

Permit and 173 Agreement requirements

The permit required a Section 173 agreement to be registered which included a requirement for a landscape plan and Conservation Management Plan (CMP) to be prepared and endorsed. Landscaping had to be established for a period of 2 years prior to any development of on the site 2 (f)



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Planning PERMIT

Planning scheme: SURF COAST PLANNING SCHEME
Responsible authority: SURF COAST SHIRE COUNCIL

Permit number:
97/7281

Address of the land: 23-79 Bambra Road, Aireys Inlet
Property number: 64280

The permit allows: **The subdivision of the land involving realignment of existing lot boundaries and development of one house on each lot in accordance with the endorsed plans.**

The following conditions apply to this permit:

1. Prior to the commencement of any development under this permit, an amended plan of the re-subdivision, to the satisfaction of the Responsible Authority, shall be submitted. This plan shall be generally in accordance with the plan submitted with the permit application, but shall show:
 - a) the proposed lots 3 and 4 consolidated into a single lot; and
 - b) the land set aside to be vested in the Council for the purpose of public open space, to a width necessary to ensure a minimum width of 10 metres along the Painkalac Creek.
2. Prior to the certification of any Plan of Subdivision for the land and prior to commencement of any development on the land the owners shall execute an agreement with the Responsible Authority under Section 173 of the Planning and Environment Act 1987, which shall contain the following covenants:
 - a) That none of the lots created on the plan of subdivision shall be further subdivided and not more than one dwelling will be constructed on each lot.
 - b) The setting aside as an area of public open space to vest in the Council upon registration of the plan of re-subdivision of such land as may be necessary to ensure a minimum width of public open space of 10 metres along the Painkalac Creek.
 - c) Creation of building envelopes set back a minimum of 40 metres from Bambra Road, having an area not greater than 500sqm, and otherwise sited to the satisfaction of the Responsible Authority on each of the three permitted lots.
 - d) No buildings to be constructed outside the building envelopes.

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Date issued:
24 March 1999

Signature of the responsible authority:

Permit number: 97/7281 continued.

- e) No buildings to exceed a maximum wall height of 3 metres and an overall height of 5 metres above natural ground level.
 - f) That no development commence on any of the lots unless the planting as shown on the landscape plan endorsed to this permit ("the endorsed landscaping plan") has been established for a period of at least two years prior to the commencement of any development.
 - g) That the planting on the endorsed landscaping plan to be carried out and maintained to the satisfaction of the Council.
 - h) That, save for the establishment of garden beds within a 10 metre radius of any buildings, no plantings shall be undertaken on the subject land other than in accordance with the endorsed landscaping plan, without the written consent of the council.
 - i) That no dogs shall be kept on the land.
 - j) That all stormwater run-off from any buildings and any hard surfaces shall be treated to the satisfaction of the Council prior to discharge into the creek.
 - k) To pay the Council's reasonable legal costs associated with the negotiation, preparation, execution and registration of the Agreement.
3. Easements for drainage in favour of the Surf Coast Shire must be created on the plan to the satisfaction of the responsible authority.

Conditions required by referral authorities

Powercor

4. The Applicant shall:
 - a) Enter into an agreement with Powercor Australia Limited for the supply of electricity to each lot and for the extension, augmentation or re-arrangement of any existing electricity supply system, as required by Powercor Australia Limited. (A payment to cover the cost of such work will be required). In the event that a supply cannot be provided the Applicants shall provide a written undertaking to Powercor Australia Limited that a prospective purchasers will be so informed;
 - b) Re-arrange, to the satisfaction of Powercor Australia Limited, any existing private electric lines that cross boundaries or the proposed lots to supply existing installations. Such lines shall be constructed with underground cable;
 - c) Provide to Powercor Australia Limited, a copy of the version of the Plan of Subdivision submitted for certification, which shows any amendments which have been required.

Note: It is recommended that, at an early date, the Applicant commences negotiations with Powercor Australia Limited, for supply of electricity in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay (the release to the municipality enabling a Statement

Page 2 of 4

Date issued:
24 March 1999

Signature of the responsible authority:

Permit number: 97/7281 continued.

