

3 SUBDIVISION OF LAND AND REMOVAL OF RESTRICTIVE COVENANTS AT RIMPLE WAY, MONICA WAY AND RIX ROAD, BEACONSFIELD

FILE REFERENCE INT1968655

RESPONSIBLE GENERAL MANAGER Tracey Parker

AUTHOR Stephen Powell

RECOMMENDATION

That Council refuse to Grant Planning Permit T180348 be issued for the subdivision of eight (8) lots into twelve lots (12) and the variation of Covenant PS711709M relating to building envelope restrictions at 17 & 19 Rimple Way, 18, 19, 20 & 21 Monica Way, 420 & 422 Rix Road, Beaconsfield VIC 3807 on the following grounds:

- The proposal fails to meet the requirements of Section 60(2) and 60(5) of the Planning and Environment Act 1987, as the Responsible Authority is not satisfied that the owner of any land benefitted by the restriction will be unlikely to suffer financial loss, loss of amenity, loss arising from the change in neighbourhood character or any other material detriment (including perceived detriment) as a consequence of variation to the restriction.
- The subdivision results in excessive crossovers along the Rix Road frontage which will reduce on street parking, impact on an existing bikeway within Rix Road and result in an adverse impact to the streetscape.

Attachments

1	Locality Map	1 Page
2	Subdivision Plan	6 Pages
3	Copy of Objections - Circulated to Councillors only	3 Pages

EXECUTIVE SUMMARY:

APPLICATION NO.:	T180348
APPLICANT:	Banriar Investments Pty Ltd CC/Hansen Partnership - Mr Cameron Gentle.
LAND:	17 & 19 Rimple Way, 18, 19, 20 & 21 Monica Way and 420 & 422 Rix Road, Beaconsfield VIC 3807
PROPOSAL:	Subdivision and removal of restrictive covenants
PLANNING CONTROLS:	Urban Growth Zone Schedule 3 Development Contributions Overlay Schedule 4 Clause 52.02 Easements Restrictions and Reserves Clause 53.01 Public Open Space Contribution and subdivision Clause 56 Residential Subdivision Clause 65 Decision Guidelines Officer Precinct Structure Plan September 2011 Development Contributions Plan 15 September 2011.

NOTIFICATION & OBJECTIONS:	The application has been advertised pursuant to Section 52 of the <i>Planning and Environment Act 1987</i> . Council has received one objection and one petition with 23 signatories to date.
KEY PLANNING CONSIDERATIONS:	Is there variation of the restrictive covenant an appropriate planning outcome.
RECOMMENDATION:	Refusal

BACKGROUND:

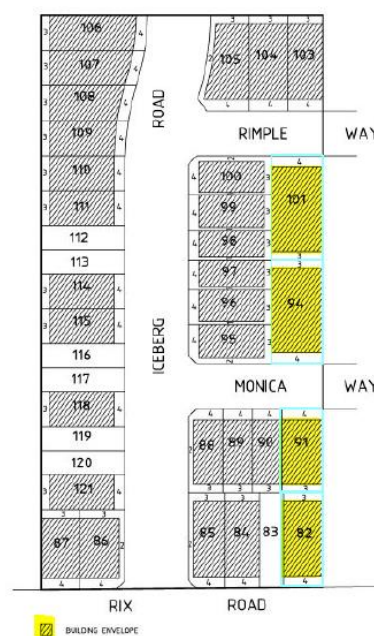
Planning permits T120317 and T160824 allowed for the subdivision of the land which is known as the Beaconsfield Roses Estate. As part of these subdivisions the eight (8) subject lots were created.

SUBJECT SITE

The site includes eight (8) existing lots located on the south side of Rimple Way, north and south side of Monica Way and the north side of Rix Road with the land approximately 30 metres east of Iceberg Road in Beaconsfield. The following is a summary of each of the current lots:

