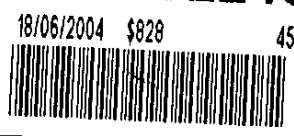
Name: DAVID KOMESAROFF LL.B.

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 Duty, JRMO



**Printed 14/05/2024
Page 7 of 34**

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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 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. *M.*

M.
PLAN SUCH PEG LIES 83 METRES FROM THE CORNER OF THE

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:

[Signature]

[Signature]

SIGNED by the Transferees
In the presence of:

H.R.
+

Heather N. Rose

WITNESSE

[Signature]
Jacqueline McKean

S.H.
+

[Signature]

Approval No. 002926L

AC929224J

18/06/2004 \$828 45

T2 Page 2



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Page 8 of 34

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K328610

COMPLETED
ANZ Banking Corporation
IRENE J. KEESER

REGD

9-4 23536

VICTORIA
TRANSFER OF LAND

J 9/7/2021/30
K 20/27/30

X B
Z

X B
Z

M.S.M.
Lindsay

APR-11-85 1 30 9 23 20315

WIDEN STRIP ONLY

LE A 101 * 049-35

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 Bundoock 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 ~~964~~ 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;

Jm
28/8/84



X J. Collinson
X Jo-ann Collinson

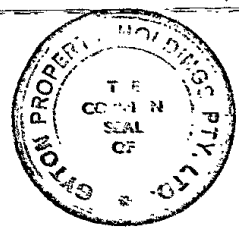
Jm
28/8/84

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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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Draft Covenant:

This memorandum contains provisions which are intended for inclusion in transfers of land under the Transfer of Land Act 1958 to be subsequently lodged for registration.

This covenant applies to land contained in Lot 2 on Plan of Subdivision 524068S in equity with land contained in Lot 1 on Plan of Subdivision 524068S.

Covenants:

The transferees, their heirs, executors, administrators and transferees shall not at any time:

1. Build, construct or erect or cause to be built, constructed or erected or remain on the Land or any part thereof any building outside of the nominated building envelope as annexed to this covenant.
2. Allow vegetation to be planted or grown above a height of 1.5 metres outside of the nominated building envelope.

It is intended that the above covenant shall appear as an encumbrance on the Certificate of title to the Land hereby transferred and shall run with the Land hereby transferred.

APR
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24

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APPLICATION FOR PLANNING PERMIT

VARIATION OF A RESTRICTIVE COVENANT

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

CONTENTS

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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	Site Plan
C	Proposed Covenant

DOCUMENT REVISION

1	Draft Report	DAC	19/04/2024
2	Final Report	CMC	20/04/2024

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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 variation of a restrictive covenant at 36A Lakeshore Drive, Nungurner.

This application seeks approval for the variation of a covenant registered on title as **AC929224J**.

There are three options for seeking to vary 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 vary the covenant applicable to this land.

The proposal is consistent with the objectives of the East Gippsland Planning Scheme and will result in a positive 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	Variation 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 are contained in **Appendix A**.

The site is irregularly shaped 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**.