11. A landscaping plan must be prepared for the subject land and be submitted to the Responsible Authority for its approval. This plan must be generally in accordance with the landscaping shown on the plan prepared by ERM Mitchell McCotter (Drawing no. LS2, Project n. 698215, August 1998), but modified to implement the following objectives:
 - a) When specified vegetation reaches maturity, it will:
 - i) provide effective screening of buildings from views from the south of the subject land;
 - ii) provide substantially screened views of buildings from viewpoints on Bambra Road.
 - b) Inclusion of a mix of native vegetation species including trees and shrubs which are native to the hill slopes to the east and west of the subject land.
 - c) Planting of vegetation is to occur at densities and with a distribution reflecting naturally occurring vegetation in the area.

Once approved, this plan shall become "the endorsed landscaping plan" to this permit.
12. A conservation management plan must be prepared to the satisfaction of the Responsible Authority for the protection of remnant native vegetation on the southern areas of the subject land. This plan will show:
 - a) management proposals for areas of habitat value, being the existing mature trees and the ephemeral wetlands areas, which should be retained;
 - b) retention of mature trees with suitable nesting hollows;
 - c) protection of remnant trees and vegetation with sign posting and fencing by standard post and wire fencing; and
 - d) retention of remnant roadside vegetation outside the eastern boundary of the subject land, along Bambra Road, wherever practicable.

Once approved, this plan shall become "the endorsed conservation management plan" to this permit.
13. Prior to the occupation of any dwelling on the land, the boundary between the land shown on the plan of subdivision as vesting in the Responsible Authority and the balance of the land shall be fenced at the cost of the owner to the satisfaction of the Responsible Authority.
14. This permit, insofar as it permits the construction of a dwelling on each of the lots to be created by the subdivision also hereby permitted, will expire if either of the following circumstances applies:-
 - a) The construction of the dwelling is no issue of the permit
 - b) The construction of the dwelling is not commencement of construction.

Signed Date 10/5/12 '14
This permit has been extended for 4 of years, Planning Permit No. 97/7281 will now expire on 24/3/2018 if the development has not commenced.

Date issued:
24 March 1999

Signature of the responsible authority:

Permit and 173 Agreement requirements

The Section 173 agreement contains the same two year restriction at cl 4.8 was registered then later went through an amendment process to add a CMP maintenance requirement cl 4.13

THIS AGREEMENT is made the 1st day of July 2002

BETWEEN:

SURFCOAST SHIRE COUNCIL of 25 Grossmans Road, Torquay in the State of Victoria ("the Responsible Authority") of the first part

- and -

JOHN BRUCE ALLEN & JOHN BRUCE ALLEN as Executor of the ESTATE OF PATRICIA VALERIE ALLEN care of Allen & Allen Solicitors, 20th Floor, 114 William Street, Melbourne in the State of Victoria ("the Owners") of the second part

WHEREAS:

A. The Owners are the registered proprietors of the land comprised in Certificates of Title Volume 6388 Folio 595, Volume 7292 Folio 273, Volume 7302 Folio 355, Volume 8079 Folio 511, Volume 8253 Folio 339 and Volume 8253 Folio 340 and Volume 10422 Folio 553 ("the land").

B. An Agreement pursuant to Section 173 of the *Planning and Environment Act 1987* ("the S. 173 Agreement") affects the land. A copy of the S. 173 Agreement forms Schedule 1.

C. Clause 4 of the S. 173 Agreement, states:-

"4. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that:

4.1 None of the lots created on the Plan of Subdivision of the land (any of such lots to be referred to in this Agreement as "the lot") shall be further subdivided.

4.2 Not more than one dwelling shall be constructed on the lot.

4.3 An area of the land with a minimum width of 10 metres along the Painkalac Creek shall be noted on any Plan of Subdivision of the land as public open space to vest upon registration of any Plan of Subdivision of the land in the Council.

4.4 A building envelope shall be created for the lot as follows:-

(a) A minimum setback of 40 metres from the boundary of the road reserve of the road known as Bambra Road.

(b) A building area of not greater than 500m².

4.5 No building shall be constructed outside the building envelope.

4.6 The wall height of any building shall be a maximum of 3 metres above the natural ground level of the lot.

4.7 The maximum height of any building on the lot shall be 5 metres above the natural ground level of the lot.

4.8 No development shall commence on any of the lots unless the planting shown on the landscape plan endorsed to the permit ("the Endorsed Landscaping Plan") has been established for a period of at least two years prior to the commencement of any development.

