

**PP30/2019-1**

**15 Marriners Lookout Road APOLLO BAY**

**Lot: 1 PS: 647281 V/F: 11999/583**

**Building and Works Comprising Construction  
of a Dwelling, Variation with the Covenant  
PS647281F and X539010J**

**J M Borg & O Borg**

**Officer - Vikram Kumar**

# **EXHIBITION FILE**

*This document is made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any Copyright.*

Submissions to this planning application will be accepted until a decision is made on the application.

If you would like to make a submission relating to a planning permit application, you must do so in writing to the Planning Department



Planning Enquiries  
Phone: (03) 5232 9400  
Email: [ing@colacotway.vic.gov.au](mailto:ing@colacotway.vic.gov.au)  
Web: [www.colacotway.vic.gov.au](http://www.colacotway.vic.gov.au)

Office Use Only

VicSmart?

Specify class of VicSmart application:

Application No.:

YES  NO  
Date Lodged: / /

The following copied documents are made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any Copyright.

# Application for a Planning Permit

If you need help to complete this form, read MORE INFORMATION at the back of this 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 (\*) must be completed.

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

**i** Click for further information.

Clear Form

## Application Type

Is this a VicSmart application?\*

No  Yes

If yes, please specify which

VicSmart class or classes:.....

**⚠** If the application falls into one of the classes listed under Clause 92 or the schedule to Clause 94, it is a VicSmart application.

## Pre-application Meeting

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

No  Yes

If 'Yes', with whom?:

Date:

day / month / year

## The Land **i**

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

Street Address \*

Unit No.: St. No.: 15 St. Name: Marriners Lookout Road  
Suburb/Locality: Apollo Bay Postcode: 3233

Formal Land Description \*

Complete either A or B.

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

If this application relates to more than one address, attach a separate sheet setting out any additional property details.

A Lot No.: 1  Lodged Plan  Title Plan  Plan of Subdivision No.: 647281F  
OR  
B Crown Allotment No.: Section No.:  
Parish/Township Name:

## The Proposal

**⚠** 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.

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

Buildings and works associated with a dwelling. Variation of a covenants X539070J & PS647281F substantially as described by the accompanying plans and submissions

**📎** Provide additional information about 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.

**i** Estimated cost of any development for which the permit is required \*

Cost \$ 300000

**⚠** 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](http://www.sro.vic.gov.au) for information.

## Existing Conditions **i**

Describe how the land is used and developed now \*

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

Vacant

**📎** Provide a plan of the existing conditions. Photos are also helpful.

## Title Information **i**

Encumbrances on title \*

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', for example, restrictive covenants.

The following copied documents are made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any Copyright.

# Applicant and Owner Details i

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

## Applicant \*

The person who wants the permit.

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:

Please provide at least one contact phone number \*

**Contact information for applicant OR contact person below**

Business phone:  Email:

Mobile phone:  Fax:

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

**Contact person's details\***  Same as applicant

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 \*

The person or organisation who owns the land

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

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

## Information requirements

Contact Council's planning department to discuss the specific requirements for his application and obtain a planning permit checklist.

Is the required information provided?

Yes  No

## Declaration i

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:

day / month / year



## Checklist

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 (for example, 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 above?

## Need help with the Application?

If you need help to complete this form, read [More Information](#) at the end of this form.

For help with a VicSmart application see Applicant's Guide to Lodging a VicSmart Application at [www.planning.vic.gov.au](http://www.planning.vic.gov.au)

General information about the planning process is available at [www.planning.vic.gov.au](http://www.planning.vic.gov.au)

Assistance can also be obtained from Council's planning department.

## Lodgement

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

Colac Otway Shire  
PO Box 283  
Colac VIC 3250  
2-6 Rae Street  
Colac VIC 3250

### Contact information

Phone: (03) 5232 9400  
Email: [inq@colacotway.vic.gov.au](mailto:inq@colacotway.vic.gov.au)

**Deliver application in person, by post or by electronic lodgement.**

## MORE INFORMATION

### The Land

Planning permits relate to the use and development of the land. It is important that accurate, clear and concise details of the land are provided with the application.

#### How is land identified?


Land is commonly identified by a street address, but sometimes this alone does not provide an accurate identification of the relevant parcel of land relating to an application. Make sure you also provide the formal land description - the lot and plan number or the crown, section and parish/township details (as applicable) for the subject site. This information is shown on the title.

See **Example 1**.

### The Proposal

#### Why is it important to describe the proposal correctly?


The application requires a description of what you want to do with the land. You must describe how the land will be used or developed as a result of the proposal. It is important that you understand the reasons why you need a permit in order to suitably describe the proposal. By providing an accurate description of the proposal, you will avoid unnecessary delays associated with amending the description at a later date.

 Planning schemes use specific definitions for different types of use and development. Contact the Council planning office at an early stage in preparing your application to ensure that you use the appropriate terminology and provide the required details.

#### How do planning schemes affect proposals?

A planning scheme sets out policies and requirements for the use, development and protection of land. There is a planning scheme for every municipality in Victoria. Development of land includes the construction of a building, carrying out works, subdividing land or buildings and displaying signs.

Proposals must comply with the planning scheme provisions in accordance with Clause 61.05 of the planning scheme. Provisions may relate to the State Planning Policy Framework, the Local Planning Policy Framework, zones, overlays, particular and general provisions. You can access the planning scheme by either contacting Council's planning department or by visiting the Planning Schemes Online section of the department's website <http://planning-schemes.delwp.vic.gov.au>

 You can obtain a planning certificate to establish planning scheme details about your property. A planning certificate identifies the zone and overlays that apply to the land, but it does not identify all of the provisions of the planning scheme that may be relevant to your application. Planning certificates for land in metropolitan areas and most rural areas can be obtained by visiting [www.landata.vic.gov.au](http://www.landata.vic.gov.au). Contact your local Council to obtain a planning certificate in Central Goldfields Corangamite, Macedon Ranges and Greater Geelong. You can also use the free Planning Property Report to obtain the same information.

See **Example 2**.


#### Estimated cost of development

In most instances an application fee will be required. This fee must be paid when you lodge the application. The fee is set down by government regulations.

To help Council calculate the application fee, you must provide an accurate cost estimate of the proposed development. This cost does not include the costs of development that you could undertake without a permit or that are separate from the permit process. Development costs should be calculated at a normal industry rate for the type of construction you propose.

Council may ask you to justify your cost estimates. Costs are required solely to allow Council to calculate the permit application fee. Fees are exempt from GST.

 Costs for different types of development can be obtained from specialist publications such as Cordell Housing: Building Cost Guide or Rawlinsons: Australian Construction Handbook.

 Contact the Council to determine the appropriate fee. Go to [www.planning.vic.gov.au](http://www.planning.vic.gov.au) to view a summary of fees in the Planning and Environment (Fees) Regulations.

**Metropolitan Planning Levy** refer Division 5A of Part 4 of the *Planning and Environment Act 1987* (the Act). A planning permit application under section 47 or 96A of the Act for a development of land in metropolitan Melbourne as defined in section 3 of the Act may be a leviable application. If the cost of the development exceeds the threshold of \$1 million (adjusted annually by consumer price index) a levy certificate must be obtained from the State Revenue Office after payment of the levy. A valid levy certificate must be submitted to the responsible planning authority (usually council) with a leviable planning permit application. Refer to the State Revenue Office website at [www.sro.vic.gov.au](http://www.sro.vic.gov.au) for more information. A leviable application submitted without a levy certificate is void.

### Existing Conditions

#### How should land be described?

You need to describe, in general terms, the way the land is used now, including the activities, buildings, structures and works that exist (e.g. single dwelling, 24 dwellings in a three-storey building, medical centre with three practitioners and 8 car parking spaces, vacant building, vacant land, grazing land, bush block).

Please attach to your application a plan of the existing conditions of the land. Check with the local Council for the quantity, scale and level of detail required. It is also helpful to include photographs of the existing conditions.

See **Example 3**.

### Title Information

#### What is an encumbrance?

An 'encumbrance' is a formal obligation on the land, with the most common type being a 'mortgage'. Other common examples of encumbrances include:

- **Restrictive Covenants:** A 'restrictive covenant' is a written agreement between owners of land restricting the use or development of the land for the benefit of others, (eg. a limit of one dwelling or limits on type of building materials to be used).
- **Section 173 Agreements:** A 'section 173 agreement' is a contract between an owner of the land and the Council which sets out limitations on the use or development of the land.
- **Easements:** An 'easement' gives rights to other parties to use the land or provide for services or access on, under or above the surface of the land.
- **Building Envelopes:** A 'building envelope' defines the development boundaries for the land.

Aside from mortgages, the above encumbrances can potentially limit or even prevent certain types of proposals.

#### What documents should I check to find encumbrances?

Encumbrances are identified on the title (register search statement) under the header 'encumbrances, caveats and notices'. The actual details of an encumbrance are usually provided in a separate document (instrument) associated with the title. Sometimes encumbrances are also marked on the title diagram or plan, such as easements or building envelopes.

#### What about caveats and notices?

A 'caveat' is a record of a claim from a party to an interest in the land. Caveats are not normally relevant to planning applications as they typically relate to a purchaser, mortgagee or chargee claim, but can sometimes include claims to a covenant or easement on the land. These types of caveats may affect your proposal.

Other less common types of obligations may also be specified on title in the form of 'notices'. These may have an effect on your proposal, such as a notice that the building on the land is listed on the Heritage Register.



### What happens if the proposal contravenes an encumbrance on title?

Encumbrances may affect or limit your proposal or prevent it from proceeding. Section 61(4) of the *Planning and Environment Act 1987* for example, prevents a Council from granting a permit if it would result in a breach of a registered restrictive covenant. If the proposal contravenes any encumbrance, contact the Council for advice on how to proceed.

You may be able to modify your proposal to respond to the issue. If not, separate procedures exist to change or remove the various types of encumbrances from the title. The procedures are generally quite involved and if the encumbrance relates to more than the subject property, the process will include notice to the affected party.

▲ You should seek advice from an appropriately qualified person, such as a solicitor, if you need to interpret the effect of an encumbrance or if you seek to amend or remove an encumbrance.

### Why is title information required?

Title information confirms the location and dimensions of the land specified in the planning application and any obligations affecting what can be done on or with the land.

As well as describing the land, a full copy of the title will include a diagram or plan of the land and will identify any encumbrances, caveats and notices.

### What is a 'full' copy of the title?

The title information accompanying your application must include a 'register search statement' and the title diagram, which together make up the title.

In addition, any relevant associated title documents, known as 'instruments', must also be provided to make up a full copy of the title.

Check the title to see if any of the types of encumbrances, such as a restrictive covenant, section 173 agreement, easement or building envelope, are listed. If so, you must submit a copy of the document (instrument) describing that encumbrance. Mortgages do not need to be provided with planning applications.

▲ Some titles have not yet been converted by Land Registry into an electronic register search statement format. In these earlier types of titles, the diagram and encumbrances are often detailed on the actual title, rather than in separate plans or instruments.

### Why is 'current' title information required?

It is important that you attach a current copy of the title for each individual parcel of land forming the subject site. 'Current' title information accurately provides all relevant and up-to-date information.

Some Councils require that title information must have been searched within a specified time frame. Contact the Council for advice on their requirements.

▲ Copies of title documents can be obtained from Land Registry: Level 10, 570 Bourke Street, Melbourne; 03 8636 2010; [www.landata.vic.gov.au](http://www.landata.vic.gov.au) – go direct to "titles & property certificates"

## Applicant and Owner Details

This section provides information about the permit applicant, the owner of the land and the person who should be contacted about any matters concerning the permit application.

The applicant is the person or organisation that wants the permit. The applicant can, but need not, be the contact person.

In order to avoid any confusion, the Council will communicate only with the person who is also responsible for providing further details. The contact may be a professional adviser (e.g. architect or planner) engaged to prepare or manage the application. To ensure prompt communications, contact details should be given.

Check with council how they prefer to communicate with you about the application. If an email address is provided this may be the preferred method of communication between Council and the applicant/contact.

The owner of the land is the person or organisation who owns the land at the time the application is made. Where a parcel of land has been sold and an application made prior to settlement, the owner's details should be identified as those of the vendor. The owner can, but need not, be the contact or the applicant.

See **Example 4**.

## Declaration

The declaration should be signed by the person who takes responsibility for the accuracy of all the information that is provided. This declaration is a signed statement that the information included with the application is true and correct at the time of lodgement.

The declaration can be signed by the applicant or owner. If the owner is not the applicant, the owner must either sign the application form or must be notified of the application which is acknowledged in the declaration

▲ Obtaining or attempting to obtain a permit by wilfully making or causing any false representation or declaration, either orally or in writing, is an offence under the *Planning and Environment Act 1987* and could result in a fine and/or cancellation of the permit

## Checklist

### What additional information should you provide to support the proposal?

You should provide sufficient supporting material with the application to describe the proposal in enough detail for the Council to make a decision. It is important that copies of all plans and information submitted with the application are legible.

There may be specific application requirements set out in the planning scheme for the use or development you propose. The application should demonstrate how these have been addressed or met.

The checklist is to help ensure that you have:

- provided all the required information on the form
- included payment of the application fee
- attached all necessary supporting information and documents
- completed the relevant Council planning permit checklist
- signed the declaration on the last page of the application form

▲ The more complete the information you provide with your permit application, the sooner Council will be able to make a decision.

## Need help with the Application?

If you have attended a pre-application meeting with a Council planner, fill in the name of the planner and the date, so that the person can be consulted about the application once it has been lodged.

## Lodgement

The application must be lodged with the Council responsible for the planning scheme in which the land affected by the application is located. In some cases the Minister for Planning or another body is the responsible authority instead of Council. Ask the Council if in doubt.

Check with Council how they prefer to have the application lodged. For example, they may have an online lodgement system, prefer email or want an electronic and hard copy. Check also how many copies of plans and the size of plans that may be required.

Contact details are listed in the lodgement section on the last page of the form.

▲ Approval from other authorities: In addition to obtaining a planning permit, approvals or exemptions may be required from other authorities or Council departments. Depending on the nature of your proposal, these may include food or health registrations, building permits or approvals from water and other service authorities.

# EXAMPLES

## Example 1

**The Land** The following copied documents are made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any Copyright.

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

**Street Address \***

Unit No.: <b>4</b>	St. No.: <b>26</b>	St. Name: <b>Planmore Avenue</b>
Suburb/Locality: <b>HAWTHORN</b>		Postcode: <b>3122</b>

**Formal Land Description \***  
Complete either A or B.

**A** Lot No.: **2**  Lodged Plan  Title Plan  Plan of Subdivision No.: **LP93562**

**OR**

**B** Crown Allotment No.:  Section No.:

Parish/Township Name:

⚠ This information can be found on the certificate of title.  
If this application relates to more than one address, attach a separate sheet setting out any additional property details.

