

14th October 2020

Nicole Reynolds
Acting Manager Planning
PO Box 1618
BAIRNSDALE VIC 3875

Dear Nicole,

**RE: APPLICATION FOR PLANNING PERMIT
3 CADDIE COURT, EAGLE POINT
APPLICATION TO VARY A COVENANT**

Please find attached an application for planning permit with the following:

- Application for Planning Permit Form
- Planning Submission
- Current copy of title
- Copy of Covenant
- Assessment of Eagle Bay Village Covenant
- Land affected by the Covenant
- Real Estate Report

Should you require any further information, please do not hesitate to contact 5152 4858.

Regards

Courtney Campbell

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

VOLUME 11447 FOLIO 403

Security no : 124086050049R
Produced 14/10/2020 04:37 PM

LAND DESCRIPTION

Lot 11 on Plan of Subdivision 637663W.
PARENT TITLE Volume 11447 Folio 375
Created by instrument PS637663W 20/09/2013

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
SUSAN MARIE TEAGUE of 30 VICTORIA STREET PAYNESVILLE VIC 3880
AQ568686F 19/12/2017

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT AQ568686F 19/12/2017
Expiry Date 31/12/2024

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 PS637663W 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: 3 CADDIE COURT EAGLE POINT VIC 3878

DOCUMENT END



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Document Type	Plan
Document Identification	PS637663W
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PLAN OF SUBDIVISION

STAGE No. /

LTO USE ONLY

EDITION 1

PS637663W



Location of Land

Parish: Bairnsdale
Township: -
Section: -
Crown Allotment: 144 & 145 (parts)
Crown Portion: -

Title References: Vol.11447 Fol. 375

Last Plan Reference: Lot A on PS637656T

Postal Address: Palm Avenue
 (at time of subdivision) Eagle Point, 3878

MGA 94 Co-ordinates: E 562 580
 (of approx. centre of plan) N 5804 740 **Zone:** 55

Council Certification and Endorsement

Council Name: East Gippsland Shire Council **Ref:** 2/2011/CRT

1. This plan is certified under Section 6 of the Subdivision Act 1988.
2. ~~This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 / /~~
3. ~~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 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 *[Signature]*
 Council seal
 Date 03/03/2011
~~Re-certified under Section 11(7) of the Subdivision Act 1988~~
 Council Delegate
 Council seal
 Date / /

Vesting of Roads or Reserves

Identifier	Council/Body/Person
R1	East Gippsland Shire Council

Notations

- Staging** This is / is not a staged subdivision
 Planning Permit No 301/2010/P
- Depth Limitation** Does not apply
 Lots 1-6 have been omitted from this plan.

Survey: This plan is / ~~is not~~ based on survey
 This plan has been connected to permanent mark no(s). 375, 453 & 454

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-3 & E-7	Drainage	See diag.	PS524610A	East Gippsland Shire Council & land in PS524610A
E-4	Sewerage	See diag.	PS524627G	East Gippsland Region Water Authority
E-5	Sewerage	See diag.	PS637656T	East Gippsland Region Water Authority
E-6 & E-7	Sewerage	See diag.	This Plan	East Gippsland Region Water Authority

LRS USE ONLY

STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT

RECEIVED
 DATE 13/09/13

LRS USE ONLY

PLAN REGISTERED

TIME 3:57pm
 DATE 20/09/13
 G Venn
 Assistant Registrar of Titles

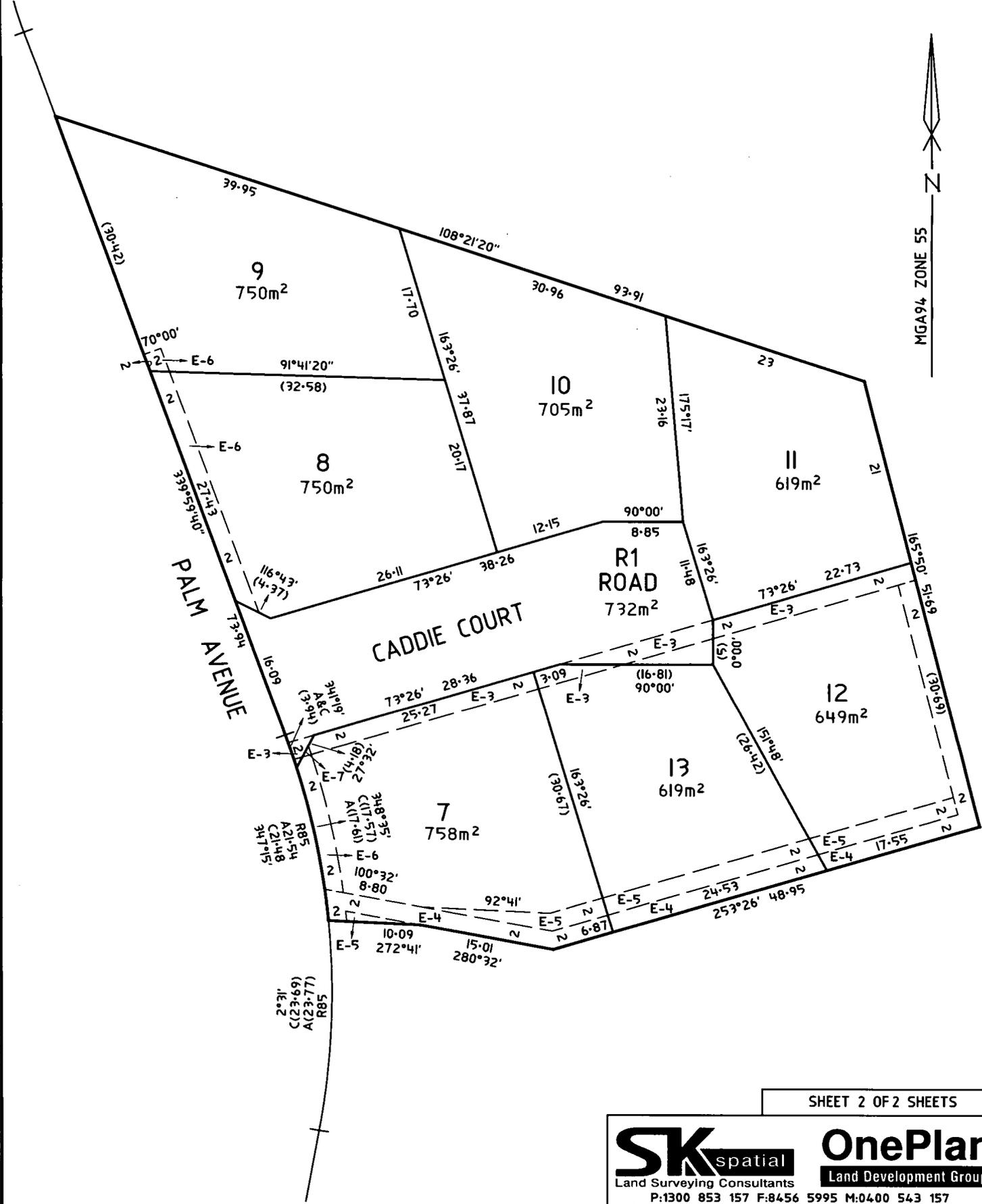
SHEET 1 OF 2 SHEETS



LICENSED SURVEYOR SCOTT CHARLES KIMM
 SIGNATURE *[Signature]* DATE 10 / 11 / 2010
 REF 10078-57 VERSION 2

[Signature]
 DATE 03/03/2011
 COUNCIL DELEGATE SIGNATURE
 ORIGINAL SHEET SIZE A3

PLAN OF SUBDIVISION	STAGE No. /	PLAN NUMBER PS 637663W
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SHEET 2 OF 2 SHEETS

SK

OnePlan

spatial Land Development Group
Land Surveying Consultants

P:1300 853 157 F:8456 5995 M:0400 543 157
sks@oneplangroup.com.au www.oneplangroup.com.au
GIPPSLAND - MELBOURNE

ORIGINAL

SHEET SIZE: A3

SCALE: 1:400

SCALE: 4 0 4 8 12 16

LENGTHS ARE IN METRES

LICENSED SURVEYOR: SCOTT CHARLES KIMM

SIGNATURE: *[Signature]* DATE: 10 / 11 / 2010

REF: 10078-57 VERSION: 2

[Signature]

DATE: 03/08/2011

COUNCIL DELEGATE SIGNATURE



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AQ568686F

TRANSFER OF LAND

Creating an Easement and/or Restrictive Covenant

Section 45 Transfer of Land Act 1958

Privacy Collection Statement
The information from this form is collected by the Registrar of Titles under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes.

