

Application for Planning Permit

Planning Enquiries
 Phone: 03 9205 2200
 Web: <http://www.hume.vic.gov.au>

If you need help to complete this form, read [How to complete the Application for Planning Permit form](#).

⚠ Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any concerns, please contact Council's planning department.

⚠ Questions marked with an asterisk (*) are mandatory and must be completed.

⚠ If the space provided on the form is insufficient, attach a separate sheet.

Clear Form

The Land i ① Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

Street Address *

Unit No.:	St. No.: 17	St. Name: Snaefell Crescent
Suburb/Locality: Gladstone Park		Postcode: 3043

Formal Land Description *

Complete either A or B.

⚠ This information can be found on the certificate of title.

A Lodged Plan Title Plan Plan of Subdivision

OR

B

If this application relates to more than one address, please click this button and enter relevant details. Add Address

The Proposal i ⚠ You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application.

② For what use, development or other matter do you require a permit? *

If you need help about the proposal, read: [How to Complete the Application for Planning Permit Form](#)

📎 Provide additional information on the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.

③ Estimated cost of development for which the permit is required *

⚠ You may be required to verify this estimate. Insert '0' if no development is proposed.

If the application is for land within **metropolitan Melbourne** (as defined in section 3 of the *Planning and Environment Act 1987*) and the estimated cost of the development exceeds \$1 million (adjusted annually by CPI) the Metropolitan Planning Levy **must** be paid to the State Revenue Office and a current levy certificate **must** be submitted with the application. Visit www.sro.vic.gov.au for information.

Existing Conditions i

④ Describe how the land is used and developed now *

eg. vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

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Title Information

5 Encumbrances on title *

If you need help about the title, read: [How to complete the Application for Planning Permit form](#)

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- Yes. (If 'yes' contact Council for advice on how to proceed before continuing with this application.)
 No
 Not applicable (no such encumbrance applies).

 Provide a full, current copy of the title for each individual parcel of land forming the subject site. (The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'Instruments', eg. restrictive covenants.)

Applicant and Owner Details

6 Provide details of the applicant and the owner of the land.

Applicant *

The person who wants the permit.

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

Please provide at least one contact phone number *

Owner *

The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.

Contact person's details *

Organisation (if applicable): HWL Ebsworth Lawyers

Postal Address:

Unit No.: Lvl 8

St. No.: 447

If it is a P.O. Box, enter the details here:

St. Name: Collins Street

Suburb/Locality: Melbourne

State: VIC

Postcode: 3000

Contact information

Business Phone: 8644 3720

Email: agelber@hwle.com.au

Mobile Phone:

Fax:

Name:

Same as applicant

Title:

First Name:

Surname:

Organisation (if applicable):

Postal Address:

If it is a P.O. Box, enter the details here:

Unit No.:

St. No.:

St. Name:

Suburb/Locality:

State:

Postcode:


Owner's Signature (Optional):

Date:

day / month / year

Declaration

7 This form must be signed by the applicant *

 Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the permit application.

Signature:



Date:

15 06 2023

day / month / year

Need help with the Application?

If you need help to complete this form, read [How to complete the Application for Planning Permit form](#)
General information about the planning process is available at www.delwp.vic.gov.au/planning

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist. Insufficient or unclear information may delay your application.

8 **Has there been a pre-application meeting with a Council planning officer?**


No Yes

Checklist

9 **Have you:**

Filled in the form completely?

Paid or included the application fee?

 Most applications require a fee to be paid. Contact Council to determine the appropriate fee.

 Provided all necessary supporting information and documents?

A full, current copy of title information for each individual parcel of land forming the subject site

A plan of existing conditions.

Plans showing the layout and details of the proposal

Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist.

If required, a description of the likely effect of the proposal (eg traffic, noise, environmental impacts).

If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it is issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void.

Completed the relevant Council planning permit checklist?

Signed the declaration (section 7)?

Lodgement

Lodge the completed and signed form, the fee payment and all documents with:

Hume City Council
PO Box 119 Dallas VIC 3047
Pascoe Vale Road Broadmeadows VIC 3047

Contact information:

Telephone: 61 03 9205 2200

Email: email@hume.vic.gov.au

DX: 94718

Translation: 03 9205 2200 for connection to Hume Link's multilingual telephone information service

Deliver application in person, by fax, or by post:

Print Form

Make sure you deliver any required supporting information and necessary payment when you deliver this form to the above mentioned address. This is usually your local council but can sometimes be the Minister for Planning or another body.

Save Form:

Save Form To
Your Computer

You can save this application form to your computer to complete or review later or email it to others to complete relevant sections.

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Department of Environment, Land, Water & Planning

Electronic Instrument Statement

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 17/07/2023 03:10:08 PM

Lodger Details

Lodger Code	22888W
Name	MARIPA & CO.
Address	
Lodger Box	
Phone	
Email	
Reference	17 Snaefell Cres Gla

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APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction VICTORIA

Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest
FEE SIMPLE

Land Title Reference
9084/730

Instrument and/or legislation
RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	HUME CITY COUNCIL
Address	
Street Number	1079
Street Name	PASCOE VALE
Street Type	ROAD
Locality	BROADMEADOWS
State	VIC
Postcode	3047

Additional Details



Department of Environment, Land, Water & Planning

Electronic Instrument Statement

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.

