

Form 2

NOTICE OF AN APPLICATION FOR PLANNING PERMIT

The land affected by the application is located at:	380 Forge Creek Road BAIRNSDALE 3875 Lot: 1 PS: 748264
The application is for a permit to:	Two Lot Subdivision
The applicant for the permit is:	Crowther & Sadler Pty Ltd
The application reference number is:	5.2023.441.1

You may look at the application and any documents that support the application free of charge at: <https://www.eastgippsland.vic.gov.au/building-and-development/advertised-planning-permit-applications>

You may also call 5153 9500 to arrange a time to look at the application and any documents that support the application at the office of the responsible authority, East Gippsland Shire. This can be done during office hours and is free of charge.

Any person who may be affected by the granting of the permit may object or make other submissions to the responsible authority.

An objection must

- ♦ **be made to the Responsible Authority in writing,**
- ♦ **include the reasons for the objection, and**
- ♦ **state how the objector would be affected.**

The responsible authority must make a copy of every objection available at its office for any person to inspect during office hours free of charge until the end of the period during which an application may be made for review of a decision on the application.

The Responsible Authority will not decide on the application before:	Subject to the applicant giving notice
---	---

If you object, the Responsible Authority will tell you its decision.

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

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

VOLUME 12065 FOLIO 988

Security no : 124110156581P
Produced 31/10/2023 09:23 AM

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 748264S.

PARENT TITLES :

Volume 11218 Folio 356 Volume 11529 Folio 779 Volume 11597 Folio 528
Created by instrument PS748264S 15/03/2019

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors

ENCUMBRANCES, CAVEATS AND NOTICES

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
U712902G 08/04/1997

AGREEMENT as to part Section 173 Planning and Environment Act 1987
AF993373B 28/07/2008

AGREEMENT as to part Section 173 Planning and Environment Act 1987
AK992729Y 28/03/2014

AGREEMENT Section 173 Planning and Environment Act 1987
AQ797656L 07/03/2018

DIAGRAM LOCATION

SEE PS748264S FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

Street Address: 380 FORGE CREEK ROAD BAIRNSDALE VIC 3875

DOCUMENT END

Delivered from the LANDATA System by Dye & Durham Terrain Pty Ltd

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

Page 1 of 3

VOLUME 12065 FOLIO 988

Security no : 124107058667M
Produced 22/06/2023 10:54 AM

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 748264S.

PARENT TITLES :

Volume 11218 Folio 356 Volume 11529 Folio 779 Volume 11597 Folio 528
Created by instrument PS748264S 15/03/2019

REGISTERED PROPRIETOR

Estate Fee Simple

Joint Proprietors

PETER JOHANNES DE VOOGD

SHARON LEANNE DE VOOGD both of 320 FORGE CREEK ROAD BAIRNSDALE VIC 3875

PS748264S 15/03/2019

ENCUMBRANCES, CAVEATS AND NOTICES

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
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AQ797656L 07/03/2018

DIAGRAM LOCATION

SEE PS748264S FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

Street Address: 380 FORGE CREEK ROAD BAIRNSDALE VIC 3875

DOCUMENT END



AF993373B

28/07/2008 \$99.90 173



Titles Office Use Only

Lodged by: Wards Barristers & Solicitors Pty Ltd
DX 82203 Bairnsdale
Code: 3556G

**VICTORIA APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for ENTRY OF A MEMORANDUM
OF AGREEMENT under Section 173 of the Act.**

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND

Certificate of Title Volume 10319 Folio 279

ADDRESS OF THE LAND

320 Bairnsdale-Forge Creek Road, Forge Creek 3875

RESPONSIBLE AUTHORITY

East Gippsland Shire Council, 273 Main Street, Bairnsdale 3875

PLANNING SCHEME

East Gippsland Planning Scheme

AGREEMENT DATE

18/07/2008

AGREEMENT WITH

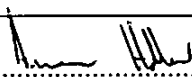
PETER JOHANNES DE VOOGD

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority

Name of Officer

Date



AARON HOLLOW - MANAGER DEVELOPMENT

22/07/2008

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AF993373B



Date 18 / 07 /2008

Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land:

320 Bairnsdale-Forge Creek Road, Forge Creek

East Gippsland Shire Council
and

Peter Johannes De Voogd

AF993373B



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AF993373B



Agreement under Section 173 of the Planning and Environment Act 1987

DATE 18 / 07 /2008

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL
of Corporate Centre, 273 Main Street, Bairnsdale

(Council)

AND

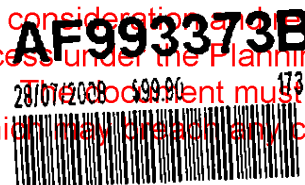
PETER JOHANNES DE VOOGD
of 320 Bairnsdale-Forge Creek Road, Forge Creek

(Owner)

RECITALS

- A. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. On 11th June 2008 Council issued Planning Permit No. 21/2008/P allowing the Subject Land to be subdivided in accordance with a plan to be endorsed under condition 1 of the Planning Permit (the Endorsed Plan). Condition 2 of the Planning Permit requires the Owner to enter into this Agreement to provide for the matters set out in that condition. A copy of the Planning Permit is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.
- D. Condition 2 of the Planning Permit provides that:
- “Before the issue of a Statement of Compliance, the owner of the land must enter into an agreement with the responsible authority in accordance with Section 173 of the Planning & Environment Act 1987, which will covenant that, the land may not be further subdivided so as to create a smaller lot for an existing dwelling.
- The agreement will bind the applicant as the owner and shall run with the land so that all successors in title are bound by the agreement. This agreement will be prepared by the applicant, at the applicants cost and to the satisfaction of the responsible authority, and shall be registered on the title in accordance with Section 181 of the Planning and Environment Act 1987.”
- E. As at the date of this Agreement, the Subject Land is not encumbered by a Mortgage.
- F. The parties enter into this Agreement:
- F.1 to give effect to the requirements of the Planning Permit; and
- F.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

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THE PARTIES AGREE

1. DEFINITIONS

In this Agreement the words and expressions set out in this clause have the following meanings unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit. A copy of the Endorsed Plan is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

lot means a lot on the Endorsed Plan.

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 Subject Land or any part of it.

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

party or parties means the Owner and Council under this Agreement as appropriate.

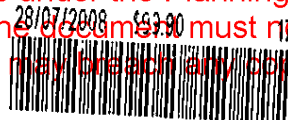
Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Subject Land means the land situated at 320 Bairnsdale-Forge Creek Road, Forge Creek being the land referred to in Certificate of Title Volume 10319 Folio 279 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

2. INTERPRETATION

In this Agreement unless the context admits otherwise:

- 2.1 The singular includes the plural and vice versa.
- 2.2 A reference to a gender includes a reference to each other gender.
- 2.3 A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- 2.4 If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5 A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.



- 2.6 A reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.7 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner agrees that once the subdivision authorised by the Planning Permit is registered, the Subject Land may not be further subdivided in any way so as to create an additional lot.

4. FURTHER OBLIGATIONS OF THE OWNER

4.1 *Notice and Registration*

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

4.2 *Further actions*

The Owner further covenants and agrees that:

- 4.2.1 the Owner will do all things necessary to give effect to this Agreement;
- 4.2.2 the Owner will make application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to this to be done including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section.

4.3 *Council's Costs to be Paid*

The Owner further covenants and agrees that the Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.



5. AGREEMENT UNDER SECTION 173 OF THE ACT

Council and the Owner agree that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed pursuant to the Planning Permit.

6. OWNER'S WARRANTIES

Without limiting the operation or effect which this Agreement has, the Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

- 7.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 7.2 execute a deed agreeing to be bound by the terms of this Agreement.

8. GENERAL MATTERS

8.1 *Notices*

A notice or other communication required or permitted to be served by a party on another party must be in writing and may be served:

- 8.1.1 by delivering it personally to that party;
- 8.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 8.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

8.2 *Service of Notice*

A notice or other communication is deemed served:

- 8.2.1 if delivered, on the next following business day;
- 8.2.2 if posted, on the expiration of 7 business days after the date of posting; or



8.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

8.3 *No Waiver*

Any time or other indulgence granted by Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

8.4 *Severability*

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

8.5 *No Fettering of Council's Powers*

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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 Subject Land or relating to any use or development of the Subject Land.

9. COMMENCEMENT OF AGREEMENT

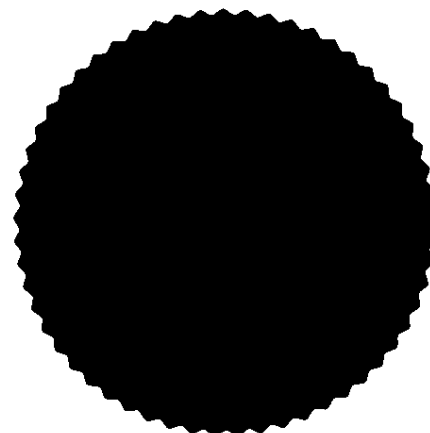
Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

SIGNED, SEALED AND DELIVERED as a Deed by the parties on the date set out at the commencement of this Agreement.

The Common Seal of the East Gippsland Shire Council was hereunto affixed on the 18th day of JULY 2008, in the presence of:

.....  **ACTING** Chief Executive

.....  Witness



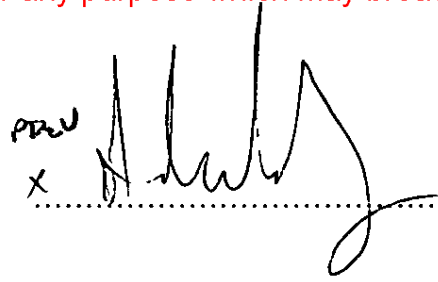
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SIGNED, SEALED AND DELIVERED
by the said **PETER JOHANNES DE VOOGD**
in the presence of:

Witness. 

]]]


x

AF993373B

28/07/2008 \$99.90 173



Ref: AJR/HMDEVOOGDSECT173

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PLAN OF SUBDIVISION

EDITION 1

PS 748264S

LOCATION OF LAND

PARISH: BAIRNSDALE

TOWNSHIP: _____

SECTION: _____

CROWN ALLOTMENT: 74F, 187A, 187B, 188 AND PARTS OF 82B, 82C, 190, 74E & G

CROWN PORTION: _____

TITLE REFERENCE: VOL 11529 FOL 779
VOL 11218 FOL 356
VOL 11597 FOL 528

LAST PLAN REFERENCE: LOT 2 - PS636924A
LOT 2 - PS721702V
LOT 3 - PS734389Y

POSTAL ADDRESS: 410 FORGE CREEK ROAD,
(at time of subdivision) BAIRNSDALE, 3875

MGA CO-ORDINATES: E: 552 120 ZONE: 55
(of approx centre of land in plan) N: 5809 120 GDA 94

Council Name: East Gippsland Shire Council

Council Reference Number: PS748264S
Planning Permit Reference: 137/2015/P
SPEAR Reference Number: S085013M

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: Aaron David Hollow for East Gippsland Shire Council on 17/08/2016

Statement Of Compliance issued: 23/03/2018

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER	COUNCIL/BODY/PERSON
NIL	NIL

NOTATIONS

THE DIMENSIONS OF LOT 1 ARE NOT THE RESULT OF THIS SURVEY.
THE AREA OF LOT 1 IS BY DEDUCTION FROM TITLE.