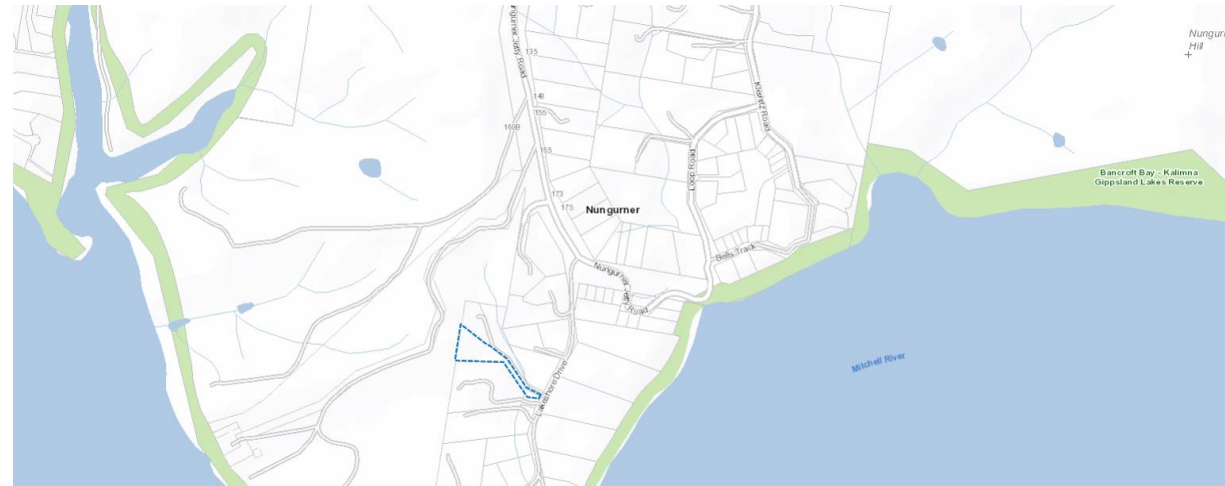


Figure 1 – Locality Plan – 36A Lakeshore Drive, Nungurner (source: mapshare.vic.gov.au)



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

Surrounds

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

North and south of the subject site comprises existing residential development. East of the subject site comprises Lakeshore Drive, an existing dwelling and Lake King being further east. Land west of the subject site is predominantly farming land.

Lakeshore Drive is a constructed bitumen sealed road with rollover kerb and channel traversing in a north to south direction. Lakeshore Drive directly connects to Nungurner Jetty Road approximately 340 metres north of the subject site. Nungurner Jetty Road and Nungurner Road are the main road networks connecting Nungurner to the surrounding areas.

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.



ADVERTISED

Photograph 1 – Aerial Photograph of the subject site and surrounding land
– 36A Lakeshore Drive, Nungurner. (source: doi.vic.gov.au)