## Example 2

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

*Construction of two, double-storey dwellings and construction of two new crossovers.*

Provide additional information about 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.

## Example 3

**Existing Conditions** i

**Describe how the land is used and developed now \***

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

*Single dwelling.*

Provide a plan of the existing conditions. Photos are also helpful.

## Example 4

**Applicant and Owner Details** i

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

**Applicant \***

The person who wants the permit.

Please provide at least one contact phone number \*

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

**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.

**Name:**

Title: <b>Mr</b>	First Name: <b>Len</b>	Surname: <b>Browning</b>
------------------	------------------------	--------------------------

Organisation (if applicable): **Responsible Developers P/L**

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

Unit No.: <b>4</b>	St. No.: <b>12</b>	St. Name: <b>Ardour Lane</b>
Suburb/Locality: <b>Wycheproof</b>		State: <b>Vic</b> Postcode: <b>3527</b>

**Contact information for applicant OR contact person below**

Business phone: <b>9123 4567</b>	Email: <b>tcpl@bigpond.net.au</b>
Mobile phone: <b>0412 345 678</b>	Fax: <b>9123 4567</b>

**Contact person's details\* Same as applicant**

Name:

Title: <b>Mr</b>	First Name: <b>Andrew</b>	Surname: <b>Hodge</b>
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Organisation (if applicable): **Town Planning Consultants**

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

Unit No.:	St. No.:	St. Name: <b>PO Box 111</b>
Suburb/Locality: <b>Parkdale</b>		State: <b>Vic</b> Postcode: <b>3194</b>

Name: Same as applicant

Title:	First Name:	Surname:
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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





# The Planning Professionals

## Planning Report

Variation of covenant, building envelope and buildings and works

15 Marriners Lookout Road, Apollo Bay

January 2019

po box 7076  
geelong west  
vic 3218  
[info@theplanningprofessionals.com.au](mailto:info@theplanningprofessionals.com.au)

31 Lt Ryrie Street  
Geelong VIC 3220

m 0414517365



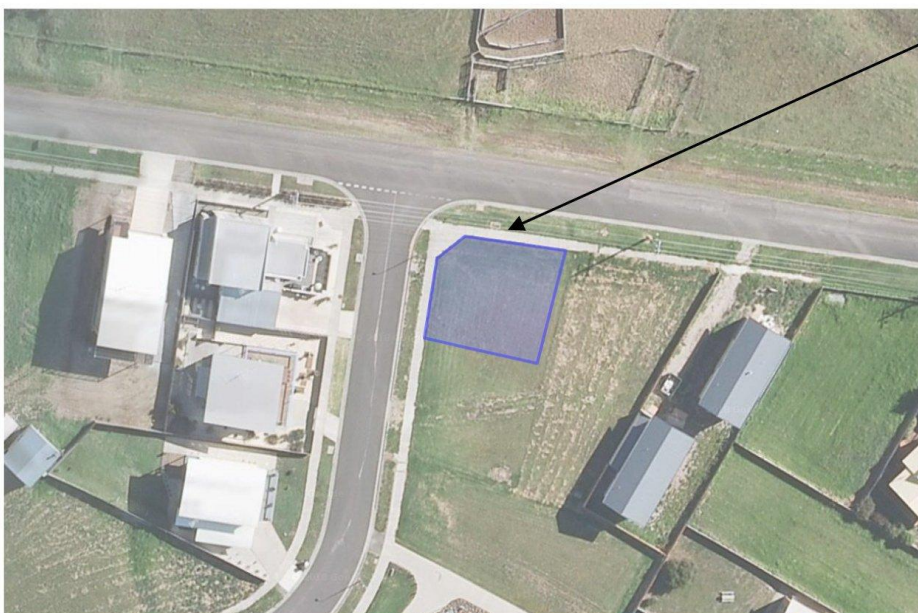
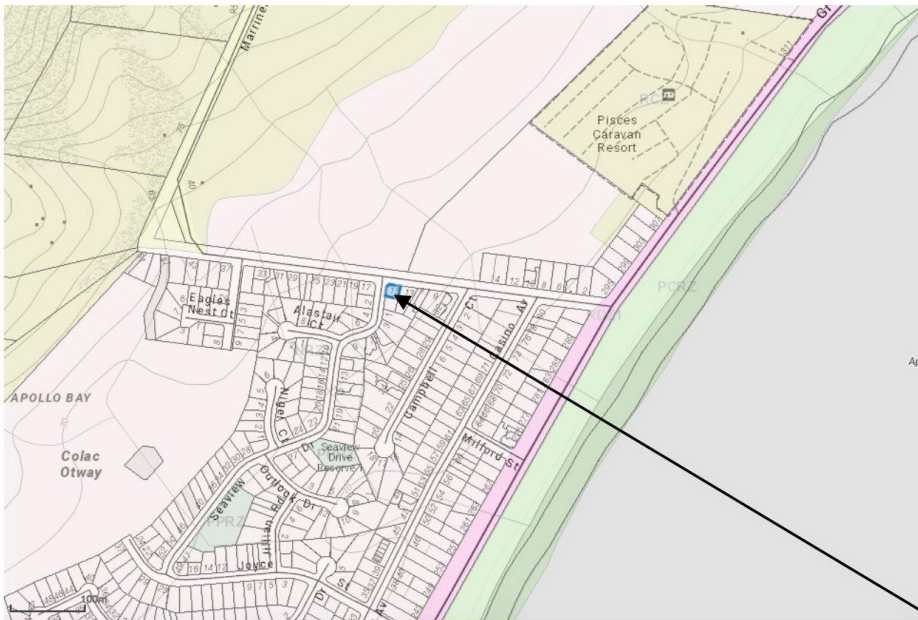
The Planning Professionals

### What's the application all about?

This is a submission made on behalf of the permit applicant supporting a proposal for a variation of two covenants referred to as X539070J and PS647281F. The proposed variations simply allow for the usage of materials other than those specified within the covenant on the exterior walls of the proposed dwelling and a variation to the building envelope plan.

#### 1. The locality and existing conditions

1.1. The subject land is 15 Marriners Lookout Road, Apollo Bay and is substantially described by the accompanying plans and generally below:



Subject property indicated in blue





## 2. What is proposed?

- 2.1. To vary the covenant X539070J to allow for exterior finishes other than brick, brick veneer, stone or cedar as specified by the covenant, substantially as described by the accompanying plans, attachments and report following.
- 2.2. To vary the building envelope on restriction PS647281F, substantially as described by the accompanying plans, attachments and report following.
- 2.3. The design solution includes limestone consistent with the covenant but substantially includes "Colorbond Ultra Steel siding".
- 2.4. The existing building envelope did not allow for wall thicknesses of a garage built on the property boundary and thus the garage would have lead to minor encroachments of vehicle parking into the building envelope. The proposal allows for these wall thicknesses and an enclosed primary parking space.
- 2.5. The proposed building envelope would be 0.9 metres longer in length east to west.
- 2.6. The proposal is to allow for a 10m x 15.90m four bedroom single storey dwelling.
- 2.7. A 1.8 metre front fence is proposed at the frontage of Marriners Lookout Road to better seclude the designated "private" open space.
- 2.8. The accompanying plans and schematics describe the proposal in more detail.

## 3. Why is a permit required?

- 3.1. The subject land is located in the Neighbourhood Residential Zone under the Colac Otway Planning Scheme and is subject to a Design and Development Overlay.
- 3.2. The relevant zones and overlays are:
  - Neighbourhood Residential Zone,
  - schedule 1 - Neighbourhood Residential Zone
  - Design and Development Overlay, and
  - Schedule 7 - Design and Development Overlay
- 3.3. The permit triggers are:
  - Buildings and Works (Clause 43.02-2)
- 3.4. For a variation to the covenant (X539070J) as it applies to the subject property under Section 47 of the Act to allow for the use of materials other than specified as described by the accompanying plans.
- 3.5. For a variation to the covenant (PS647281F) to modify the building envelope on the plan of subdivision as described by the accompanying plans.





#### 4. Response to the provisions of the scheme and Act

- Planning policies*
- 4.1. The Responsible Authority is required to take into account relevant policies contained in the PPF, MSS and LPPF.
- 4.2. The State policies are broad in their application. It is the local parts of of the planning scheme which are more relevant to the application.
- 4.3. This section discusses the permit triggers in detail and offers a response to the relevant planning provisions.

#### **CLAUSE 32.09 NEIGHBOURHOOD RESIDENTIAL ZONE**

##### **Purpose**

*To implement the Municipal Planning Strategy and the Planning Policy Framework. To recognise areas of predominantly single and double storey residential development.*

*To manage and ensure that development respects the identified neighbourhood character, heritage, environmental or landscape characteristics.*

*To allow educational, recreational, religious, community and a limited range of other non-residential uses to serve local community needs in appropriate locations.*

##### **Response**

There is no permit trigger under the zone provisions. The outcome anticipated is consistent with the purpose of the zone.

#### **CLAUSE 43.02 DESIGN AND DEVELOPMENT OVERLAY**

##### **Clause 43.02-2 Buildings and works**

##### **Permit requirement**

*A permit is required to construct a building or construct or carry out works*

##### **Clause 43.02-6 Decision Guidelines**

*Before deciding on an application, in addition to the decision guidelines in Clause 65, the responsible authority must consider, as appropriate:*

- *The Municipal Planning Strategy and the Planning Policy Framework.*
- *The design objectives of the relevant schedule to this overlay.*
- *The provisions of any relevant policies and urban design guidelines.*
- *Whether the bulk, location and appearance of any proposed buildings and works will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.*
- *Whether the design, form, layout, proportion and scale of any proposed buildings and works is compatible with the period, style, form, proportion, and scale of any identified heritage places surrounding the site.*
- *Whether any proposed landscaping or removal of vegetation will be in keeping with the character and appearance of adjacent buildings, the streetscape or the area.*
- *The layout and appearance of areas set aside for car parking, access and egress, loading and unloading and the location of any proposed off street car parking*
- *Whether subdivision will result in development which is not in keeping with the character and appearance of adjacent buildings, the streetscape or the area.*

##### **Response:**

The proposal is consistent with the provisions of the schedule as far as can be reasonably applied. See the responses to schedule provisions following.



### **SCHEDULE 7 TO THE DESIGN AND DEVELOPMENT OVERLAY**

#### **1.0 Design Objectives**

*To limit building heights and ensure that upper levels are well articulated to respect the character of the area.*

*To identify a lower density area facilitating a more spacious form of residential development.*

*To ensure that development density is consistent with the coastal town character.*

*To ensure that permeable space is available between dwellings to sustain vegetation.*

*To ensure that new development maintains space between buildings so that views to the surrounding landscape are retained.*

*To encourage building design that complements and responds to the cultural, environmental and landscape values of Apollo Bay, including appropriate use of coastal materials, colours, heights and setbacks.*

#### **2.0 Buildings and Works**

*A permit is not required to construct or extend a dwelling if:*

- *It is the only dwelling on the lot; and*
- *It is less than 8 metres in height; and*
- *The lot is in excess of 450m<sup>2</sup>.*

#### **Performance Criteria**

*Buildings and works should comply with the following standards unless it can be demonstrated that an alternative approach achieves the design objectives of this control:*

*Simple building details.*

- *A mix of contemporary and traditional coastal materials textures and finishes.*
- *Colours and finishes that compliment those occurring naturally in the area*
- *Articulated facades, incorporating setbacks to upper levels to reduce building bulk and overshadowing.*
- *Articulated roof forms on new developments to provide visual interest to the street. Buildings greater than 8 metres in height have a front setback at the upper level of 3 metres.*
- *Applications for more than one dwelling on a lot should be at a density that would enable future subdivision in accordance with the subdivision requirements of this clause.*

#### **4.0 Application requirements**

*An application must include a report that demonstrates how the proposal meets the objectives and provisions of the schedule.*

#### **Response**

The subject allotment is less than 450sqm. This is precisely why a permit is required.

The design solution has been crafted by an experienced and Registered Architect.

The proposed dwelling is a low scale, small single storey dwelling with a mono pitched roof thereby reducing visual bulk and building mass as opposed to a traditional hipped or gabled roof.

The maximum height of the proposed dwelling would be approximately 3.8 metres. Significant views around the subject site to the surrounding landscape are and would be readily available over the proposed dwelling consistent with the performance criteria.

The design solution incorporates the use of extensive glazing, sandstone, steel and other contemporary lightweight materials that are features of typical coastal design. Adding a mix of textures and hard and soft materials.

The use of lightweight steel siding is a design featured on many neighbouring homes in the immediate locality.

The design solution is consistent with the performance criteria and design objectives above.





## **SCHEDULE 7 TO THE DESIGN AND DEVELOPMENT OVERLAY**

### **5.0 Decision guidelines**

Before deciding on an application the responsible authority must consider, in addition to the decision guidelines in Clause 65 and 43.02-5, the following:

- The appropriateness of any subdivision, building or works having regard to land capability, including land form, slope, drainage and the presence of remnant vegetation.
- The extent to which the proposed subdivision or development meets the objectives and design responses for the precinct within which it is located as specified in the Apollo Bay, Marengo Neighbourhood Character Study 2003 and Clause 43.02.
- The extent to which the building exceeds 8 metres and achieves the schedule design objectives and performance criteria.

#### **Response:**

The design solution does not exceed 8 metres in height.

## **THE PLANNING AND ENVIRONMENT ACT (1987)**

### **Section 60(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.

(4) Subsection (2) does not apply to any restriction which was—

- (a) registered under the Subdivision Act 1988 ; or
- (b) lodged for registration or recording under the Transfer of Land Act 1958 ; or
- (c) created before 25 June 1991.

(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.

#### **Response:**

The outcome reasonably anticipated by The Responsible Authority and all benefitting parties is that the subject land would be developed for a single dwelling.

The design solution is a modest sized single storey dwelling designed by a Registered and experienced Architect. The proposal would not cause any loss of amenity to any benefitting parties.

The design solution incorporates the usage of contemporary materials and design practices that is consistent with the Performance Criteria of the Overlay and the existing character of the neighbourhood.

The variation of the covenants would not cause any party financial loss, unreasonable loss of amenity, any distinct change to the character of the neighbourhood or cause material detriment. It is within the Responsible Authorities discretion to vary the covenant (X539070J) if it has found the above to be correct.