NOTATIONS

DEPTH LIMITATION 15 METRES BELOW THE SURFACE APPLIES TO CROWN ALLOTMENT 187B ONLY

SURVEY:

This plan is based on survey.

STAGING:

This is not a staged subdivision.
Planning Permit No. 137/2015/P

This survey has been connected to permanent marks No(s). 367

In Proclaimed Survey Area No.

EASEMENT INFORMATION

LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	TRANSMISSION OF ELECTRICITY	10.06	INST No 1821649	S.E.C.V.
E-2, E-4	WATER SUPPLY	3	INST AD859361C	EAST GIPPSLAND REGION WATER AUTHORITY
E-3, E-4	POWERLINE	SEE DIAG	PS622378E - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	SPI ELECTRICITY PTY LTD

Crowthor & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
162 MACLEOD STREET, BAIRNSDALE, VIC., 3875
P. (03) 6162 6011 E. contact@crowthor&sadler.com.au

SURVEYORS FILE REF: 16436

Digitally signed by: Paul Anthony Dwyer (Crowthor & Sadler - Crowthor & Sadler),
Surveyor's Plan Version (1),
10/05/2016, SPEAR Ref: S085013M

ORIGINAL SHEET
SIZE: A3

SHEET 1 OF 1 SHEETS

PLAN REGISTERED

TIME: 8.17 DATE: 15/03/2016

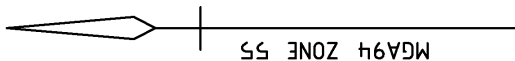
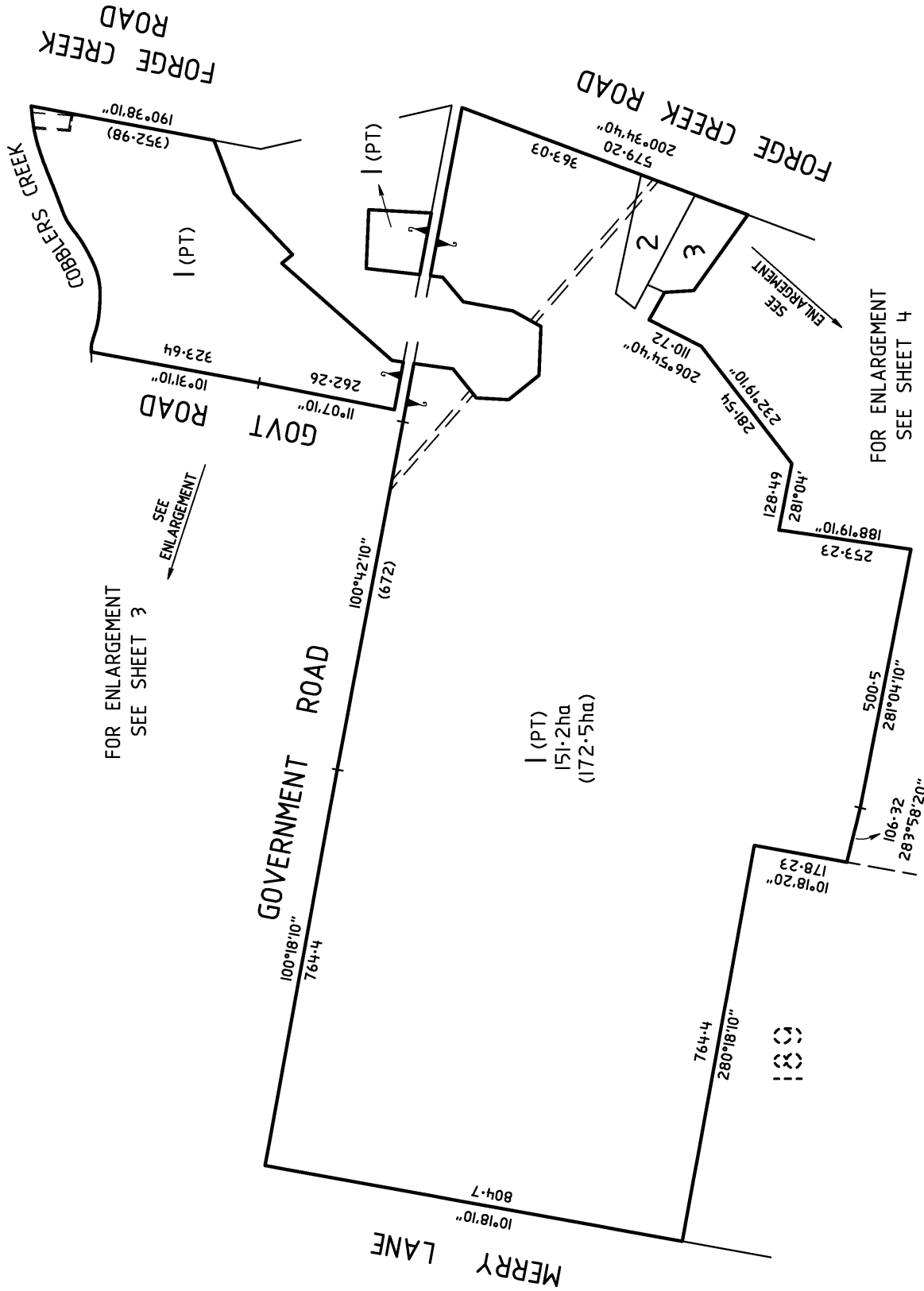
Ian R Mcleod
Assistant Registrar of Titles

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PS 748264S



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Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
115/117 CLEOD STREET, BAIRNSDALE, VIC., 3875
039 512 8011 E. contact@crowthersadler.com.au

SURVEYORS REF
16436

SCALE
1:8000

LENGTHS ARE IN METRES
80 0 80 160 240 320

ORIGINAL SHEET
SIZE: A3

SHEET 2

Digitally signed by:
- Crowther & Sadler,
Surveyor's Plan Version (1),
10/05/2016, SPEAR Ref: S085013M

Digitally signed by:
East Gippsland Shire Council,
17/08/2016,
SPEAR Ref: S085013M

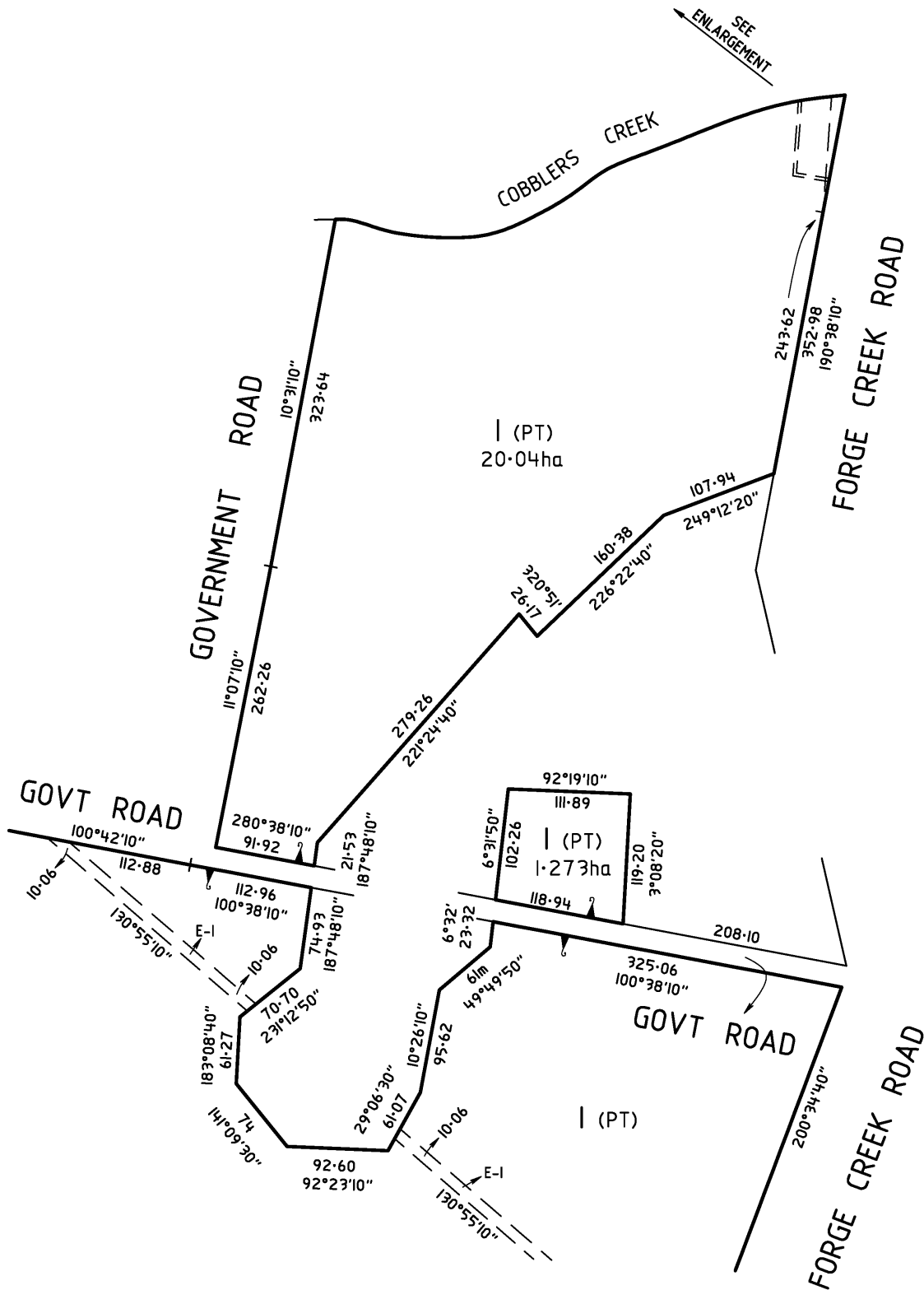
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PS 748264S

FOR ENLARGEMENT
SEE SHEET 4

SEE
ENLARGEMENT

MGA94 ZONE 55



Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
162 MACLEOD STREET, BAIRNSDALE, VIC., 3875
P. (03) 5162 6011 E. contact@crowthersadler.com.au