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Photograph 2 – Subject site at 36A Lakeshore Drive, Nungurner.



Photograph 4 – Existing access to subject site facing south.



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 west.



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



Photograph 9 – Subject site facing south adjoining the northern boundary.



Photograph 11 – Subject site facing west along the eastern boundary.



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 further along the northern boundary at 30 Lakeshore Drive, Nungurner.



Photograph 17 – Lakeshore Drive facing south.

3. THE PROPOSAL

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

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”*.

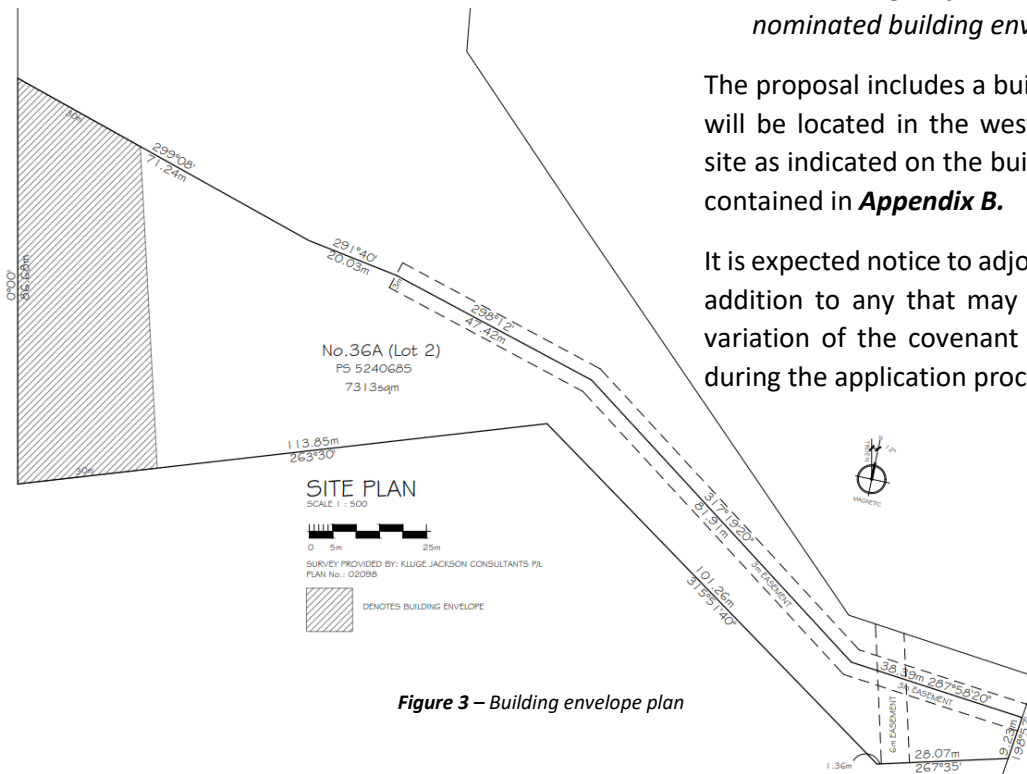
The covenant prevents any buildings from being constructed, prevents the construction of a driveway and the planting of trees exceeding 1.5 metres in height in the eastern portion of the site. Whilst it appears that this was meant only to restrict development in the view lines of the adjoining property,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