## Building Envelope Variation

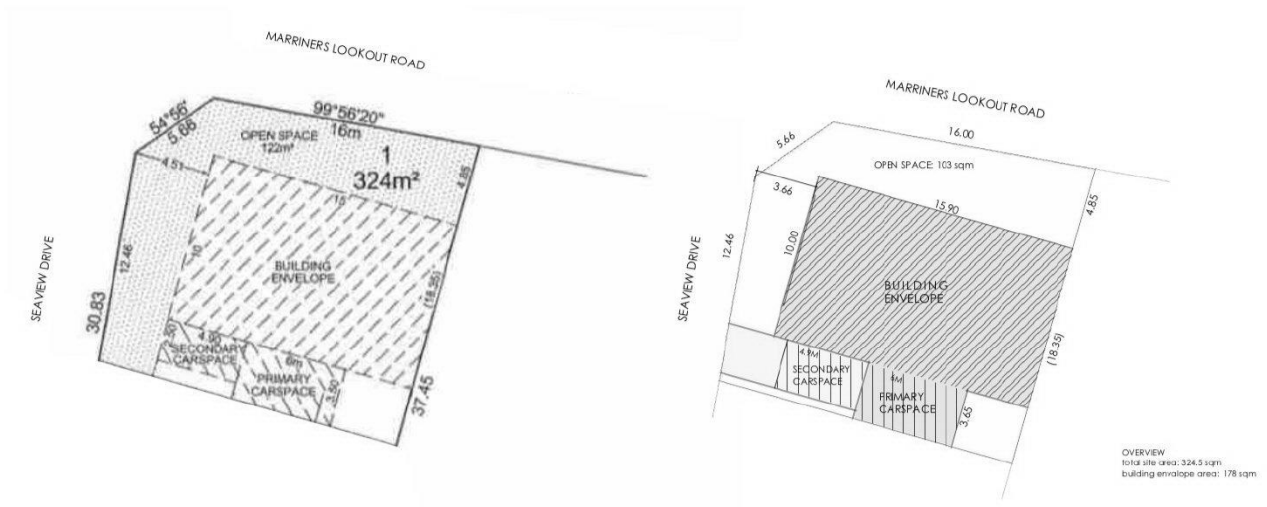


Figure: Proposed amended building envelope

The existing building envelope does not allow for wall thicknesses of a garage and as such a vehicle parking space with a minimum dimension of 3.5 metres cannot be achieved under the current arrangement. The proposal allows for a greater Primary vehicle parking space to achieve an enclosed garage.

The proposed building envelope would be 0.9m wider than the building envelope under PS 647281F to a floor area not exceeding the specified maximum in the Restriction. The variation is minor and would have no noticeable impact on the amenity of the locality.

A 1.8m high side fence to Marriners Lookout Road is proposed to seclude the "private" open space at the north of the dwelling. If this is to be intended to be the primary open space for a dwelling as it is under the existing building envelope; future residents should be afforded reasonable privacy of this space. A 1.8 metre side fence allows for this privacy which otherwise can not be afforded on the subject land.





## 5. Clause 65 Decision Guidelines

Clause 65 establishes the general decision guidelines for the consideration of applications, as set out below.

*The matters set out in section 60 of the Act.*

### **Response**

These are general provisions including such matters such as the objectives of planning, objections to an application and the comments of referral authorities.

*The State Planning Policy Framework and the Local Planning Policy Framework, including the Municipal Strategic Statement and local planning policies.*

### **Response**

The State Planning Policy Framework is broad in its application. The Local Planning Policy Framework including Municipal Strategic Statement inform the application in more detail. All relevant planning policy has been considered.

*The purpose of the zone, overlay and other provisions*

### **Response**

The proposal anticipates the modest development of residential land for a residential dwelling.

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

### **Response**

All matters have been duly considered.

*The orderly planning of the area*

### **Response**

The proposal would not adversely impact on the orderly planning of the zone.

*The effect on the amenity of the area*

### **Response**

The design solution has been crafted by a Registered and experienced Architect with regard to contemporary design practices and the character of the locality.

*The proximity of the land to any public land.*

### **Response**

Not relevant



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

**Response**

Not relevant.

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

**Response**

A stormwater management plan has been endorsed by the Responsible Authority and a Section 173 Agreement entered into to fulfil the requirement prior to an occupancy permit for any building on the land.

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

**Response**

Not applicable

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

**Response**

Not applicable

*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.*

**Response**

Not applicable

*The adequacy of loading and unloading facilities and any associated amenity, traffic flow and road safety impacts.*

**Response**

Not Applicable

**Concluding Response**

- 5.1. All relevant policies contained within the SPPF, MSS and the LPPF have been discussed above.
- 5.2. It is self evident and clear that the proposal is not in conflict with these policies.



## 6. Merits of the proposal

- 6.1. The State policies are broad in their application. It is the local parts of of the planning scheme which are more relevant to the application.
- 6.2. The proposal is consistent with the design objectives and performance criteria of the overlay.
- 6.3. The proposal is simply for a small scale single storey single dwelling on the subject land.
- 6.4. The variation of the covenant (*X539070J, usage of Colorbond UltraSteel and other lightweight construction materials not specified within the covenant*) achieves the design objectives and performance criteria of the overlay.
- 6.5. The variation of the building envelope (*PS647281F*) is minor and simply allows for and enclosed parking space and a building up to the area specified within the restriction.
- 6.6. The proposed dwelling is low scale not exceeding 4 metres in height.
- 6.7. The design solution has been crafted by a Registered and experienced Architect.
- 6.8. The proposal is consistent with planning policy, and the relevant detailed provisions of the scheme, as far as can reasonably be applied to the proposal.
- 6.9. The outcome anticipated would not cause any party financial loss, unreasonable loss of amenity, any distinct change to the character of the neighbourhood or cause material detriment.
- 6.10. In the general scheme of matters the proposal is of minor consequence and would not result in off-site amenity impacts or cause material detriment to any party.



7. Conclusions – should a permit be granted?

- 7.1. The proposal is consistent with planning policy, and responds well to relevant policies.
- 7.2. The proposal would not result in off-site amenity impacts or cause material detriment to any party.
- 7.3. For these reasons and the reasons contained in the body of this submission it is respectfully submitted that a permit should be granted.

James Cavill B.Comm., M. Planning (Prof) PIA (Assoc.)  
*Urban Planner*  
*January 2019*





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# TRANSFER OF LAND

Section 45 Transfer of Land Act 1958



150601 1352 45 120  
**X539070J**  
P2  
fee

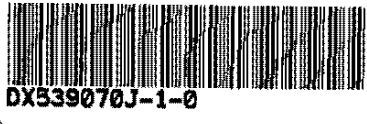
Lodged by:  
Name: Walsh Johnston RB  
Phone: 9489 9566  
Address: 452 High Street Northcote  
Ref.: NJ  
Customer Code: 1708V

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)*  
Certificate of Title Volume 10583-Folio 052

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



Consideration:  
\$120,000.00

Transferor: *(full name)*  
**SWAN BAY NOMINEES PTY LTD A.C.N. 005 524 201**

Transferee: *(full name and address including postcode)*  
**MARGARET HELEN TOWT**  
of "Mount Hope", 140 Towts Road Whittlesea 3757

Directing Party: *(full name)*

Creation and/or Reservation and/or Covenant:  
**AND** the said Transferee for himself and his successor in Title the registered proprietors for the time being of the land transferred **HEREBY** and as separate covenants **COVENANT** with the Transferor and its successor in Title and others the registered proprietor or proprietors of the Lots in the Plan of Subdivision No. 443880T other than the land hereby transferred not to erect or permit or suffer to be erected upon the Lot hereby transferred or any part thereof any building other than building with exterior walls of which are constructed substantially of brick, brick veneer, stone, cedar such buildings to be not less than 130 square metres and the following materials shall not be permitted to be used for exterior walls namely fibro light, hardie plank or any secondhand materials and no transportable homes shall be permitted to be re-erected on the said Lot hereby transferred **AND** it is intended that this Covenant shall be set out as an encumbrance on the Certificate of Title issued or to be issued for the said Lot hereby transferred and shall run with the land.

Continued on T2 Page 2

Approval No. 571987L      ORDER TO REGISTER  
Please register and issue title to  
**T2**  
Signed                      Cust. Code:

**2360** STAMP DUTY USE ONLY  
Original Transfer of Land  
Stamped with: \$2,860.00  
Trn: 1036753 15-JUN-2001  
Stamp Duty Victoria, JMNO



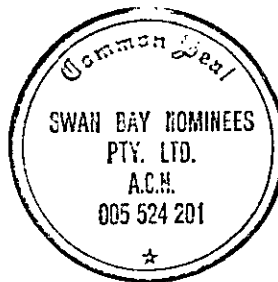
mw 20/6/01

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Dated: 14/6/01

Execution and attestation:



The Common Seal of SWAN BAY NOMINEES PTY LTD was affixed in the presence of authorised persons:

Director

Full Name: LAWRENCE ROBERT THOMSON  
Usual Address: 915 BRAWAN PARK ROAD WINDHURST 3241

Secretary

Full Name: Barry Alan Killely  
Usual Address: 1001 Grand Service Drive, Leopold 3224.

Signed by the Transferee in the presence of:

*L. Mearns*      *Mary Towt*

Approval No. 571987L

**X539070J**  
150601 1352 45 120

T2 Page 2







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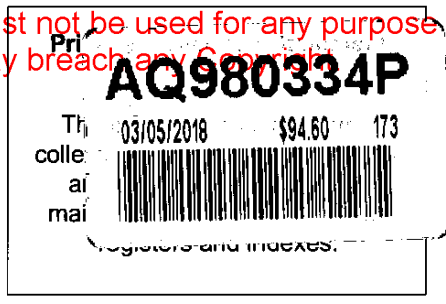
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**Application by a responsible authority for the making of a recording of an agreement**  
**Section 181 Planning and Environment Act 1987**



Lodged by  
Name: HARWOOD ANDREWS  
Phone: 5225 5225  
Address: 70 GHERINGHAP STREET, GEELONG 3220  
Reference: *SASS: 27706569*  
Customer code: 2235J

The responsible authority having made an agreement referred to in section 181(1) of the Planning and Environment Act 1987 requires a recording to be made in the Register.

Land:(volume and folio)  
  
VOLUME *10583* FOLIO *052*

Responsible authority:(full name and address, including postcode)  
  
COLAC OTWAY SHIRE COUNCIL OF 2-6 RAE STREET, COLAC 3250

Section and act under which agreement is made:  
  
SECTION 173 PLANNING AND ENVIRONMENT ACT 1987

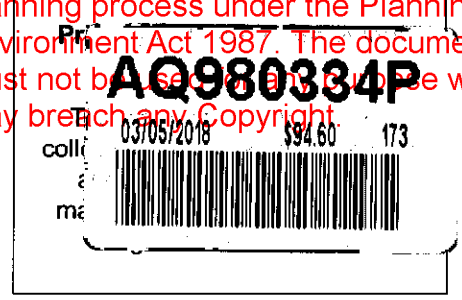
A copy of the agreement is attached to this application:

Signing:

35271702A  
181PEA

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**Application by a responsible authority for the making of a recording of an agreement**  
**Section 181 Planning and Environment Act 1987**



**Certifications**

- 1.The Certifier has taken reasonable steps to verify the identity of the applicant.
- 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 legislation and any Prescribed Requirement.

Executed on behalf of **COLAC OTWAY SHIRE COUNCIL**  
 Signer Name **STUART MONOTTI**  
 Signer Organisation **HARWOOD ANDREWS**  
 Signer Role **AUSTRALIAN LEGAL PRACTITIONER**

Signature 

Execution Date **2 MAY 2018**

35271702A

181PEA

Page 2 of 2

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Land Use Victoria contact details: see [www.delwp.vic.gov.au/property](http://www.delwp.vic.gov.au/property)>Contact us



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**AQ980334P**

03/05/2018 \$94.60 173



**SECTION 173 AGREEMENT  
PLANNING AND ENVIRONMENT ACT 1987**

**COLAC OTWAY SHIRE COUNCIL**  
Responsible Authority

- and -

**MARGARET HELEN TOWT**  
Owner

in relation to land at:

**15 MARRINERS LOOKOUT ROAD, APOLLO BAY, VICTORIA**

5AJS:21704981

Harwood Andrews  
ABN 68 076 868 034  
70 Gheringhap Street, Geelong 3220, Victoria, Australia  
DX 22019 Geelong  
PO Box 101 Geelong Vic 3220

Telephone: 03 5225 5225 Facsimile: 03 5225 5222

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AQ980334P



THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_

**PARTIES:**

- 1. **Colac Otway Shire Council** of 2-6 Rae Street, Colac, Victoria, 3250 (**Responsible Authority**)
- 2. **Margaret Helen Towt** of 140 Towts Road, Whittlesea, Victoria, 3757 (**Owner**)

**RECITALS:**

- R.1. The Owner is the registered proprietor of the land known as 15 Marriners Lookout Road, Apollo Bay, Victoria, being the land described in Lot 108 on PS 443880T, Certificate of Title Volume 10583 Folio 052 (**Land**).
- R.2. The Responsible Authority is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act.
- R.3. The Responsible Authority issued planning permit number PP233/2010-1 on 9 May 2011 allowing Two (2) lot subdivision in accordance with the endorsed plans (**Permit**).
- R.4. Condition 4 of the Permit provides as follows:
  - Prior to Certification of the plan of subdivision, a stormwater detention system designed by a qualified engineer must be lodged with the Responsible Authority verifying that post development stormwater discharge volume from the land does not exceed pre-development stormwater discharge volume to the satisfaction of the responsible Authority, once approved such design must be endorsed and must form part of the permit issued.*
- R.5. On 6 September 2017 the Responsible Authority approved the Stormwater Detention Plans, being the plans entitled "15 Marriners Lookout Road Apollo Bay Layout Plan" and "15 Marriners Lookout Road Apollo Bay Drainage Plan", dated August 2017, Revision C, prepared by Phipps Consulting (**Stormwater Detention Plans**).
- R.6. This Agreement is entered into between the Responsible Authority and the Owner pursuant to section 173 of the Act in order to:
  - a. achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Land; and
  - b. record the Owners ongoing obligation to install and maintain the Stormwater Detention Tanks to the satisfaction of the Responsible Authority.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

In this Agreement unless inconsistent with the context or subject matter:

- 1.1. **Act** means the *Planning and Environment Act 1987* (Vic).
- 1.2. **Agreement** means this Agreement and any agreement executed by the parties varying or expressed to be supplemental to this Agreement.
- 1.3. **Building** has the same meaning as in the Act.