SURVEYORS REF
16436

SCALE
1:4000

40 0 40 80 120 160
LENGTHS ARE IN METRES

ORIGINAL SHEET
3

SHEET 3

Digitally signed by: Paul Anthony Dwyer (Crowther & Sadler - Crowther & Sadler),
Surveyor's Plan Version (1),
10/05/2016, SPEAR Ref: S085013M

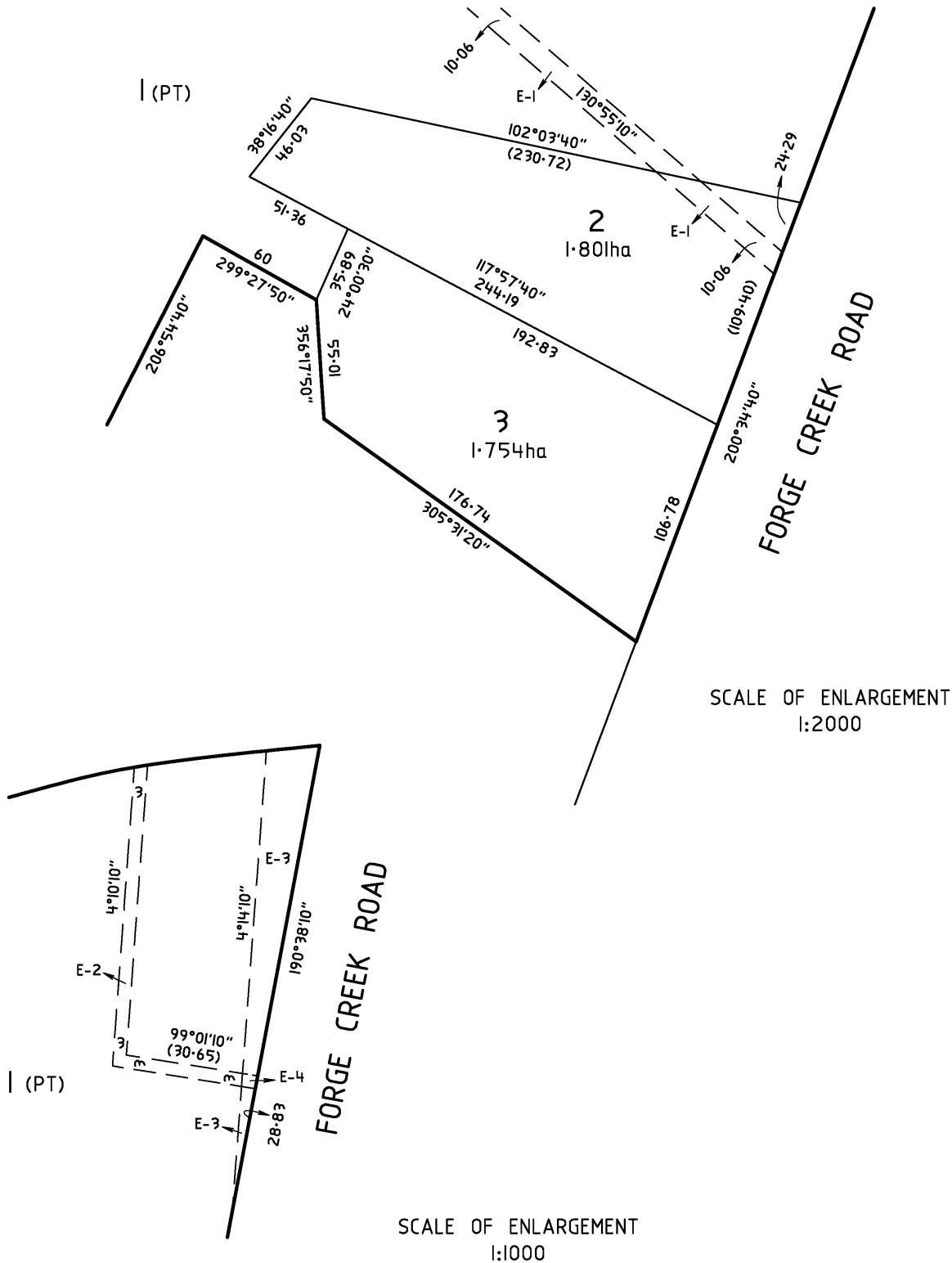
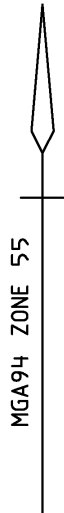
Digitally signed by:
East Gippsland Shire Council,
17/08/2016,
SPEAR Ref: S085013M

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PS 748264S



BY LETTER

\$63



PLANNING AND ENVIRONMENT REGULATIONS 1988

U712902G

080497 2018 173 \$63



Form 9.1

Lodged by ENGEL & PARTNERS PTY

Code 0392C

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VICTORIA

APPLICATION BY A RESPONSIBLE
AUTHORITY under Section 181
Planning and Environment Act 1987
for ENTRY OF A MEMORANDUM OF
AGREEMENT under Section 173 of the
Act.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

Now = V10332 F094 of 26/6/97.
LAND Lot 3 on Plan of Subdivision Number 403365M and being the land comprised in Certificate of Title volume 10319 folio 278

PART OF

10332/094

ADDRESS OF THE LAND Forge Creek Road Bairnsdale VIC 3875

RESPONSIBLE AUTHORITY East Gippsland Shire Council

30/6/97

PLANNING SCHEME Bairnsdale (Shire) Planning Scheme

patent error

AGREEMENT DATE

21-3-97

AGREEMENT WITH

DAISY MAY BALLANTYNE of 19 Newlands Drive
Paynesville VIC 3880

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority.....

Name of Officer... Graeme Pearce, Chief Executive

Date... 21.3.97

25 JUN 1997

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THIS AGREEMENT is made this 21 day of March 1998

BETWEEN: EAST GIPPSLAND SHIRE COUNCIL (the Council) of 55 Palmers Road Lakes Entrance in the State of Victoria of the first part and DAISY MAY BALLANTYNE of 19 Newlands Drive Paynesville in the said State (the owner) of the second part and ANZ BANKING GROUP LTD of Main Street as Mortgagee of the third part.

WHEREAS:-

- A. The Owner has made application to the Council as the Responsible Authority under the Bairnsdale (Shire) Planning Scheme (the Scheme) for a permit to subdivide the subject land and other land into three Lots.
- B. The Council has granted Planning Permit No.96/00358/PS dated the 20th September, 1996 (the permit) for the subdivision of the subject land for the above purpose subject to conditions including a condition as follows:-

" (3) The applicant must enter into an agreement under Section 173 of the Planning and Environment Act with the responsible authority to provide the following:

(a) The density of small lots shall not exceed two lots per 100 hectares."

- C. The Council and the Owner have agreed that without restricting or limiting their respective powers to enter into this Agreement and insofar as it can be so treated this Agreement shall be treated as being an agreement under Section 173(1) of the Planning and Environment Act 1987.

NOW THIS AGREEMENT WITNESSETH as follows:-

- 1. In this Agreement unless inconsistent with the context or

U712902G

080497 2018 173 \$63



subject matter:-

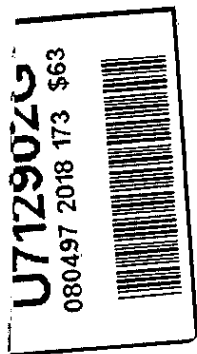
"Owners" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the subject land; "subdivision" includes:-

- (i) The dividing of land into two or more parts -
 - (a) by sale, conveyance, transfer or partition; or
 - (b) by procuring the issue of a Certificate of Title under the Transfer of Land Act 1958 in respect of a part of the land;
- (ii) The subdivision of land by sale, transfer or partition into two or more lots and common property.
- (iii) The subdivision of land by sale, transfer or partition into two or more units or into two or more units and common property whether or not any unit is on the same level as any other unit; and "subdivided" has a corresponding interpretation.

2. The Owner with the intent that his covenant hereunder shall run with the land hereby covenants and agrees that they (which term shall include the Owner or Owners of the subject land or any part thereof from time to time) will-

- (a) Comply with the conditions of the Permit;
- (b) Not cause, allow or permit the subject land to be further subdivided under the provisions of the Subdivision Act 1988 so that the density of small Lots shall not exceed two Lots per 100 hectares.

3. The Owner agree to do all things necessary to enable the Council to enter a memorandum of this Agreement on the Certificate of Title to the subject land in accordance with Section 181 of the Act including signing any further



agreement acknowledgement or document to enable the said memorandum to be registered under that Section.

4. The Owner covenants and agrees to pay the Council's costs and incidental to the preparation and execution of this Agreement and the registration of a Memorandum of Agreement at the Office of Titles pursuant to Section 181 of the Act and any duties or fees payable in connection with either the Agreement or the registration of the Memorandum at the Office of Titles.
5. This Agreement will end pursuant to Section 177 of the Act by agreement between the Responsible Authority and all persons who are bound by the Covenant in this Agreement or upon amendment to the Scheme which allows further subdivision of the said land.

IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

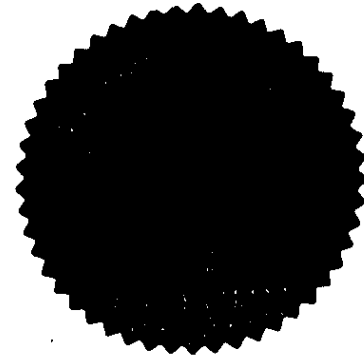
THE COMMON SEAL of THE EAST GIPPSLAND
SHIRE COUNCIL was affixed on the 21ST
 day of March 1997 in the
 presence of.

.....Chief Executive

.....

SIGNED by the said DAISY MAY BALLANTYNE
 in Victoria in the presence of:

.....



D. M. Ballantyne



Printed 17/01/2024
Page 21 of 63

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EAST GIPPSLAND SHIRE COUNCIL

AND

D M BALLANTYNE

=====
SECTION 173 AGREEMENT
=====

MESSRS ENGEL & PARTNERS PTY
Solicitors
109 Main Street
BAIRNSDALE 3875
Tel: (051) 52 6177
Ref:
PE.LEIGH\DOC\BALLANTYNE.173

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28/03/2014 \$113 173



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VICTORIA APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for **ENTRY OF A MEMORANDUM**
OF AGREEMENT under Section 173 of the Act.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND

Certificate of Title Volume 11218 Folio 355

ADDRESS OF THE LAND

410 Forge Creek Road, Bairnsdale, Vic 3875

RESPONSIBLE AUTHORITY

East Gippsland Shire Council, 273 Main Street, Bairnsdale, Vic 3875

PLANNING SCHEME

East Gippsland Planning Scheme

AGREEMENT DATE

20/03/2014

AGREEMENT WITH

Peter Johannes de Voogd &
Sharon Leanne de Voogd

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority

Name of Officer

Date

[Signature]
Daron Holloway, Manager
Development
24/03/2014

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AK992729Y



Date 20 103, 2014

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land:

410 Forge Creek Road, Bairnsdale, Victoria 3875

East Gippsland Shire Council
and

Peter Johannes de Voogd and
Sharon Leanne de Voogd

AK992729Y



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Agreement under section 173 of the Planning and Environment Act 1987

Dated 20 / 03 / 2014

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria, 3875
Short name	Council

Name	Peter Johannes de Voogd and Sharon Leanne de Voogd
Address	320 Forge Creek Road, Bairnsdale, Victoria, 3875
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in condition 2 of the Planning Permit.
- D. As at the date of this Agreement, the Subject Land is not encumbered by a mortgage.
- E. The Parties enter into this Agreement:
 - E.1 to give effect to the Planning Permit; and
 - E.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement.