Furthermore, we are seeking to vary the covenant and include a building envelope as indicated on the proposed site plan contained in **Appendix B**.

The variation of the covenant is unlikely to impact the amenity of the area particularly

given the existing development surrounding the site. Any future development on the site would be subject to all other conditions contained within the Covenant, Low Density Residential Zone, Design and Development Overlay, Erosion Management Overlay and the Vegetation Protection Overlay.

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 Lots 1 and 2 on Plan of Subdivision 542984.



The proposed varied covenant is contained in **Appendix C** and will read:

“The transferees, their heirs, executors, administrators and transferees shall not at any time:

- 1. Build, construct or erect or cause to be built, constructed or erected or remain on the Land or any part thereof any building outside of the nominated building envelope as annexed to this covenant.*
- 2. Allow vegetation to be planted or grown above a height of 1.5 metres outside of the nominated building envelope. “*

The proposal includes a building envelope that will be located in the western portion of the site as indicated on the building envelope plan contained in **Appendix B**.

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

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 vary a covenant under the provisions of the Low Density Residential Zone and therefore these provisions are not addressed further.

The variation of the covenant and inclusion of a building envelope will enable the land to be developed for residential purposes in the future consistent with the objectives of the Low Density Residential Zone.

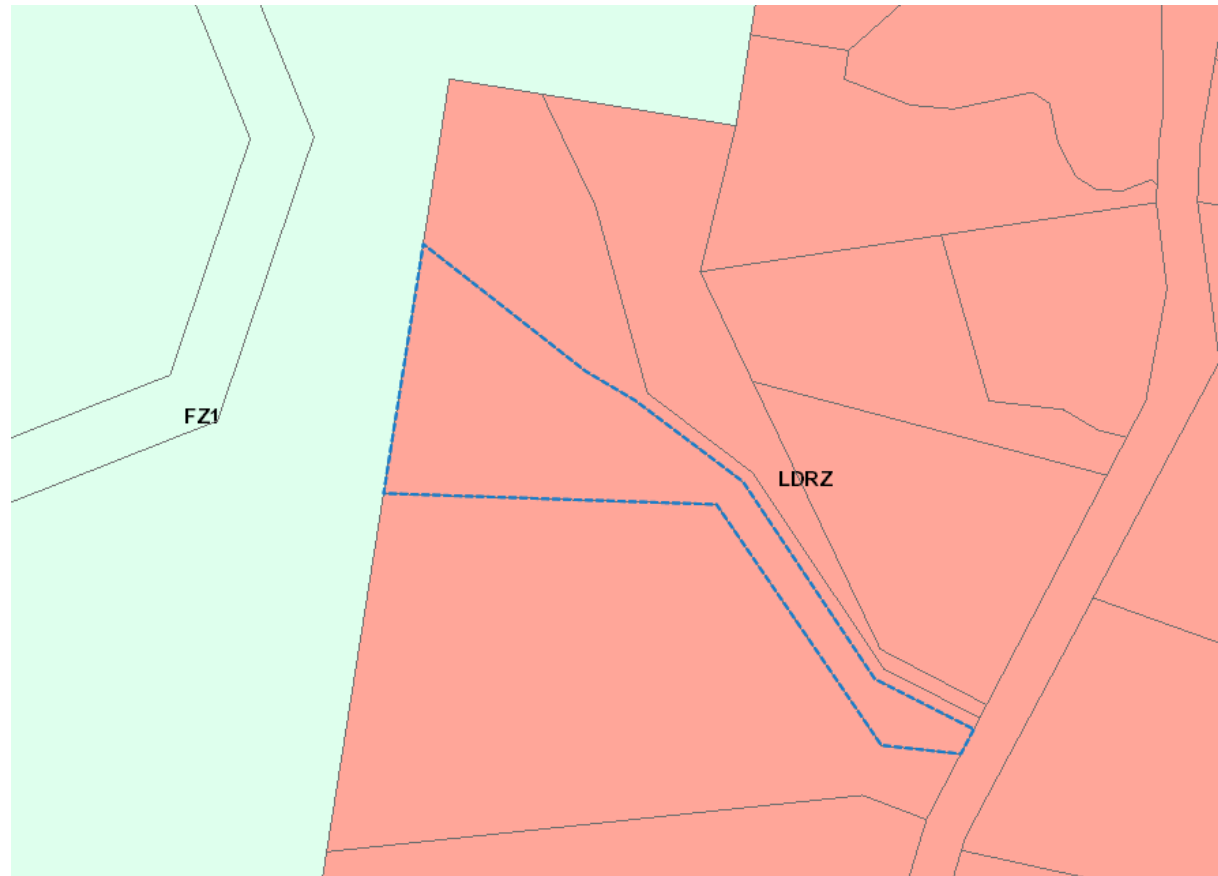


Figure 4 – Zoning Map – (source - mapshare.vic.gov.au)

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 vary a covenant under the provisions of the Design and Development Overlay and therefore these provisions are not addressed further. It is noted that the building envelope does not contravene the intent of the Design and Development Overlay.