- 17 Rimple Way (Lot 41 PS711708P) located on the south side of the road with a frontage of 20.93m and depth of 37m lot area of 774m². The lot has a 3m wide easement along the south boundary and has a crossover on the west side of the site frontage.
- 19 Rimple Way Beaconsfield (Lot 101 on PS730185N) located on the south side of the road with a frontage of 18.08m and depth of 37m lot area of 669m². The lot has a 3m wide easement along the south boundary and has a crossover on the east side of the site frontage.
- 18 Monica Way (Lot 56 PS711709M) located on the north side of road with a frontage of 20.93m and depth of 37m lot area of 774m² with a crossover on the east side of the site frontage.
- 19 Monica Way (Lot 57 PS711709M) located on the south side of road with a frontage of 20.42m and depth of 30m lot area of 613m². The lot has a 3m wide easement along the south boundary and has a crossover on the east side of the site frontage.
- 20 Monica Way (Lot 94 PS730185N) located on the north side of the road with a frontage of 18.08m and depth of 37m lot area of 669m² and has a crossover on the west side of the site frontage.
- 21 Monica Way (Lot 91 PS730185N) located on the south side of the road with a frontage of 14.58m and depth of 30m lot area of 437m². The lot has a 3m wide easement along the south boundary and has and has a crossover on the west side of the site frontage.
- 420 Rix Road (Lot 80 PS711709M) with a frontage of 18.96m and depth of 33.6m lot area of 636m². The lot has a crossover on the east side of the site frontage.
- 422 Rix Road (Lot 82 PS730185N) with a frontage of 14.04m and depth of 33.7m lot area of 473m². The lot has a crossover on the west side of the site frontage.

Restrictive Covenants/Agreements



Group 1

- 19 Rimple Way (Lot 101 on PS730185)
- 20 Monica Way (Lot 94 on PS730185)
- 21 Monica Way (Lot 91 on PS730185)
- 422 Rix Road (Lot 82 on PS730185)

These lots are subject to:

- Section 173 Agreements AN270798E and AN557615T which relate to the owners obligations in relation to the Officer Development Contribution Plan including both the payment of the applicable levy and the delivery of infrastructure items. The application does not breach this agreement and no further action is required as a result of this proposal.
- Restrictive Covenant PS730185N which requires dwellings to be constructed in accordance with the Building and Design Guidelines and, requires dwellings to be constructed within the prescribed building envelope (shown right).

Group 2

- 19 Monica Way (Lot 57 on PS711708)
- 420 Rix Road (Lot 80 on PS711708)

These lots are subject to:

- Section 173 Agreements AM026664B which relates to the owners obligations in relation to the Officer Development Contribution Plan including both the payment of the applicable levy and the delivery of infrastructure items. The application does not breach this agreement and no further action is required as a result of this proposal.
- Restrictive Covenant PS711709M which requires dwellings to be constructed in accordance with the Building and Design Guidelines but does not include building envelopes.

Group 3

- 17 Rimple Way (Lot 41 on PS711708)

This lot is subject to:

- Restrictive Covenant PS711708P which requires dwellings to be constructed in accordance with the Building and Design Guidelines. No building envelope applies to this lot.

Group 4

- 18 Monica Way (Lot 56 on PS711709)

This lot is subject to:

- Restrictive Covenant PS711709M which requires dwellings to be constructed in accordance with the Building and Design Guidelines. No building envelope applies to this lot.
- Section 173 Agreements AM026664B which relates to the owners obligations in relation to the Officer Development Contribution Plan including both the payment of the applicable levy and the delivery of infrastructure items. The application does not breach this agreement and no further action is required as a result of this proposal.

PROPOSAL

The proposal seeks the subdivision of eight (8) lots into twelve lots (12) and the variation of Covenant PS730185N relating to building envelope restrictions on lots 82, 91, 94 and 101 on Plan of Subdivision 730185N in accordance with the submitted plans.

19 Rimple, 20 Monica, 21 Monica, 422 Rix contain building envelopes on the titles that restricted development on the site and the removal of these covenant to allow the development of the future lots consistent with the new lot boundaries.

The proposed subdivision will include the provision of new crossover to provide access to lot 102, 92 and 81 with the resultant removal of indented parking may on Rix Road.

