



Planning Report

Variation of a Registered Restrictive Covenant

(Variation of Restriction No. 2)

41 Cerberus Drive OCEAN GROVE (Lot 371, PS710786X)

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1. Introduction

St Quentin has been instructed to prepare this planning report in relation to: Variation of a Registered Restrictive Covenant encumbering land at No. 41 Cerberus Drive OCEAN GROVE (Lot 371, PS710786X).

The purpose of this report is to consider the decision guidelines specified for the relevant class of application, and in doing so explain why the proposal is worthy of Council's support and approval.

This report is supported by and should be read in conjunction with the following supporting documentation:

Appendices

- Certificate of Title
- Copies of Sec. 173 Agreements
- Plan of Variation of Restriction

2. Key Considerations

The key consideration for Council to assess within this planning application is as follows:

2.1. Interests of Affected Persons

- The sole decision guideline under Clause 52.02 (Easements, Restrictions and Reserves) requires:
'Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people'.
- The proposed Variation of the Restriction will not result in any detrimental impact on the interests of affected parties.
- A detailed assessment of the proposed variation is provided in Section 7 (Particular Provisions) of this Planning Report.

2.2. Other Encumbrances (not relevant to the application)

There are other Restriction and Section 173 Agreements encumbering the subject lot as follows,

1. Creation of **Restriction No. 1** in the PS710786X
2. Agreement **AH297775T** 16/06/2010
3. Agreement **AJ78386X** 09/07/2012

The proposed **Variation of the Restriction No. 2** do not contravene or breach the abovementioned Restriction and the Agreements.



3. Setting

3.1. Subject Site

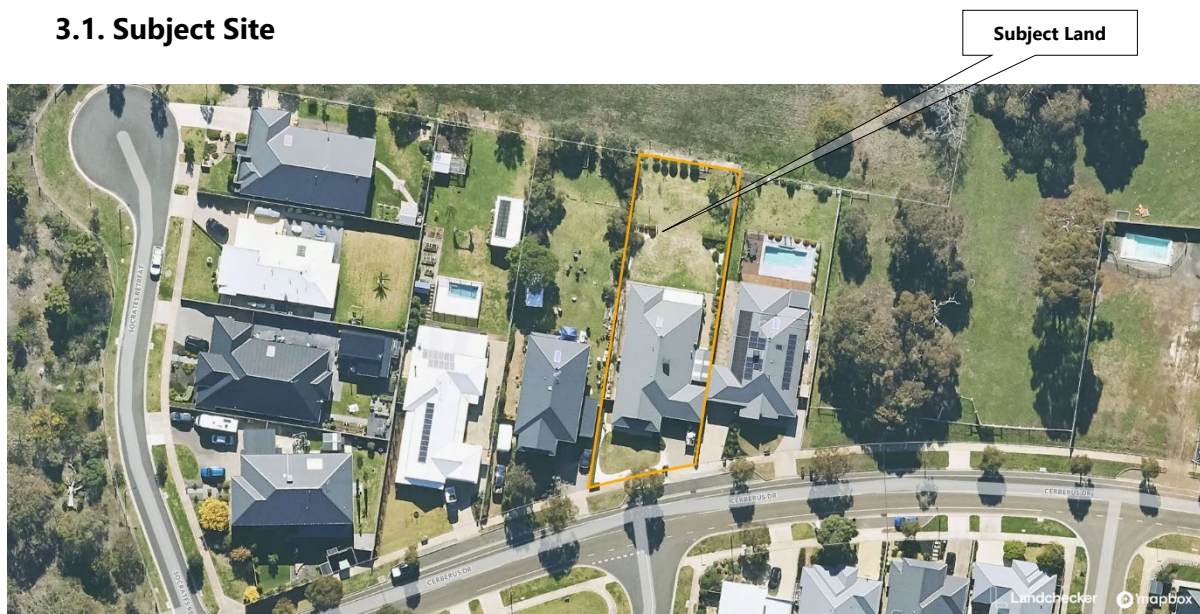


Figure 1 – Aerial (Source: Landchecker, 11/08/2025)

Street Address:	41 Cerberus Drive OCEAN GROVE VIC - 3226
Title Details:	Lot 371 on Plan of Subdivision 710786X Volume 11650 Folio 686
Restrictions/Covenants:	- COVENANT PS710786X 29/04/2016 - Creation of Restriction No. 1 - Creation of Restriction No. 2 - AGREEMENTS (Section 173 PEA 1987) - AH29777T 16/06/2010 - AJ83811Q 09/07/2012
Land Size:	1114.05 m ² (approx.)
Zone:	General Residential Zone – Schedule 1 (GRZ1)
Overlays:	Development Plan Overlay – Schedule 22 (DPO22) Ocean Grove Growth Area
Key Site Features:	41 Cerberus Drive, Ocean Grove comprises a generally rectangular parcel of land that tapers slightly towards the frontage. The site has a frontage of approximately 20.37 metres to Cerberus Drive, with a western boundary of 62.68 metres, a northern (rear) boundary of



18.96 metres, and an eastern boundary of 55.04 metres, providing a total site area of approximately 1,114 square metres (m²).