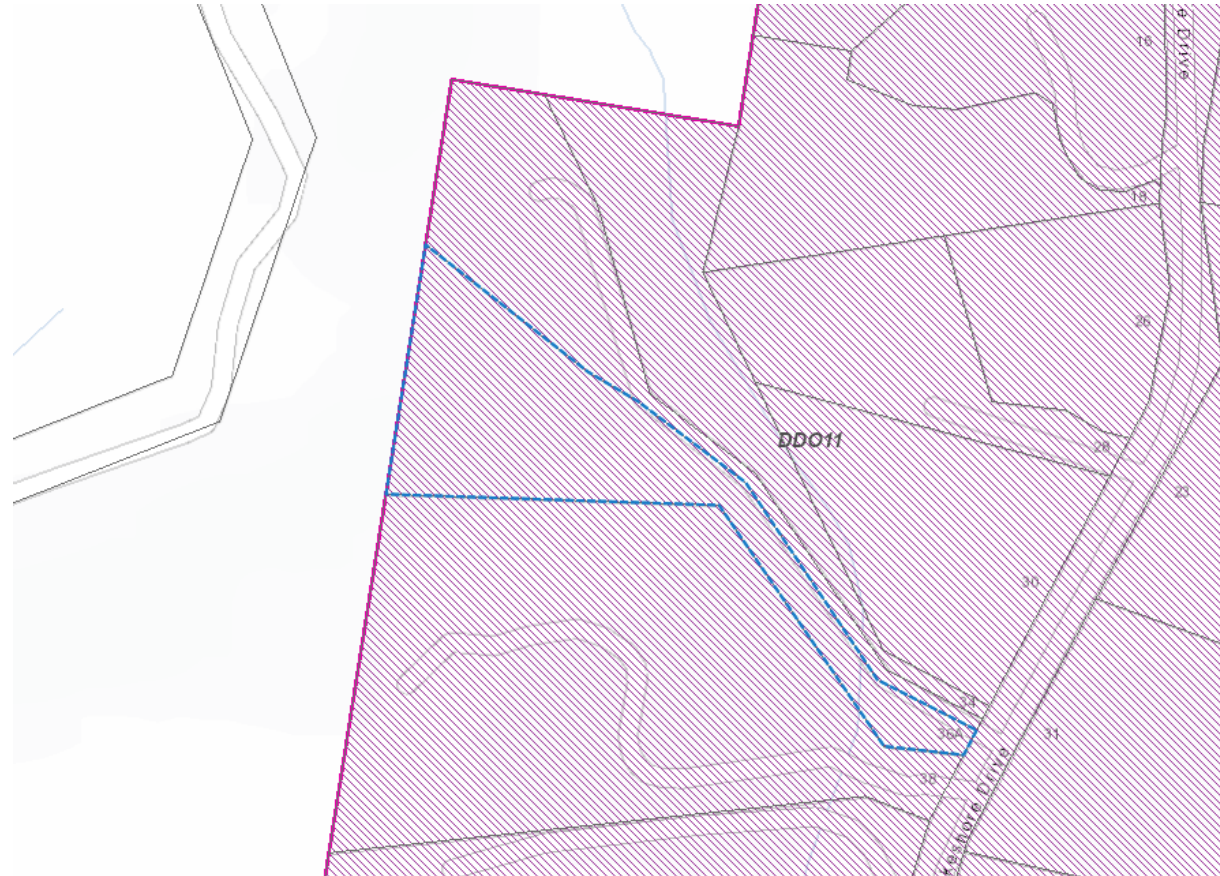


Figure 5 – Design and Development Overlay – (source - mapshare.vic.gov.au)

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 vary 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 vary a covenant under the provisions of the Vegetation Protection Overlay and therefore these provisions are not addressed further.