Lot has the same meaning as in the Planning Scheme.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land or any part of it and includes a mortgagee-in-possession.

Party or Parties means the Parties to this Agreement.

Planning Permit means planning permit No.306/2013/P, as amended from time to time, issued on 7 November 2013, authorising the subdivision of the Subject Land in accordance with the endorsed plan.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Subject Land means the land situated at 410 Forge Creek Road, Bairnsdale being the land referred to in Certificate of Title Volume 11218 Folio 355 and any reference to the Subject Land includes any Lot created by the subdivision of the Subject Land or any part of it.

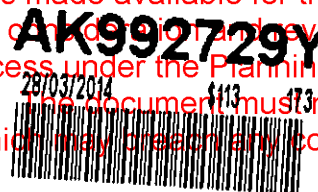
2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;
- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Owner's specific obligations

Notwithstanding anything in the Planning Scheme, the Owner must not subdivide the Subject Land in a way that creates an additional Lot except in accordance with the Planning Permit.



4. Owner's acknowledgments

The Owner acknowledges that the further subdivision of the Subject Land in a way that creates an additional Lot except in accordance with the Planning Permit is prohibited.

5. Owner's further obligations

5.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

5.2 Further actions

The Owner:

5.2.1 must do all things necessary to give effect to this Agreement;

5.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the Certificate of Title of the Subject Land in accordance with section 181 of the Act and do all things necessary to enable Council to do so, including:

- (a) sign any further agreement, acknowledgment or document; and
- (b) obtain all necessary consents to enable the recording to be made.

5.3 Council's costs to be paid

Prior to this Agreement being recorded on the Certificate of Title of the Subject Land, the Owner must pay to Council, Council's costs and expenses (including legal expenses) of preparing, drafting, finalising, signing, recording and enforcing this Agreement.

6. Agreement under section 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a deed in accordance with section 173 of the Act.

7. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

8. Successors in title

Until such time as a memorandum of this Agreement is recorded on the Certificate of Title of the Subject Land, the Owner must require successors in title to:

8.1 give effect to this Agreement; and

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8.2 enter into a deed agreeing to be bound by the terms of this Agreement.

9. General matters

9.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 9.1.1 personally on the person;
- 9.1.2 by leaving it at the person's current address for service;
- 9.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 9.1.4 by facsimile to the person's current number for service; or
- 9.1.5 by email to the person's current email address for service.

9.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

9.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

9.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

9.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

9.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

10. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date the Planning Permit was issued.

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11. Ending of Agreement

- 11.1 This Agreement ends when the Owner has complied with all of the Owner's obligations under this Agreement.
- 11.2 After the Agreement has ended, Council will, at the Owner's written request and at the Owner's cost, apply to the Registrar of Titles under section 183(1) of the Act to cancel the record of this Agreement.

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Signing Page

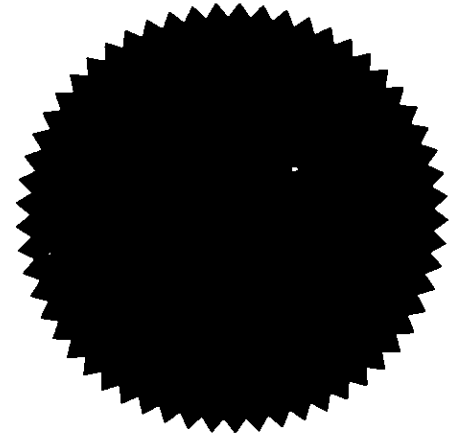
Signed, sealed and delivered as a deed by the Parties.

The Common Seal of the East Gippsland
Shire Council was hereunto affixed on
the 20th day of March, in the
presence of: 2014

Colleen Smith

Chief Executive

Witness



Signed Sealed and Delivered by PETER
JOHANNES DE VOOGD in the presence of:

Wayne Haywood

Witness

)

Signed Sealed and Delivered by SHARON
LEANNE DE VOOGD in the presence of:

Wayne Haywood

Witness

)

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Code: 3556G

VICTORIA APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for **ENTRY OF A MEMORANDUM**
OF AGREEMENT under Section 173 of the Act.

The Responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires that a memorandum of the Agreement be entered on the Certificate(s) of Title to the land referred to.

LAND

Certificates of Title Volume 11597 Folio 528, Volume 11529 Folio 779, Volume 11218 Folio 356

ADDRESS OF THE LAND

410 Forge Creek Road, Bairnsdale, Vic 3875

RESPONSIBLE AUTHORITY

East Gippsland Shire Council, 273 Main Street, Bairnsdale, Vic 3875

PLANNING SCHEME

East Gippsland

AGREEMENT DATE

AGREEMENT WITH

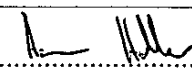
Peter Johannes de Voogd and
Sharon Leanne de Voogd

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority

Name of Officer

Date


Aaron Hollow
10/06/2016

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Date 09/10/2016

Agreement under section 173 of the Planning and Environment Act 1987

Subject Land: 410 Forge Creek Road, Bairnsdale, Vic 3875

East Gippsland Shire Council
and

Peter Johannes de Voogd
and

Sharon Leanne de Voogd

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Agreement under section 173 of the Planning and Environment Act 1987

Dated 09 / 06 / 2016

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council

Name	Peter Johannes de Voogd
Address	320 Forge Creek road, Bairnsdale, Victoria
Short name	Owner

Name	Sharon Leanne de Voogd
Address	320 Forge Creek road, Bairnsdale, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. As at the date of this Agreement, the Subject Land is not encumbered by a Mortgage.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the *Planning and Environment Act 1987*.

Agreement means this Agreement and includes this Agreement as amended from time to time.



Current Address means:

- (a) for Council, the address shown on page one of this Agreement, or any other address listed on Council's website; and
- (b) for the Owner, the address shown on page one of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

Current Email means:

- (a) for Council, feedback@egipps.vic.gov.au, or any other email address listed on Council's website; and
- (b) for the Owner, any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement.

Lot has the same meaning as in the Planning Scheme.

Owner means the person registered or entitled from time to time to be registered as proprietor of an estate in fee simple of the Subject Land and includes a mortgagee-in-possession.

Owner's obligations includes the Owner's specific obligations and the Owner's further obligations.

Party or Parties means the Parties to this Agreement but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit no. 137/2015/P as amended from time to time, issued on 23 February 2016, authorising the subdivision of the Subject Land in accordance with plans endorsed by Council.

Planning Scheme means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

Subject Land means the land situated at 410 Forge Creek Road, Bairnsdale being the land referred to in certificates of title Volume 11597 Folio 528, Volume 11529 Folio 779 and Volume 11218 Folio 356 and any reference to the Subject Land includes any Lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

- 2.1 the singular includes the plural and vice versa;
- 2.2 a reference to a gender includes all genders;
- 2.3 a reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law;
- 2.4 any agreement, representation, warranty or indemnity by 2 or more persons (including where 2 or more persons are included in the same defined term) binds them jointly and severally;

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07/03/2018 09:46:17



- 2.5 a term used has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act, it has the meaning as defined in the Act;
- 2.6 a reference to an Act, regulation or the Planning Scheme includes any Act, regulation or amendment amending, consolidating or replacing the Act, regulation or Planning Scheme;
- 2.7 the Background forms part of this Agreement;
- 2.8 the Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land; and
- 2.9 any reference to a clause, page, condition, attachment or term is a reference to a clause, page, condition, attachment or term of this Agreement.

3. Purposes of Agreement

The Parties acknowledge and agree that the purposes of this Agreement are to:

- 3.1 give effect to the Planning Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

4. Reasons for Agreement

The Parties acknowledge and agree that Council has entered into this Agreement for the following reasons:

- 4.1 Council would not have issued the Planning Permit without the condition requiring this Agreement; and
- 4.2 the Owner has elected to enter into this Agreement in order to take the benefit of the Planning Permit.

5. Agreement required

The Parties agree that this Agreement will continue to be required unless Council confirms in writing that it is no longer required.

6. Owner's specific obligations

Notwithstanding anything in the Planning Scheme, the Owner must not subdivide the Subject Land in a way that creates an additional Lot.

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7. Owner's further obligations

7.1 Notice and registration

The Owner must bring this Agreement to the attention of all prospective occupiers, purchasers, lessees, licensees mortgagees, chargees, transferees and assigns.

7.2 Further actions

The Owner:

- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with section 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
 - (a) sign any further agreement, acknowledgment or document; and
 - (b) obtain all necessary consents to enable the recording to be made.

7.3 Council's costs to be paid

The Owner must pay to Council, within 14 days after a written request for payment, Council's costs and expenses (including legal expenses) relating to this Agreement, including:

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement; and
- 7.3.3 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

7.4 Interest for overdue money

- 7.4.1 The Owner must pay to Council interest in accordance with section 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date.
- 7.4.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

8. Agreement under section 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with section 173 of the Act.



9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

11. General matters

11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;
- 11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or
- 11.1.4 by email to the other Party's Current Email.

11.2 No waiver

Any time or other indulgence granted by Council to the Owner or any variation of this Agreement or any judgment or order obtained by Council against the Owner does not amount to a waiver of any of Council's rights or remedies under this Agreement.

11.3 Severability

If a court, arbitrator, tribunal or other competent authority determines that any part of this Agreement is unenforceable, illegal or void then that part is severed with the other provisions of this Agreement remaining operative.

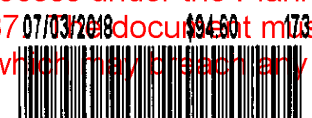
11.4 No fettering of Council's powers

This Agreement does not fetter or restrict Council's power or discretion to make decisions or impose requirements or conditions in connection with the grant of planning approvals or certification of plans subdividing the Subject Land or relating to use or development of the Subject Land.