Lodged by

Name: Eastcoast Conveyancing Group Pty Ltd

Phone: 03 51521171

Address: PO Box 695 BAIRNSDALE VIC 3875

Reference: 17-5641

Customer Code: 549U

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)*

Certificate of Title

Volume	Folio
11447	403

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

All its estate in fee simple

Consideration:

\$105,000.00

Transferor: *(full name)*

EAGLE BAY VILLAGE PTY LTD 054 610 918

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

SUSAN MARIE TEAGUE of 30 Victoria Street PAYNESVILLE VIC 3880

Directing Party: *(full name)*

Creation and/or Reservation of Easement and/or Restrictive Covenant

The Transferee 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 No PS637663W and each and every part thereof and that the burden of this Covenant shall be annexed to and run at law and in equity with the land hereby transferred and each and every part thereof and that the same shall be noted and appear on every Certificate of Title for the said lot and every part thereof as an encumbrance effecting the same **DOES HEREBY COVENANT** with the transferor and other registered proprietor or proprietors for time being of the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the transferee will not prior to the 31st of December 2024:-

- (a) (i) erect, place, permit, licence or authorise on any of the Lots any buildings other than dwellings (together with usual outbuildings) containing a floor area of less than 170 m2 within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola, porch, veranda, or other outbuildings.

30800812A

Duty Use Only

T2

TRANSFER OF LAND

Creating an Easement and/or Restrictive Covenant

Section 45 Transfer of Land Act 1958

Signed by the Transferor
Signed by the Transferee

-
- (ii) erect, place, permit, licence or authorise on the said land any dwelling without eaves on the entire perimeter of the dwelling, such eaves must not be less than 450 mm.
 - (iii) erect, place, permit, licence or authorise on the said land any building which is built other than of new materials save for second hand bricks.
 - (iv) erect, place, permit, licence or authorise on the said land any building constructed of materials other than bricks of nominal dimensions unless such materials are finished with a permanent render or texture coating.
 - (v) erect, place, permit, licence or authorise on the said land any building with wall finishes of heavily blended, mottled or rock faced brick work (it being agreed that use of blended brick work shall be limited to not more than 2 closely matched colours).
 - (vi) erect, place, permit, licence or authorise on the said land any building constructed with Hardiplank or cement sheet on any external walls or roof (such materials being acceptable only for eave lining, gable-ends and in-fills).
 - (vii) erect, place, permit, licence or authorise on the said land any building having a roof other than of slate, clay tile, cement tile or colorbonded material.
 - (viii) erect, place, permit, licence or authorise on the said land any outbuilding with a floor area greater than 10m² unless the same is constructed with materials of the same type and in the same style as the dwelling.
 - (ix) erect, place, permit, licence or authorise on the said land any single storey dwelling or outbuilding of a size greater than 10 m² which has a roof pitch of less than 22 degrees.
 - (x) erect, place, permit, licence or authorise on the said land any single storey dwelling with internal ceiling heights of less than 2700mm (excluding bathroom and laundry areas).
 - (xi) erect, place, permit, licence or authorise on any building any gutters and down pipes that are not colour coated or painted with at least 2 coats of first quality paint.
 - (b) Construct on the land any dwelling other than in accordance with plans and specifications first submitted to Eagle Bay Village Pty Ltd or its nominee for approval of the design, colours and brick selection in its absolute discretion.
 - (c) Erect, place permit, licence or authorise on the said land any fence on the side boundaries or boundaries facing roadways unless the same is constructed of brick, concrete, timber picket, palings, or aluminium pickets or any combination thereof and (except in the case of a fence constructed of new bricks) such fence shall be painted with at least 2 coats of first quality paint or finished with a permanent render or texture coating.
 - (d) Erect, place permit, licence or authorise on the said land any retaining wall constructed of treated pine timber, which is visible to the public from a roadway.
 - (e) Construct any driveway, parking and paved areas on the land of materials other than clay brick, masonry pavers, stone sheeted bitumen, hot mix or concrete.

9801206A

Duty Use Only

T2

Page 2 of 3

THE BACK OF THIS FORM MUST NOT BE USED

Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

TRANSFER OF LAND

Creating an Easement and/or Restrictive Covenant

Section 45 Transfer of Land Act 1958

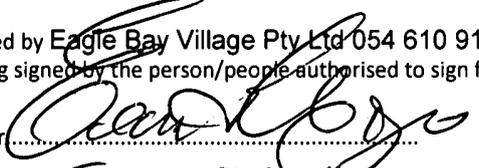
Signed by the Transferor
Signed by the Transferee



- (f) Extract or remove or permit the extraction or removal of any soil, gravel or earth or other materials from the said land except for the purpose of excavating for the foundations of a building or of a swimming pool or tennis court or for gardening, landscaping or driveway within the said land.
- (g) Use or permit the use of the said land for any offensive or noxious purpose.
- (h) Permit the land or any part thereof to be used for the purpose of commercial breeding or boarding of or training kennels for cats or dogs or for the purpose of keeping poultry or pigeons thereon.
- (i) Permit the land to be used for the parking, garaging or servicing of any motor vehicle in excess of 5 tonnes gross vehicle mass (GVM) except for the purpose of loading or unloading goods unless the vehicle is a vehicle engaged in construction works on the said land.
- (i) Permit the land or any part thereof to be used for the parking, garaging or servicing of any boat (on a trailer or hard stand), caravan, campervan or similar vehicle unless such vehicle is screened from public view from the roadways.
- (k) Permit or authorise any part of the land to be used for the purposes of storage of garbage, housing of gas, fuel or water tanks, drying of clothes or similar uses unless such areas are screened from public view from adjoining roadways.
- (l) Permit the occupancy of any dwelling or other building on the land unless an occupancy permit has issued for such dwelling or other building.

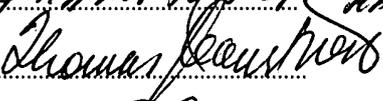
Dated:
Execution and attestation:

Executed by Eagle Bay Village Pty Ltd 054 610 918
by being signed by the person/people authorised to sign for the company

Director.....

Full name: ERNEST A. LIGGETT

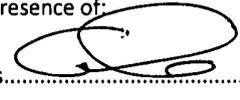
Usual address: 324 HAMPTON ST HAMPTON 3188

Director/Secretary.....

Full name: THOMAS J. COURTNEY

Usual address: 115 WATKINSON'S RD, EAGLE POINT

Signed by the Transferee Susan Marie Teague
in the presence of: 

Witness.....