The property is improved with a single-storey brick dwelling.

3.2. Surrounding Context



Figure 2 Surrounding Context (Source: Landchecker 11/08/2025)

North:	No. 252-260 Grubb Road WALLINGTON Farming Zone (FZ) 3.6 Ha land with a Dwelling
East:	No. 43 Cerberus Drive OCEAN GROVE (Lot 372 of PS710786) General Residential Zone - Schedule 1 (GRZ1) Single Storey Dwelling
South:	Cerberus Drive General Residential Zone - Schedule 1 (GRZ1) Road Reserve
West:	No. 39 Cerberus Drive OCEAN GROVE General Residential Zone - Schedule 1 (GRZ1) Dwelling



4. Proposal

4.1. Proposal Description

This Application for Planning Permit seeks approval for Variation of a Registered Restrictive Covenant (No. 2).

A part of following Section of the Registered Restrictive Covenant (on Plan Number PS710786X) is proposed to be removed.

Identity of Restriction:

The restriction is identified as **Creation of Restriction No. 2** shown as a hatching on the Plan Number **PS 710786X**

Description of Variation:

The registered proprietor of any burdened lot shall not allow any buildings to be constructed in the area shown thus:

Description of Restriction:

The registered proprietor or proprietors of any burdened lot shall not allow any buildings to be constructed in the area shown thus:

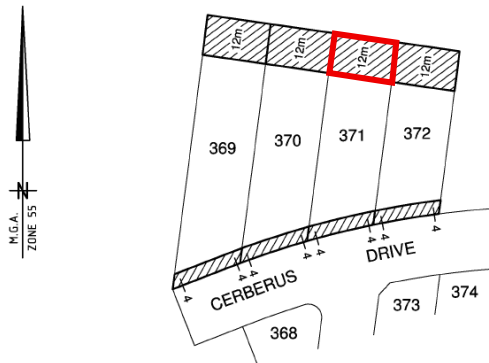


Figure 3 Snip of the Restriction No.2. 12-m depth restriction highlighted in red outline is proposed to be removed.

Land to Benefit: Lot 345 to 382 (inclusive) on the Plan of Subdivision

Land to be burdened: Lots 369 to 372 (Inclusive) on the Plan of Subdivision

Approval is sought solely for the removal of the 12-metre-deep restriction located along the rear (northern) boundary of the subject lot, as identified by the hatched area (See Fig. 3)

The existing 4-metre restriction along the front boundary of the lot will remain unchanged and is not subject to this application.

The proposed variation will facilitate the construction of a shed ancillary to the existing dwelling.

Please refer to the Appendices for the Plan of Variation of Restriction.



4.2. Permit Triggers

Use	Development	Subdivision	Other
N/A	N/A	N/A	Clause 52.02 (Easements, Restrictions and Reserves) A permit is required before a person proceeds: <i>Under Section 23 of the Subdivision Act 1988 to create, vary or remove <u>an</u> easement or <u>restriction</u> or vary or remove a condition in the nature of an easement in a Crown grant.</i>

5. Strategic Context & Response

The key planning, land use and development policies relevant to the consideration and assessment of the proposal are as follows:

1.1. Municipal Planning Strategy

N/A

1.2. Planning Policy Framework

N/A

6. Statutory Context & Response

6.1. Zone

General Residential Zone – Schedule 1 (GRZ1)

The subject site is located within a 'General Residential Zone - Schedule 1' (**GRZ1**) under the Greater Geelong Planning Scheme.



GENERAL RESIDENTIAL ZONE (GRZ)
GENERAL RESIDENTIAL ZONE - SCHEDULE 1 (GRZ1)



Figure 4 Zone map (Source: VicPlan)

Assessment:

No permit is required under the provisions of the Clause 32.08 (General Residential Zone) of the Greater Geelong Planning Scheme.

6.2. Overlays

Development Plan Overlay – Schedule 22 (DPO22)



Figure 5 Overlay Map - Development Plan Overlay



Assessment:

No permit is required under the provisions of the Clause 43.04 (Development Plan Overlay) of the Greater Geelong Planning Scheme.