Subdivision, crossover and building envelope plans below:



PLANNING SCHEME PROVISIONS

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 11.02 Managing Growth
 - Clause 11.02-2S Structure Planning
 - Clause 11.02-3S Sequencing of development
- Clause 11.03 Planning for Places
 - Clause 11.03-2S Growth Areas
- Clause 13.07 Amenity
 - Clause 13.07-1S Land Use compatibility
- Clause 14.02 Water
 - Clause 14.02-1S Catchment planning and management

- Clause 15.01 Built Environment
 - Clause 15.01-1S Urban Design
 - Clause 15.01-1R Urban Design Metropolitan Melbourne
 - Clause 15.01-2S Building Design
 - Clause 15.01-3S Subdivision Design
 - Clause 15.01-5S Neighbourhood Character
- Clause 16 Housing
 - Clause 16.01-1S Integrated housing
 - Clause 16.01-2S Location of residential development
 - Clause 16.01-3S Housing Diversity
 - Clause 16.01-4S Housing affordability
- Clause 18.02 Movement Networks.
- Clause 19.03 Development infrastructure.

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- Clause 21.03 Settlement and Housing
 - Clause 21.03-1 Housing
 - Clause 21.03-2 Urban growth area
- Clause 21.05 Infrastructure provision
 - Clause 21.05-3 Local roads
- Clause 21.06 Particular Uses and Development
 - Clause 21.06-1 Design and built form

Relevant Particular/ General Provisions and relevant incorporated or reference documents

The relevant provisions/ documents are:

- Clause 52.01 Public Open Space
- Clause 56 Residential Subdivision
- Clause 65 Decision Guidelines
- Clause 66.01 Subdivision Referrals
- Officer Precinct Structure Plan September 2011
- Officer Native Vegetation Precinct Plan September 2011
- Officer Development Contributions Plan

Cardinia Shire's Liveability Plan 2017-2029

This proposal has regard to Cardinia Shire's Liveability Plan 2017-2029, in particular:

- *Improved safety; and*
- *Reduce obesity*

Zone

The land is subject to the Urban Growth Zone Schedule 3. The applied zone is General Residential (Clause 32.08).

Overlays

The land is subject to the Development Contributions Plan Overlay Schedule 4 (DCPO4).

PLANNING PERMIT TRIGGERS

The proposal for the subdivision of the land requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Clause 37.07 Urban Growth Zone (Part B) - where a structure plan applies (Officer Precinct Structure Plan approved September 2011 and incorporated into the scheme), the provisions clauses 37.07-9 to 37.07-16 apply. Pursuant to Clause 37.07-10 of the Urban Growth Zone, a permit is required to subdivide the land. Any requirement in the schedule to this zone or the precinct structure plan must be met. A permit granted must be generally in accordance with the precinct structure plan applying to the land and include any conditions or requirements specified in the schedule to this zone or the precinct structure plan.

Under the Schedule 3 of the Urban Growth Zone, sub-clause 2.1 refers to applied zones that apply within the Officer Precinct Structure Plan. The subject site is located and zoned within the General Residential Zone, therefore pursuant to Clause 32.08-2 of the General Residential Zone a planning permit is required to subdivide land. The proposed development must meet the requirements of Clause 56.

A permit must include any conditions or requirements specified in the schedule to this zone or the precinct structure plan.

- Pursuant to Clause 52.02 Easements, restrictions and reserves a permit is required to create and remove a restriction.

PUBLIC NOTIFICATION

The application has been advertised pursuant to Section 52 of the *Planning and Environment Act 1987*, by:

- Sending notices to the owners and occupiers of adjoining land.
- Placing sign(s) on site frontages (Each street frontage)
- Placing a notice in the Pakenham Gazette newspaper

Council has received one objection and one petition with 23 signatories to date. The key issues that were raised in the objections are:

- Area is currently closed off and under traffic stress at peak hours and school.
- Increased parking on nature strips.
- Further subdivision will increase pressures on on-street parking.
- Overcrowding of vehicles on the narrow streets causing vehicle to be crammed and parking on council land causing walkways and accessibility to be blocked, with houses generally having 2-3 vehicles with other vehicles which all restrict visitor parking areas.
- Approval will be contrary to the restrictive covenant under which the lots were purchased.

REFERRALS

External Referrals/Notices Required by the Planning Scheme:

No external referrals required

Internal Referrals

Internal Council Referral	Advice/ Response/ Conditions
Engineering	Raised during a Growth Area Permit Matters meeting. The proposed cross-overs associated with proposed lot 81 will result in the removal of one

indented car spaces within Rix Road which is an unacceptable outcome.