Executed on behalf of HUME CITY COUNCIL

Execution Date

04 APRIL 2023

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.

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Number of Pages (excluding this cover sheet)	2
Document Assembled	

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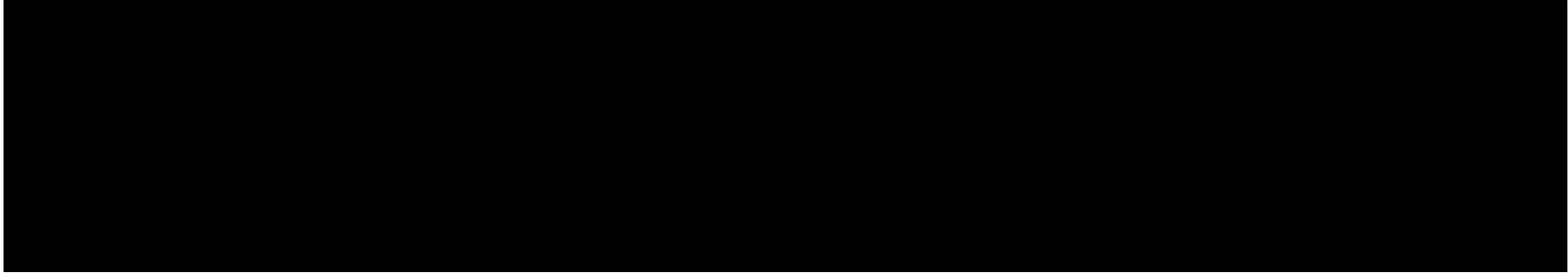
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THIS AGREEMENT is made the 06 day of February 2023

BETWEEN:

HUME CITY COUNCIL (hereinafter called "the Council")



WHEREAS:

A. The owner(s) are entitled to be registered at the Office of Titles as the proprietor(s) of an estate in fee simple in the land described in Certificate of Title as;

Address.	Lot 2461 LP 99737 Vol 9084 Fol 730
No.	17 SNAEFELL CRES GLADSTONE PARK VIC 3043

(hereinafter called 'the subject land')

B. The Council is the Responsible Authority for the enforcement and carrying out of the Hume Planning Scheme (hereinafter called "the Planning Scheme").

C. The Owners wish to erect a building or other structure over a Council easement on the subject land.

Description of Building.	Pool barrier, deck, and shed constructed over an easement.
---------------------------------	--

D. The Council has given its consent to the erection of the building on the subject land on the basis that the Owner enter into this agreement with the Council.

E. The Council and the Owner(s) have agreed that this Agreement is made pursuant to Section 173 of the Planning and Environment Act 1987.

NOW THE OWNER(S) AGREE AS FOLLOWS:


1. To permit the Council to enter into and upon the building or other structure and/or the easement for the purpose of inspecting maintaining or repairing any sewer or drain or other works of the Council now laid or which may be hereafter laid by the Council and of constructing any sewer or drain or other works of the Council which may be hereafter laid by the Council.
2. To be solely responsible for all injury, loss or damage which may be occasioned to the said building or other structure by reason of or incidental to the carrying out of the inspection construction maintenance or repair of the said sewer or drain or other works or by reason of or incidental to the presence of the said sewer or drain or other works.
3. To indemnify the Council against all actions claims suits and demands arising out of or incidental to the erection and/or retention of the said building or other structure over the said sewer drain or other works and/or the said easement.
4. To pay to the Council all additional costs incurred by it in inspecting, constructing, maintaining or repairing any drain, drainage asset or other works by reason of the said building or other structure having been erected over such sewer or drain of other works and/or the said easement.