1.4. **Current Address for Service**

- 1.4.1. for the Responsible Authority means the address shown under the heading "Parties" in this Agreement or any other address provided by the Responsible Authority to the Owner for any purpose or purposes relating to this Agreement; and
- 1.4.2. for the Owner means the address shown under the heading "Parties" in this Agreement or any other address provided by the Owner to the Responsible Authority for any purpose or purposes relating to the Land or this Agreement.

1.5. **Current Email Address for Service**

- 1.5.1. for the Responsible Authority means [inq@colacotway.vic.gov.au](mailto:inq@colacotway.vic.gov.au) or any other email address provided by the Responsible Authority to the Owner for the express purpose of electronic communication regarding this Agreement; and
- 1.5.2. for the Owner means any email address provided by the Owner to the Responsible Authority for the express purpose of electronic communication regarding the Land or this Agreement.

1.6. **Current Number for Service**

- 1.6.1. for the Responsible Authority means 03 5232 9586 or any other facsimile number provided by the Responsible Authority to the Owner for the express purpose of facsimile communication regarding this Agreement; and
- 1.6.2. for the Owner means any facsimile number provided by the Owner to the Responsible Authority for the express purpose of facsimile communication regarding the Land or this Agreement.

1.7. **Land** means the land described in Recital R.1.

1.8. **Mortgagee** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Land or any part of it.

1.9. **Occupancy Permit** means an occupancy permit issued under the *Building Act 1993* (Vic).

1.10. **Owner** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Land or any part of it, and includes a mortgagee in possession.

1.11. **Owner's Obligations** includes the Owner's specific obligations and the further covenants of the Owner.

1.12. **party or parties** means the Owner, and the Responsible Authority under this Agreement as appropriate.

1.13. **Permit** means the planning permit issued by the Responsible Authority described in Recital R.3 including the plans endorsed under it and as amended from time to time.

1.14. **Planning Scheme** means the Colac Otway Planning Scheme and any successor instrument or other planning scheme which applies to the Land.



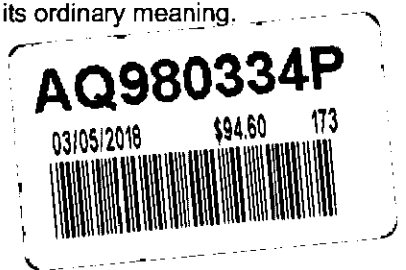
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- 1.15. **Responsible Authority** means Colac Otway Shire Council in its capacity as:
  - 1.15.1. the authority responsible for administering and enforcing the Planning Scheme; and
  - 1.15.2. a municipal council within the meaning of the *Local Government Act 1989* (Vic),
 and includes its agents, officers, employees, servants, workers and contractors, and any subsequent person or body which is the responsible authority or municipal council.
- 1.16. **Stormwater Detention Plans** means the plans described in Recital R5, showing the proposed stormwater detention system for the Land, including the volume and discharge rate of the Stormwater Detention Tanks being "3,910 Lt DETENTION TO BE PROVIDED BY 2,000 Lt WATER TANKS ON EACH LOT. DISCHARGE TO BE CONTROLLED TO 1.5 Lt/S FOR EACH LOT BY 20mm OUTLET".
- 1.17. **Stormwater Detention Tanks** means the on-site rainwater tanks designed and installed to collect, and detain all stormwater runoff from the rooftops of all Buildings on the Land prior to off-site discharge and / or on-site reuse.

**2. INTERPRETATION**

In the interpretation of this Agreement unless inconsistent with the context or subject matter:

- 2.1. The singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to all other genders.
- 2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- 2.4. A reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law.
- 2.5. A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute.
- 2.6. The Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.
- 2.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
- 2.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.
- 2.9. Where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 2.10. Where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.



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**AQ980334P**



**3. SPECIFIC OBLIGATIONS OF THE OWNER**

The Owner covenants, acknowledges and agrees with the Responsible Authority that the Owner:

- 3.1. must prior to the issue of an Occupancy Permit for any Building on the Land, install Stormwater Detention Tanks for that Building in accordance with Stormwater Detention Plans; and
- 3.2. must maintain the Stormwater Detention Tanks installed on the Land at all times, to the satisfaction of Council.

**4. FURTHER COVENANTS OF THE OWNER**

The Owner warrants and covenants with the Responsible Authority that:

- 4.1. It is the registered proprietor (or entitled to be so) of the Land.
- 4.2. Save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches.
- 4.3. Neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act 1958 (Vic)*.
- 4.4. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement.
- 4.5. It will within 28 days of written demand pay to the Responsible Authority the Responsible Authority's reasonable costs (including legal or other professional costs) and expenses of and incidental to the:
  - 4.5.1. negotiation, preparation, execution and recording of this Agreement;
  - 4.5.2. assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and
  - 4.5.3. determination of whether any of the Owner's obligations have been undertaken to the satisfaction of the Responsible Authority or to give consent to anything under this Agreement.

To the extent that such costs and expenses constitute legal professional costs, the Responsible Authority may at its absolute discretion have these costs assessed by the Law Institute of Victoria and in that event the parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by the Responsible Authority and the Owner. Such costs payable by the Owner will include the costs and disbursements associated with the recording, cancellation or alteration of this Agreement in the Register.

- 4.6. It will do all that is necessary to enable the Responsible Authority to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document.

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4.7. Until such time as this Agreement is recorded in the Register, the Owner must ensure that successors in title will give effect to this Agreement, and do all acts and sign all documents which will require those successors to give effect to this Agreement, including executing a deed agreeing to be bound by the terms of this Agreement.

**5. FURTHER ASSURANCE**

The parties to this Agreement will do all things necessary (including signing any further agreement, acknowledgement or document) to give full effect to the terms of this Agreement and to enable this Agreement to be recorded in the Register in accordance with the Act.

**6. AMENDMENT**

This Agreement may be amended only in accordance with the requirements of the Act.

**7. NO WAIVER**

No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

**8. NO FETTERING OF POWERS OF RESPONSIBLE AUTHORITY**

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Land or relating to any use or development of the Land.

**9. INTEREST ON OVERDUE MONEYS**

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 227A of the *Local Government Act 1989* (Vic) and any payment made shall be first directed to payment of interest and then the principal amount owing.

**10. NOTICES**

All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery, email or by facsimile to the Current Addresses for Service, Current Email Address for Service or Current Number for Service of the parties, and may be sent by an agent of the party sending the notice. Each notice or communication will be deemed to have been duly received:

- 10.1. not later than seven business days after being deposited in the mail with postage prepaid;
- 10.2. when delivered by hand;
- 10.3. if sent by email, at the time of receipt in accordance with the *Electronic Transactions (Victoria) Act 2000* (Vic);





- 10.4. if sent by facsimile transmission upon completion of that transmission and production of a transmission report stating that the facsimile was sent to the addressee's facsimile number.

## 11. COSTS ON DEFAULT

If the Owner defaults in the performance of any obligations under this Agreement the Owner will pay to the Responsible Authority its reasonable costs of action taken to achieve compliance with this Agreement.

## 12. INVALIDITY OF ANY CLAUSE

Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

## 13. AGREEMENT BINDING ON SUCCESSORS OF OWNERS

This Agreement will extend to and bind the Owner's successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

## 14. JOINT OBLIGATIONS

In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party.

## 15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

## 16. COMMENCEMENT AND ENDING OF AGREEMENT

- 16.1. This Agreement will commence:
- 16.1.1. on date that it bears; or
- 16.1.2. if it bears no date, on the day it is recorded in the Register.
- 16.2. This Agreement will end in accordance with the provisions of the Act.

**AQ980334P**

03/05/2018 \$94.60 173



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**AQ980334P**




**EXECUTED AS A DEED**

Signed, sealed and delivered as a deed by the Parties.

**SIGNED** on behalf of **COLAC OTWAY SHIRE COUNCIL** by the person holding the title of General Manager, Development and Community Services (or the person acting in that role from time to time), pursuant to an instrument of delegation authorised by a Council resolution, in the presence of:

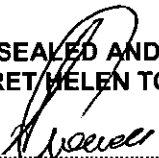
  
.....  
Signature of delegate

*Garath Smith*  
.....  
Name of delegate

  
.....  
Signature of witness  
*J. Preston-Smith*  
.....  
Name of witness

**SIGNED SEALED AND DELIVERED** by the said **MARGARET HELEN TOWT** in the presence of:

*Marg Towt.*  
.....  
Margaret Helen Towt

  
.....  
Signature of witness

**S.W.C. Cresswell, JP**  
**#15112**  
.....  
Name of witness **BLenheim**  
**Justice of the Peace for New Zealand**

.....  
Address of witness

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

VOLUME 11999 FOLIO 583

Security no : 124075919539Q  
Produced 30/01/2019 02:21 PM

**LAND DESCRIPTION**

Lot 1 on Plan of Subdivision 647281F.  
PARENT TITLE Volume 10583 Folio 052  
Created by instrument PS647281F 14/07/2018

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Joint Proprietors  
OLGA BORG  
JOHN MARIO BORG both of 96 ANDERSONS CREEK ROAD DONCASTER EAST VIC 3109  
AR305162E 01/08/2018

**ENCUMBRANCES, CAVEATS AND NOTICES**

COVENANT X539070J 15/06/2001

COVENANT PS647281F 14/07/2018

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.

AGREEMENT Section 173 Planning and Environment Act 1987  
AQ980334P 03/05/2018

**DIAGRAM LOCATION**

SEE PS647281F FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

DOCUMENT END





# Imaged Document Cover Sheet

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Document Type	<b>Plan</b>
Document Identification	<b>PS647281F</b>
Number of Pages (excluding this cover sheet)	<b>3</b>
Document Assembled	<b>30/01/2019 14:31</b>

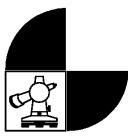
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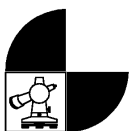
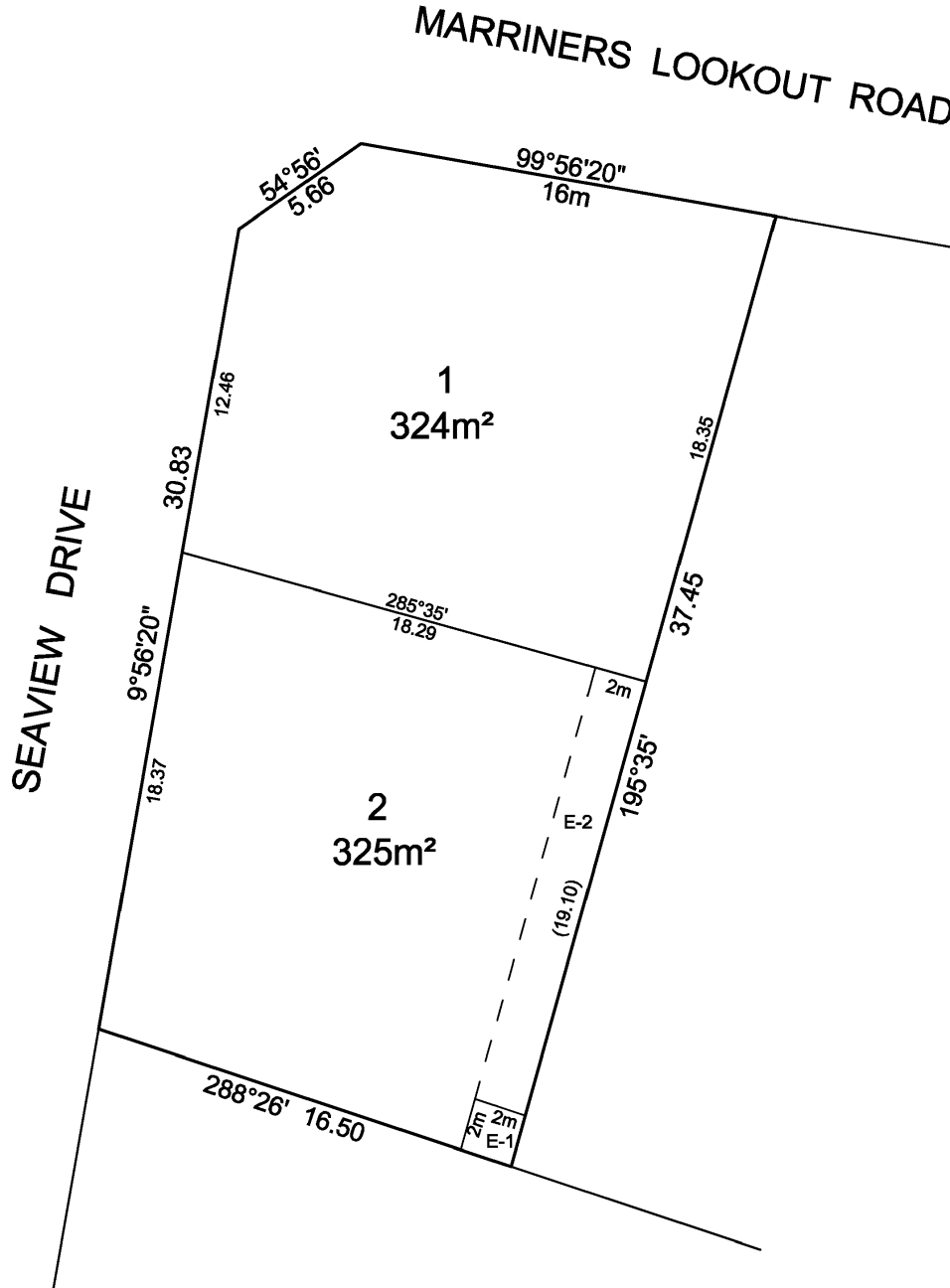
**PS 647281F**