APPLICATION FOR PLANNING PERMIT

APPLICATION FOR PLANNING PERMIT TO VARY A COVENANT

3 CADDIE COURT, EAGLE POINT

SUSAN TEAGUE

REF: 20078

OCTOBER 2020



CONTENTS

1. EXECUTIVE SUMMARY	3
2. INTRODUCTION	4
3. SITE AND SURROUNDS	4
4. PROPOSAL	12
5. PLANNING PROVISIONS	13
5.1 PLANNING POLICY FRAMEWORK	13
5.2 MUNICIPAL PLANNING STRATEGY	17
5.3 ZONE AND OVERLAYS	23
5.4 OTHER PLANNING CONSIDERATIONS	25
6. PLANNING ASSESSMENT	26
6.1 DECISION GUIDELINES OF THE DESIGN AND DEVELOPMENT OVERLAY	26
6.2 DECISION GUIDELINES OF CLAUSE 65	29
7. CONCLUSION	31
APPENDIX A	COPY OF TITLE AND PLAN OF SUBDIVISION
APPENDIX B	COPY OF COVENANT
APPENDIX C	ASSESSMENT OF EAGLE BAY VILLAGE COVENANT COMPLIANCE
APPENDIX D	LAND AFFECTED BY THE COVENANT
APPENDIX E	REAL ESTATE REPORT

Version	Initials	Date	Comments
1.0	CMC	06/08/2020	Draft for review
1.1	LMM	30/09/2020	Reviewed
2.0	CMC	06/10/2020	Final for submission

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October 2020



APPLICATION FOR PLANNING PERMIT 3 CADDIE COURT, EAGLE POINT APPLICATION TO VARY A COVENANT

1. EXECUTIVE SUMMARY

This planning submission is in support of a planning permit application to vary a covenant at 3 Caddie Court, Eagle Point.

The subject site is located within the Eagle Bay Village Estate, approximately 613.95m² in area and is zoned General Residential Zone. The property is affected by the Design and Development Overlay – Schedule 14.

This application seeks approval to vary a covenant in order to accommodate the materials of a dwelling being inconsistent with the requirements specified in the covenant as registered on the title.

The dwelling was constructed in 2018 under a building permit issued by Watershed Building Permits. The details of all building permits issued for the subject site are outlined below:

Building Permit No: 1590/20180070/0 – Dwelling and Garage – Permit issued 19/01/2018

Building Permit No: 57086/20192593/0 – Pergola and Deck – Permit issued 01/04/2019

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.

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

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

This submission addresses the requirements of Clause 52.02 – Easement, Restrictions and Reserves and Clause 65 of the East Gippsland Planning Scheme.

The information provided within this submission addresses the requirements of the East Gippsland Planning Scheme and provides evidence as to why it is considered appropriate in this instance to vary the covenant.



2. INTRODUCTION:

This planning submission has been prepared in support of an application to vary a covenant as registered on the title pertaining to land at 3 Caddie Court, Eagle Point.

This submission addresses relevant provisions of the East Gippsland Planning Scheme and provides justification as to why a planning permit should be granted to assist Council planning officers in considering the merit of the proposal.

3. SITE AND SURROUNDS

The subject site is located at 3 Caddie Court, Eagle Point formally identified as Lot 11 on Plan of Subdivision 637663W contained in Certificate of Title Vol 11447 Fol 403.

The title is affected by a restrictive covenant AQ568686F. The details of this covenant are addressed in Section 4 of this submission as this is the subject of this application. The covenant was created and registered on the title at the creation of the allotment.

The site is located within an existing residential area within Eagle Point as shown in the locality plan below in **Figure 1** and **Figure 2**. The site is approximately 3.2 kilometres north of the central business district of Paynesville. Paynesville is one of the main East Gippsland towns with a strong residential and tourism focus. Paynesville has a high level of community and commercial services and facilities.

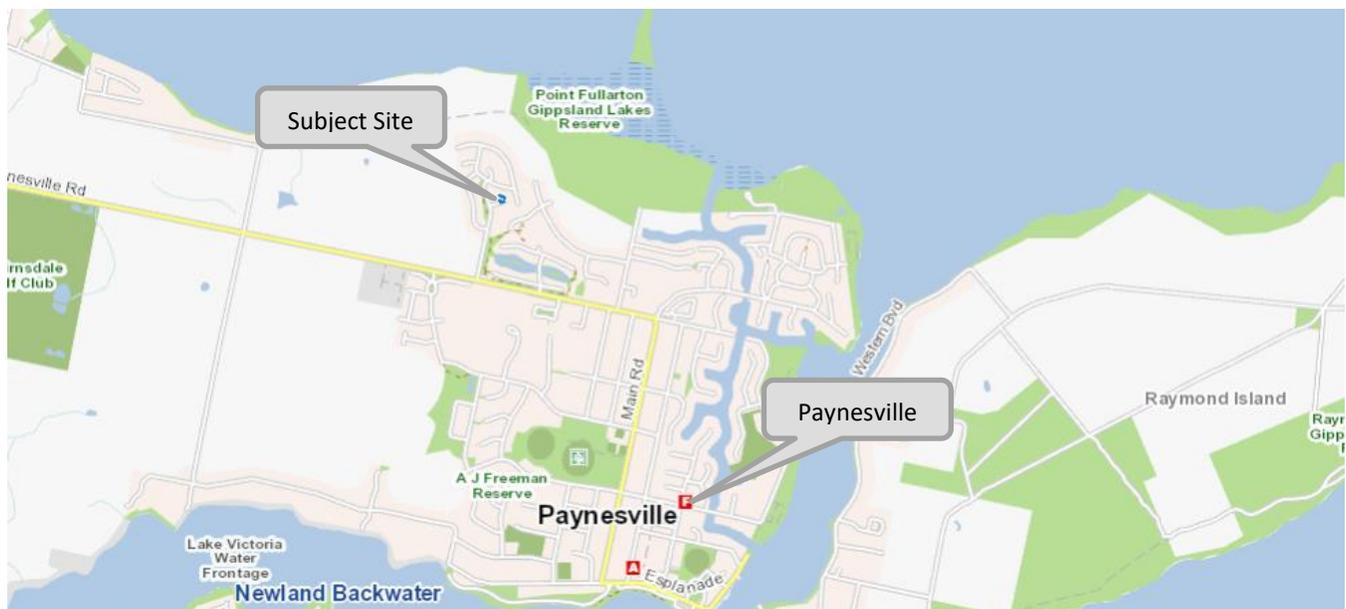


Figure 1 – Locality Plan – 3 Caddie Court, Eagle Point (source <http://mapshare.vic.gov.au/>)





Figure 2 – Locality Plan – 3 Caddie Court, Eagle Point (source <http://mapshare.vic.gov.au/>)

The subject site is approximately 613.95m² in area and contains an existing dwelling. The dwelling is a single storey dwelling with a combination of cladding including brick and cement sheet with a colorbond roof. The dwelling is very well presented and not out of character to many others in the immediate area.

The site directly adjoins Caddie Court along the western boundary for a distance of approximately 10.79 meters.

The subject site contains landscaped garden areas in association with the dwelling. The boundaries of the site are predominantly delineated by an existing timber paling fence. The western boundary is partially fenced save for the portion of the boundary which directly adjoins Caddie Court.

The site is located within an existing residential area where the majority of lots are now developed. Immediately adjoining the subject site to the south and east are existing residential dwellings. To the north is a vacant residential allotment surrounded by existing residential development.

A visual description of the subject site and surrounding land is outlined in the photographs below, noting the aerial photographs are not current enough to show the most recent dwellings, particularly at 4 and 6 Caddie Court.

There is an existing concrete crossover providing access to the site. Additional services available in proximity to the site include electricity, water, sewerage, telecommunications, gas and drainage.

Caddie Court is a fully constructed bitumen sealed Court with rollover kerb. Caddie Court is a no through road.

A visual description of the subject site and surrounding land is outlined in the photographs below.