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11.5 Inspection of documents

A copy of any planning permit, document or plan referred to in this Agreement is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

11.6 Governing law

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.

12. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

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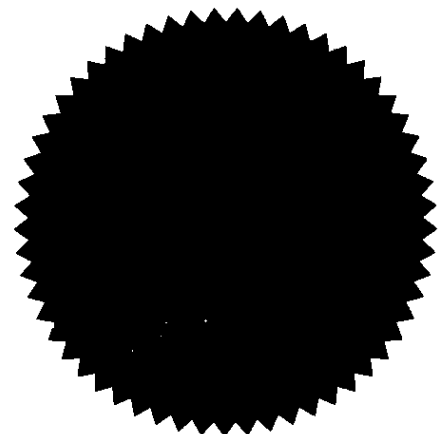
AQ797656L



Signing Page

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

The Common Seal of the East Gippsland
Shire Council was hereunto affixed on
the day of , in the
presence of:



Bay Giff
.....
Colleen Giff 09/06/16
.....

Chief Executive

Witness

Signed Sealed and Delivered by Peter
Johannes de Voogd in the presence of:

P. de Voogd
.....
Witness

}x *Aduly*
.....

Signed Sealed and Delivered by Sharon
Leanne de Voogd in the presence of:

P. de Voogd
.....
Witness

}x *S de Voogd*
.....

Planning Report

Two Lot Subdivision
380 Forge Creek Road, Bairnsdale

Our reference – 20539

31 October 2023



FS 520900



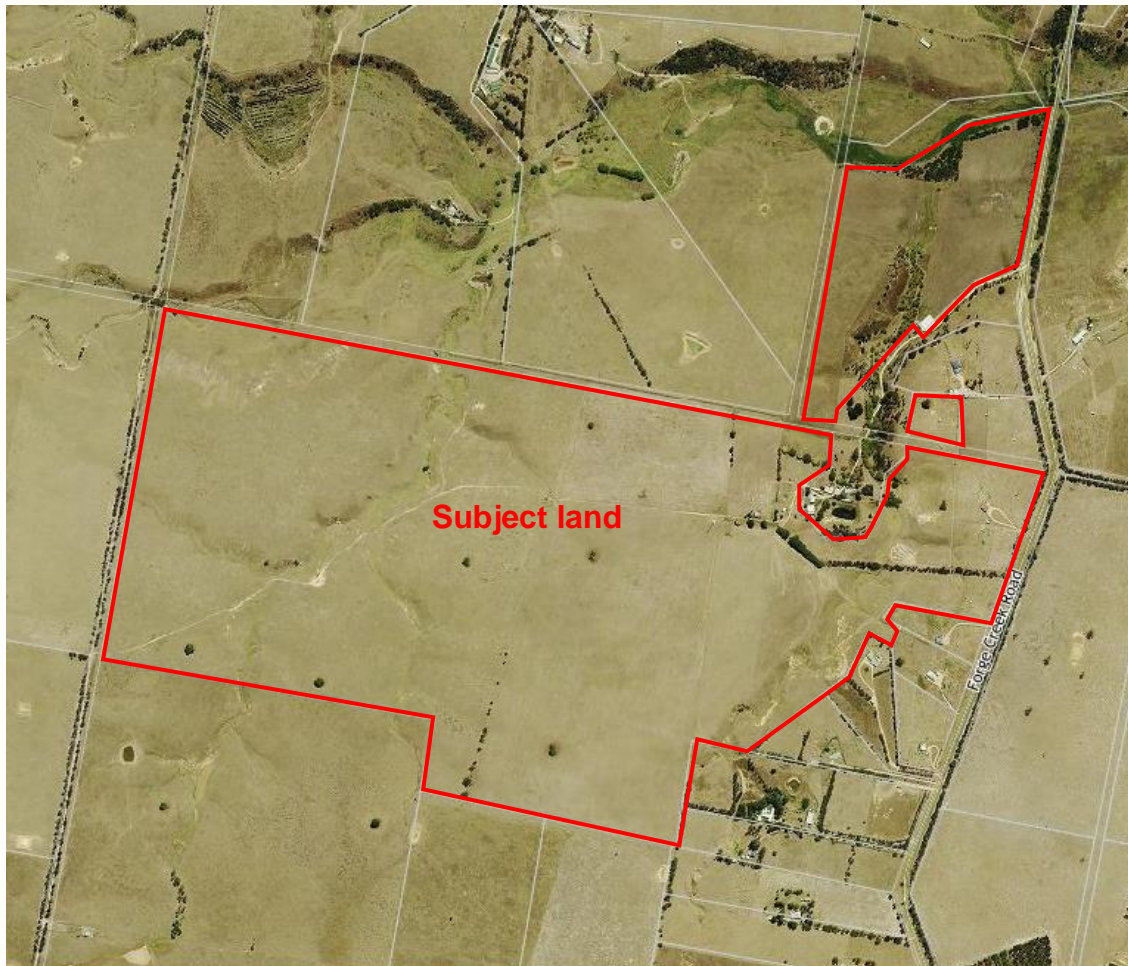
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	Copy of Title (Lot 1 on PS 748264S)	

Note: Applicable Planning Application fee is \$1,415.10

1. Introduction

This Planning Report is prepared in support of a proposed two lot subdivision at 380 Forge Creek Road, Bairnsdale. The Report addresses the provisions of the Farming 1 Zone, Erosion Management Overlay and Environmental Significance Overlay as contained within the East Gippsland Planning Scheme.



Aerial image of the subject land and surrounds

2. Subject Land & Surrounding Context

Lot 1 on PS 748264S or more commonly known as 380 Forge Creek Road, Bairnsdale, is a large 172.54 hectare grazing property developed with a dwelling close to Forge Creek Road.

Planning Permit 5.2020.150.1 was granted recently to construct a shed on the land, close to the Forge Creek Road frontage. The recently constructed shed is being used for the purposes of primary produce sales.

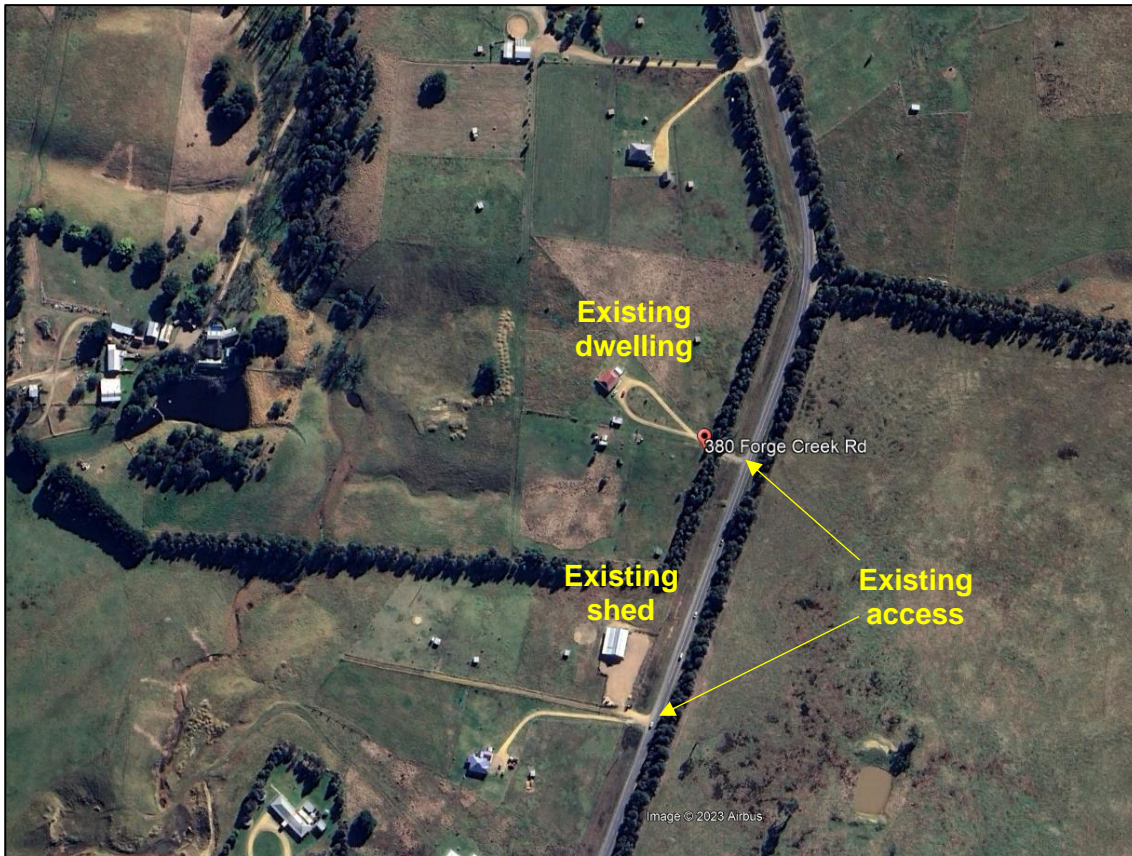


Approved shed location

Two points of access are established from Forge Creek Road, constructed to contemporary standards including indented gates and sealed apron.

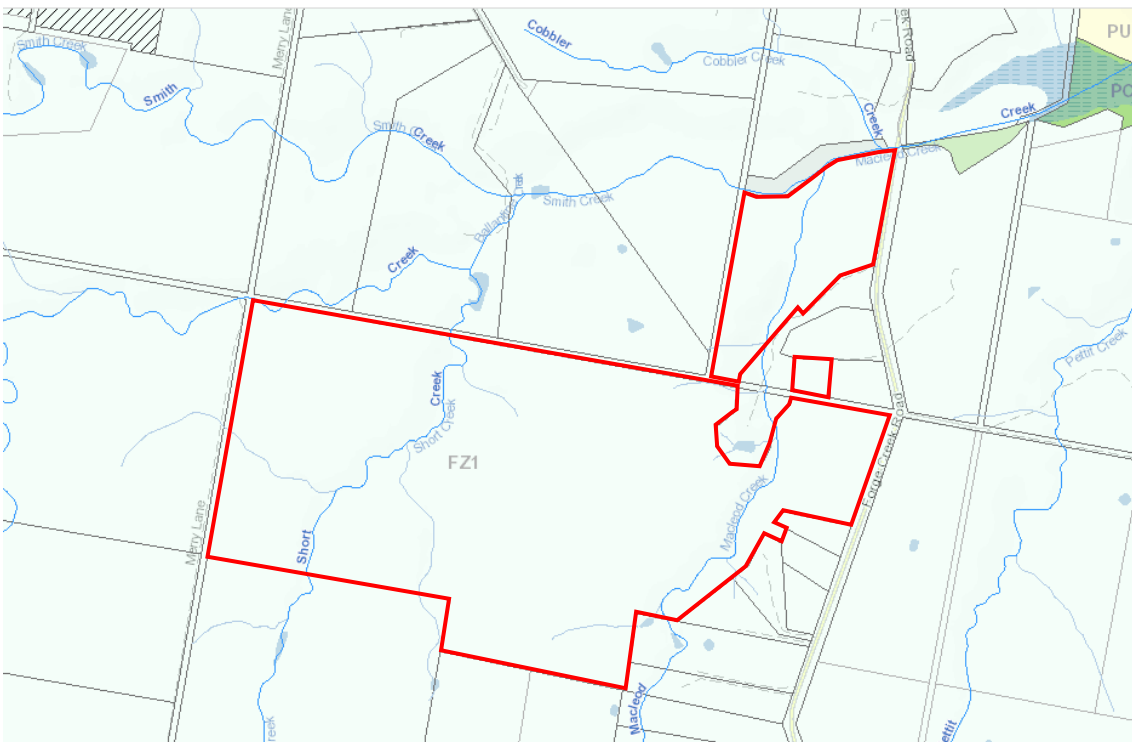


Existing dwelling access viewed from Forge Creek Road



Aerial photograph of existing dwelling (Source: Google Earth)

The land contains a number of waterways running through the property from south to north. The land is also developed with boundary and paddock fencing, contains stock dams, agricultural outbuildings and shelter belts.