DISCUSSION

Section 60(2) and 60(5) of the Planning and Environment Act 1987 states that Council **must not** issue a permit where it has not been satisfied that the owner of any land benefitted by the restriction will be unlikely to suffer financial loss, loss of amenity, loss arising from the change in neighbourhood character or any other material detriment (including perceived detriment) as a consequence of the variation to the restriction.

The relevant section of the *Planning and Environment Act 1987* is provided below.

*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](#) benefitted 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.*

Then objectors have expressed concerns with the detriment that the removal of the covenant and increased numbers of lots will have on the surrounds in terms of on street parking and traffic. As all objections received are from legal beneficiaries of the covenant and relate to perceived material detriment that will arise from the variation of the covenant, the effect of Section 60(5) of the *Planning and Environment Act 1987* is that a permit **must not** be granted and the application must be refused.

Therefore the Officer's Recommendation is to refuse the application as required by Section 60(2) and 60(5) of the *Planning and Environment Act 1987*, in accordance with its statutory obligation.

Impacts of the Subdivision

The proposed subdivision results in an additional crossover on the Rix Road frontage associated with proposed lot 81 and necessitates the removal/alteration of an existing indented on street parking space. There is insufficient room within Rix Road to replace the indented car space, and it is considered that the removal of the car space to allow for a cross-over to lot 81 is inappropriate. Further it is considered that the additional cross-over will result in excessive cross-overs presenting to Rix Road which will result in a detrimental impact to the streetscape.

CONCLUSION

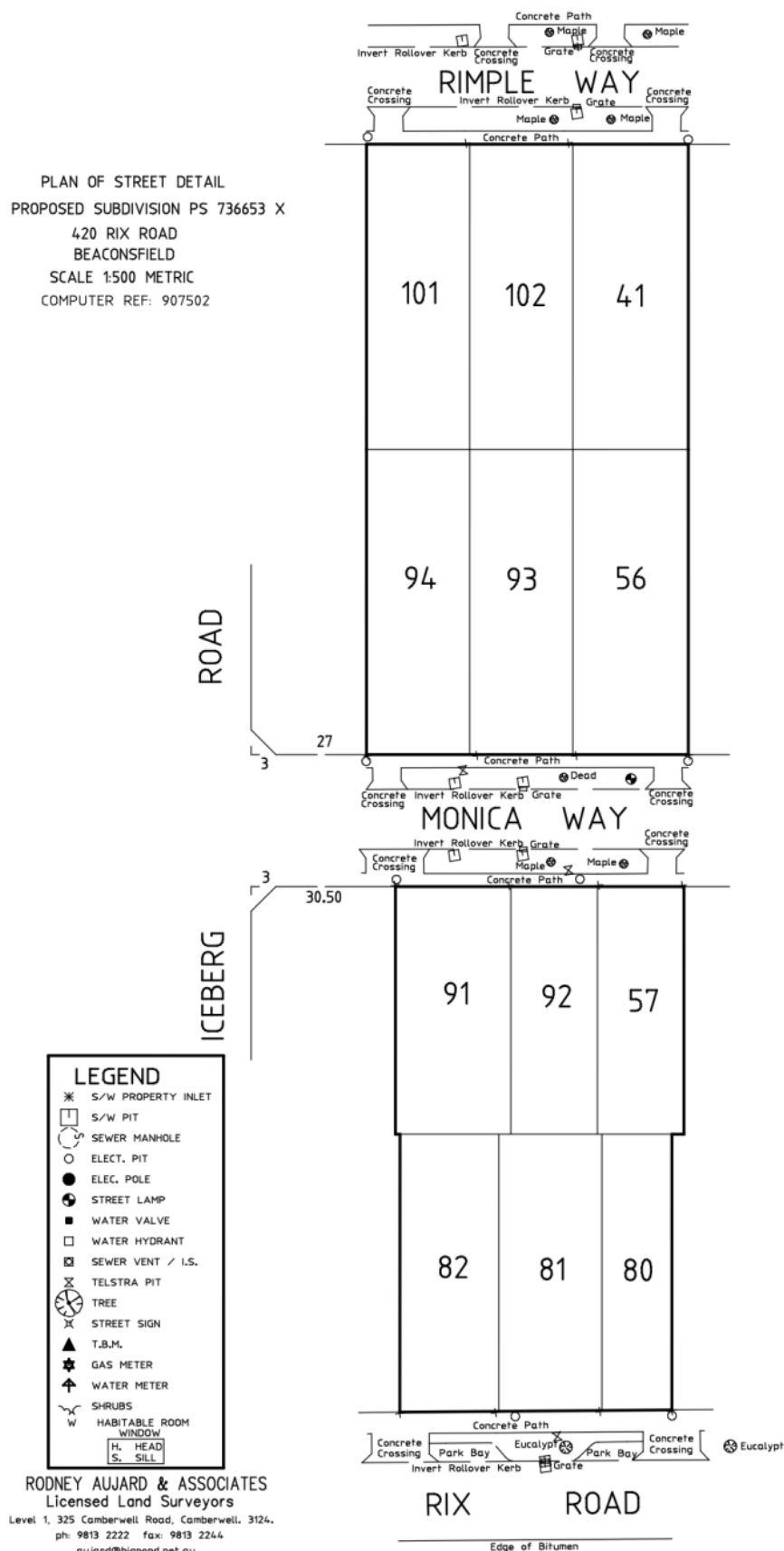
It is considered that the application has not satisfied that the legal beneficiaries of the covenant will be unlikely to suffer detriment as a consequence of the proposed variation of the restriction, and as such, Council has no avenue to consider supporting the application pursuant to Section 60(5) of the *Planning and Environment Act 1987*.