4.9 The planting on the endorsed landscape plan shall be maintained to the satisfaction of the Council.

4.10 Save for the establishment of garden beds within a 10 metre radius of any buildings, no planting shall be undertaken on the lot other than in accordance with the endorsed landscaping plan without the written consent of the Council.

4.11 No dogs shall be kept on the lot.

4.12 All storm-water runoff from any building and any hard surfaces on the lot shall be treated to the satisfaction of the Responsible Authority prior to discharge into Painkalac Creek."

D. The Responsible Authority and the Owners agree to the variation of the S.173 Agreement contained on the Title by inserting an additional covenant in Clause 4 of the S.173 Agreement as follows:

"4.13 The ongoing implementation of the Conservation Management Plan endorsed under Permit 9717281 shall be undertaken in accordance with the requirements of the Plan."

A copy of the Conservation Management Plan forms Schedule 2 to this Agreement.

E. In order to give effect to the agreement referred to in Recital D, the parties enter into this agreement which the parties agree constitutes an amendment to the S. 173 Agreement insofar as it affects the land, pursuant to Section 178 of the *Planning and Environment Act 1987* ("the Act").

F. The Responsible Authority is responsible under the Act for the administration and enforcement of the Surfcoast Shire Planning Scheme ("the Planning Scheme") in respect of the land.

Extracts from the combined Landscape and Conservation Management Plan

Botanical Name

Eucalyptus radiata
E. cladocalyx
E. sideroxylon
E. tricarpa
E. viminalis
E. ovata
Acacia melanoxylon
A. verniciflua
Goodenia ovata
Poa labillardieri

Common Name

Narrow Leafed Peppermint
 Sugar Gum
 Red Ironbark
 Red Ironbark
 Manna Gum
 Swamp Gum
 Blackwood
 Varrish Wattle
 Hop Goodenia
 Tussock Grass

PLANNING & ENVIRONMENT ACT 1987

SURF COAST PLANNING SCHEME
 Amended Plan Endorsed
 under Condition 12... of
 Permit 171,129... dated 21.3.1991

Signed
 Date 13/12/02

For and on behalf of the
 Council of the Surf Coast Shire

Sheet No. 3... of 7... sheets



Figure 1.1 The planted vegetation

Initially more than 600 trees and shrubs were planted along the boundaries between the allotments and along Bambra Road. This planting was subsequently approved by a Council Officer and will be maintained as part of the conservation plan.

minimal impact and will be removed after planting has established and the construction work has been completed.

Erection of temporary fencing around perimeter of building envelope and access road needs to be constructed prior to commencement of and building and works.

2.3.2 Permanent fencing of wetlands and remnant vegetation

Permanent fencing shall follow the outer perimeter of any ephemeral wetlands and surround existing remnant vegetation. The proposed layout of permanent fencing is illustrated below.



Figure 2.2 Permanent fencing

PLANNING & ENVIRONMENT ACT 1987

SURF COAST PLANNING SCHEME
 Amended Plan Endorsed
 under Condition 12... of
 Permit 171,129... dated 21.3.1991

Signed
 Date 13/12/02

For and on behalf of the
 Council of the Surf Coast Shire

Sheet No. 6 of 7... sheets

File Audit findings

- Planting occurred prior to the endorsement of the landscape plan. This was accepted by the Council Officer who inspected the site on several occasions.

4/10/1999 – Council letter setting out in detail the requirements for the management plan and again reminding of the need for submission of a landscape plan contains a statement that Mark Harwood reinspected the site and was *..“generally satisfied with planting, save that additional wattles and gums should be planted in the southern area to ensure adequate screening of the building sites from the south. I understand that you will plant an additional 50 plants in this area.”* A further 80 plants were planted.

14/10/1999 – Council letter reminding owner of need for submission and approval of landscape plan and copy of the 4 October letter. (Includes clear reference to 3 October 1999 date as the completed landscape planting date for the commencement of the two year maintenance period.

File Audit findings con't

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22/10/2001 Council letter to ERM with comment on unsatisfactory Management Plan. States amongst other matters Part 1.1 should deal with Landscape Plan and part 2.2 the Conservation Management Plan.