Designated waterway mapping (Source: VicPlan)

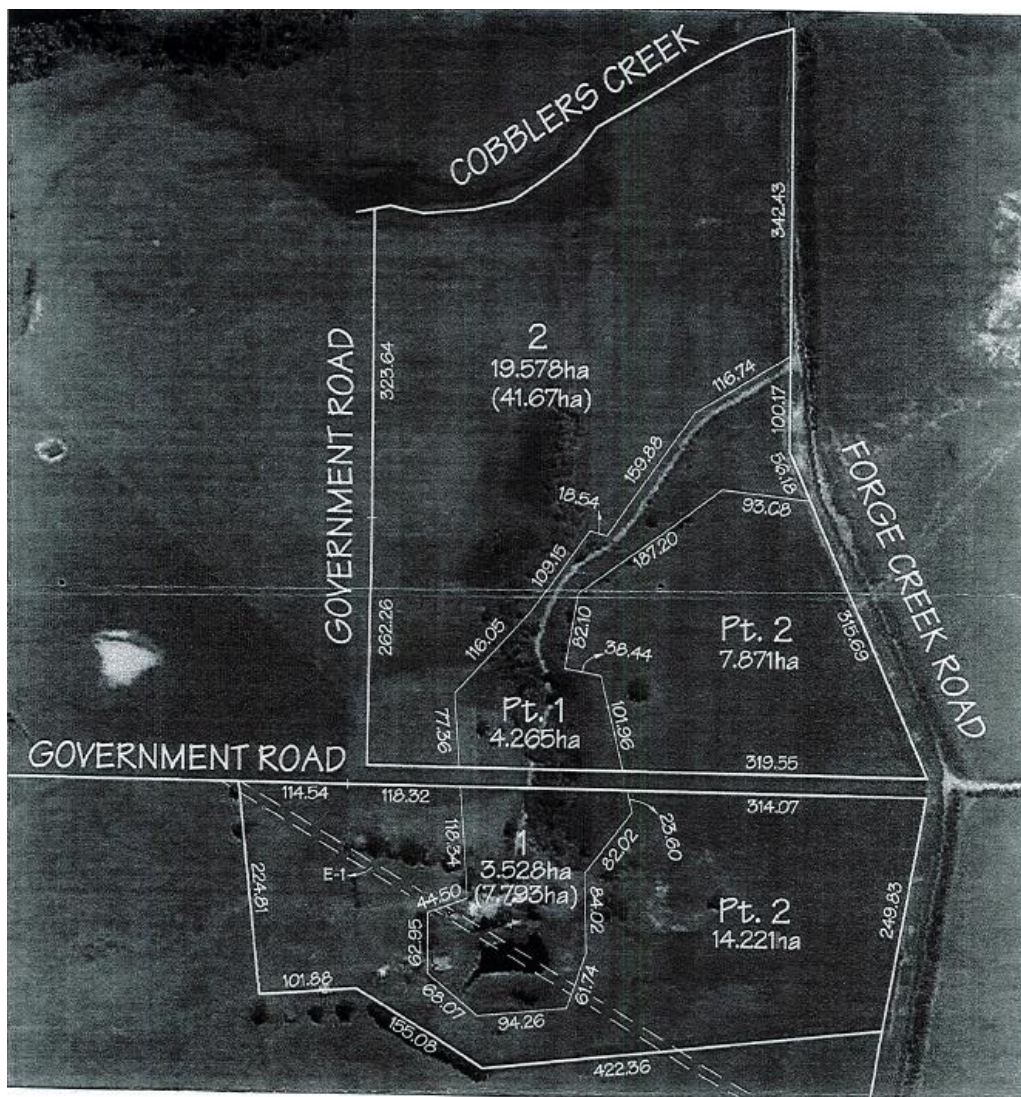
The subject land is located approximately 4.5 kilometres from the Central Activity Area of Bairnsdale, as such the land is well located to take advantage of the services and facilities of the regional centre.

The area contains numerous smaller, rural residential style properties fronting Forge Creek Road developed with dwellings, with more traditional farming activities being undertaken to the west of these lifestyle properties.

The subject land has been formed by a number of subdivisions over the years to establish the land parcel. The subdivision history was premised on the basis of agglomerating land parcels to provide a substantial farming property, which is actively grazed.

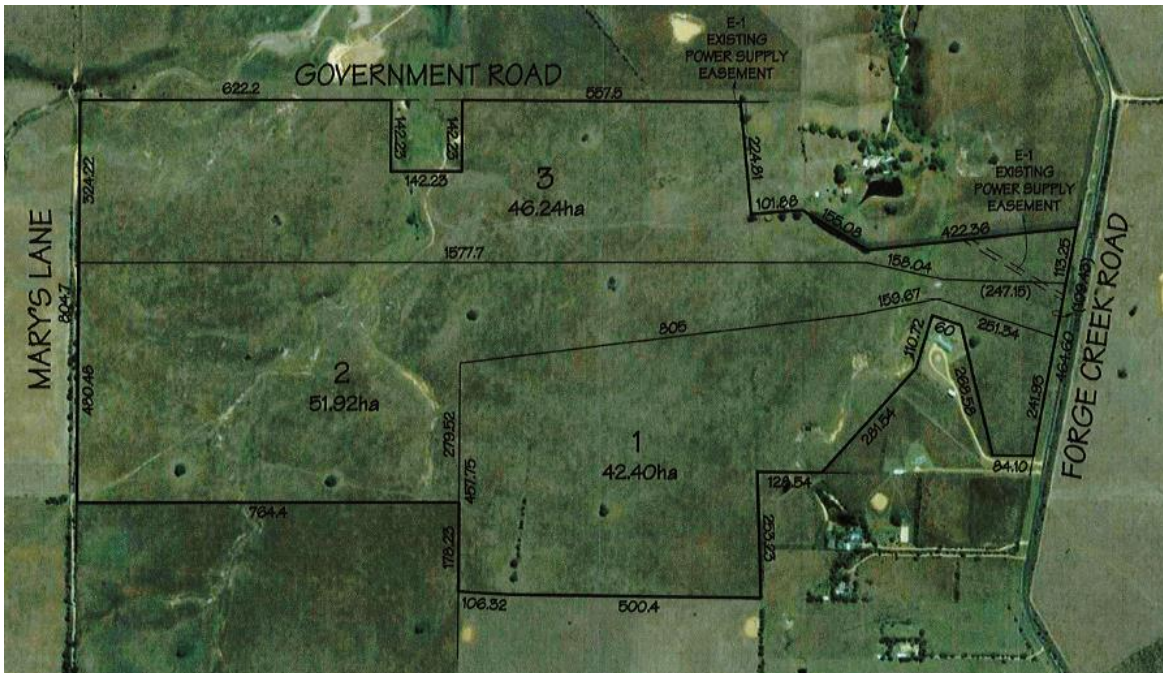
We have included a history of planning approvals associated with the land.

PS 622378E approved by Planning Permit 21/2008/P created a two lot subdivision.



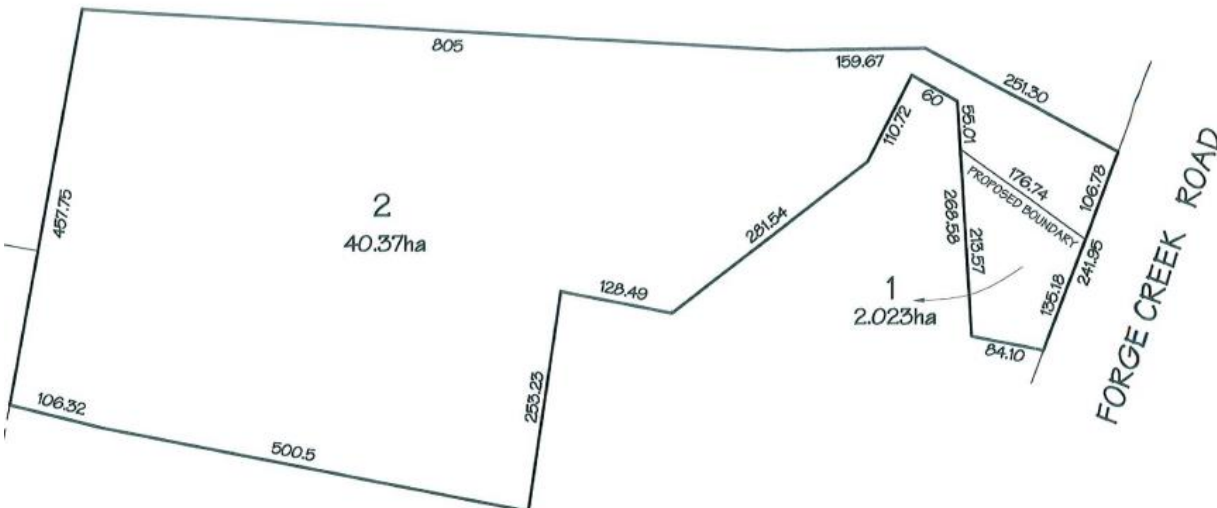
Extract from Proposed Subdivision Plan endorsed under Planning Permit 21/2008/P

PS636924 approved by Planning Permit 484/2009/P created a three lot subdivision.



Extract from Proposed Subdivision Plan endorsed under Planning Permit 484/2009/P

PS721702 approved by Planning Permit 306/2013/P created a two lot subdivision.