<b>PLAN OF SUBDIVISION</b>			EDITION 1	
<b>LOCATION OF LAND</b> PARISH: KRAMBRUK TOWNSHIP: SECTION: CROWN ALLOTMENT: 9A(PART) CROWN PORTION: TITLE REFERENCE: VOL 10583 FOL 052  LAST PLAN REFERENCE: LOT 108 ON PS443880T POSTAL ADDRESS: 15 MARRINERS LOOKOUT ROAD (at time of subdivision) APOLLO BAY VIC. 3233  MGA CO-ORDINATES: E: 732 110 ZONE: 54 (of approx centre of land in plan) N: 5 708 375 GDA 94			Council Name: Colac Otway Shire Council Reference Number: 536/2017 Planning Permit Reference: 233/2010-1 SPEAR Reference Number: S111863E  Certification This plan is certified under section 6 of the Subdivision Act 1988  Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made  Digitally signed by: Helen Evans for Colac Otway Shire on 21/06/2018  Statement Of Compliance issued: 22/06/2018	
<b>VESTING OF ROADS AND/OR RESERVES</b>		<b>NOTATIONS</b>		
IDENTIFIER	COUNCIL/BODY/PERSON			
<b>NOTATIONS</b>		<b>OTHER PURPOSES:</b> TO CREATE A RESTRICTION VIDE PLANNING PERMIT PP233/2010-1		
DEPTH LIMITATION: DOES NOT APPLY				
SURVEY: This plan is/is not based on survey.  STAGING: This is/is not a staged subdivision. Planning Permit No. PP233/2010-1  This survey has been connected to permanent marks No(s).  In Proclaimed Survey Area No.				
<b>EASEMENT INFORMATION</b>				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
SECTION 12 (2) OF THE SUBDIVISION ACT 1988 APPLIES TO LOTS ON THIS PLAN				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE	2m	PS443880T	COLAC OTWAY SHIRE
E-1	SEWERAGE	2m	THIS PLAN	LOT 1 ON THIS PLAN
E-2	DRAINAGE	2m	THIS PLAN	COLAC OTWAY SHIRE
E-2	SEWERAGE	2m	THIS PLAN	LOT 1 ON THIS PLAN
 <b>AH &amp; LJ JEAVONS</b> <b>LAND SURVEYORS</b> South West Surveyors m: 0430 401 954 t: 5261 2971 14 Ocean Boulevard, Jan Juc, VIC 3228 tonyjeavons@swsg.com.au www.swsg.com.au		SURVEYORS FILE REF: 0059PSV07  Digitally signed by: ANTHONY HAROLD JEAVONS (A H and L J Jeavons), Surveyor's Plan Version (08), 31/10/2017, SPEAR Ref: S111863E		ORIGINAL SHEET SIZE: A3 SHEET 1 OF 3  PLAN REGISTERED TIME: 2:40 PM DATE: 14/7/18 L. White Assistant Registrar of Titles

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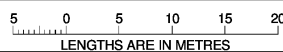
PS 647281F

MGA 94  
ZONE 55



**AH & LJ JEAVONS  
LAND SURVEYORS**  
South West Survey Group  
m: 0430 401 954 t: 5261 2971  
14 Ocean Boulevard, Jan Juc, VIC 3228  
tonyjeavons@swsg.com.au www.swsg.com.au

SCALE  
1:500



ORIGINAL SHEET  
SIZE: A3

SHEET 2

Digitally signed by: ANTHONY HAROLD JEAVONS (A H and L J Jeavons),  
Surveyor's Plan Version (08),  
31/10/2017, SPEAR Ref: S111863E

Digitally signed by:  
Colac Otway Shire,  
21/06/2018,  
SPEAR Ref: S111863E



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PS 647281F

MGA 94  
ZONE 55

### CREATION OF RESTRICTION

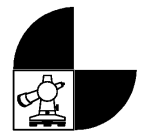
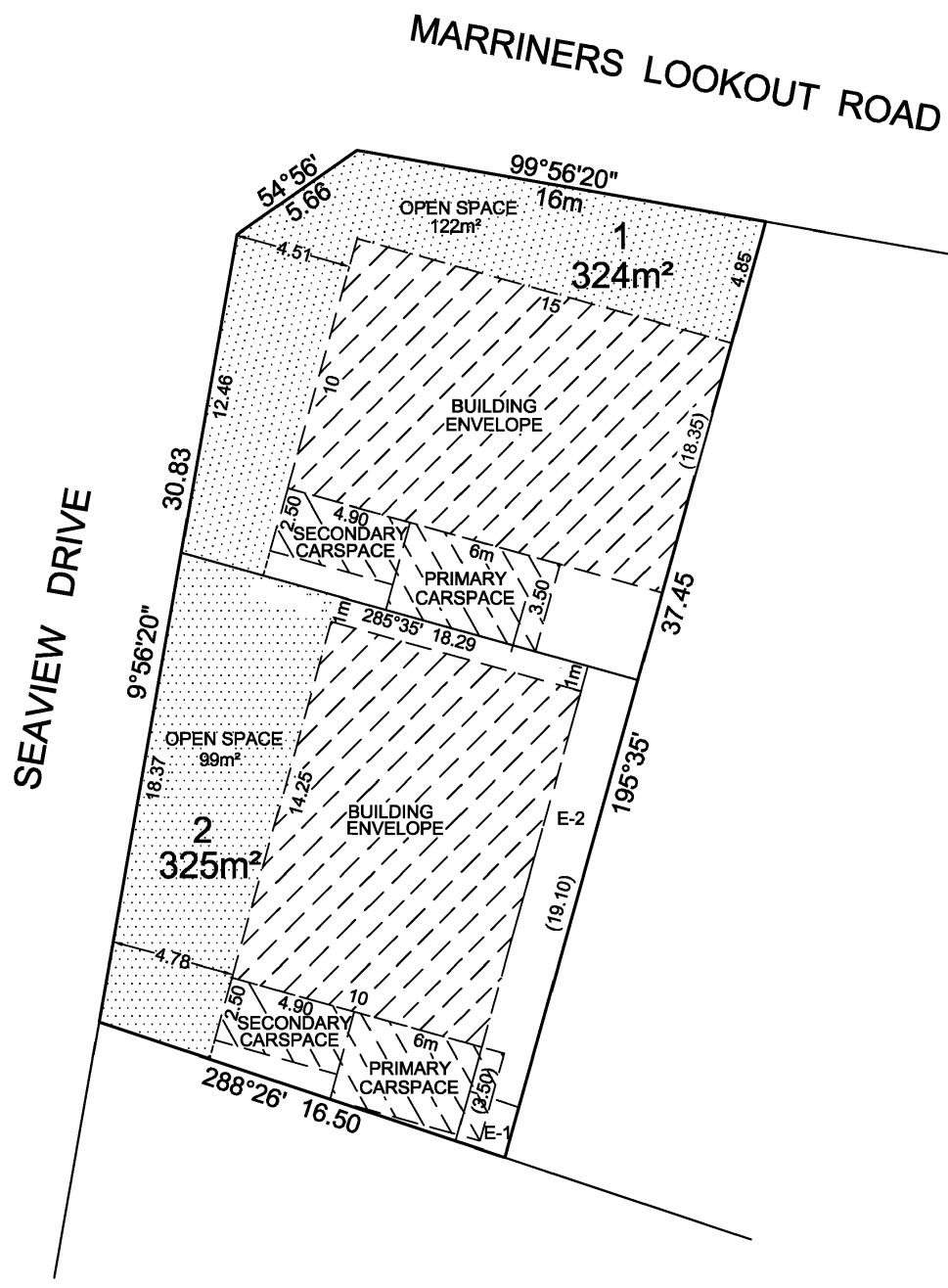
ON REGISTRATION OF THIS PLAN THE FOLLOWING RESTRICTION IS CREATED:

LAND TO BE BURDENED: LOTS 1 & 2 ON THIS PLAN

LAND TO BE BENEFITED: LOTS 1 & 2 ON THIS PLAN

DESCRIPTION OF RESTRICTION: NO BUILDING(S) ON THIS PLAN SHALL HAVE A FLOOR AREA EXCEEDING 160m<sup>2</sup> EXCLUDING THE AREA IDENTIFIED AS PRIMARY AND SECONDARY CAR SPACES DETAILED ON THE BUILDING ENVELOPE PLAN

### BUILDING ENVELOPE PLAN



**AH & LJ JEAVONS  
LAND SURVEYORS**  
South West Survey Group  
m: 0430 401 954 t: 5261 2971  
14 Ocean Boulevard, Jan Juc, VIC 3228  
tonyjeavons@swsg.com.au www.swsg.com.au

SCALE  
1:200

LENGTHS ARE IN METRES

Digitally signed by: ANTHONY HAROLD JEAVONS (A H and L J Jeavons),  
Surveyor's Plan Version (08),  
31/10/2017, SPEAR Ref: S111863E

ORIGINAL SHEET  
SIZE: A3

SHEET 3

Digitally signed by:  
Colac Otway Shire,  
21/06/2018,  
SPEAR Ref: S111863E





SURROUNDING AREA

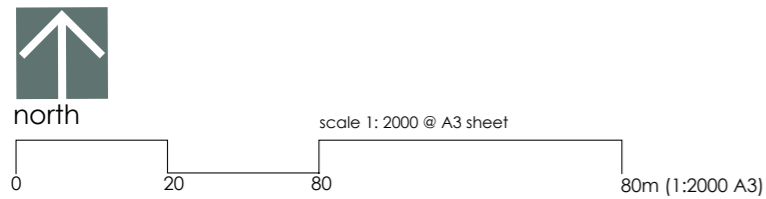
SUBJECT SITE

VACANT BLOCKS ADJACENT TO SUBJECT SITE

The site is  
 - 400m away from Apollo bay coastal Reserve  
 - 2km away from Apollo bay shops and Foreshore Reserve.  
 - 2.6km away from Apollo bay Harbour



IMMEDIATE AREA



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project PROPOSED HOUSE

drawing PA01 SITE ANALYSIS 1

address 15 MARRINERS LOOKOUT ROAD  
 APOLLO BAY  
 VIC

date JANUARY 2019

file number 18014

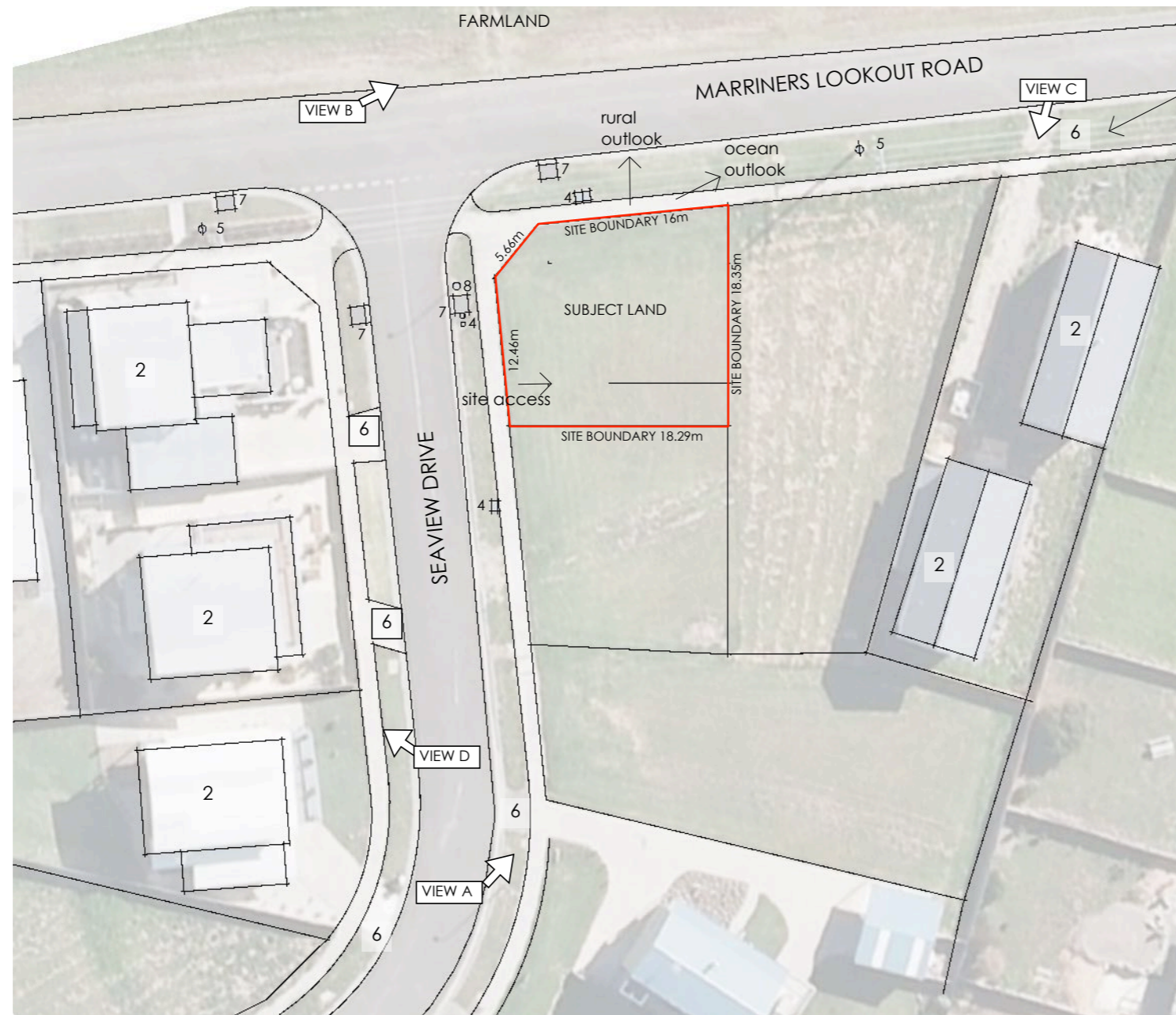
po box 7076 geelong west vic 3218  
 m 0422202516  
 tchakir@theplanningprofessionals.com.au  
 abn 89 007 435 565