References Council planned aerial photography run in Nov/ Dec will provide accurate base for plan.
Third dot point – *“ It is unnecessary to reference the general approval of the landscaping by myself in the document. Council is not questioning the adequacy of the landscaping. Council has previously documented its general satisfaction with the landscaping in correspondence to Michael Gerner of KLM Gerner Consulting Group in October 1999. The main purpose of the endorsed landscape plan now is to provide a record of the planting for the future reference when the land is subdivided and sold.”*

13/3/2002 Conservation and Management Plan is endorsed (includes under 2.2 - first dot point the statement *“Construction of buildings can commence in October 2001 (under the conditions of the permit, construction must wait two years after the completion of planning)”*). This page is endorsed and signed by Mark Harwood as sheet no 4 of 9.

Cover letter makes reference to the 173 agreement being amended.

Conclusion is that it is clear that the planting occurred on the site and that Mark Harwood was satisfied that this had occurred and was maintained for a period of 2 years.

Site Inspection findings

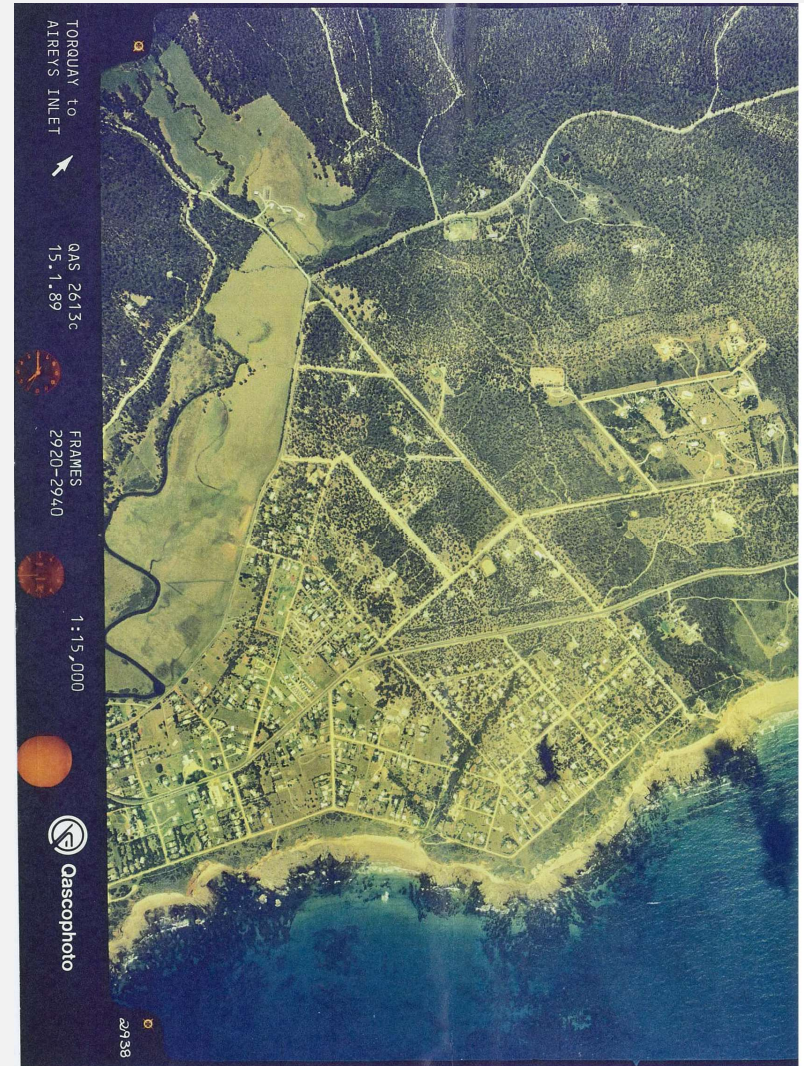
Inspected on 28 November 2017

The landscape plan recorded that over 600 trees and some shrubs had been planted.