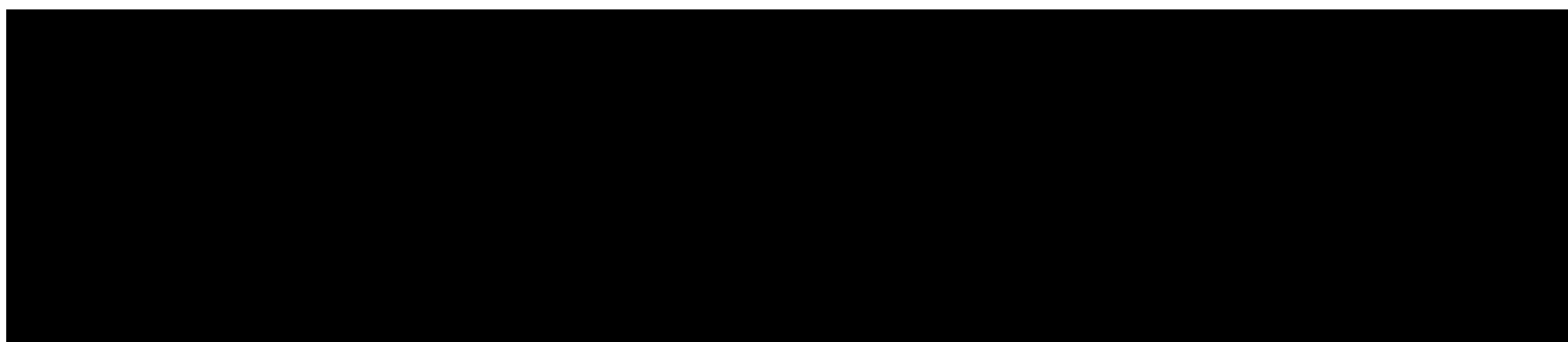
5. To pay to the Council all additional costs incurred by it in inspecting, constructing, maintaining or repairing any new drain, new drainage asset or other new works by reason of the said building or other structure having been erected over the said easement.
6. Not to sell or mortgage land to which this agreement refers without first disclosing the contents of this Agreement to the purchaser or mortgagee.
7. To ensure that the foundations of the said building or other structure shall be clear of any sewer, drain or other works already in the easement of which may laid in the easement.
8. To construct the floor in a way that the said sewer or drain or other works will be accessible for repair. In case of a concrete floor, slabs over the sewer or drain or other works are to be not greater than 900 x 900 with caneite or bitumen joints 12mm wide running longitudinally on both sides of the slabs which are directly above the pipe of other works.
9. To pay to the Council the Council's reasonable costs and expenses of and incidental to the preparation execution and subsequent registration, amendment or cancellation of the memorandum of this Agreement.
10. The Council and the Owner(s) acknowledge and agree that the obligations imposed upon the Owners hereunder are intended to take effect as covenants which shall be annexed to and run at law and in equity with the said land and by the Owners, the Owners' successors, assignees and transferees, the registered proprietor or proprietors for the time being of the said and every part thereof.
11. An application shall be made by the Council to the Registrar of Titles for the entry of a memorandum of this Agreement on the said Certificates of Title to the said land.

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IN WITNESS WHEREOF the parties have hereunto set their hands the day and year first hereinbefore mentioned.

Signed by and on behalf, and with the authority, of the Hume City Council by Peter Jolly, Municipal Building Surveyor, in the exercise of a power conferred by an Instrument of Delegation:)
)
)
)
)
)


.....
Peter Jolly, MBS



Date: 06/02/2023

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

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

VOLUME 09084 FOLIO 730

Security no : 124106309866C
Produced 23/05/2023 04:49 PM

LAND DESCRIPTION

Lot 2461 on Plan of Subdivision 099737.
PARENT TITLE Volume 08551 Folio 749
Created by instrument LP099737 22/04/1975

REGISTERED PROPRIETOR

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT F915932 03/11/1975

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 or imaged folio set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AW703223X 04/04/2023

DIAGRAM LOCATION

SEE LP099737 FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER	AGREEMENT	STATUS	DATE
AW703223X (E)		Registered	12/04/2023

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

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

Street Address: 17 SNAEFELL CRESCENT GLADSTONE PARK VIC 3043

ADMINISTRATIVE NOTICES

NIL

eCT Control 16320Q WESTPAC BANKING CORPORATION
Effective from 29/04/2017

DOCUMENT END

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~~F787350~~

~~F787350~~

NO FEE
1942
F915932

LEGAL DEPARTMENT
STATE SAVINGS BANK OF VICTORIA
P.O. BOX 1966 R
MELBOURNE 3001

F915932
REGD

***0.00 B RT T

09-7 744010 NOV 13 1994 66 56933

LE 1011 *** 194-25

FREEHOLD

~~PAUL WILSON EDWIN S CARTER~~

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VICTORIA
TRANSFER OF LAND

611 MADE AVAILABLE TO ISSUE TO Make work



COSTAIN AUSTRALIA LIMITED of 147 Eastern Road South Melbourne and COSTAIN DEVELOPMENTS (AUSTRALIA) PROPRIETARY LIMITED of 147 Eastern Road South Melbourne being

registered as the proprietors of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of Eleven Thousand and Fifty Dollars (\$11050-00) paid to them by MARTIN GREGORY Design Draughtsman and DIANE JEAN GREGORY

Senior Typist both of Flat 25 No. 204 The Avenue Parkville DO HEREBY TRANSFER to the said MARTIN GREGORY and DIANE JEAN GREGORY as joint tenants ALL their estate and interest in ALL THAT piece of land being Lot 2461 on Plan of

Subdivision No. 99737 lodged in the Office of Titles and Parish of Tullamarine and being the whole of the land in Certificate of Title being part of Crown Portion 5/ and the said MARTIN GREGORY and DIANE JEAN GREGORY with the intent that the benefit of

this covenant shall be attached to and run at law and in equity with each and every Lot on the aforesaid Plan of Subdivision (other than the Lot hereby transferred) and that the burden of this covenant shall be annexed to and run at law and in equity with the land hereby transferred and every part thereof DO HEREBY for themselves their heirs executors administrators and transferees the registered proprietor or proprietors for the time being of the land hereby transferred or any part thereof and as separate covenants COVENANT with the said COSTAIN AUSTRALIA LIMITED and COSTAIN DEVELOPMENTS (AUSTRALIA) PROPRIETARY LIMITED and their assigns and other the registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision and every part or parts thereof (other than the land hereby transferred)

that the said MARTIN GREGORY and DIANE JEAN GREGORY of the within instrument has been entered in the Register Book.