copyright 2017





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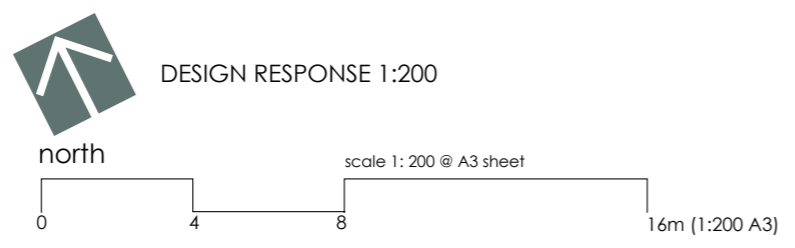
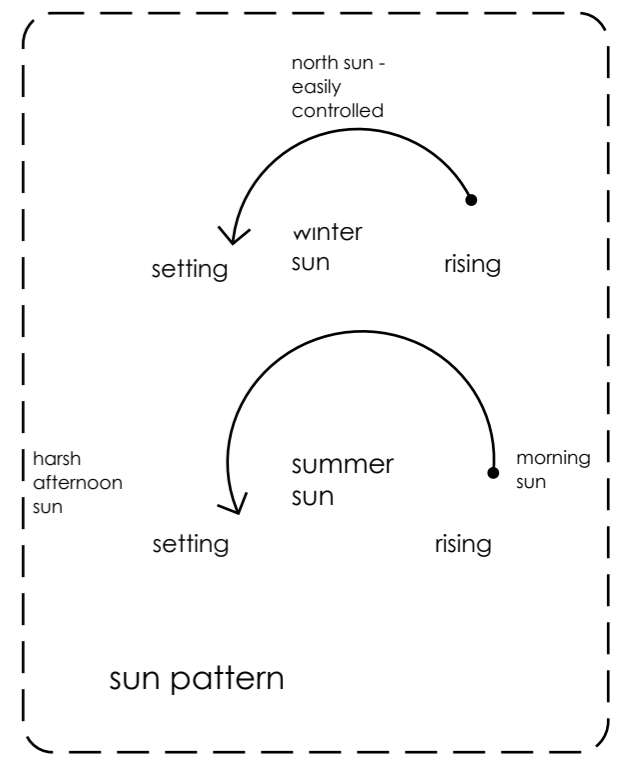
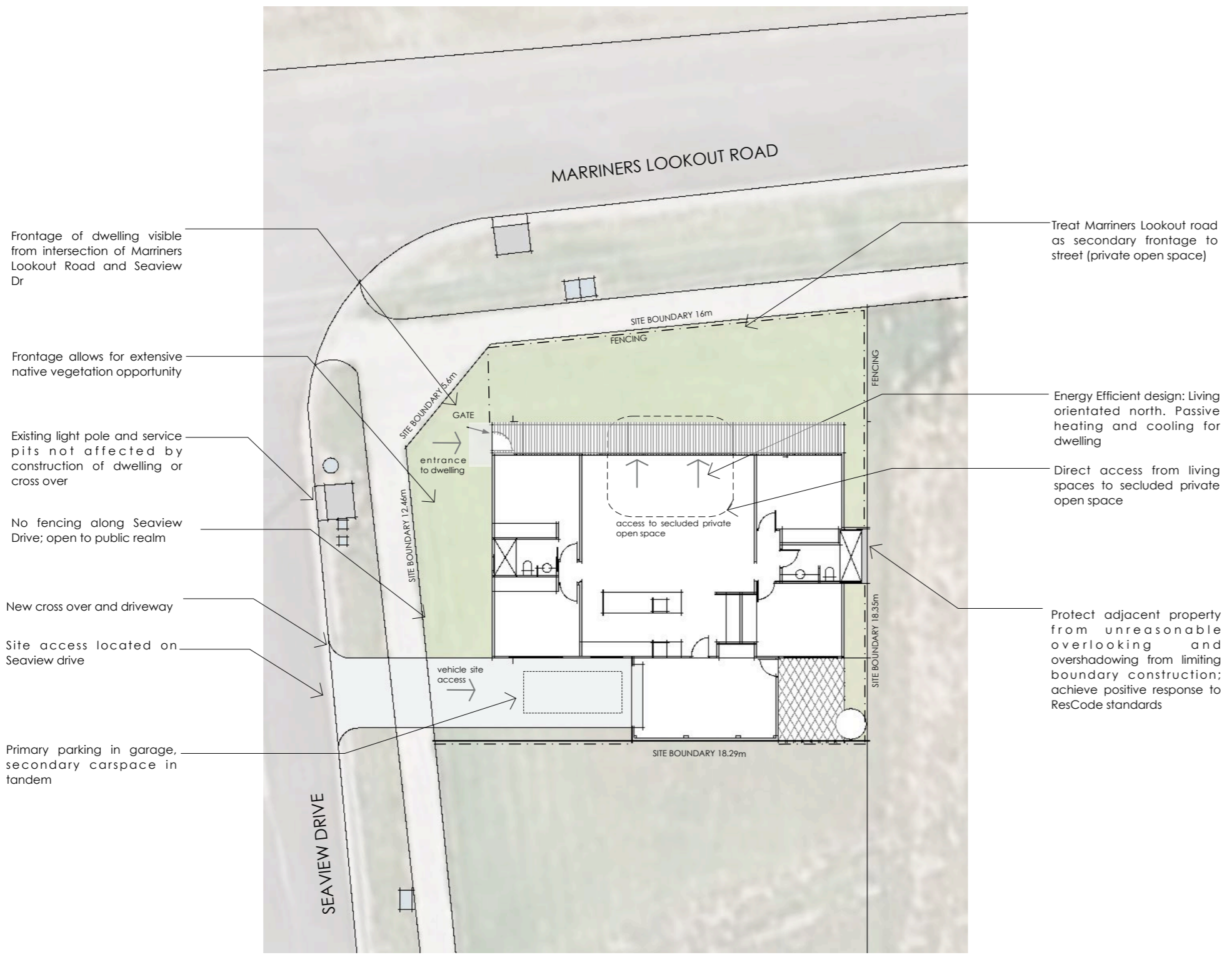


**The Planning Professionals**

project	PROPOSED HOUSE
drawing	PA02 SITE ANALYSIS 2
address	15 MARRINERS LOOKOUT ROAD APOLLO BAY VIC
date	JANUARY 2019
file number	18014
p o b o x 7076 geelong west vic 3218 m 0422202516 tchakir@theplanningprofessionals.com.au abn 89 007 435 565	
copyright 2017	

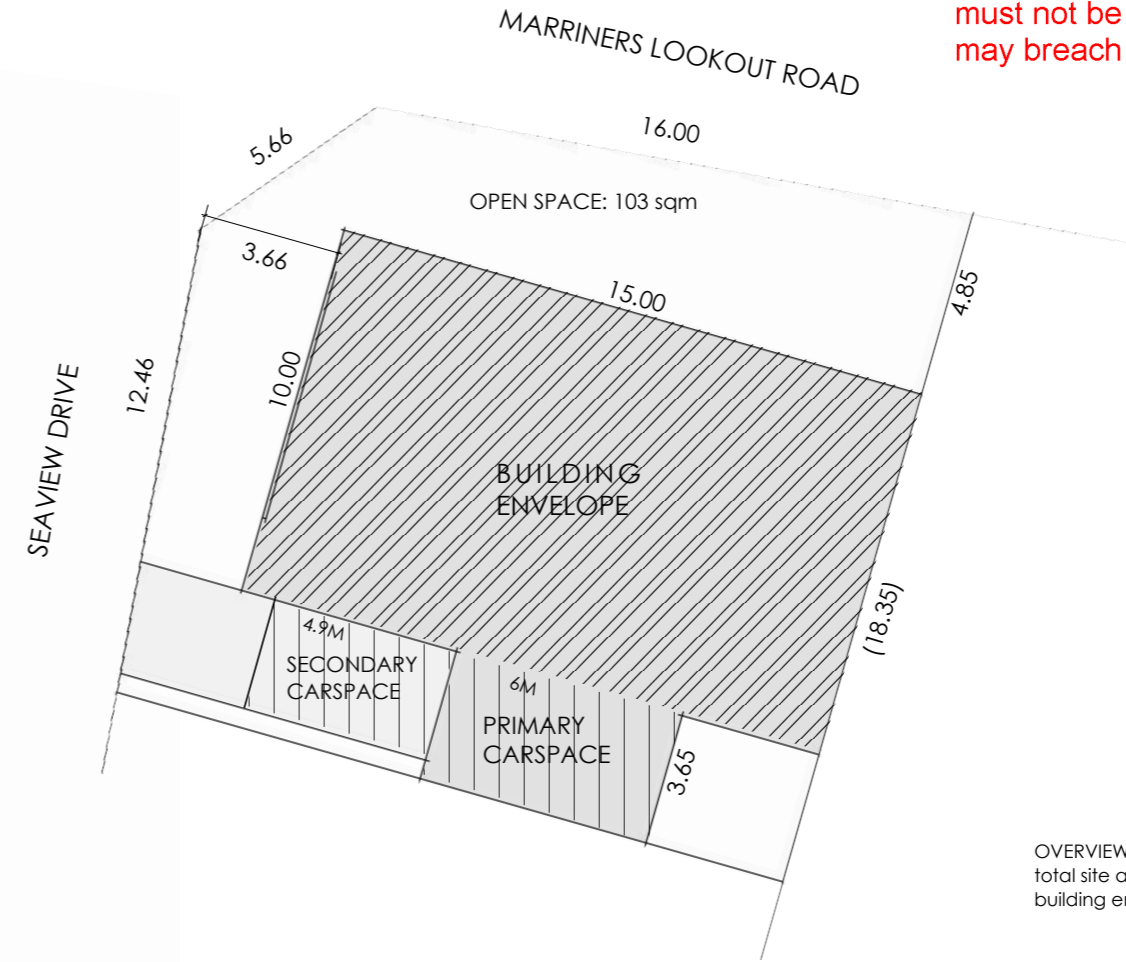
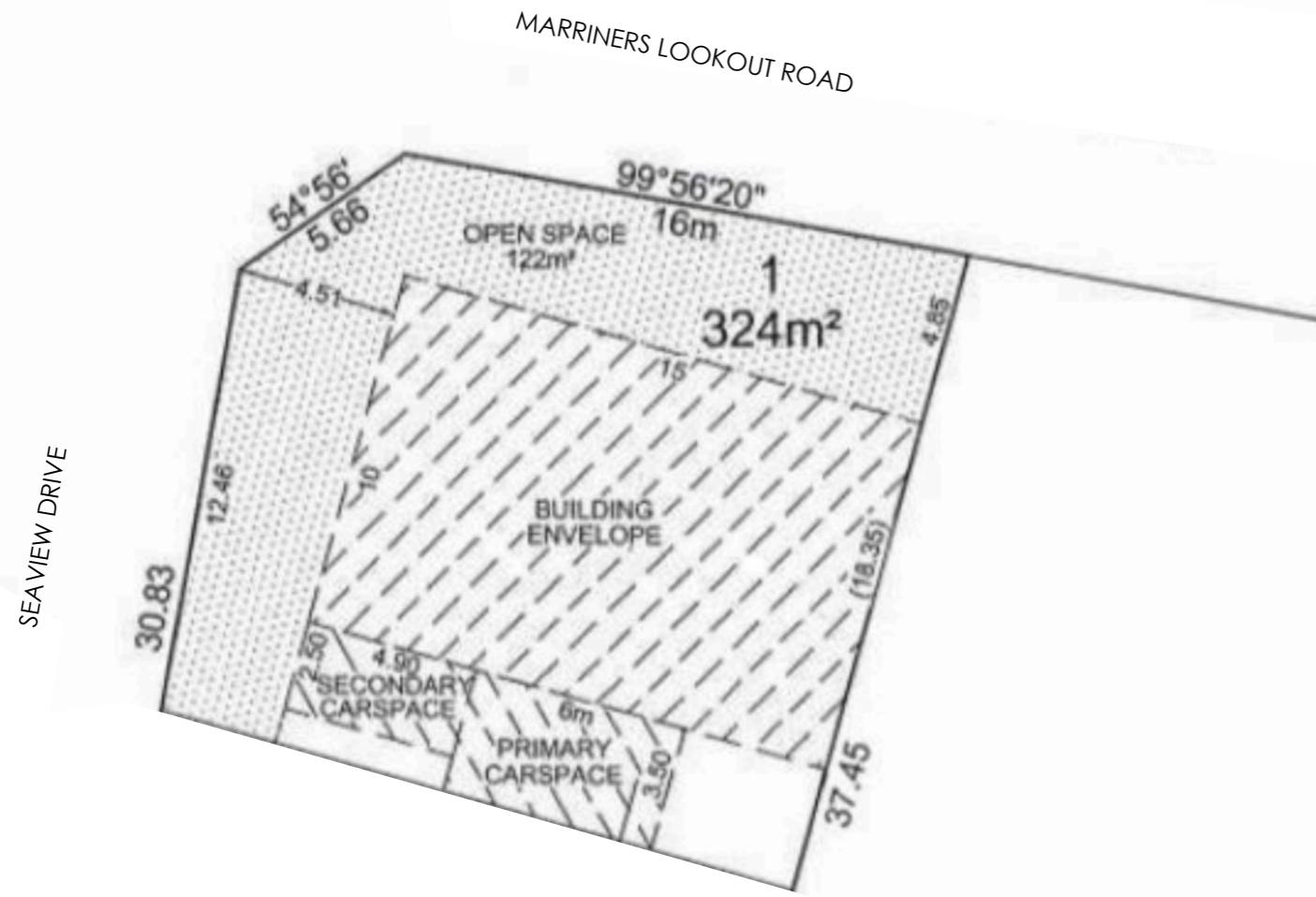


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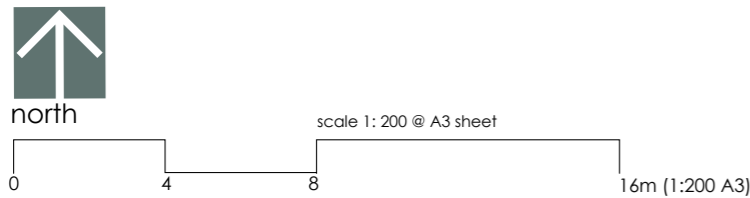
<b>The Planning Professionals</b>	
project	PROPOSED HOUSE
drawing	PA03 DESIGN RESPONSE
address	15 MARRINERS LOOKOUT ROAD APOLLO BAY VIC
date	JANUARY 2019
file number	18014
p o b o x 7076 geelong west vic 3218 m 0422202516 tchakir@theplanningprofessionals.com.au abn 89 007 435 565	
copyright 2017	

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OVERVIEW  
total site area: 324.5 sqm  
building envelope area: 178 sqm