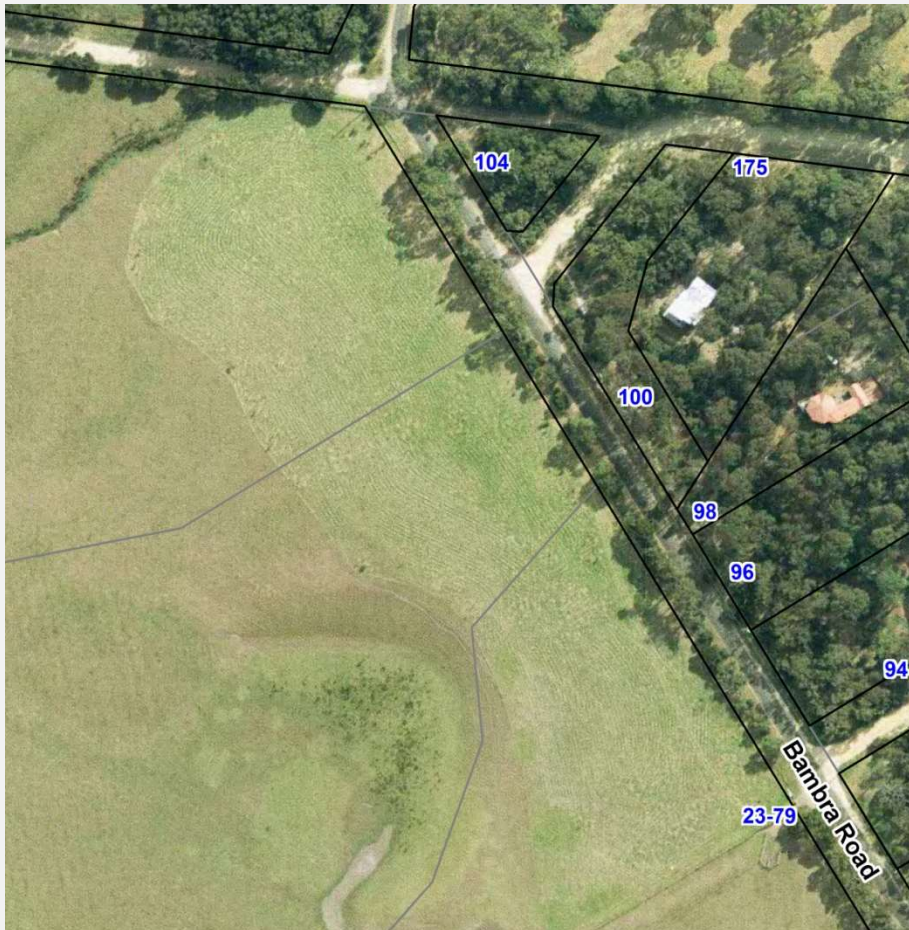
- A physical count of the trees established on the property was undertaken. Many of the trees are now 6 to 8 m high.
 - Lot 1 = 115 trees
 - Lot 2 = 62 trees
 - Lot 3 = 147 trees
 - Bambra Road Reserve = 106 trees
 - A total of 430 trees were able to be identified (some were shrub species and appeared self sown from original stock)
- Substantial amount of the planted vegetation has survived and forms a suitable screen after 18 years.
 - Permanent fencing around the wet land and remnant forest area has not occurred. This has to be completed before the buildings and works commence for the houses. The owner is attending to this.