heirs executors administrators and transferees the registered proprietor or proprietors of the land hereby transferred will not at any time:-

- (a) commence the erection or construction of any building (other than fencing) on the Lot hereby transferred unless and until the design thereof and the proposed specifications of construction have been approved by Costain Australia Limited and Costain Developments (Australia) Proprietary Limited;
- (b) erect any fencing on the front boundary of the Lot hereby transferred or within eight metres of such front boundary on the side boundaries or in the case of corner allotments within three metres of the front boundary on the side street boundary other than a fence of not more than one metre above ground level;
- (c) erect or display on the Lot hereby transferred until after the 29th day of March One Thousand nine hundred and 77. any advertisement or hoarding notifying or advertising to the effect that the Lot hereby transferred or any other Lot on the said Plan of Subdivision is for sale.

AND IT IS INTENDED that the above covenants shall appear as an encumbrance on the Certificate of Title to issue in respect of the said land and run with the land hereby transferred.

DATED this 20th day of JUNE One Thousand Nine Hundred and Seventy Five.

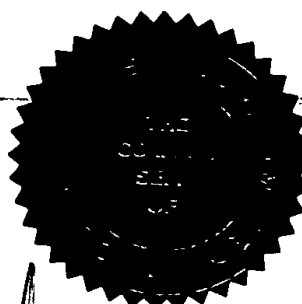
THE COMMON SEAL OF COSTAIN

AUSTRALIA LIMITED was hereto

affixed in accordance with its

Articles of Association in

the presence of:



.....
Director

.....
Secretary

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THE COMMON SEAL OF COSTAIN

DEVELOPMENTS (AUSTRALIA)

PROPRIETARY LIMITED was hereto

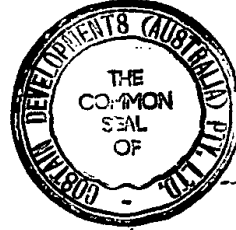
affixed by the authority of a

resolution of the Board of

Directors and in accordance

with its Articles of Association

in the presence of:



[Handwritten signature]

Director

[Handwritten signature]

Secretary

SIGNED by the said MARTIN GREGORY

in Victoria in the presence of:

[Handwritten signature]

[Handwritten signature]

SIGNED by the said DIANE JEAN GREGORY

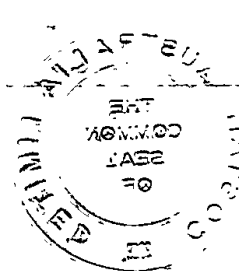
in Victoria in the presence of:

[Handwritten signature]

[Handwritten signature]

ENCUMBRANCES REFERRED TO:

The Easements (if any) as set out at the foot of the said Certificate of Title.



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DF915932-2-2

The Registrar of Titles
Please register this transfer and
on completion hand certificate of
title to issue thereunder to lodging party
Title in F204782

Russell Henry Clark

DATED 1975

COSTAIN AUSTRALIA LIMITED AND
COSTAIN DEVELOPMENTS (AUSTRALIA)
PROPRIETARY LIMITED

to

M. GREGORY AND D. J. GREGORY

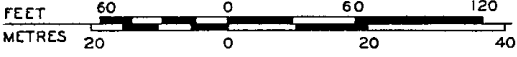
TRANSFER OF LAND

PAVEY WILSON COHEN & CARTER,
Solicitors,
390 Lonsdale Street,
MELBOURNE, VIC. 3000
67 5941 (JW08)

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PLAN OF SUBDIVISION OF
 PART OF CROWN PORTION 5
 PARISH OF TULLAMARINE
 COUNTY OF BOURKE