Attachment 1 (Locality Plan)



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REF: 19075
8th NOVEMBER 2018



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aujard@bigpond.net.au
 SURVEY REF : 19075 GS DATE OF SURVEY : 8/11/2018

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REF: 19075
20th December 2018

PLAN OF STREET DETAIL
PROPOSED SUBDIVISION PS 736653 X
420 RIX ROAD
BEACONSFIELD
SCALE 1:500 METRIC
COMPUTER REF: 907502

ROAD

ICEBERG

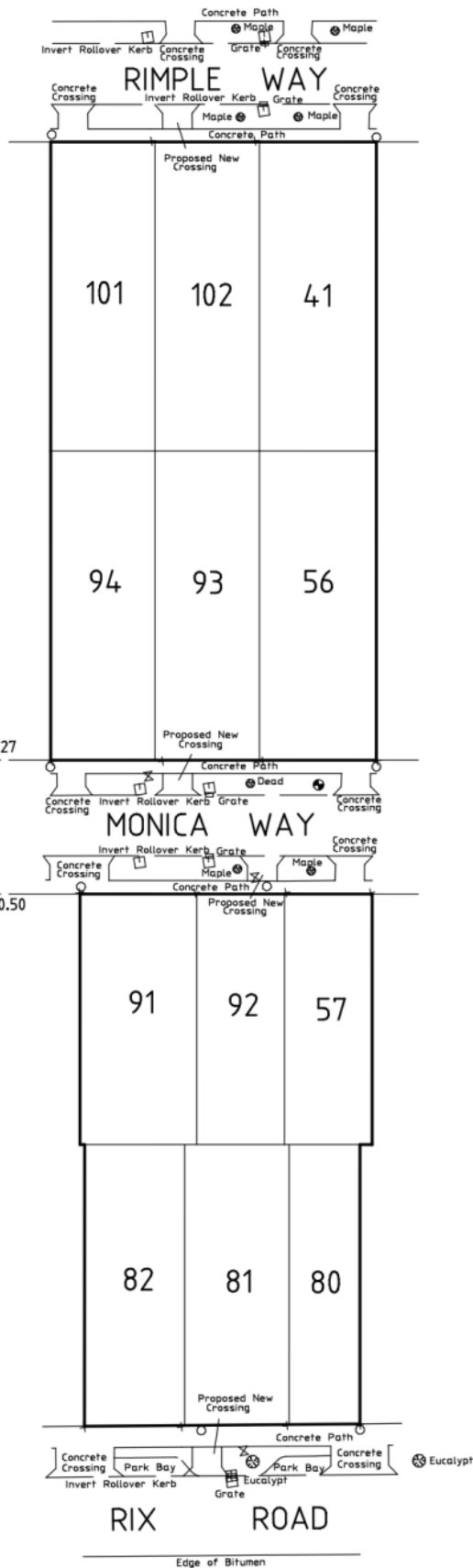
LEGEND	
	S/W PROPERTY INLET
	S/W PIT
	SEWER MANHOLE
	ELECT. PIT
	ELEC. POLE
	STREET LAMP
	WATER VALVE
	WATER HYDRANT
	SEWER VENT / I.S.
	TELSTRA PIT
	TREE
	STREET SIGN
	T.B.M.
	GAS METER
	WATER METER
	SHRUBS
	HABITABLE ROOM WINDOW
	H. HEAD S. SILL