Aerial Image 1989



Aerial Image 2002



MARCH 2002

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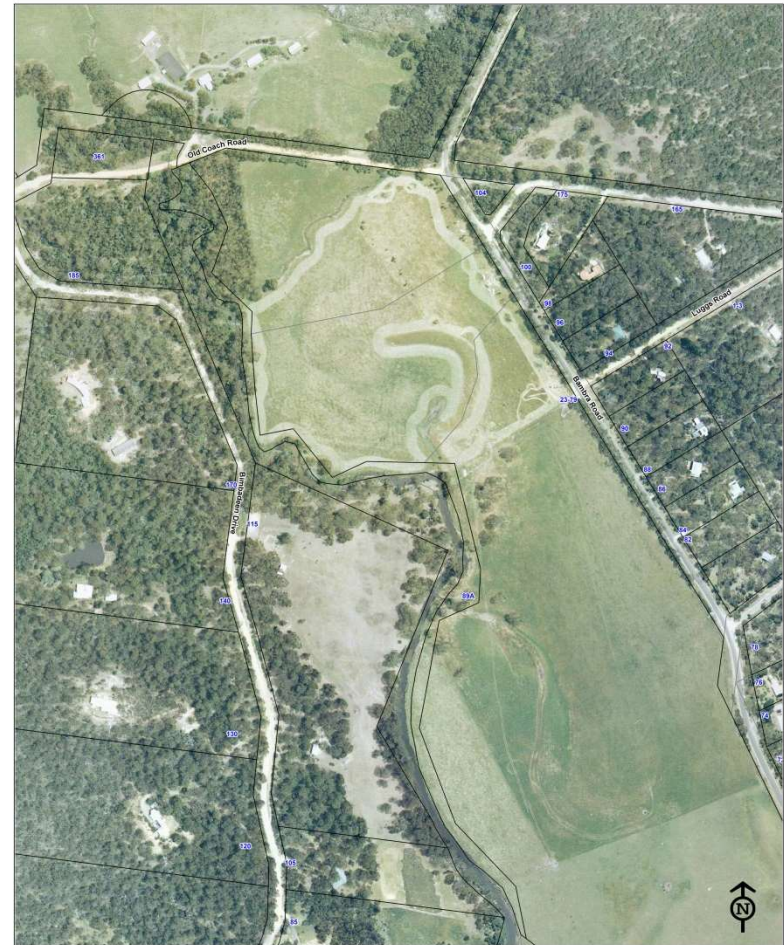
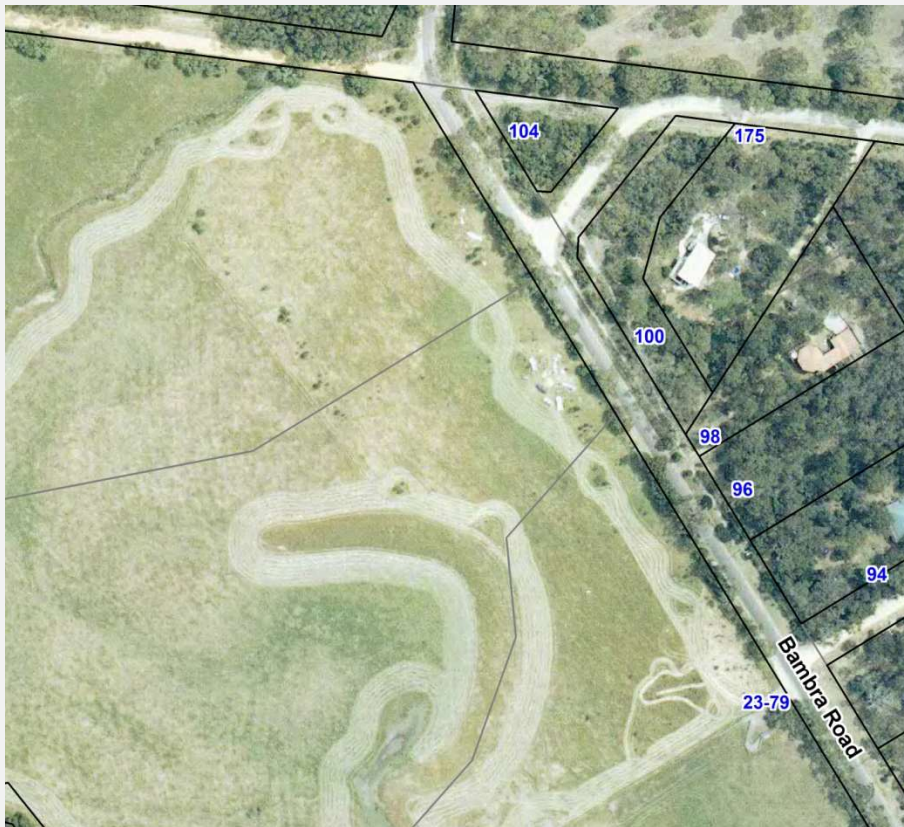
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Aerial Image 2003