FEET 60 0 60 120
 METRES 20 0 20 40

APPROVED 19 / 12 / 74
 COLOUR CONVERSION
 BLUE = E-1
 BROWN = R1

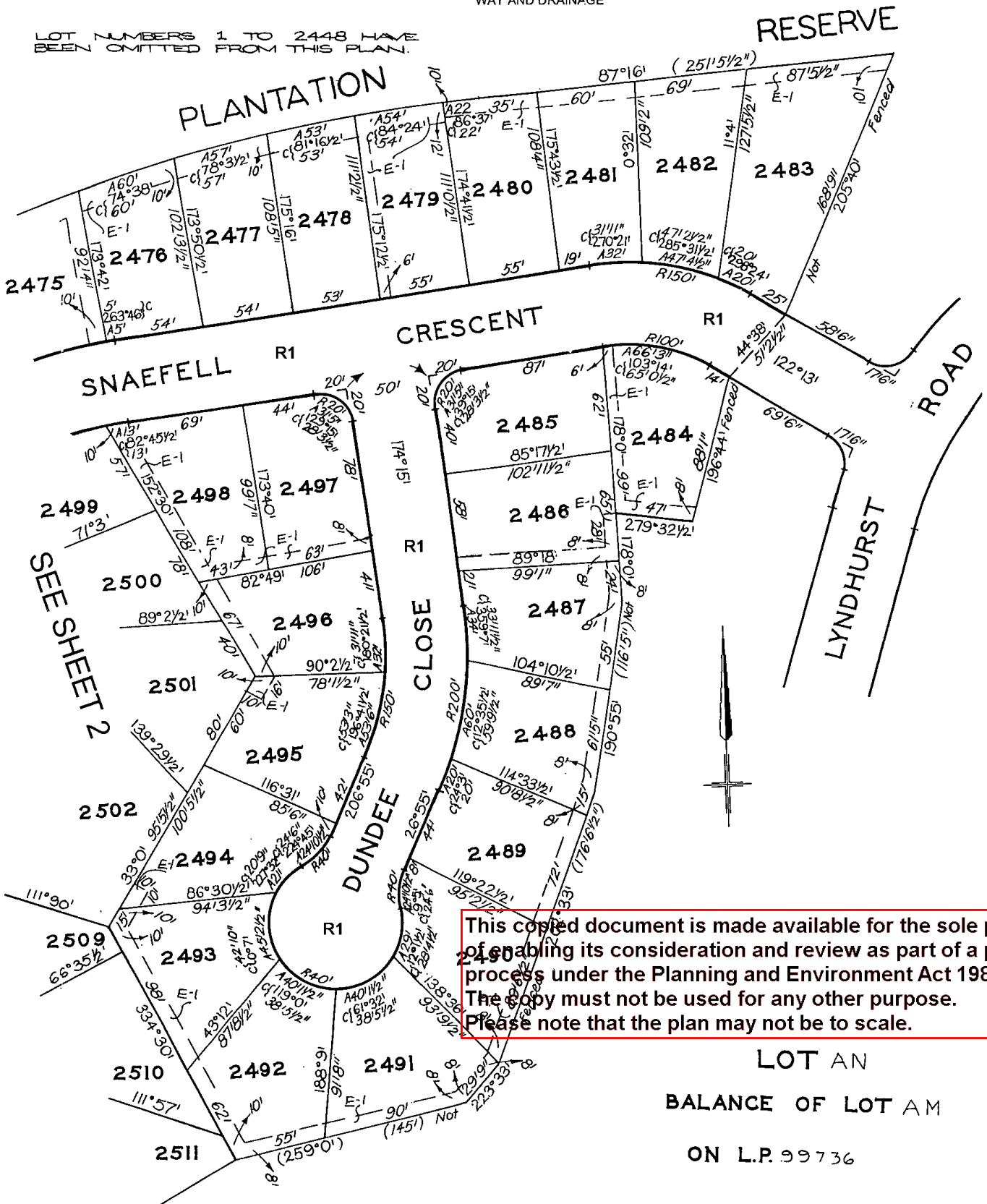
LP 99737
 EDITION 1
 PARISH/P-SHIP/CHART 12

3 SHEETS
 SHEET 1

THE LAND COLOURED BLUE IS APPROPRIATED OR SET APART FOR EASEMENTS OF DRAINAGE AND SEWERAGE

THE LAND COLOURED BROWN IS APPROPRIATED OR SET APART FOR EASEMENTS OF WAY AND DRAINAGE

LOT NUMBERS 1 TO 2448 HAVE BEEN OMITTED FROM THIS PLAN.