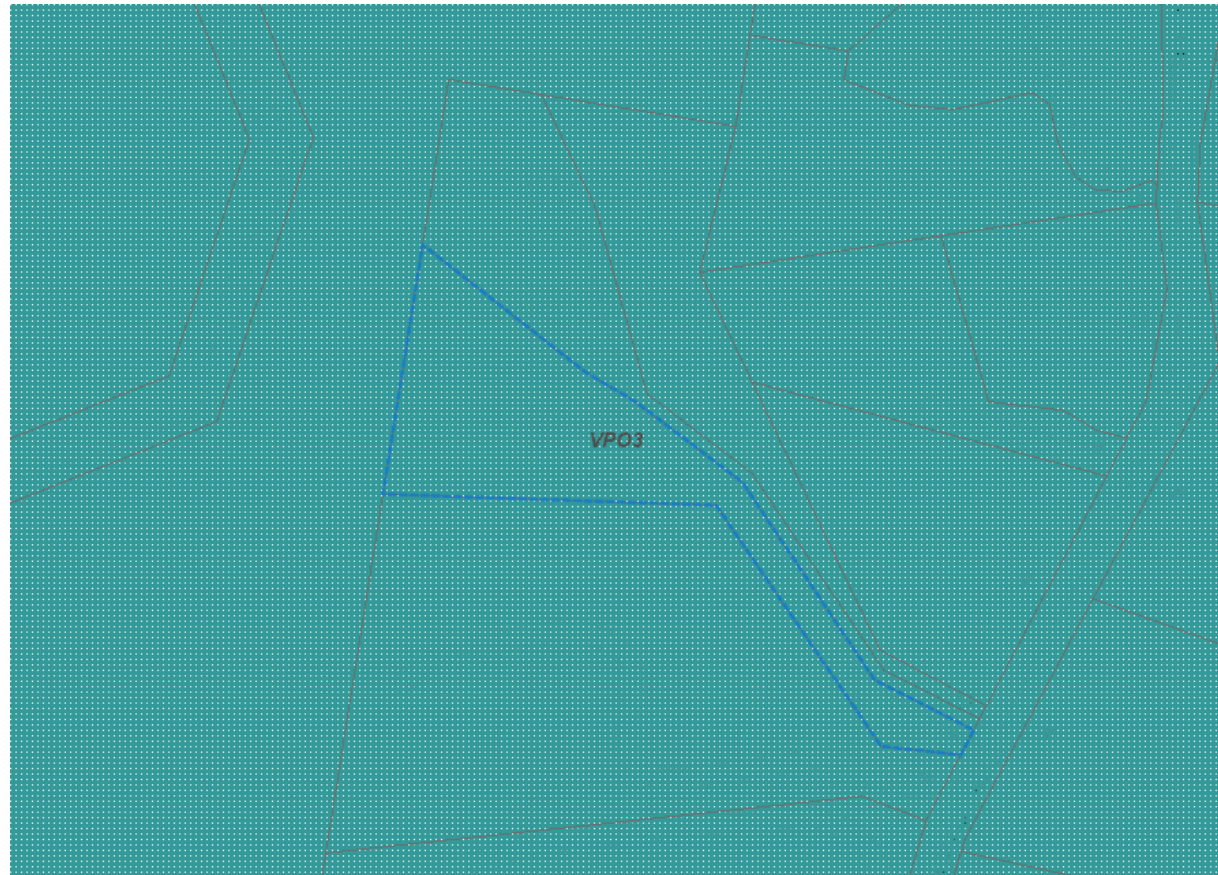


Figure 7 – Vegetation Protection Overlay – (source - mapshare.vic.gov.au)