Photograph 1 – Aerial Photograph of the subject site– 3 Caddie Court, Eagle Point (source: dpi.vic.gov.au)



Photograph 2 – Aerial Photograph of the subject site and surrounding land – 3 Caddie Court, Eagle Point (source: dpi.vic.gov.au)





Photograph 3 – The subject site at 3 Caddie Court, Eagle Point.



Photograph 4 – Southern portion of the subject site at 3 Caddie Court, Eagle Point.





Photograph 5 – Northern portion of the subject site at 3 Caddie Court, Eagle Point.



Photograph 6 – Caddie Court facing west from the subject site.





Photograph 7 – Existing dwelling north west of the subject site at 2 Caddie Court, Eagle Point.



Photograph 8 – Existing dwelling adjoining the subject site to the south at 4 Caddie Court, Eagle Point.



4. PROPOSAL:

This application seeks approval to vary covenant AQ568686F.

The covenant was created on 19/12/2017 and expires on 31/12/2024.

This application seeks to vary the covenant as the existing dwelling is deemed to contravene the requirements stipulated in the covenant. A copy of the covenant is provided in **Appendix B**. The covenant contains the following:

The Transferee 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 No PS637663W and each and every part therefor and that the burden of this Covenant shall be annexed to and run at law and in equity with the land hereby transferred and each and every part thereof and that the same shall be noted and appear on every Certificate of Title for the said lot and every part thereof as an encumbrance effecting the same DOES HEREBY COVENANT with the transferor and other registered proprietor or proprietors for the time being and the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the transferee will not prior to the 31st of December 2024:-

- (a) (i) erect, place, permit, licence or authorise on any of the Lots any buildings other than dwellings (together with usual outbuildings) containing a floor area of less than 170m² within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola, porch, veranda, or other outbuildings.
 - (ii) erect, place, permit, licence or authorise on the said land any dwelling without eaves on the entire permitter [sic] of the dwelling, such eaves must not be less than 450 mm.
 - (iii) erect, place, permit, licence or authorise on the said land any building which is built other than of new materials save for second hand bricks.
 - (iv) erect, place, permit, licence or authorise on the said land any building constructed of materials other than bricks of nominal dimensions unless such materials are finished with a permanent render or texture coating.
 - (v) erect, place, permit, licence or authorise on the said land any building with wall finishes of heavily blended, mottled or rock faced brick work (it being agreed that use of blended brick work shall be limited to not more than 2 closely matched colours).
 - (vi) erect, place, permit, licence or authorise on the said land any building constructed with Hardiplank or cement sheet on any external walls or roof (such materials being acceptable only for eave lining, gable-ends and in-fills).
 - (vii) erect, place, permit, licence or authorise on the said land any outbuilding with a floor area of greater than 10m² unless the same is constructed with materials of the same type and in the same style as the dwelling.
 - (ix) erect, place, permit, licence or authorise on the said land any single storey dwelling or outbuilding of a size greater than 10m² which has a roof pitch of less than 22 degrees.
 - (x) erect, place, permit, licence or authorise on the said land any single storey dwelling with internal ceiling heights of less than 2700mm (excluding bathroom and laundry areas).
 - (xi) erect, place, permit, licence or authorise on any building any gutters and down pipes that are not colour coated or painted with at least 2 coats of first quality paint.
- (b) Construct on the land any dwelling other than in accordance with plans and specifications first submitted to Eagle Bay Village Pty Ltd or its nominee for approval of the design, colours and brick selection in its absolute discretion.
 - (c) Erect, place, permit, licence or authorise on the said land any fence on the side boundaries or boundaries facing roadways unless the same is constructed of brick, concrete, timber picket, palings, or aluminium pickets or any combination thereof and (except in the case of a fence constructed of new bricks) such fence shall be painted with at least 2 coats of first quality pain or finished with a permanent render or texture coating.



- (d) *Erect, place, permit, licence or authorise on the said land any retaining wall constructed of treated pine timber, which is visible to the public from a roadway.*
- (e) *Construct any driveway, parking and paved areas on the land of materials other than clay brick, masonry pavers, stone sheeted bitumen, hot mix or concrete.*
- (f) *Extract or remove or permit the extraction or removal of any soil, gravel or earth or other materials from the said land except for the purpose of excavating for the foundations of a building or of a swimming pool or tennis court or for gardening, landscaping or driveway within the said land.*
- (g) *Use or permit the use of the said land for any offensive or noxious purpose.*
- (h) *Permit the land or any part thereof to be used for the purpose of commercial breeding or boarding of or training kennels for cats or dogs or for the purpose of keeping poultry or pigeons thereon.*
- (i) *Permit the land to be used for the parking, garaging or servicing of any motor vehicle in excess of 5 tonnes gross vehicle mass (GVM) except for the purpose of loading or unloading goods unless the vehicle is a vehicle engaged in construction works on the said land.*
- (j) *Permit the land or any part thereof to be used for the parking, garaging or servicing of any boat (on a trailer or hard stand), caravan, campervan or similar vehicle unless such vehicle is screened from public view from the roadways.*
- (k) *Permit or authorise any part of the land to be used for the purposes of storage of garbage, housing of gas, fuel or water tanks, drying of clothes or similar uses unless such areas are screened from public view from adjoining roadways.*
- (l) *Permit the occupancy of any dwelling or other building on the land unless an occupancy permit has been issued for such dwelling or other building.*

It is sought to remove points (a) (vi) and (b).

The variation of the covenant to remove these two points would regularise the breach without compromising any other components of the covenant and without detrimentally affecting any other parties.

Point (a)(vi) states:

(vi) erect, place, permit, licence or authorise on the said land any building constructed with Hardiplank or cement sheet on any external walls or roof (such materials being acceptable only for eave lining, gable-ends and in-fills).

The existing dwelling contains sections of cement sheet on the external wall of the dwelling.

Point (b) states:

(a) Construct on the land any dwelling other than in accordance with plans and specifications first submitted to Eagle Bay Village Pty Ltd or its nominee for approval of the design, colours and brick selection in its absolute discretion.

The application did not seek approval of the plans from Eagle Bay Village prior to construction.

There are many dwellings within this estate that appear to have breached the requirements of the covenants. There are many other dwellings with Hardiplank components on the external walls. There are also many dwellings without eaves which is also in contravention of the covenant requirements. A review of some of the dwellings within the Eagle Bay Village Estate has been undertaken and is provided in **Appendix C**. This assessment provides suitable evidence that the contravention of the covenant will not detrimentally impact on the character of the area as sought to achieve by the covenant.



5. PLANNING PROVISIONS

5.1 PLANNING AND ENVIRONMENT ACT 1987

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.

The *Planning and Environment Act 1987* does not make reference to the developer or covenantee being an objector.



5.2 EAST GIPPSLAND PLANNING SCHEME

Clause 52.02 – Easements Restrictions and Reserves contains the following purpose:

“To enable the removal and variation of an easement or restrictions to enable a use or development that complies with the planning scheme after the interests of affected people are considered.”

A permit is required before a person proceeds:

- Under Section 23 of the *Subdivision Act 1988* to create, vary or remove an easement or restriction or vary or remove a condition in the nature of an easement in a Crown grant.
- Under Section 24A of the *Subdivision Act 1988*.
- Under Section 36 of the *Subdivision Act 1988* to acquire or remove an easement or remove a right of way.

It under Section 23 of the *Subdivision Act 1988* that the application to vary the covenant will be undertaken.

The decision guidelines identified in Clause 52.02 are addressed in Section 6.1 of this submission.