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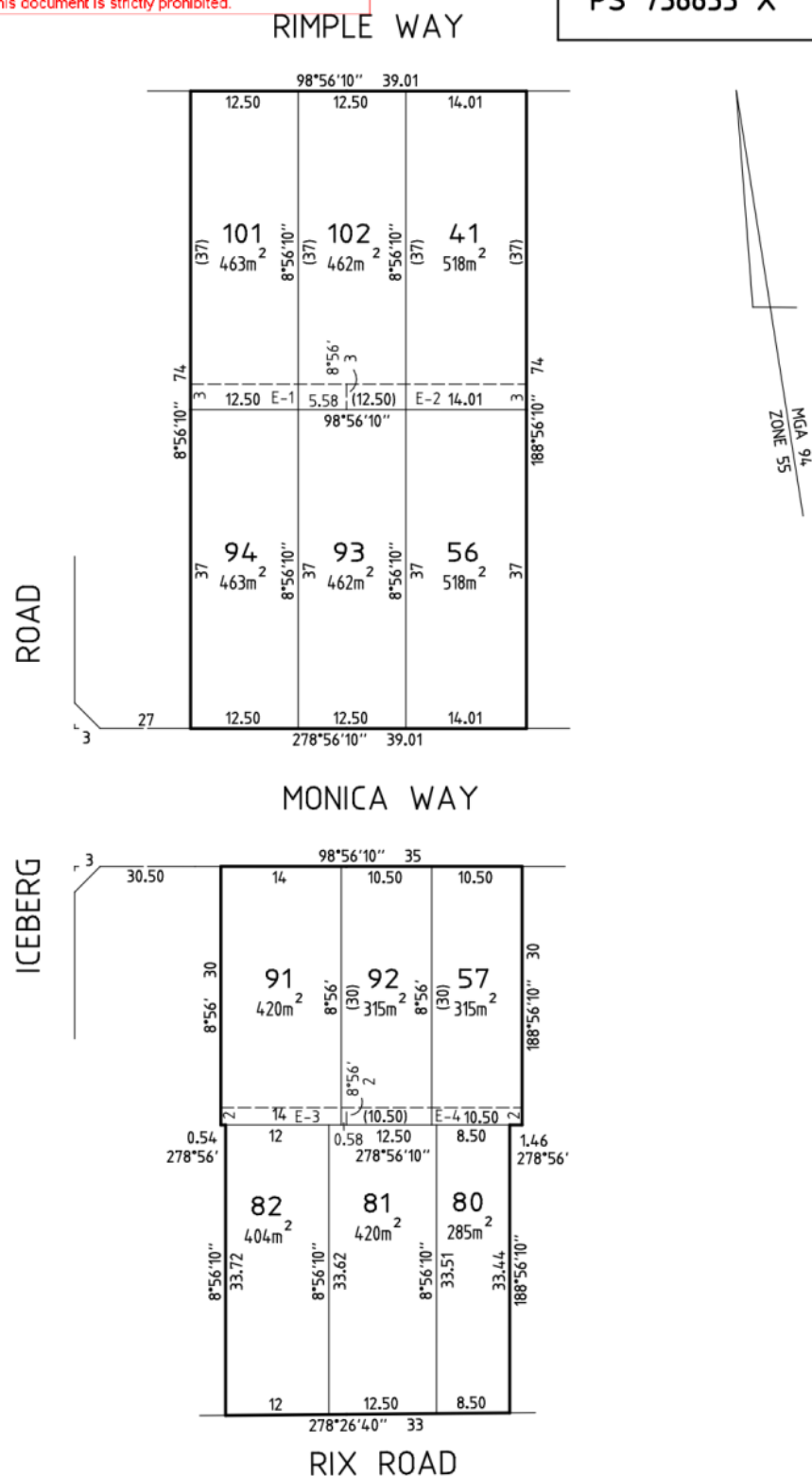
SURVEY REF : 19075 GS DATE OF SURVEY : 8/11/2018