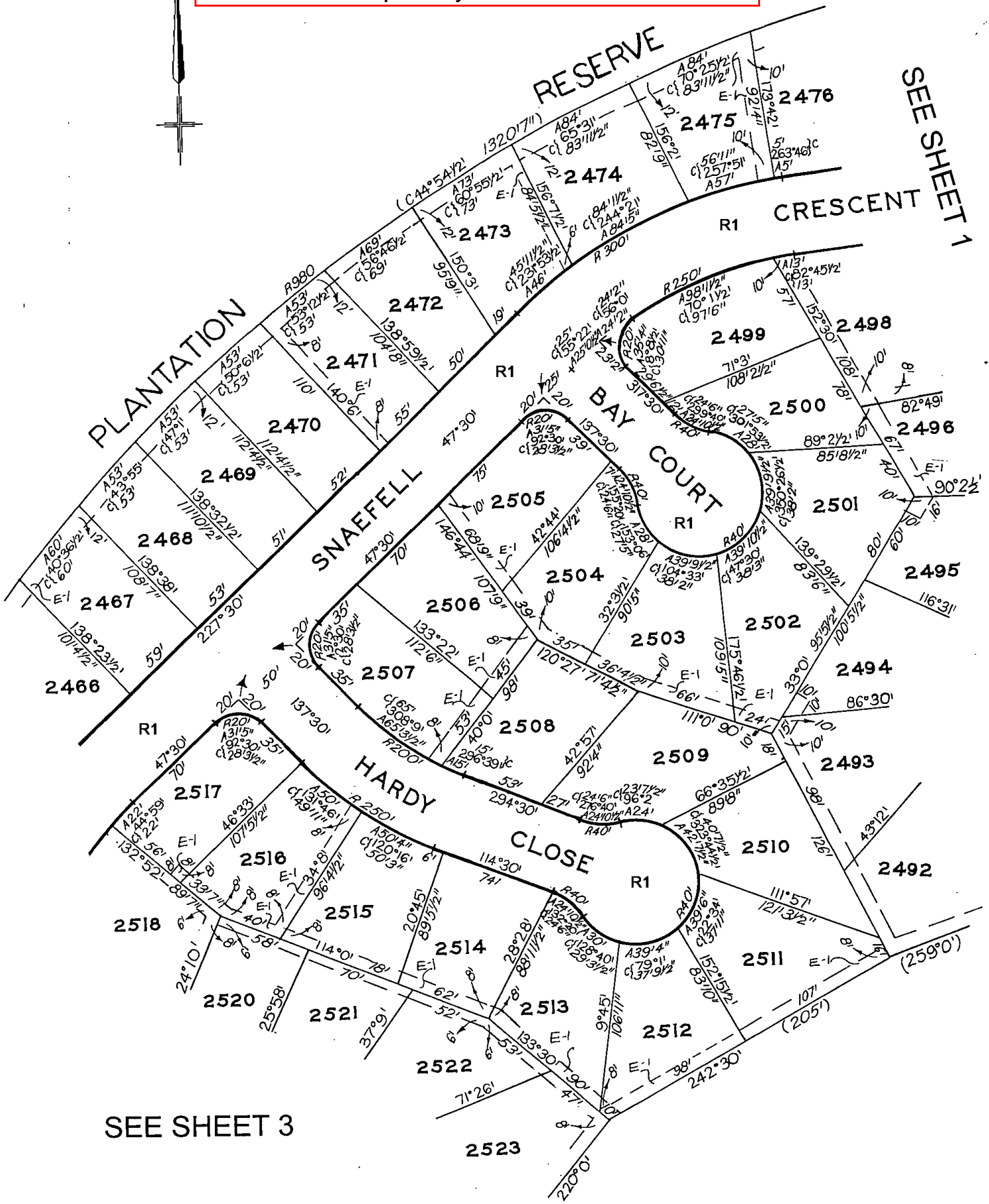
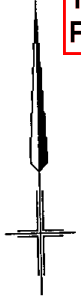
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LOT AN
 BALANCE OF LOT AM
 ON L.P. 99736