PROJECT PLANNING RESPONSE

This application seeks approval to vary the covenant as registered on the title pertaining to the land at 3 Caddie Court, Eagle Point. There are two points within the covenant that the existing dwelling on the site does not comply with. The inclusion of cement sheeting in the dwelling and the failure to obtain the approval of Eagle Bay Village prior to development. Full details of the components in non-compliance are outlined in Section 4 of this submission.

Under the provisions of the *Planning and Environment Act 1987*, the responsible authority must be satisfied that the no person benefited by the covenant will suffer:

- Financial loss; or
- Loss of amenity; or
- Loss arising from change to the character of the neighbourhood; or
- Any other material detriment.

This submission and supporting documentation provides evidence which supports that no person will suffer any detriment as a result of the proposed variation. The variation is sought to legitimise the existing development which has occurred.

The dwelling has been constructed since 2018 and to date there does not appear to be any detrimental impacts as a result of the breach. There are several other dwellings within the estate that do not comply with particular elements of the covenant and these also do not appear to result in any detrimental impact to any person.

There is no way to determine if all developments within the estate sought approval from Eagle Bay Village as required by the covenant. It is identified that there is no formal process for seeking approval outlined within the



covenant that provides clear direction to the owners. As the dwelling is completed, there is now no ability to comply with this element of the covenant.

The dwelling includes cement sheeting as part of the façade. Cement sheeting has historically had a bad reputation as when originally created it included asbestos and was known as a cheaper product. This is no longer the case and when used appropriately does not appear to be a cheaper or substandard product that would result in properties being of less value. Additionally, it was also very common for cement sheeting to be used in government housing which also had lower value and undesirable reputation.

How a dwelling is presented in conjunction with the materials is a contributing factor. Combining various materials as has been done in the dwelling being the subject of this matter is now a common architectural theme which is said to soften buildings. Lighter weight materials, such as Hardiplank and cement sheeting are often encouraged in waterside villages. This dwelling is exceptionally well presented. The dwelling is constructed of a high standard by a reputable building company. The garden areas are neat and tidy and the dwelling contains many additional finishes which ensure the highest value possible. There is no element of the development on the land at 3 Caddie Court which is considered likely to devalue any surrounding properties.

Written confirmation from a highly respected local real estate agent is provided which concludes the use of cement sheeting within the development does not devalue the property or surrounding properties.

The two elements of the covenant that are being requested to be removed are not likely to result in a financial loss to any other party, nor is it likely to result in a change to the character of the neighbourhood. There is no loss of amenity and no other material detriment expected if approval of the variation is granted.

The covenants within this estate have changed over time. A thorough investigation of the covenants within this overall Eagle Bay Village Estate has identified that the entire Estate does not have one consistent covenant. Each stage of subdivision has resulting in each covenant varying slightly. The most recent covenants have less design restrictions. For example: the newer covenants do not include a requirement for dwellings to have eaves. Having varied covenants throughout the Estate creates slight inconsistencies which makes it difficult for individuals to know if covenants have been contravened. The minor variances do not result in a decrease in value and to date, do not appear to have created a concern between parties to the covenants. There have been no issues raised with the owners by other beneficiaries.

The development of the dwelling did not require planning approval. The proposed variation will not contravene any other policy or guideline contained within the East Gippsland Planning Scheme.



5.3 ZONES AND OVERLAYS:

The site is zoned General Residential Zone and is affected by the Design and Development Overlay – Schedule 14 (DDO14)

The provisions of the Zone and Overlay are addressed below.

General Residential Zone:

The purpose of the General Residential Zone is:

- *To implement the Municipal Planning Strategy and the Planning Policy Framework.*
- *To encourage development that respects the neighbourhood character of the area.*
- *To encourage a diversity of housing types and housing growth particularly in locations offering good access to services and transport.*
- *To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

An extract of the Zone Map is provided below in **Figure 3**:

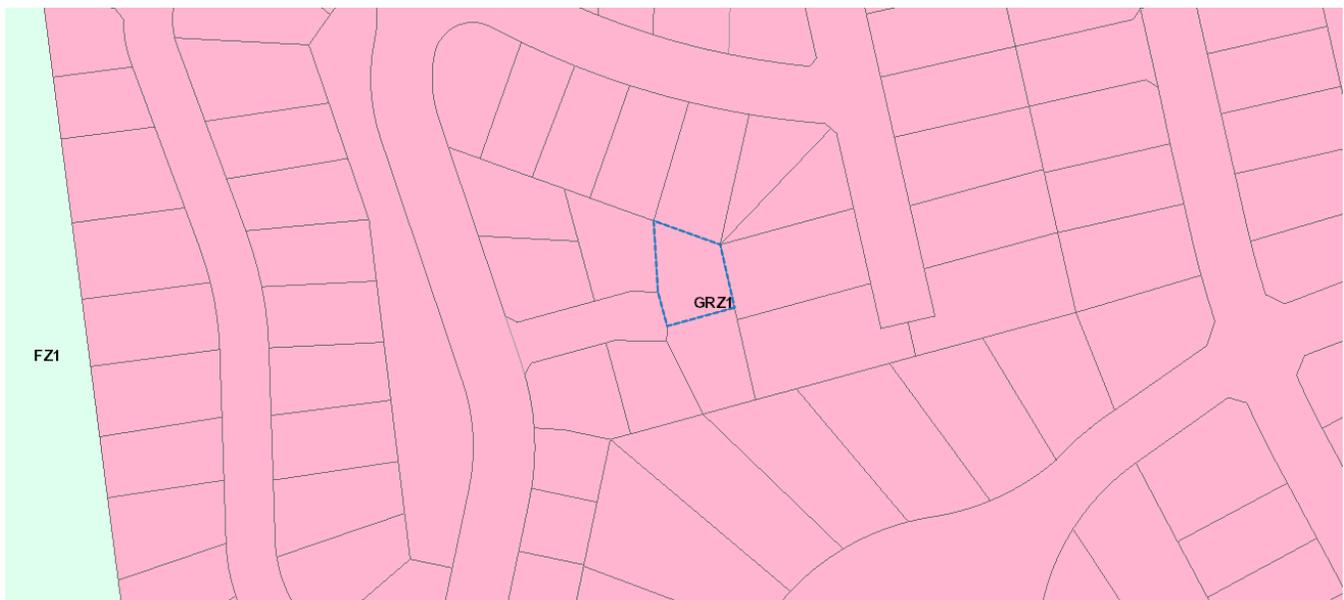


Figure 3 – General Residential Zone Map (source – <http://mapshare.vic.gov.au/>)

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



Design and Development Overlay:

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 4**:

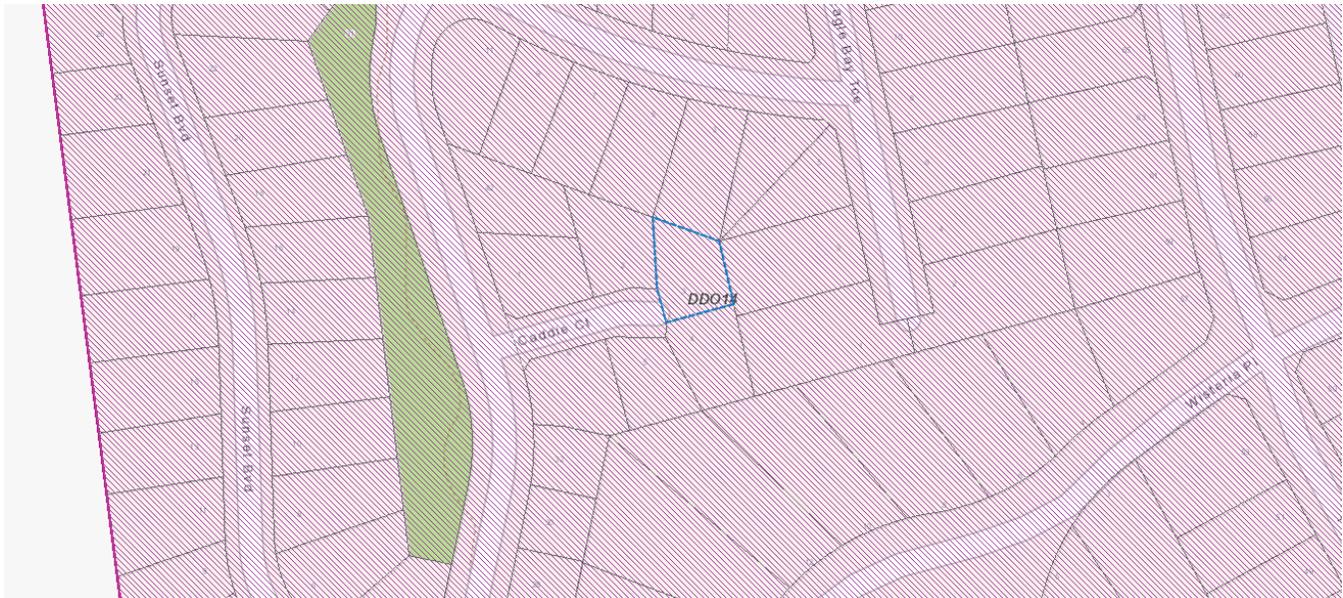


Figure 4: Design and Development Overlay Map (source – <http://mapshare.vic.gov.au/>)

Schedule 14 is applicable to the site which refers to Residential Development in Coastal Settlements: Paynesville. The following Design objectives are applicable to all areas:

- *To protect and manage the township character of coastal settlements.*
- *To ensure that the height and visual bulk of new development is compatible with the coastal neighbourhood setting.*
- *To ensure that new development is designed to minimise visual impacts on the natural landscape.*
- *To ensure that new development is visually and physically integrated with the site and surrounding landscape.*
- *To ensure that new development is sited and designed to be visually unobtrusive through and above the surrounding tree canopy when viewed from nearby streets, lakes, coastal areas, or other distant viewpoints.*

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.



5.4 OTHER PLANNING CONSIDERATIONS

Non-compliant Development

There are several developments in this locality that contravene the covenants. It is not possible to determine if the owners have had plans approved by Eagle Bay Village Pty Ltd, however there are other obvious elements of the developments that contravene the applicable covenants and which do not appear to have permits or approval.

A review of some of the dwellings in the area is attached at **Appendix C**. This shows a consistency with minor non-conformance with the covenants, and the result being that it is unlikely that any other owner or party to the covenant will be detrimentally affected by the variation to the covenant as requested.

As there are other dwellings with Hardiplank and cement sheet incorporated into the façade, the character of the area can be identified as having dwellings with a combination of materials.

The dwelling is not in a prominent location within the estate. It is not on one of the main thoroughfares and is not visually unattractive.

There are minimal lots left within this estate to be developed. The variation to the covenant is not expected to result in an increase in the number of breaches to the covenants or requests to vary the covenants.

In addition to the above points, it is acknowledged that the covenants have changed overtime. Not all stages of the subdivision have the same covenants. All of the earlier stages required dwellings to have eaves. This is not a restriction on the newer stages of the estate. It has been identified that there were many breaches to this particular restriction. This is evidence that there is no longer strict consistency within the estate.

Additional Supporting Information

A written report from a local Real Estate Agent is provided in **Appendix E** which confirms that the variation to the covenant will not result in a financial loss.



6. PLANNING ASSESSMENT

6.1 DECISION GUIDELINES OF CLAUSE 52.02

Clause 52.02 of the East Gippsland Planning Scheme provides, before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider the interests of affected people.

The interests of affected people.

It is expected that this application will be required to undertake the notification process in accordance with Clause 52 of the *Planning and Environment Act 1987*. Details of the land benefited by this covenant is identified in the attached document contained in **Appendix D**.

It is deemed that the proposed variation to the covenant will not affect any other owners or occupiers of land, however, should the responsible authority deem it necessary, notification can be undertaken to other parties.

6.2 DECISION GUIDELINES OF CLAUSE 65:

Before deciding on an application or approval of a plan, the responsible authority must consider, as appropriate:

The matters set out in Section 60 of the Act.

These are the matters which must be considered by the responsible authority.

The Municipal Planning Strategy and the Planning Policy Framework.

The proposal is consistent with the objectives and strategies identified within the Municipal Planning Strategy and the Planning Policy Framework and responds to an existing development that is considered to be consistent with the State and Local objectives for the area.

There are no potential hazards and environmental concerns associated with the land that make the site unsuitable for the existing residential development and the variation to a covenant in this instance will not detrimentally affect the amenity of the area.

The proposal will not result in any offsite impacts or detrimentally affect the amenity of the surrounding properties.

The proposal is consistent with the overall objectives of the Municipal Planning Strategy and the Planning Policy Framework.

The purpose of the zone, overlay or other provision.

The land is zoned General Residential Zone which seeks to encourage residential development that respects the neighbourhood character of the area. The existing dwelling is considered to fit with and complement the



residential character of the area. The variation of a covenant to respond to the existing dwelling will not contravene the purpose of the General Residential Zone.

The subject site is affected by the Design and Development Overlay which seeks to ensure that development retains the existing township character of coastal areas. The proposed variation to the covenant does not require approval under the provisions of the Design and Development Overlay. It is appreciated however, that this request is also relative to the design of the dwelling. The dwelling is not out of character for other dwellings in the immediate area and is in no way visually obtrusive. The dwelling would be consistent with the objectives outlined by the Design and Development Overlay.

Any matter required to be considered in the zone, overlay or other provision.

This submission addresses all elements relevant to the proposal as identified in the East Gippsland Planning Scheme which is specifically Clause 52.02. The zone and overlay provisions are also addressed as much as necessary. The proposed development is considered to adequately respond and address the requirements as relevant.

The orderly planning of the area.

This application seeks approval to vary a covenant in order to have the existing dwelling comply with the covenant. The dwelling is not out of character for the area and varying the covenant will not result in an outcome that is inconsistent with the existing development of the area.

The existing dwelling is not out of character for the area and does not detrimentally affect the amenity of the area. Granting approval of this application will support consistent and orderly planning of the area.

The effect on the amenity of the area.

The proposed variation to the covenant will not result in a detrimental effect to the amenity of the area. The existing dwelling is not visually obtrusive, and the existing streetscape will not be detrimentally affected. The proposed variation to the covenant will simply legalise the existing conditions which are considered appropriate in this location in context to the surrounding development.

The proximity of the land to any public land.

Aside from the adjoining public road reserve, the land is not in close proximity to any other public land. The proposed variation to the covenant will not impact the adjoining road reserve or any public land.

Factors likely to cause or contribute to land degradation, salinity or reduce water quality.

This application does not seek approval for any new buildings or works or vegetation removal. The variation to the covenant will not cause or contribute to any land degradation, salinity or reduce water quality.



Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.

As this application is only seeking variation to the covenant, this is not deemed relevant to this proposal.

All stormwater runoff from the existing dwelling is directed to the legal point of discharge.

The extent and character of native vegetation and the likelihood of its destruction.

There is no existing vegetation on the site that will require removal as a result of this proposal.

Whether native vegetation is to be or can be protected, planted or allowed to regenerate.

This application is seeking the variation to a covenant. The site does not contain extensive vegetation. There is not ability to plant or facilitation regeneration of vegetation on this site.

The degree of flood, erosion or fire hazard associated with the location of the land and the use, development or management of the land so as to minimise any such hazard.

The site is not within an area identified as being susceptible to fire, flood or erosion hazard. The variation to the covenant will impact any of these potential hazards.