6.3. Particular Provisions

Clause 52.02 Easements, Restrictions and Reserves

Purpose

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

Permit requirement

A permit is required before a person proceeds:

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

Decision guidelines

Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.

Note:

Section 23 of the Subdivision Act 1988 provides that either the council or the person benefiting from the direction must lodge a certified plan at the Titles Office for registration.

Assessment

A planning permit is required under Clause 52.02 (of the Greater Geelong Planning Scheme) before a person proceeds under Section 23 of the Subdivision Act 1988 to vary a restriction.

The land 'burdened' by the covenant is:

- **Lots 369 to 372 (inclusive)** on the Plan of Subdivision PS710789X

The land 'benefiting' the registered restrictive covenant is:

- **Lots 345 to 382 (inclusive) on the plan of Subdivision PS710789X**

Interests of Affected Persons

The interests of affected persons may be affirmed by giving of Notice of an Application for a Planning Permit.



Other Encumbrances (Not relevant to the proposal)

There are additional Restrictions and Section 173 Agreements registered on the title, as outlined below:

- **Creation of Restriction No. 1**
 - This restriction limits development to one private dwelling house per lot; and
 - Requires approval of the design and improvements from the Oakdene Estate Design Review Panel, care of Morgan & Griffin Pty Ltd (ceased on 24 December 2025).

The proposed Variation of Restriction No. 2 does not conflict with or contravene Restriction No. 1.

- **Agreement AH29775T**

This agreement identifies the infrastructure obligations of the Owner and seeks to achieve and advance the objectives of planning in Victoria and the relevant planning scheme provisions in relation to the C60 Amendment (Rezone to urban development/ introduce DPO), between the City of Greater Geelong and the Owners.

The proposed Variation of Restriction (No. 2) will not breach or affect the obligations under this agreement.

- **Agreement AJ783811Q**

This agreement, between the Council (City of Greater Geelong) and the Owners in relation to planning permit number 1012/2020 allowing removal of native vegetation, relates to the implementation of the approved Vegetation Offset Management Plan.

The proposed Variation of Restriction No. 2 does not contravene or relevant to this agreement.

7. Decision Guidelines

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

7.1. Clause 65.01 Approval of An Application of Plan

Decision Guidelines	Response
The matters set out in section 60 of the Act.	All matters set out in s. 60 of the Act have been suitably addressed.
Any significant effects the environment, including the contamination of land, may have on the use or development.	N/A
The Municipal Planning Strategy and the Planning Policy Framework.	N/A.



The purpose of the zone, overlay or other provision.	Proposal is consistent with the purpose of Particular Provision at Clause 52.02 of the Greater Geelong Planning Scheme, which seeks: <i>To enable the removal and variation of an easement or restriction to enable a use or development that complies with the planning scheme after the interests of affected people are considered.</i>
Any matter required to be considered in the zone, overlay or other provision.	All relevant matters have been suitably considered. The interests of affected persons have been considered and will not be detrimentally affected by the proposal.
The orderly planning of the area.	Variation of the Registered Restrictive Covenant will enable future development to occur in association with the existing dwelling and consistent with the provisions of the General Residential Zone - Schedule 1 (GRZ1) applying to the area.
The effect on the environment, human health and amenity of the area.	Variation of the Covenant is not expected to have a detrimental effect on the amenity of the area.
The proximity of the land to any public land.	N/A.
Factors likely to cause or contribute to land degradation, salinity or reduce water quality	N/A
Whether the proposed development is designed to maintain or improve the quality of stormwater within and exiting the site.	N/A
The extent and character of native vegetation and the likelihood of its destruction.	N/A
Whether native vegetation is to be or can be protected, planted or allowed to regenerate.	N/A
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.	N/A



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

8. Conclusion

As this report demonstrates, the proposal constitutes an appropriate response to the physical context of the subject site and surrounds, supports and implements the applicable strategic directions of the Planning Policy Framework and meets the objectives and requirements of the key statutory controls.

A Planning Permit is required under Clause 52.02 (*Easements, Restrictions and Reserves*) of the Greater Geelong Planning Scheme before a person proceeds under Section 23 of the *Subdivision Act 1988* to vary a restriction.

We do not consider the interests of affected persons to be detrimentally affected by variation of the restriction as proposed.

For these reasons, we submit that the responsible authority would be justified in reaching a conclusion that the proposal is worthy of support and approval.



9. Appendices

Certificate of Title

Copies of Section 173 Agreements

Plan of Variation of Restriction