Aboriginal Cultural Heritage

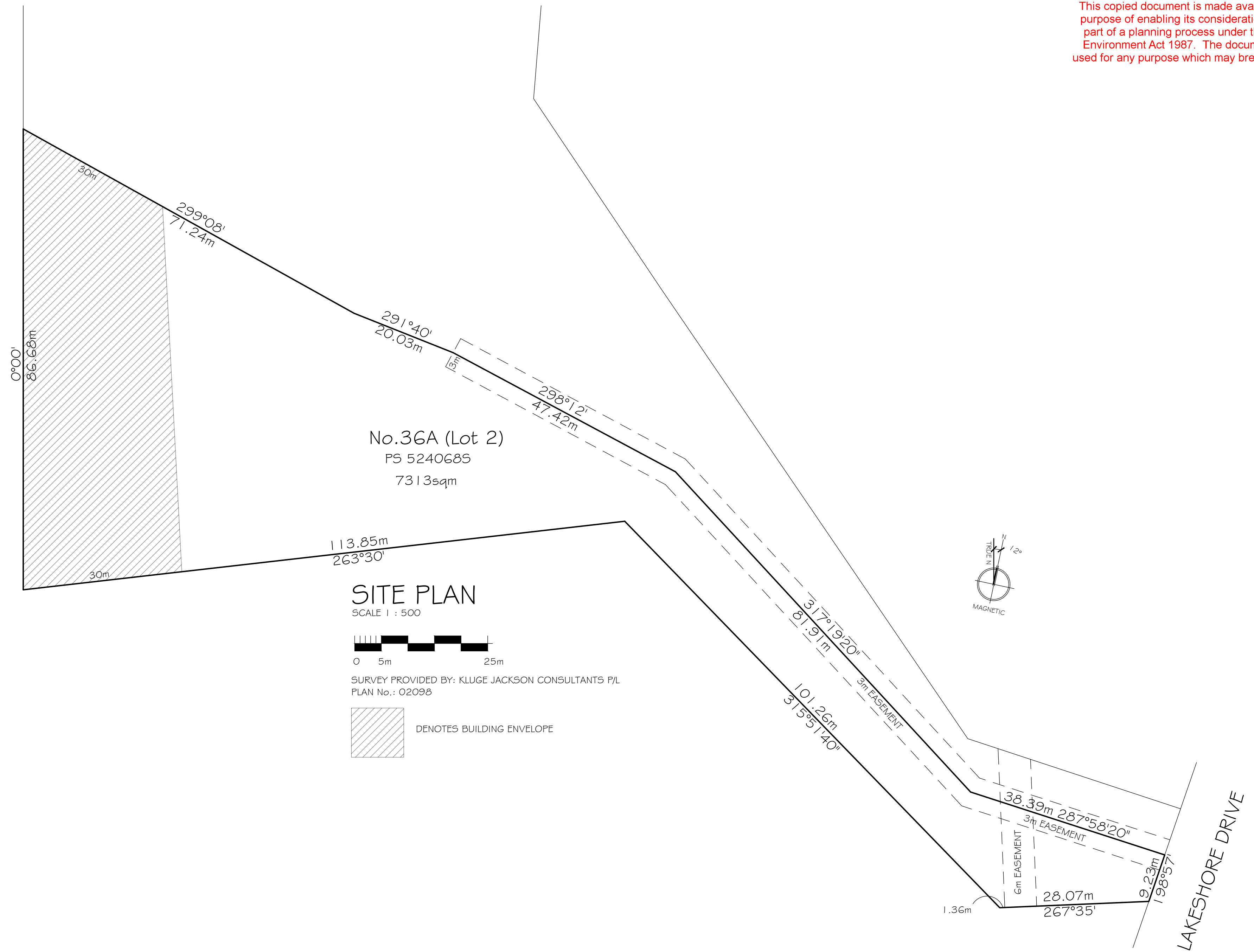
Under the provisions of the *Aboriginal Heritage Act 2006* the subject site is partly recognised as being within an area of Aboriginal Cultural Heritage Sensitivity.

The variation of a restrictive covenant and inclusion of a building envelope 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)



36A lakeshore drive nungurner

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 vary a covenant under the provisions of the Low Density Residential Zone, Design and Development Overlay, Erosion Management Overlay or the Vegetation Protection Overlay which are applicable to the subject site.

A planning permit is required to vary 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 provide evidence which supports that no person will suffer any detriment as a result of the proposed variation of a covenant. This is particularly evident given the existing surrounding development and the proposed building envelope which will limit the area of the land that buildings can be constructed. Any new development would still be subject to all other conditions on the covenants and applicable planning controls.

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.
- The proposed varied covenant will include a building envelope which will provide a limited area for the construction of buildings in the western portion of the site. A building envelope plan is contained in **Appendix B**.
- The covenant was originally created to protect the views of the adjoining allotment, however this lot has since been further subdivided.
- The proposed variation 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 affected by the Design and Development Overlay, Erosion Management Overlay and the Vegetation Protection Overlay and as such any future

development will be required to address the relevant provisions of the relevant overlays 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.
- A copy of the proposed varied covenant is contained in **Appendix C**.
- 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 are no natural hazards associated with the site that will be impacted by varying the covenant or including a building envelope.
- The proposal will result in an allotment that can be developed with a dwelling in the future.

6. CONCLUSION

This submission is in support of a planning permit application for the variation 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 variation 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 variation of the covenant will not result in any loss to any beneficiary of the covenant.
- The variation of the restrictive covenant is unlikely to impact adjoining landowners.
- The subject site will be able to be developed with a dwelling within the proposed building envelope in the future.

It is requested that a planning permit be granted for the proposed variation 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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