DECEMBER 2003

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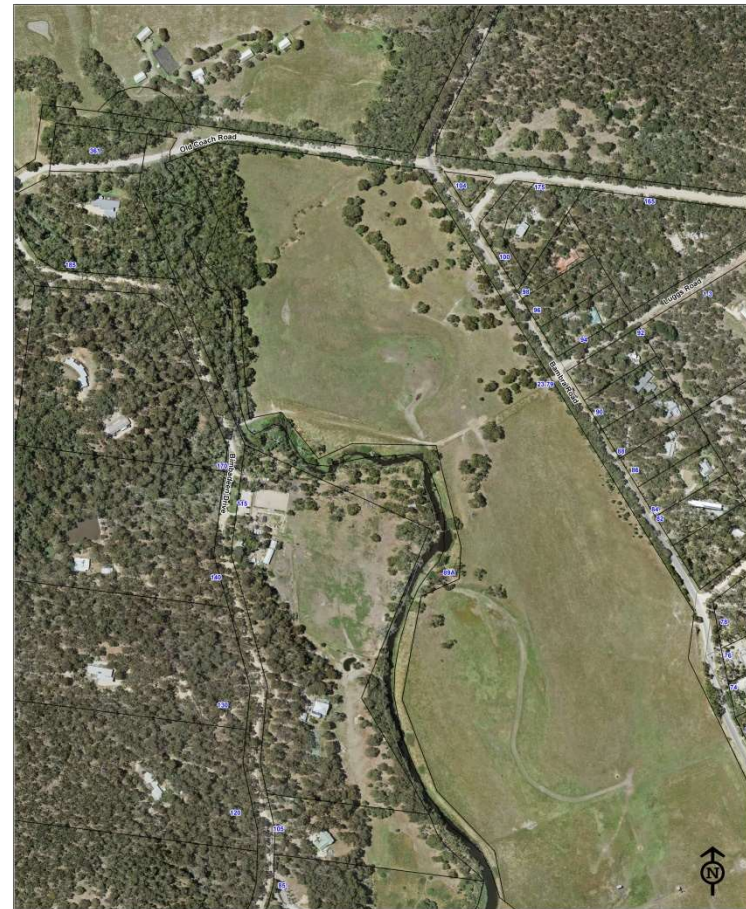
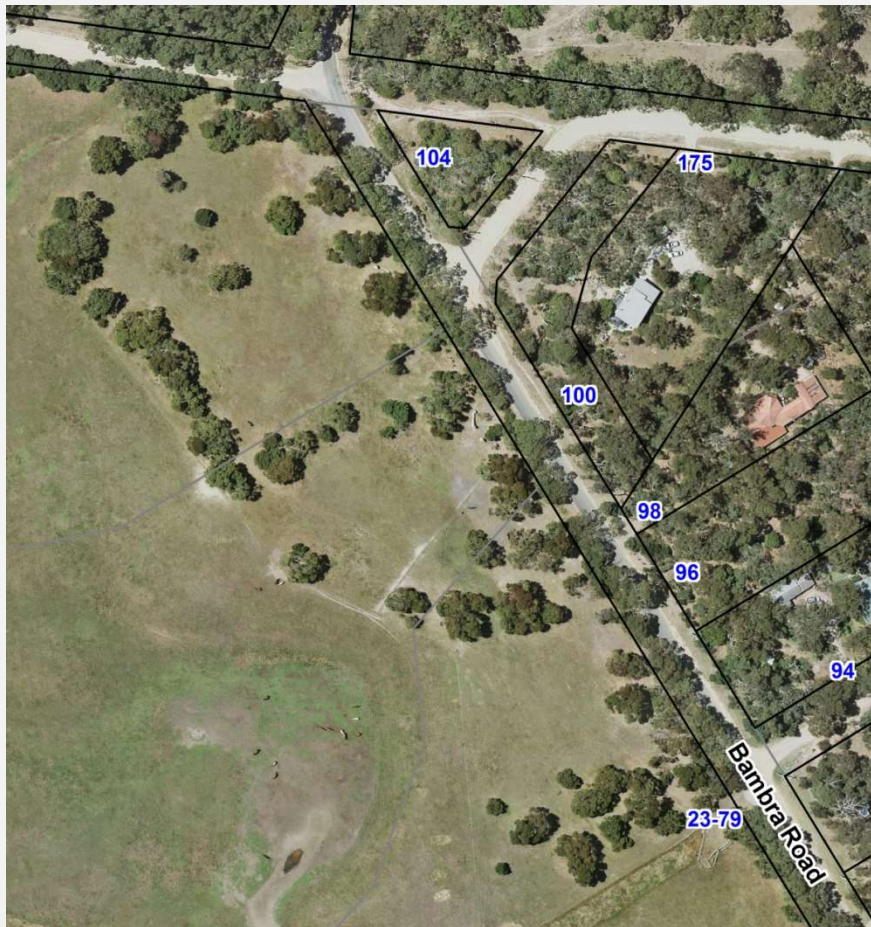
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Aerial Image 2017

Trees have formed merged canopies



JANUARY 2017

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