LP 99737

3 SHEETS
SHEET 2

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SEE SHEET 1

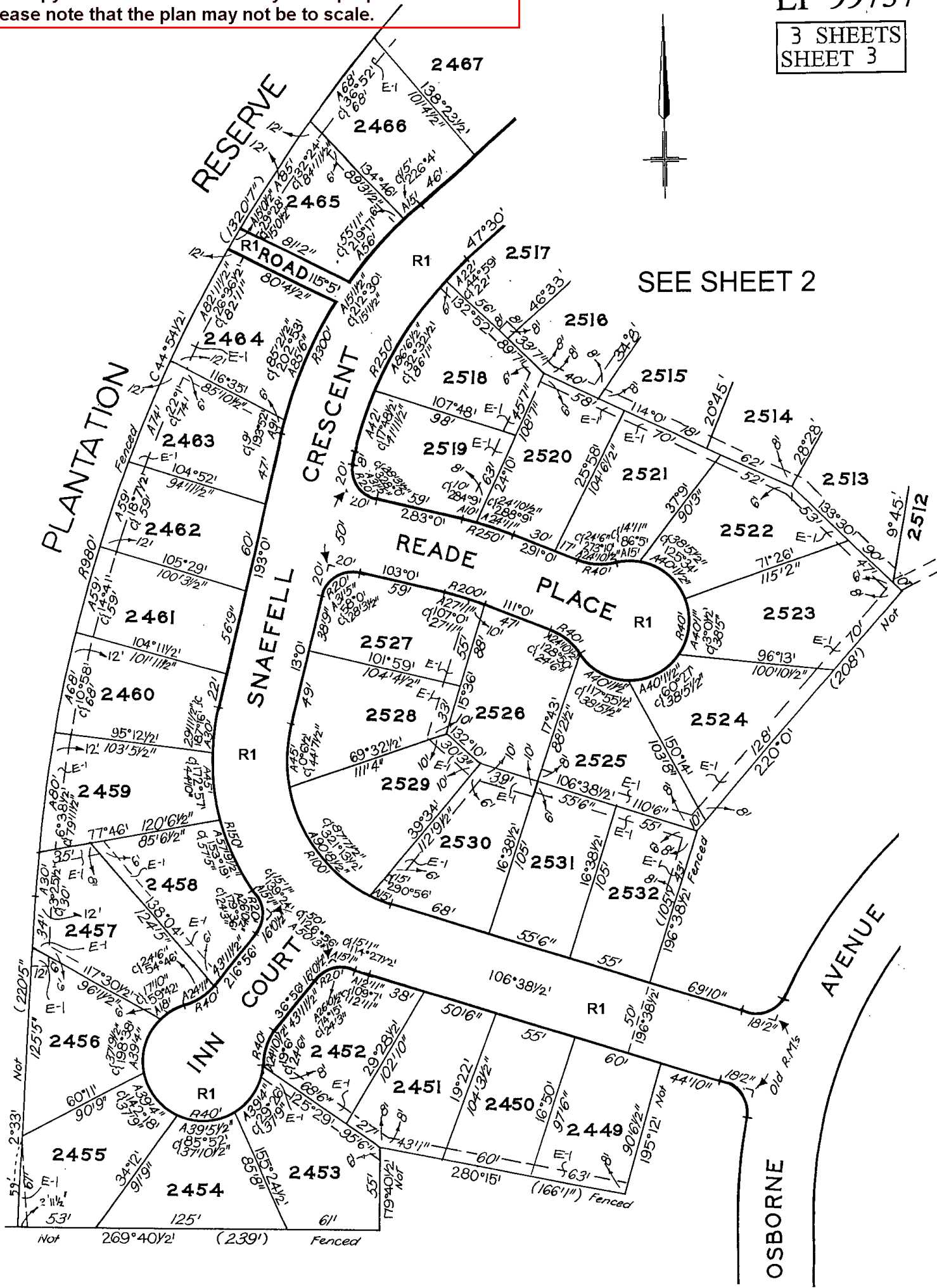
SEE SHEET 3

2523

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LP 99737

3 SHEETS
SHEET 3



Our Ref: AG:SN:1170630

16 June 2023

By Email

Harry Valentine
Principal Town Planner (Growth Areas)
Hume City Council
1079 Pascoe Value Road
Broadmeadows VIC 3047

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Email: harryv@hume.vic.gov.au

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Dear Harry

**Application for Planning Permit
Variation of Restrictive Covenant
17 Snaefell Crescent, Gladstone Park**

1. We act on behalf of [REDACTED] **Clients / Permit Applicant**), the joint registered proprietors of the land at 17 Snaefell Crescent, Gladstone Park (**Subject Land**). The Subject Land is comprised in Certificate of Title Volume 9084 Folio 730 (**Title**) and is formally known as Lot 2461 on Plan of Subdivision No. LP99737 (**Plan of Subdivision**).
2. The Subject Land is affected by Restrictive Covenant Instrument No. F915932 (**Covenant**).

Application for a Planning Permit

3. Pursuant to Clause 52.02 of the Hume Planning Scheme (**Scheme**), a planning permit is required to create, vary or remove a restriction.
4. The Covenant details the following restrictions, which we have paraphrased and simplified in some respects for the purpose of this application:
 - (a) commence the erection or construction of any building (other than fencing) on the Subject Land unless and until the design thereof and the proposed specifications of construction have been approved by the Original Vendors;
 - (b) erect any fencing on the front boundary of the Subject Land or within eight metres of such front boundary on the side boundaries; and

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- (c) erect or display any advertisement or hoarding notifying or advertising that the Subject Land or any other lot on the Plan of Subdivision is for sale on the Subject Land until after 29 March 1977.
5. On behalf of our Clients, please find enclosed a planning permit application which seeks to modify the Covenant (**Planning Application**) as shown below:
- (a) ~~commence the erection or construction of any building (other than fencing) on the Lot hereby transferred unless and until the design thereof and the proposed specifications of construction have been approved by Costain Australia Limited and Costain Developments (Australia) Proprietary Limited;~~
 - (b) erect any fencing on the front boundary of the Lot hereby transferred or within eight metres of such front boundary on the side boundaries or in the case of corner allotments within three metres of the front boundary on the side street boundary other than a fence of not more than one metre above ground level;
 - (c) erect or display on the Lot hereby transferred until after the 29th day of March One-Thousand-nine-hundred and 77. any advertisement or hoarding notifying or advertising to the effect that the Lot hereby transferred or any other Lot on the said Plan of Subdivision is for sale.
6. The Planning Application proposes only to delete clause (a), and does not propose to remove the Covenant in its entirety.
7. In support of the Planning Application, please find **attached**:
- (a) Application for Planning Permit Form;
 - (b) Register Search Statement relating to Certificate of Title Volume 9084 Folio 730 extracted 23 May 2023;
 - (c) Plan of Subdivision No. LP99737; and
 - (d) Restrictive Covenant Instrument No. F915932.
8. Pursuant to section 47(1)(e) of the *Planning and Environment Act 1987 (P&E Act)*, we acknowledge that Council requires information clearly identifying each lot that has the benefit of the Covenant. We advise that this information will be provided as soon as possible.
9. We otherwise set out the following information to assist Council's review of the Planning Application.