MGA 94
ZONE 55

PLAN OF SUBDIVISION			PS 736653 X	
LOCATION OF LAND PARISH : PAKENHAM TOWNSHIP : _____ SECTION : _____ CROWN ALLOTMENT : _____ CROWN PORTION : 31(Part) TITLE REFERENCE : C/T. Vol.11573 Fol.733, Vol.11605 Fol.204, Vol.11605 Fol.205, Vol. Fol. Vol. Fol. LAST PLAN REFERENCE : LOT 41 PS 711708P, LOTS 56,57 & 80 PS 711709M, LOTS 82,91,94 & 101 PS 730185 N POSTAL ADDRESS : No.17 - RIMPLE WAY, No.18- MONICA WAY, (At time of subdivision) No.420 - RIX ROAD BEACONSFIELD. 3807 MGA94 Co-ordinates : (of approx. centre of land in plan) E 358 239 ZONE : 55 N 5785 792			COUNCIL NAME : CARDINIA SHIRE COUNCIL <div style="border: 1px solid red; padding: 5px; color: red; font-size: small;"> This copied document is made available for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By taking a copy of this document you acknowledge and agree that you will only use the document for the purpose specified above and that any dissemination, distribution or copying of this document is strictly prohibited. </div>	
VESTING OF ROADS AND/OR RESERVES			NOTATIONS	
IDENTIFIER	COUNCIL/BODY/PERSON		Lots 1 to 40, Lots 42 to 55, Lots 58 to 79, Lots 83 to 90 & Lots 95 to 100 have been omitted from this plan.	
NIL	NIL			
NOTATIONS				
DEPTH LIMITATION : Does not apply. This is a SPEAR plan. <u>OTHER PURPOSE OF PLAN</u> To create Restrictions (See Sheet 3) Survey: This plan is based on survey. This survey has been connected to permanent marks no(s) 489, 709,710,731 & 732 in Proclaimed Survey Area No.71 STAGING: This is not a staged subdivision Planning Permit No.				
EASEMENT INFORMATION				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easements and rights implied by Section 12(2) of the Subdivision Act 1988 apply to the whole of the land on this plan.				
Easement Reference	Purpose	Width (metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE	3	PS 730185 N	CARDINIA SHIRE COUNCIL
E-1	SEWERAGE	3	PS 730185 N	SOUTH EAST WATER CORPORATION
E-2	DRAINAGE	3	PS 711708 P	CARDINIA SHIRE COUNCIL
E-2	SEWERAGE	3	PS 711708 P	SOUTH EAST WATER CORPORATION
E-3	SEWERAGE	2	PS 730185 N	SOUTH EAST WATER CORPORATION
E-4	SEWERAGE	2	PS 711709 M	SOUTH EAST WATER CORPORATION
RODNEY AUJARD & ASSOCIATES <i>Licensed Land Surveyors</i> Level 1, 325 Camberwell Road, CAMBERWELL. 3124. Ph. 9813 2222 Fax. 9813 2244 81 Grant Street, ALEXANDRA. 3714. Ph. 5772 1530 aujard@bigpond.net.au			Surveyors Ref. 19075 Licensed Surveyor Geoff. P. Sutherland	Original Sheet Size : A3 SHEET 1 OF 4 Version 1

PS 736653 X



SHEET 2

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PS 736653 X

CREATION OF RESTRICTIONS

UPON REGISTRATION OF THIS PLAN THE FOLLOWING RESTRICTIONS ARE TO BE CREATED

LAND TO BENEFIT : LOTS ON THIS PLAN

1. LAND TO BE BURDENED : LOTS 41, 56, 57, 81, 82, 91 - 94, 101 & 102.

DESCRIPTION OF RESTRICTION :

THE REGISTERED PROPRIETOR OR PROPRIETORS FOR THE TIME BEING OF LOTS 41, 56, 57, 81, 82, 91 - 94, 101 & 102 ON THIS PLAN SHALL NOT :

- (i) BUILD OR ALLOW TO BE BUILT ON THE LAND, ANY DWELLING OUTSIDE THE BUILDING ENVELOPE AS SHOWN IN THE SCHEDULE BELOW.
- (ii) BUILD OR ALLOW TO BE BUILT ANY DWELLING OTHER THAN IN ACCORDANCE WITH THE ENDORSED BUILDING DESIGN GUIDELINES ATTACHED TO PERMIT T EXCEPT WITHOUT THE FURTHER WRITTEN CONSENT OF THE CARDINIA SHIRE COUNCIL.