CURRENT BUILDING ENVELOPE PLAN (TITLE)  
1:200



PROPOSED BUILDING ENVELOPE PLAN  
1:200



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project PROPOSED HOUSE

drawing PA04 BUILDING ENVELOPE

address 15 MARRINERS LOOKOUT ROAD  
APOLLO BAY  
VIC

date JANUARY 2019

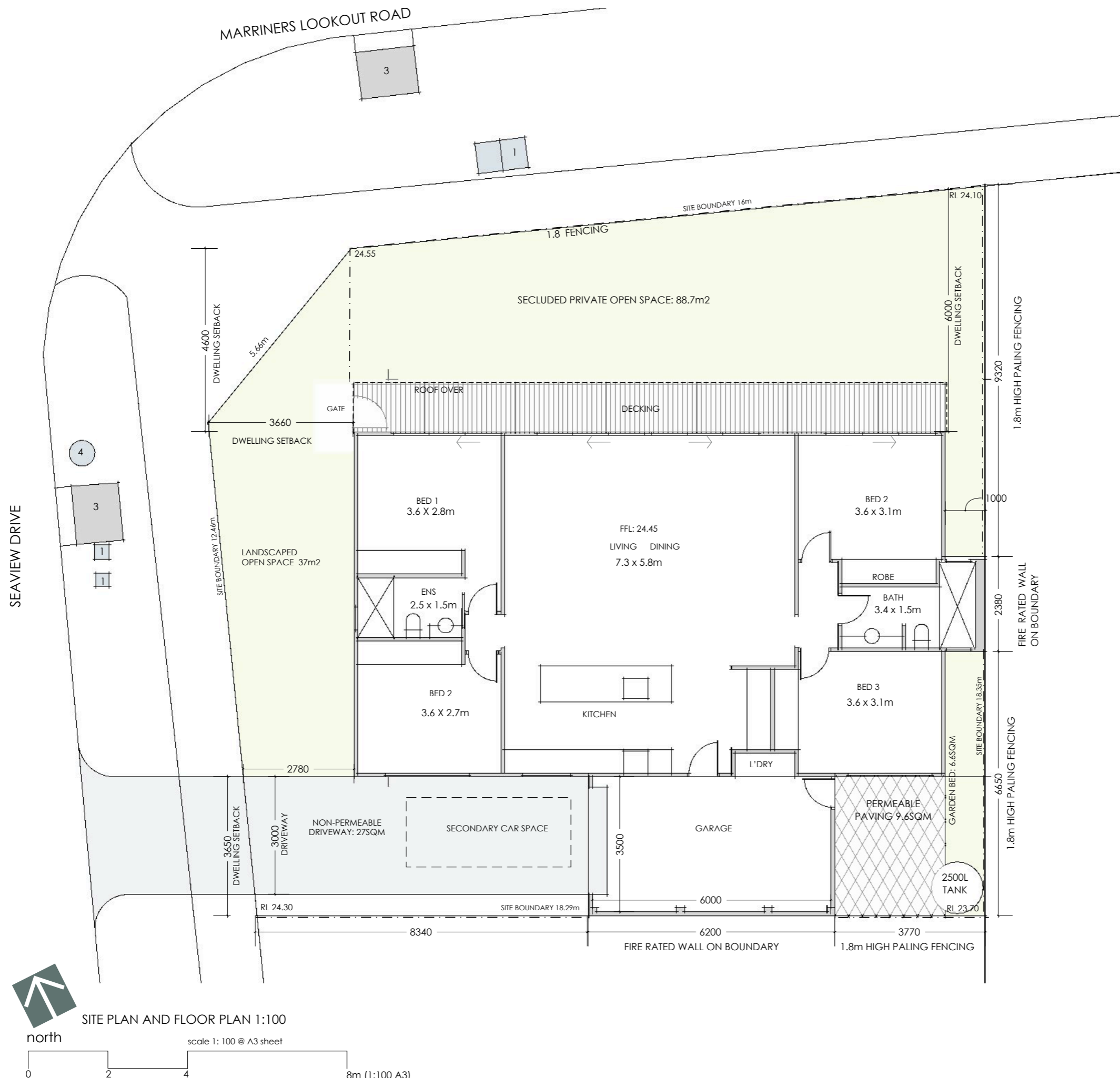
file number 18014

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m 0422202516  
tchakir@theplanningprofessionals.com.au  
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LEGEND	
1	SERVICE PIT
2	POWER POLE
3	STORM WATER DRAIN
4	LIGHT POLE

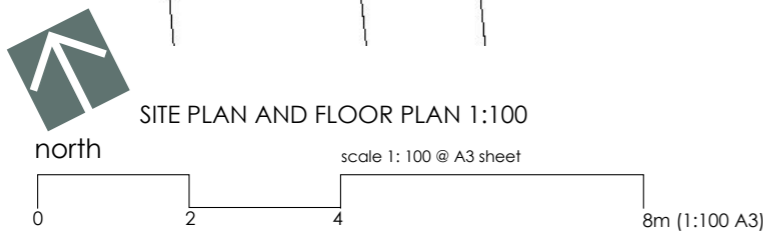
**OVERVIEW**  
 TOTAL SITE AREA: 324m2  
 DWELLING FLOOR AREA: 130m2  
 GARAGE AREA: 21m2  
 DRIVEWAY: 27m2  
 TOTAL IMPERVIOUS SITE AREA: 194m2  
 TOTAL IMPERVIOUS SITE COVERAGE: 60%

**GARDEN AREA**  
 Minimum garden area requirement for site 25%:  
 TOTAL GARDEN AREA: 142 m2  
 as percentage: 43.8%

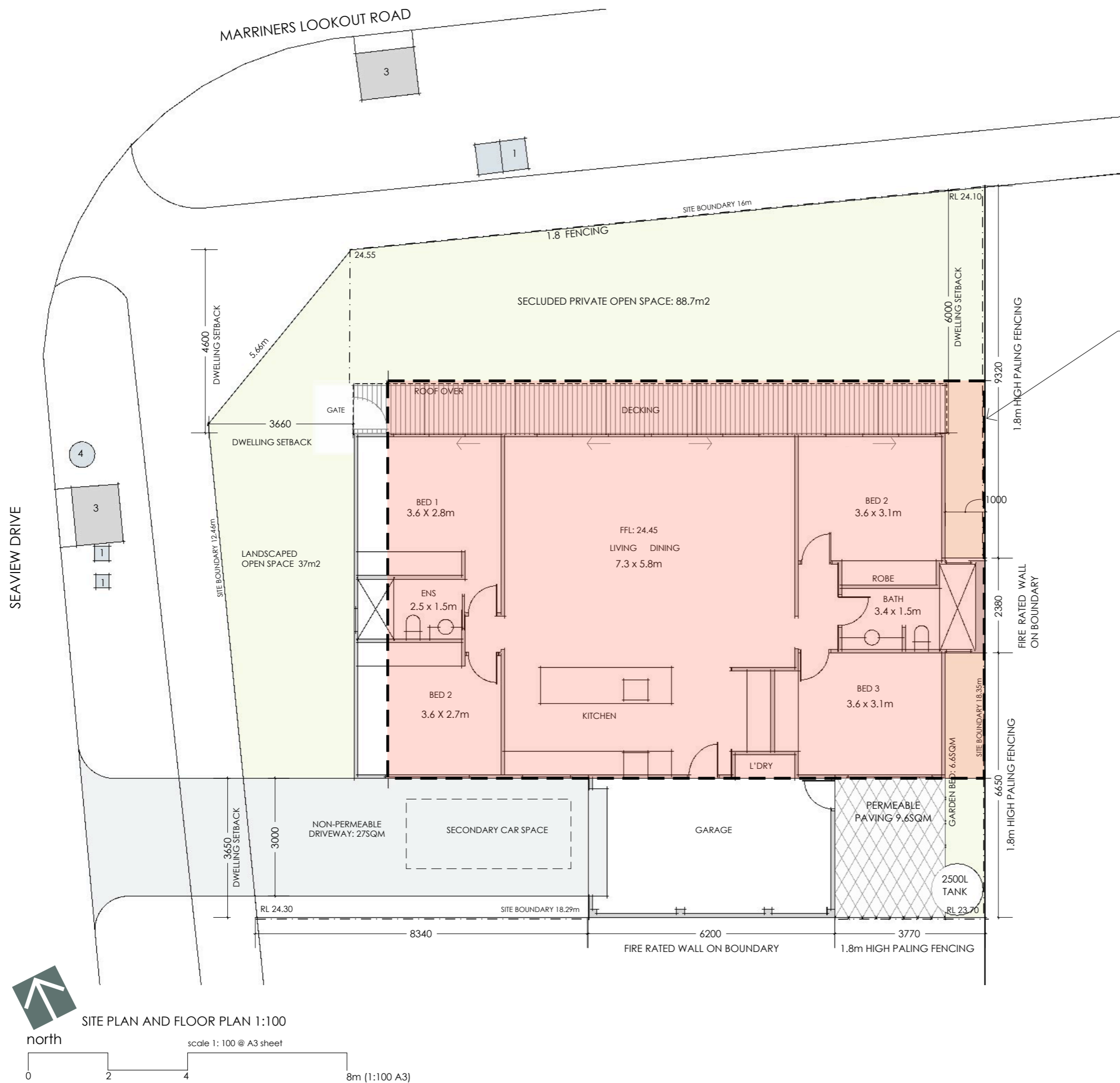


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project PROPOSED HOUSE  
 drawing PA05 SITE PLAN AND FLOOR PLAN  
 address 15 MARRINERS LOOKOUT ROAD  
 APOLLO BAY  
 VIC  
 date JANUARY 2019  
 file number 18014  
 p o b o x 7076 geelong west vic 3218  
 m 0422202516  
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CURRENT BUILDING ENVELOPE SHOWN BY BROKEN LINE AND RED AREA

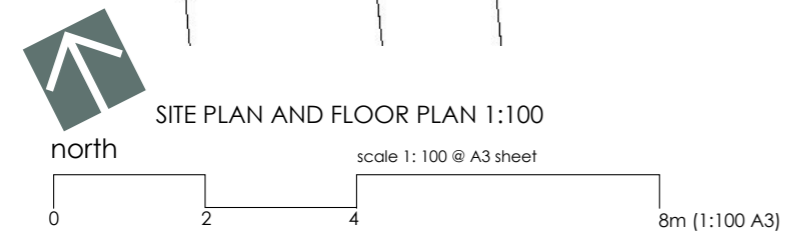
REV A May 2019 - building envelope shown



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project PROPOSED HOUSE  
drawing PA06 CURRENT BUILDING ENVELOPE  
address 15 MARRINERS LOOKOUT ROAD APOLLO BAY VIC  
date JANUARY 2019  
file number 18014

po box 7076 geelong west vic 3218  
m 0422202516  
tchakir@theplanningprofessionals.com.au  
abn 89 007 435 565  
copyright 2017

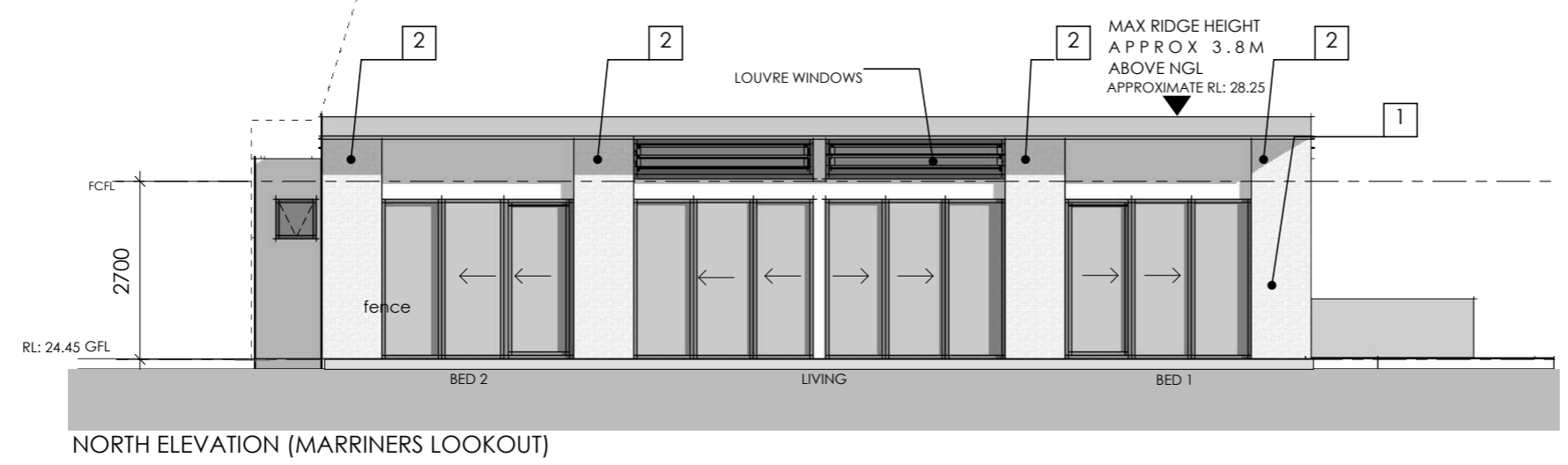


SITE PLAN AND FLOOR PLAN 1:100

scale 1: 100 @ A3 sheet

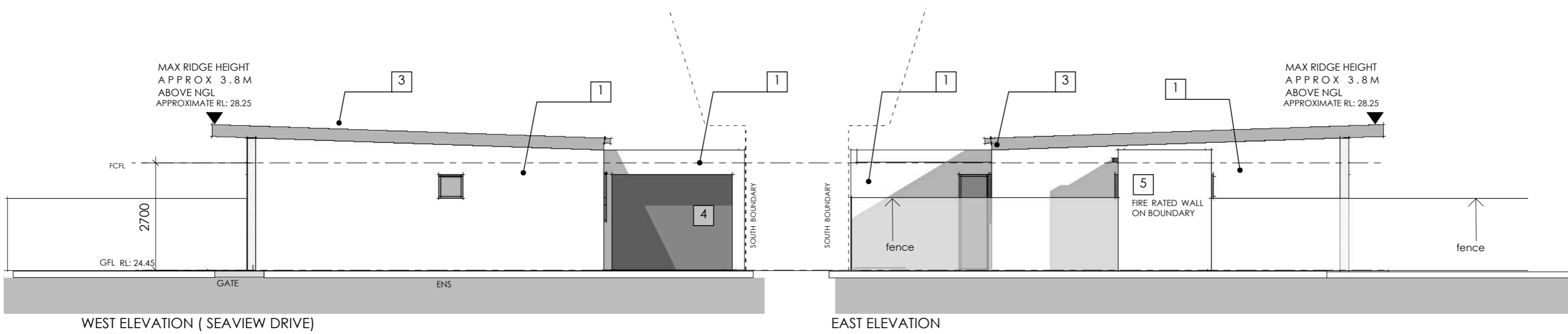


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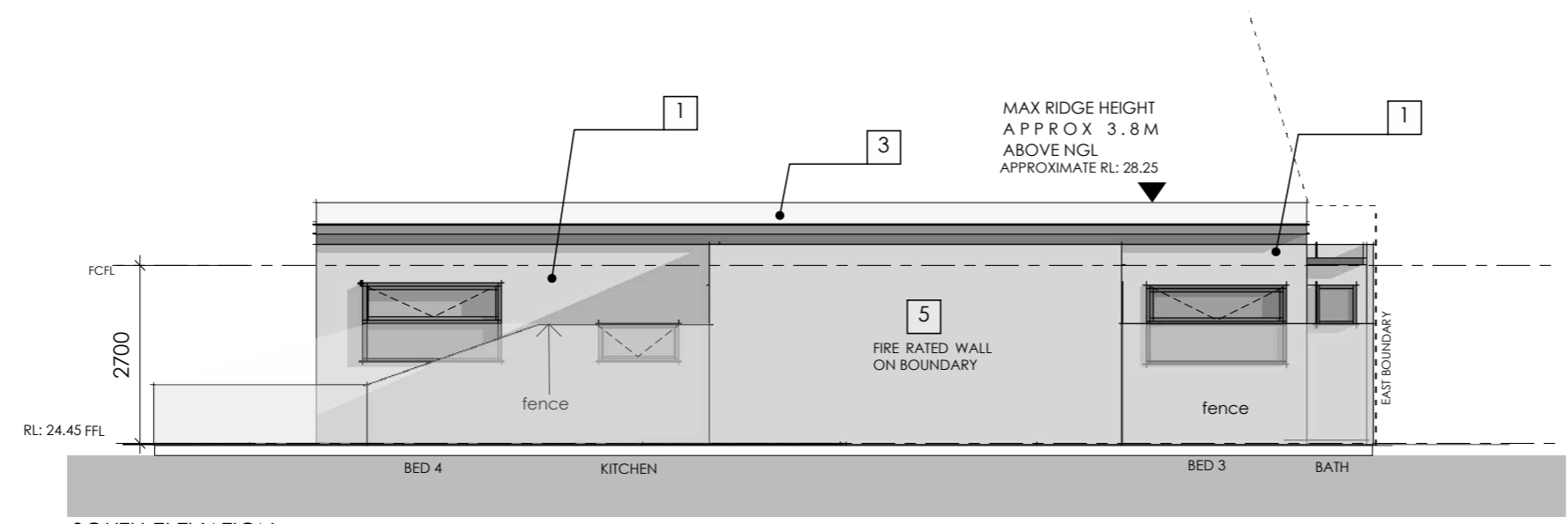
LEGEND	
	1 COLORBOND ULTRASTEEL
	4 COMPOSITE TIMBER PANEL GARAGE DOOR
	2 SANDSTONE MASONRY
	5 MASONRY