Extract from Proposed Subdivision Plan endorsed under Planning Permit 306/2013/P

It is proposed to subdivide the land into two lots for the purpose of excising a dwelling. The purpose of the subdivision is to separate the dwelling from the balance of the grazing property, to enable the ongoing, unencumbered use of the farming balance.

MERRY LANE

GOVERNMENT ROAD

GOVT ROAD

COBBLERS CR

FORGE CREEK ROAD

2 (PT)
148.69ha
(170.0ha)

2 (PT)

1

2 (PT)

Boundary measurements (meters and feet):
 - Merry Lane: 804.7
 - Government Road: 784.4, 178.28, 106.82, 500.5, 253.28, 128.18, 281.84, 110.72, 364.08
 - Govt Road: 282.26, 323.64
 - Cobblers Cr: 352.88
 - Forge Creek Road: 364.08

The map displays two land parcels, labeled 1 and 2, with their respective boundary dimensions and surrounding roads.

Parcel 1: 2.510ha. Its boundaries are defined by Government Road to the north, Forge Creek Road to the east, and a shared boundary with Parcel 2 to the west. The dimensions for its boundaries are 325.06, 207.57, 141.10, 15.08, 150.28, and 135.75.

Parcel 2: A larger area to the west of Parcel 1. Its boundaries are defined by Government Road to the north, a shared boundary with Parcel 1 to the east, and a boundary to the west. The dimensions for its boundaries are 117.89, 223.35, 61, 55.61, 61.28, and 221.98.

A dashed line indicates a proposed extension of the boundary between the two parcels, running from the bottom-left corner of Parcel 2 towards the bottom-right corner of Parcel 1.

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The subdivision boundary was determined on the basis of maintaining as much grazing land within proposed lot 2 as possible, while still ensuring that proposed lot 1 has sufficient area to manage the existing wastewater system within the boundaries of the allotment.

Waterways transverse the subject land and it was considered important to design the proposed subdivision to avoid fragmenting the watercourses. Furthermore, the subdivision layout needed to ensure the existing driveway to the dwelling was maintained to avoid the need to remove the established plantation vegetation, along Forge Creek Road.



Indicative lot boundary, waterways and access (Source: Google Earth)

Services in the form of reticulated water and electricity are available to the land.

It is expected that, should Council determine the application favourably, that a Section 173 agreement will be imposed via a condition of a permit preventing any further subdivision of both allotments to create an additional lot and to prevent the development of a dwelling on proposed lot 2. This is consistent with pre-application discussions with Council's Manager Planning and Statutory Planning Coordinator.

Planning approval is required pursuant to the following Clauses of the East Gippsland Planning Scheme:

Planning Scheme Clause No.	Description of what is proposed
35.07-3 Farming Zone	Subdivision
42.01 Environmental Significance Overlay	Subdivision
44.01-5 Erosion Management Overlay	Subdivision

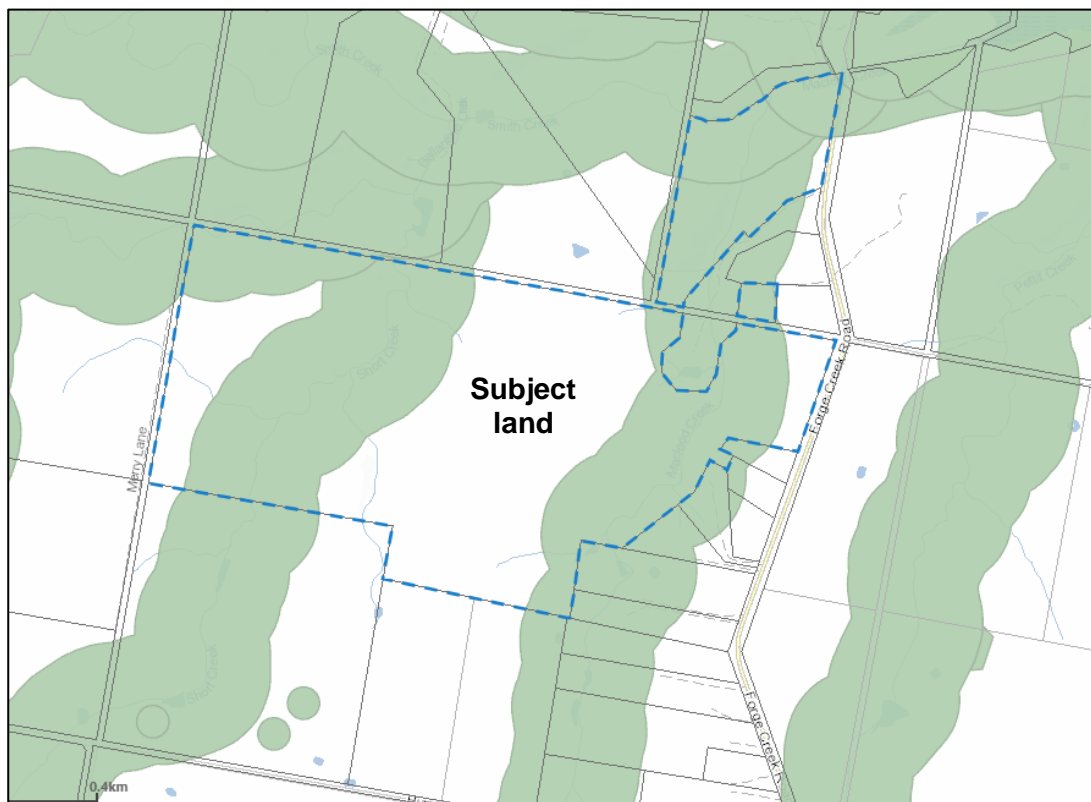
The Forge Creek Road frontage is contained within a Vegetation Protection Overlay. Deliberate care to avoid the need to remove vegetation and utilise the existing access driveway to Forge Creek Road has been proposed. As no vegetation is being removed as part of the subdivision, a permit is not triggered under the provisions of the Vegetation Protection Overlay.

4. Cultural Heritage

The proposal does not trigger any mandatory requirements to provide a Cultural Heritage Management Plan (CHMP) under the *Aboriginal Heritage Act 2006*.

Pursuant to Regulation 7 of the *Aboriginal Heritage Regulations 2018*, a CHMP is required for an activity if:

- (a) all or part of the activity area for the activity is in an area of cultural heritage sensitivity; and
- (b) all or part of the activity is a high impact activity



*Extract from Cultural Heritage Sensitivity mapping,
with sensitive areas shown in green (Source: VicPlan)*

The subject land is partly mapped as an area of cultural heritage sensitivity, however, a two lot subdivision is not considered a high impact activity. Therefore, there is no mandatory requirement to provide a CHMP in support of the application.

5. Planning Policy

5.1 Planning Policy Framework

The proposed subdivision supports the objective of Clause 12.03 Water bodies and wetlands. The subdivision will maintain the waterways contained on the land within single ownership allowing for appropriate waterway management by one party.

Located within the Erosion Management Overlay, Clauses 13.04-2S and 13.04-2L Erosion, are relevant to the application. The dwelling on the land is connected to available services, with two existing vehicle crossovers established to the land. The proposed smaller allotment will accord with existing paddock fencing minimising the need for works and the potential to create an erosion hazard.

To protect the state's agricultural base by preserving productive farmland is the objective of Clause 14.01-1S. Excising the dwelling on a small allotment will reduce the loss of agricultural land, maintaining the balance of grazing land within single ownership. It will also allow the balance allotment to be free from an encumbrance that increases the land value and reduces the opportunity for a rural enterprise to aggregate land holdings at rural market rates.

The existing dwelling is unlikely to adversely impact grazing activities on the balance of the property, and the lot configuration recognises the existing rural living allotments along Forge Creek Road.

The existing dwelling is connected to an on-site wastewater system that will be contained within the boundaries of lot 1 maintaining catchment water quality at Clause 14.02-1S.

Both proposed lots are provided with existing vehicle access to Forge Creek Road, negating the need to provide additional accessways to Forge Creek Road consistent with Clause 18.02-4S Roads.

Both proposed allotments are already connected to available services as per Clause 19 Infrastructure.

5.2 Municipal Planning Strategy

Council has formulated strategic directions within the Municipal Planning Strategy to guide use and development of land within the Shire.

Significant waterways are present on the subject land. The proposed subdivision will not fragment the waterways and maintains the waterways on lot 2 allowing for appropriate waterway management as sought by Clause 02.03-2 Environmental and landscape values.

The dwelling proposed to be excised is already connected to services, has an established vehicle crossover and the proposed lot boundaries will accord with existing fencing reducing the potential of creating an erosion hazard in accordance with Clause 02.03-3 Environmental risks and amenity.

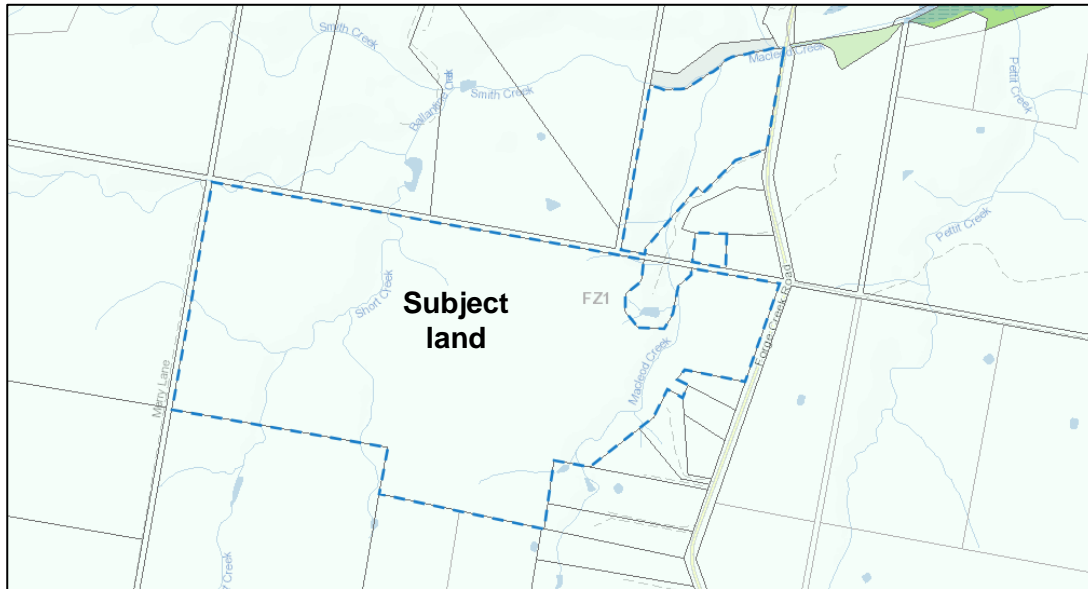
The subject land is not located within a water catchment used for domestic supply, avoiding impacts to domestic water supply. The area of the proposed lot to excise the existing dwelling has been minimised reducing land lost to agricultural production and maintaining productive agricultural land on the balance allotment. Allotments fronting Forge Creek Road are used for rural living purposes and are already lost to farming. The proposed balanced allotment reflects animal husbandry grazing carried out to the west of the rural living allotments consistent with Clause 02.03-4 Natural resource management.