7. CONCLUSION

This submission is in support of a planning permit application to vary a covenant at 3 Caddie Court, Eagle Point.

The relevant provisions of the East Gippsland Planning Scheme have been addressed within this submission and it is concluded that the proposal will not detrimentally affect the amenity of the area.

When varying a covenant there is a requirement to ensure that the variation will not result in a financial loss, a loss of amenity, a loss arising from change to the character of the neighbourhood or any other material detriment to any other beneficiary of the covenant. As outlined in this submission, the proposed variation to legitimise the existing dwelling will not result in any loss to any beneficiary of the covenant.

It is requested that a planning permit be granted to vary the covenant.

Development Solutions Victoria



Covenant Non-Compliance – Eagle Bay Village

Covenant No	Address	Non-compliance	Photos
AH933896N	3 The Crescent, Eagle Point (Lot 95 PS625114)	Hardiplank to front facade	
AH933896N	6 The Crescent, Eagle Point (Lot 95 PS625114)	Hardiplank to front facade	

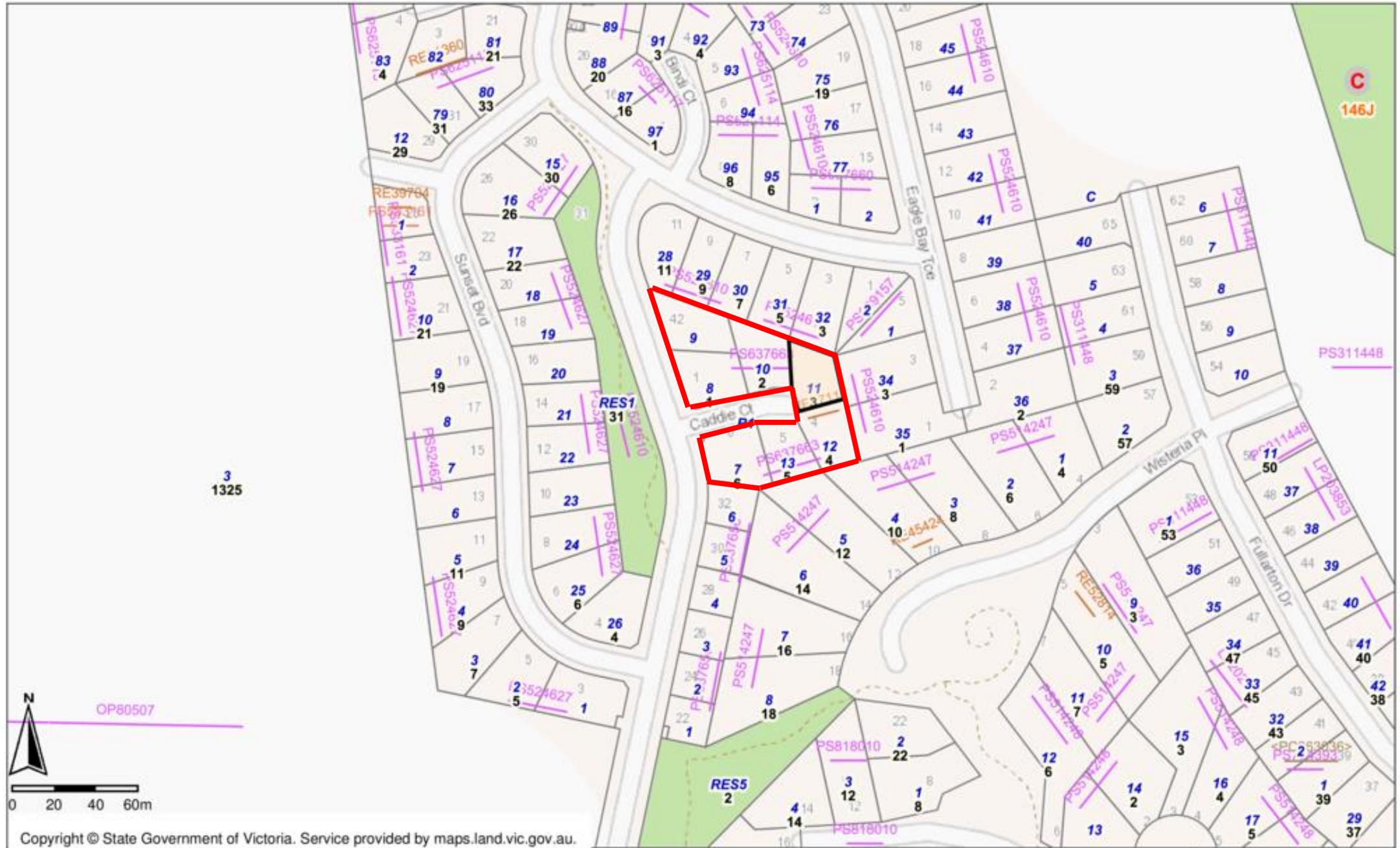
<p>AD560671B</p>	<p>3 Eagle Bay Terrace, Eagle Point (Lot 34 PS524610)</p>	<p>Hardiplank (white) to front façade</p>	
<p>AD560671B</p>	<p>5 Eagle Bay Terrace, Eagle Point (Lot 1 PS639157)</p>	<p>Hardiplank to front facade</p>	

<p>AD560671B</p>	<p>29 Eagle Bay Terrace, Eagle Point (Lot 71 PS524610)</p>	<p>Hardiplank to front facade</p>	
<p>AD560671B</p>	<p>47 Eagle Bay Terrace, Eagle Point (Lot 63 PS 524610)</p>	<p>Hardiplank (white) upper level</p>	

AD813190M	21 Sunset Boulevard, Eagle Point (Lot 16 PS 524627)	Hardiplank to full front facade	 A two-story house with a light-colored brick or stone facade. It features a large two-car garage on the left side and a prominent gabled roofline with a smaller gable above the main entrance. The house is set on a green lawn under a blue sky with light clouds.
AD813190M	26 Sunset Boulevard, Eagle Point (Lot 16 PS 524627)	Hardiplank to full front facade	 A single-story house with a dark blue or charcoal-colored facade. It has a white garage on the right side and a gabled roof. The house is surrounded by a green lawn and a concrete sidewalk. A white car is parked in the driveway. The sky is overcast with grey clouds.

AD813190M	30 Sunset Boulevard, Eagle Point (Lot 15 PS524627)	Hardiplank to front facade	
AQ792020M	28 Palm Avenue, Eagle Point (Lot 3 PS637656)	Hardiplank to front façade	

AQ792020M	32 Palm Avenue, Eagle Point (Lot 3 PS637656)	Hardiplank to front facade	
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First National King and Heath
63 The Esplanade
PAYNESVILLE VIC 3880

10th June 2020

Ms S Teague
3 Caddie Court
Eagle Point 3878

Dear Susan,

RE: 3 Caddie Court, Eagle Point 3878

Regarding the property located at the above address and after inspecting the property recently my opinion is the value of the property is not affected by having Stria Cladding. I believe the Stria Cladding enhances street appeal of the subject property and does not in any way diminish the value of other homes nearby.

If you require any further information, please feel most welcome to call me anytime.