NORTH ELEVATION (MARRINERS LOOKOUT)

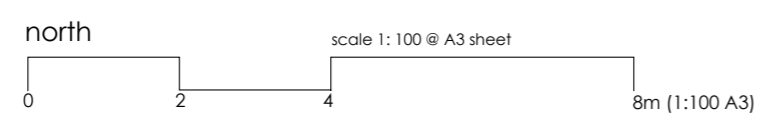


WEST ELEVATION ( SEAVIEW DRIVE)

EAST ELEVATION



SOUTH ELEVATION

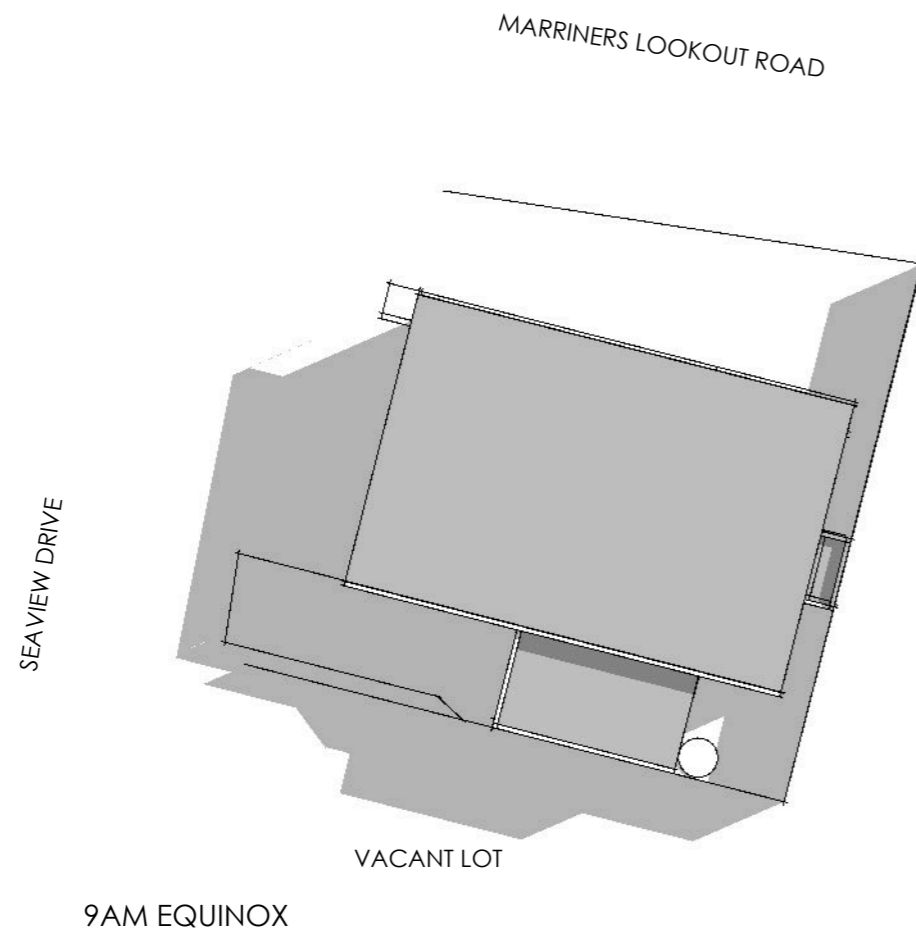


The Planning Professionals

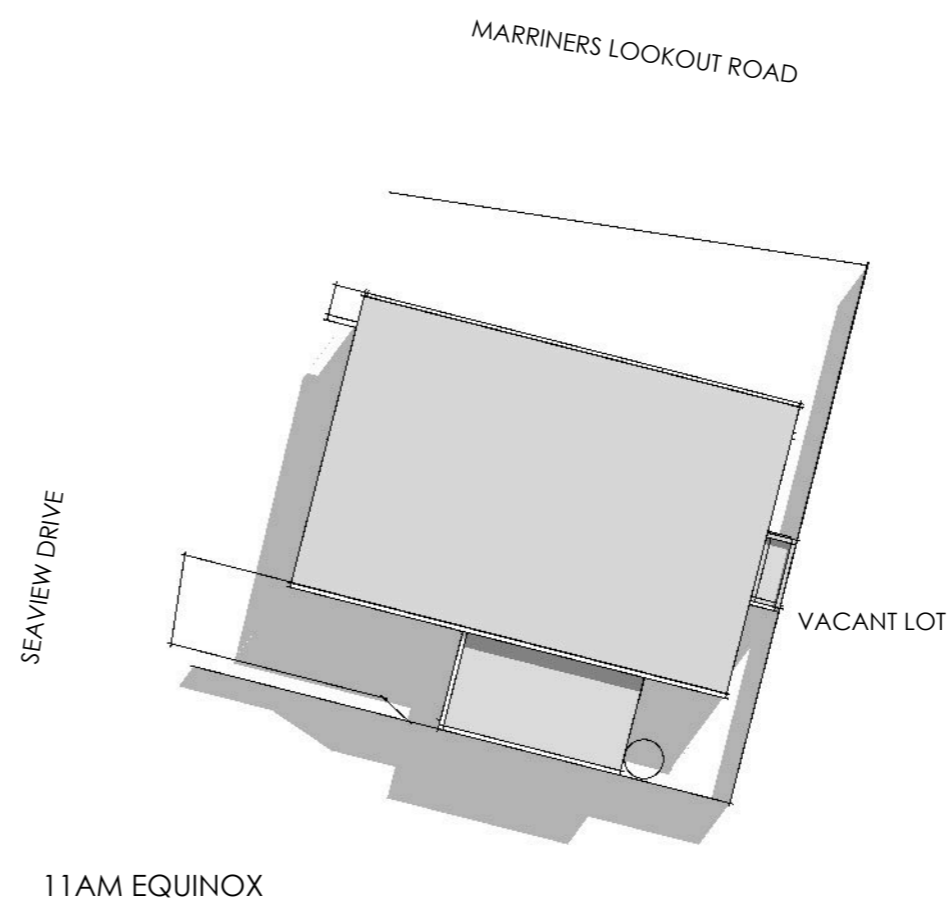
project PROPOSED HOUSE  
drawing PA06 ELEVATIONS  
address 15 MARRINERS LOOKOUT ROAD  
APOLLO BAY  
VIC  
date JANUARY 2019  
file number 18014  
p o b o x 7076 geelong west vic 3218  
m 0422202516  
tchakir@theplanningprofessionals.com.au  
abn 89 007 435 565  
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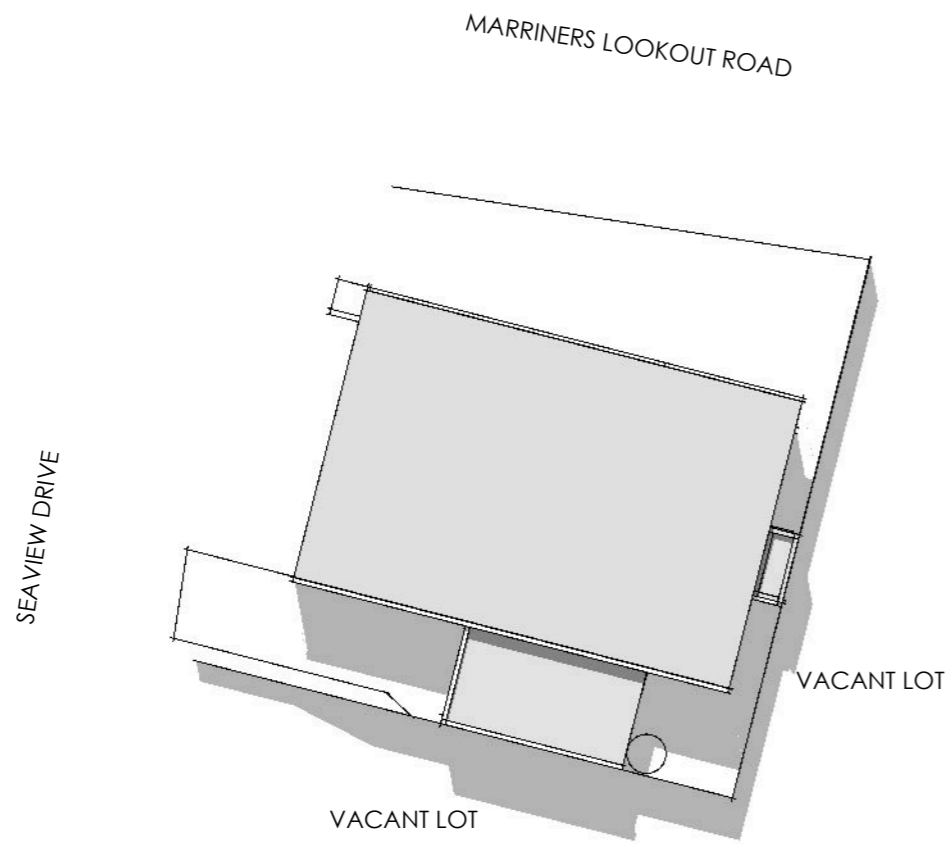
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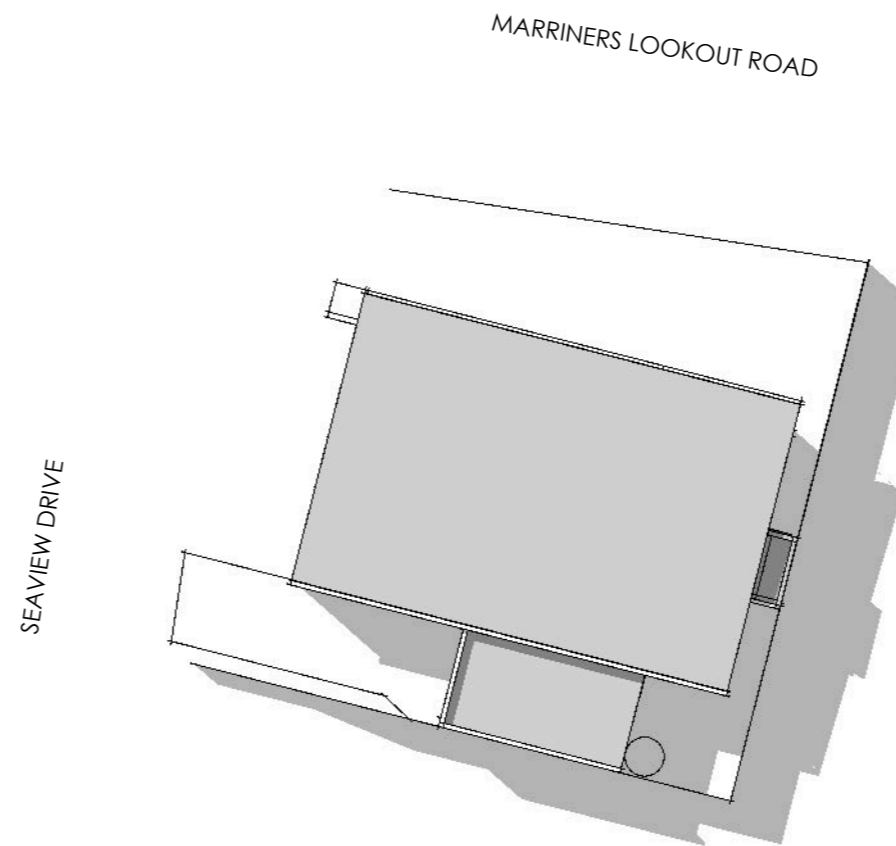
9AM EQUINOX



11AM EQUINOX




1PM EQUINOX



3PM EQUINOX



0 7.5 15 20m (1:250 A3)  
 scale 1: 250 @ A3 sheet

	
<b>The Planning Professionals</b>	
project	PROPOSED HOUSE
drawing	PA07 SHADOW DIAGRAMS
address	15 MARRINERS LOOKOUT ROAD APOLLO BAY VIC
date	JANUARY 2019
file number	18014
p o b o x 7076 geelong west vic 3218 m 0422202516 tchakir@theplanningprofessionals.com.au abn 89 007 435 565	
copyright 2017	





MARRINERS LOOKOUT ROAD

SEAVIEW DRIVE

VIEW FROM INTERSECTION



The Planning Professionals

project	PROPOSED HOUSE	
drawing	PA08	STREETSCAPE AND PERSPECTIVES
address	15 MARRINERS LOOKOUT ROAD APOLLO BAY VIC	
date	JANUARY 2019	
file number	file number	18014

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