2. LAND TO BE BURDENED : LOT 80

DESCRIPTION OF RESTRICTION :


THE REGISTERED PROPRIETOR OR PROPRIETORS FOR THE TIME BEING OF LOT 80 SHALL NOT

- (i) BUILD OR ALLOW TO BE BUILT ON THE LAND, ANY DWELLING OTHER THAN IN ACCORDANCE WITH THE OFFICER SMALL LOT HOUSING CODE.
- (ii) BUILD OR ALLOW TO BE BUILT ANY DWELLING OUTSIDE THE BUILDING ENVELOPE AS DEFINED BY THE OFFICER SMALL LOT HOUSING CODE.

THESE RESTRICTIONS WILL EXPIRE 2 YEARS AFTER THE ISSUE OF AN OCCUPANCY PERMIT FOR THE DWELLING ON THE RESPECTIVE LOT.

SCHEDULE

SEE SHEET 4

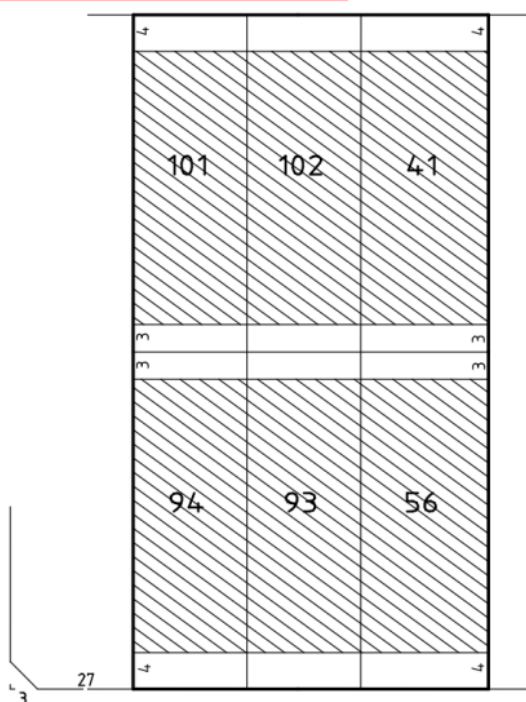
RODNEY AUJARD & ASSOCIATES <i>Licensed Land Surveyors</i> Level 1, 325 Camberwell Road, CAMBERWELL. 3124. Ph. 9813 2222 Fax. 9813 2244 aujard@bigpond.net.au	SCALE		ORIGINAL SHEET SIZE : A3	SHEET 3
	GEOFF. P. SUTHERLAND VERSION 1			
SURVEYORS FILE REF : 19075				

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RIMPLE WAY

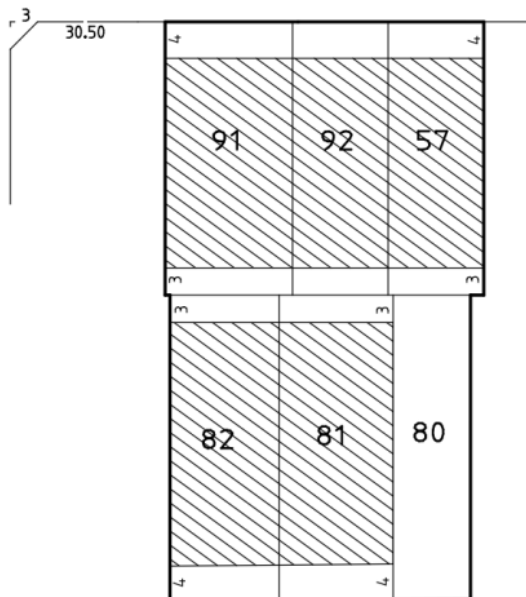
PS 736653 X

ROAD

MGA 94
ZONE 55

MONICA WAY

ICEBERG



RIX ROAD

RODNEY AUJARD & ASSOCIATES
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Surveyors Ref. 19075

Scale
1:500

5 0 5 10 15 20 25
Lengths are in metres

Original Sheet
Size : A3

SHEET 4

Licensed Surveyor
Geoff. P. Sutherland

Version 1