Kind regards

.....
Scott Holland
KING & HEATH FIRST NATIONAL
Licence number 068361L
SALES

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

Page 1 of 1

VOLUME 11447 FOLIO 403

Security no : 124086050049R
Produced 14/10/2020 04:37 PM

LAND DESCRIPTION

Lot 11 on Plan of Subdivision 637663W.
PARENT TITLE Volume 11447 Folio 375
Created by instrument PS637663W 20/09/2013

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
SUSAN MARIE TEAGUE of 30 VICTORIA STREET PAYNESVILLE VIC 3880
AQ568686F 19/12/2017

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT AQ568686F 19/12/2017
Expiry Date 31/12/2024

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 PS637663W 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: 3 CADDIE COURT EAGLE POINT VIC 3878

DOCUMENT END



Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Plan
Document Identification	PS637663W
Number of Pages (excluding this cover sheet)	2
Document Assembled	14/10/2020 16:38

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<h1>PLAN OF SUBDIVISION</h1>	STAGE No. <hr/>	LTO USE ONLY EDITION 1	PS637663W <small>13/09/2013 \$1913.50 PS</small>
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Location of Land

Parish: Bairnsdale
Township: -
Section: -
Crown Allotment: 144 & 145 (parts)
Crown Portion: -

Title References: Vol.11447 Fol. 375

Last Plan Reference: Lot A on PS637656T

Postal Address: Palm Avenue
(at time of subdivision) Eagle Point, 3878

MGA 94 Co-ordinates: E 562 580
(of approx. centre of plan) N 5804 740 **Zone:** 55

Council Certification and Endorsement

Council Name: East Gippsland Shire Council **Ref:** 2/2011/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 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 *[Signature]*
 Council seal *[Seal]*

Date 03/03/2011

~~Re-certified under Section 11(7) of the Subdivision Act 1988~~
 Council Delegate
 Council seal
 Date / /

Vesting of Roads or Reserves

Identifier	Council/Body/Person
R1	East Gippsland Shire Council

Notations

Staging This is / is not a staged subdivision
 Planning Permit No 301/2010/P

Depth Limitation Does not apply
 Lots 1-6 have been omitted from this plan.

Survey: This plan is / ~~is not~~ based on survey
 This plan has been connected to permanent mark no(s). 375, 453 & 454

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-3 & E-7	Drainage	See diag.	PS524610A	East Gippsland Shire Council & land in PS524610A
E-4	Sewerage	See diag.	PS524627G	East Gippsland Region Water Authority
E-5	Sewerage	See diag.	PS637656T	East Gippsland Region Water Authority
E-6 & E-7	Sewerage	See diag.	This Plan	East Gippsland Region Water Authority

LRS USE ONLY
 STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT

RECEIVED

DATE 13/09/13

LRS USE ONLY
 PLAN REGISTERED

TIME 3:57pm
 DATE 20/09/13
 G Venn
 Assistant Registrar of Titles

SHEET 1 OF 2 SHEETS

SK spatial
Land Surveying Consultants

P:1300 853 157 F:8456 5995 M:0400 543 157
 sks@oneplangroup.com.au www.oneplangroup.com.au
 GIPPSLAND - MELBOURNE

OnePlan
Land Development Group

LICENSED SURVEYOR SCOTT CHARLES KIMM

SIGNATURE *[Signature]* DATE 10 / 11 / 2010

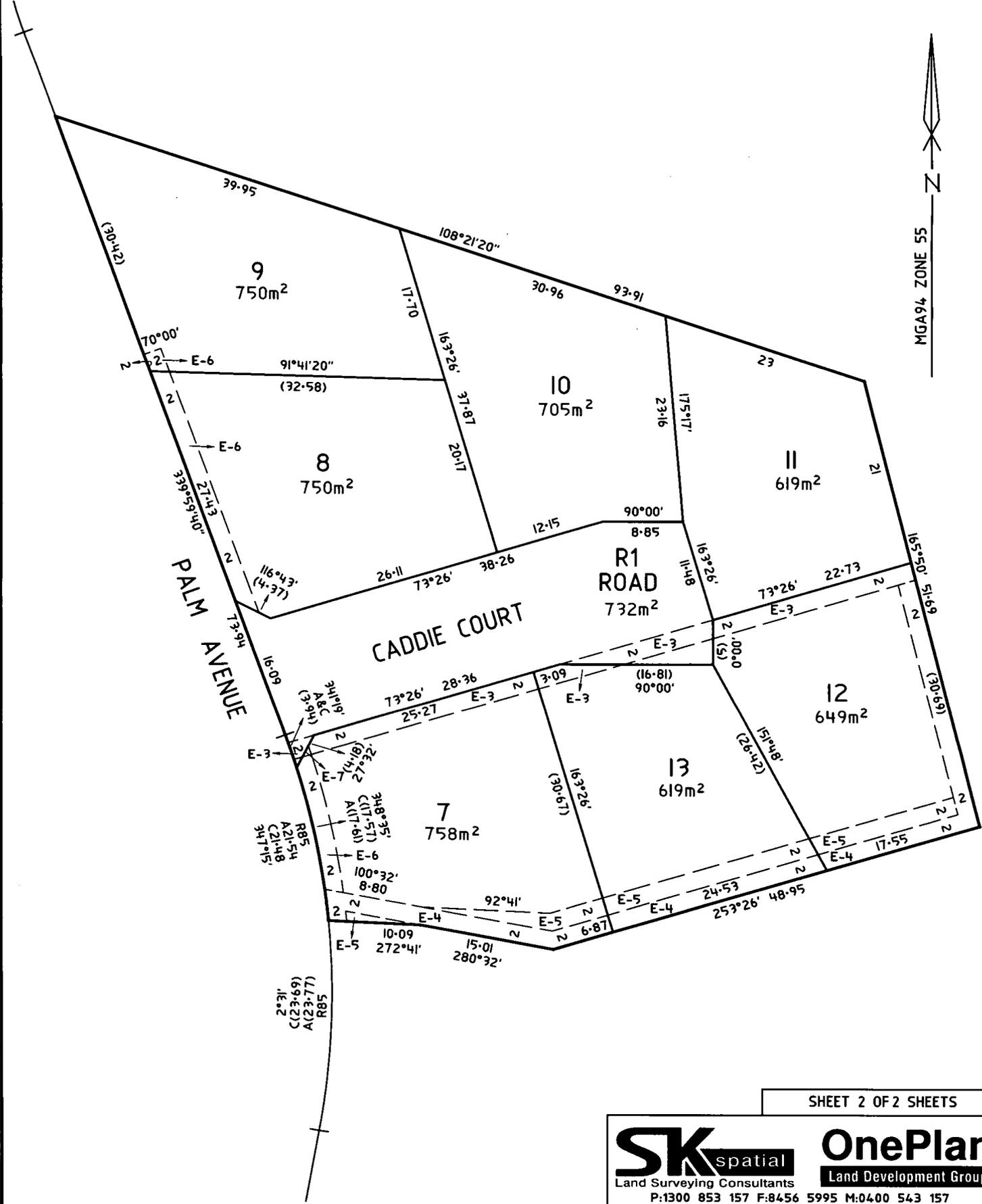
REF 10078-57 VERSION 2

[Signature]

DATE 03/03/2011
 COUNCIL DELEGATE SIGNATURE

ORIGINAL SHEET SIZE A3

PLAN OF SUBDIVISION	STAGE No. /	PLAN NUMBER PS 637663W
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SHEET 2 OF 2 SHEETS

SK	spatial	OnePlan
Land Surveying Consultants		Land Development Group
P:1300 853 157 F:8456 5995 M:0400 543 157 sks@oneplangroup.com.au www.oneplangroup.com.au GIPPSLAND - MELBOURNE		

ORIGINAL	SCALE
SHEET SIZE A3	SCALE 1:400
4 0 4 8 12 16 LENGTHS ARE IN METRES	

LICENSED SURVEYOR SCOTT CHARLES KIMM
SIGNATURE <i>[Signature]</i> DATE 10 / 11 / 2010
REF 10078-57 VERSION 2

.. <i>[Signature]</i> .. DATE 03 08 / 2011 COUNCIL DELEGATE SIGNATURE