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Decision Guidelines

10. In assessing the Planning Application, Council is required to consider the decision guidelines at Clause 52.02 and 65.01 of the Scheme, and the matters set out at section 60 of the P&E Act.
11. Before considering these requirements, it is necessary to consider the purpose of the Covenant.¹

What is the purpose of the Covenant?

12. As a starting point, the Covenant does not contain any built form restrictions. Rather, the Covenant provides the original developer, Costain Developments (Australia) Proprietary Limited (**Costain**), with a general right of approval in respect of built form matters. It is important to note that Costain was wound up in 1994 and is therefore incapable of providing its consent to any development of our Clients' land.
13. The Victorian Civil and Administrative Tribunal considered a restrictive covenant with the same restrictions as the Covenant in *Sesto v Hume CC* [2019] VCAT 826 (**Sesto v Hume CC**). The proceeding considered a combined planning permit application for the variation of a restrictive covenant alongside a proposal to develop the land for 3 units. The Tribunal determined to grant a permit to allow the variation of the restrictive covenant and for the land to be developed with 3 dwellings. The restrictive covenant considered by the Tribunal comprised the same restrictions as the Covenant affecting the Subject Land, albeit with some minor differences as to dates and dimensions.
14. In *Sesto v Hume CC*, the Tribunal accepted that a person reading the Covenant has no way of knowing what built form purpose was of concern to Costain or what type of buildings Costain may have been likely to approve.² The Tribunal also determined that it was not possible to infer any broader built form purpose nor was it appropriate to rely on other information extraneous to the restrictive covenant.³
15. It follows that, in our view, the Tribunal's decision in *Sesto v Hume CC* is of significant relevance to this Planning Application.

Will beneficiaries suffer detriment?

16. Put simply, the Covenant in its current form prohibits our Clients from undertaking any development of their land, which is plainly inappropriate.
17. As the Tribunal found in *Sesto v Hume CC*, it is our view that the Covenant is of no actual or perceived benefit to the benefited property owners for the following reasons:
 - (a) Any benefit of the Covenant thought to be conferred on beneficiaries of the Covenant is illusory - there are no parameters such as building heights, setbacks or numbers of dwellings detailed in the Covenant;

¹ *Hill v Campaspe SC* (includes Summary) (Red Dot) [2011] VCAT 949 at [113].

² *Sesto v Hume CC* [2019] VCAT 826 at [24].

³ *Sesto v Hume CC* [2019] VCAT 826 at [26].

- (b) the purpose of the Covenant was to provide a development approval right for Costain, and no other person;
 - (c) the beneficiaries have no say as to how Costain would exercise its approval right over time, nor does the Covenant provide any indication to beneficiaries as to the type of built form that Costain may approve in the area over time.⁴
18. Accordingly, there can be no detriment to the beneficiaries if the Covenant is varied by removing clause (a) of the Covenant, as is sought by the Planning Application.

Other considerations

19. It follows that:
- (a) the Planning Application will not affect the orderly planning of the area as there are no built form restrictions currently imposed by the Covenant;
 - (b) the interests of affected people are irrelevant in circumstances where the Covenant provides an imaginary benefit; and
 - (c) the Planning Application supports the purposes of the General Residential Zone - Schedule 1 (**GRZ1**) and the Melbourne Airport Environs Overlay - Schedule 1 (**MAEO1**) as it will encourage a diversity of housing types and does not otherwise impact the MAEO1.
20. The Planning Application does not otherwise have any significant effects.

Planning Fees

21. We understand that the applicable fee for the Planning Application is \$1,360.80. Please provide a debtor statement so that our Clients can arrange for payment via Council's online payment platform.

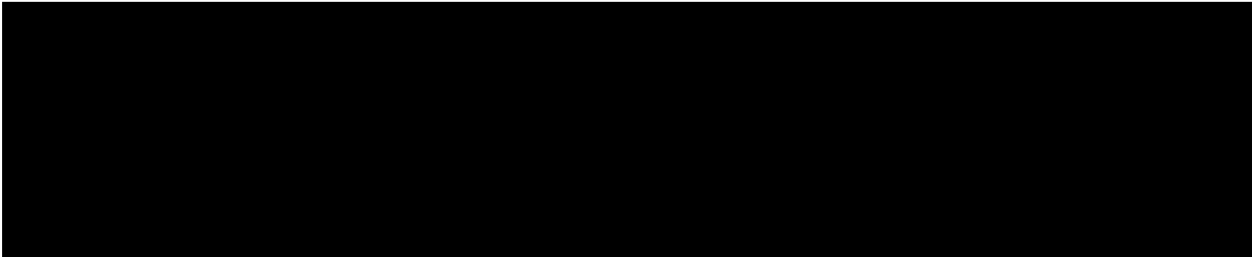
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⁴ *Sesto v Hume CC* [2019] VCAT 826 at [27] - [28].

Next Steps

- 22. We trust that we have provided sufficient information to commence Council's consideration of this Planning Application. We are willing to meet with Council to engage in any discussions as necessary.
- 23. Should you have any queries or require any further information, please contact our office.

Yours sincerely



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