Clause 02.03-6 Economic development recognises that one of the traditional major industries for the region is agriculture. The subdivision recognises the need to maximise the balanced allotment to allow for the existing grazing enterprise to continue. Being located a short distance from the regional centre of Bairnsdale, the lots to be created are not isolated or distant from services and facilities.

6. Planning Elements

6.1 Farming 1 Zone

The land is located within the Farming 1 Zone in accordance with the East Gippsland Planning Scheme.



Planning scheme zone mapping (Source: VicPlan)

The subdivision will promote the purposes of the zone. Excising the dwelling which is surplus to the requirements of the farm will create a large rural landholding that will not be further subdivided nor developed with a dwelling. This results in a large parcel of land that will have a rural land value for the purposes of farming.

Rural properties developed with a dwelling often raise values above rural land prices, and can lead to farming enterprises being priced out of the market, diminishing the ability to purchase and aggregate rural properties. In this instance, proposed lot 2 will only have a rural/farming value and will be attractive to rural enterprises aggregating land holdings and seeking to expand farming operations.

Pursuant to Clause 35.07-3 Subdivision, a permit may be granted to create smaller lots, if the subdivision is to create a lot for an existing dwelling and is a two lot subdivision.

The subdivision is consistent with the decision guidelines:

- The subdivision will provide for the grazing activities on the property to be maintained by ensuring the land within proposed lot 1 is minimised.
- Creating a large rural land holding, that will not be developed with a dwelling, will provide an opportunity for a farming enterprise to aggregate land holdings at a rural land value.

- The boundaries of the proposed lot will allow for wastewater to be disposed of and managed within the boundaries of the allotment.
- Adjoining land uses along Forge Creek Road are rural living style properties. The creation of proposed lot 1 will reflect the adjoining lot development and lot uses.
- Rural grazing activities for proposed lot 2 can be continued with minimal if any disruption from future occupants of the dwelling on lot 1.
- It is envisaged that land management grazing is likely to continue on proposed lot 1.
- Soil quality will be maintained and the potential of erosion is minimised through the adoption of existing fencing.
- Planted vegetation on the allotments has been respected through the adoption of existing paddock fencing as the lot boundaries.
- Waterways on the property will be maintained within proposed lot 2 allowing for waterway management by one landowner.
- The proposed subdivision will not be detrimental on the flora and fauna on the land and the surrounds.

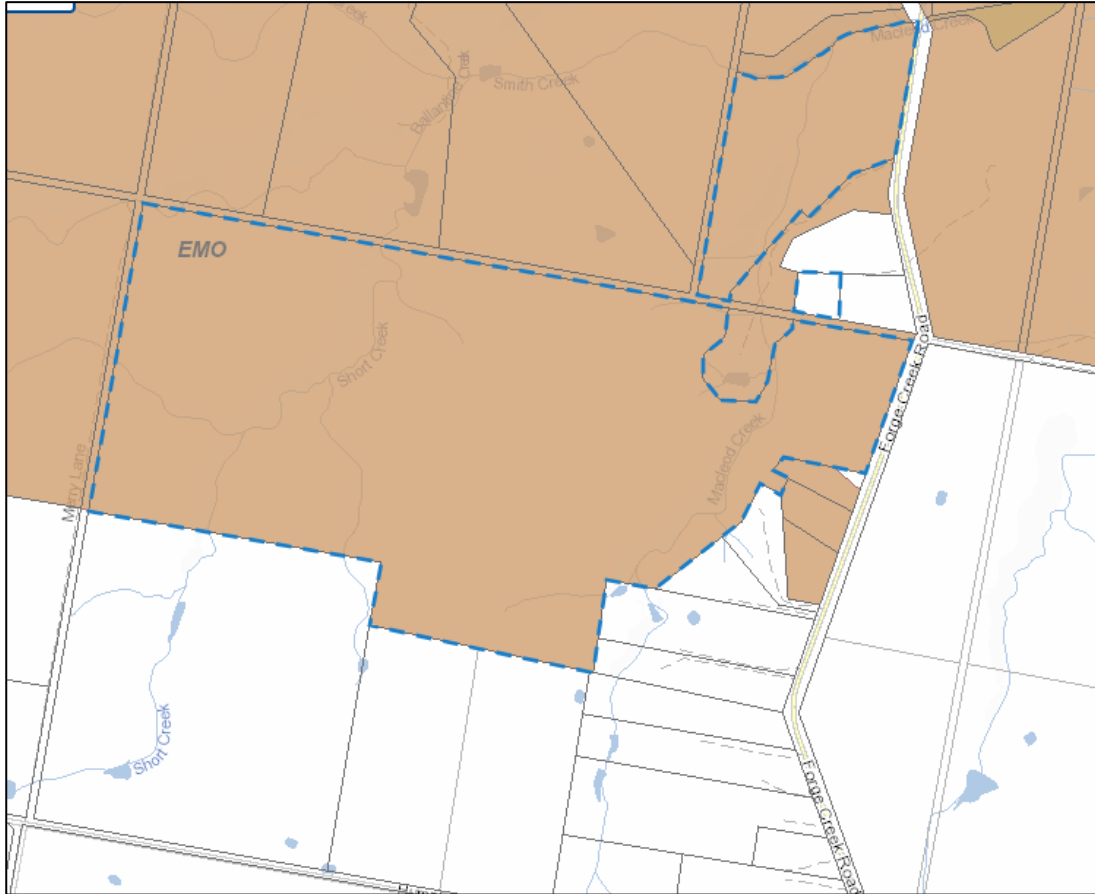
Adopted Rural Land Use Strategy – East Gippsland Shire – November 2022

It is considered that the subdivision is consistent with and is supported by the adopted Rural Land Use Strategy:

- The land is not farmland of strategic significance and is currently used for livestock production.
- Creating a large parcel of rural land unencumbered by a dwelling, provides an opportunity for livestock producers to aggregate land in accordance with current livestock production trends.
- Creating a large unencumbered allotment, allows an opportunity for diversification of a rural enterprise, to meet the challenges of climate change (landholdings within different regions allows for rural industries to adjust to seasonal conditions).
- The proposed subdivision will not increase the land value as there will be no opportunity to further subdivide or develop a dwelling on lot 2, it will not create an isolated tract of farmland and encourages investment in commercial agriculture.
- Subdividing the land provides an opportunity for a rural tourism venture to be undertaken within an established tourism node and adjoining a proposed Rural Activity Zone.

6.2 Erosion Management Overlay

The whole of the subject land is contained within the Erosion Management Overlay.



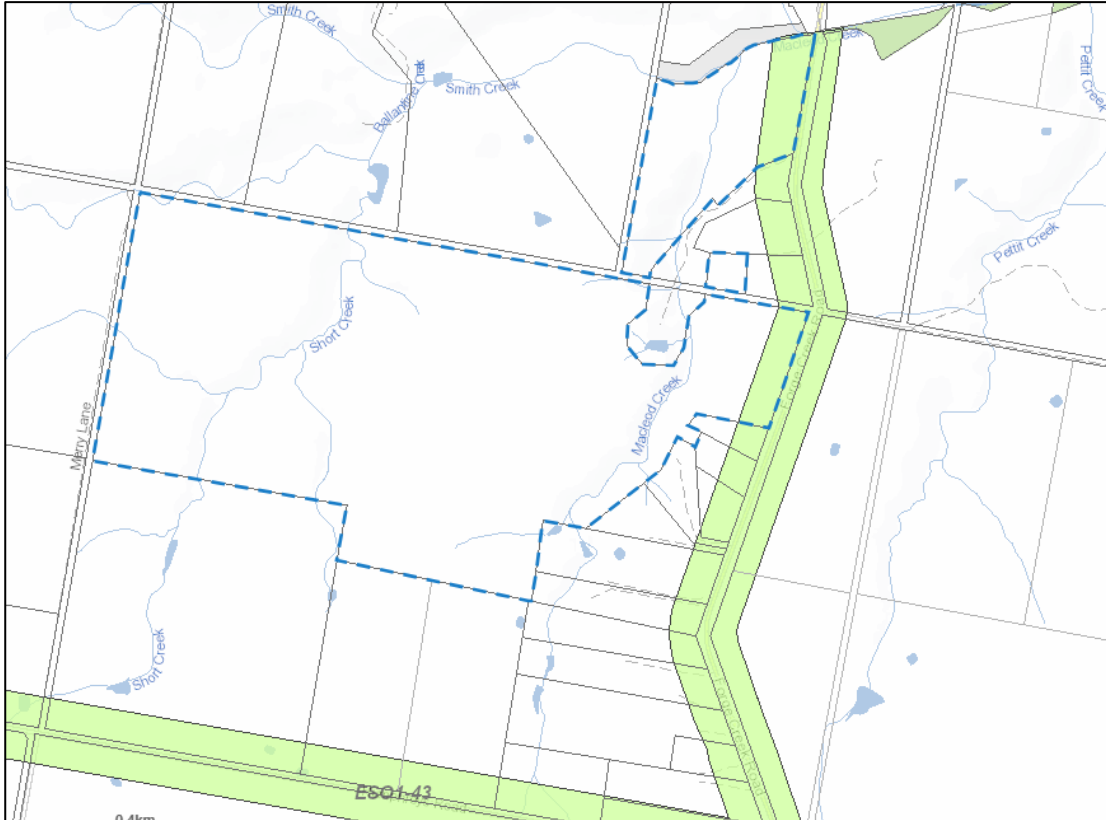
Planning scheme overlay mapping (Source: VicPlan)

Sub-clause 4.0 to the Schedule advises that a geotechnical risk assessment is not required to accompany an application to subdivide land into two lots in a rural zone.

The risk to life and property arising from the proposed subdivision is considered minimal as both proposed allotments are already connected to services, have established crossovers and existing paddock fencing will be utilised as the property boundaries, minimising the need to disturb soils.

6.3 Environmental Significance Overlay

Part of the subject land, along Forge Creek Road is within the Environmental Significance Overlay 1-43.



Planning scheme overlay mapping (Source: VicPlan)

Schedule 1 to the Overlay is East Gippsland Sites of Biological Significance. The ESO 1 – 43 is the Goonnure Wildlife Corridor.

The subdivision has been carefully designed to ensure the wildlife corridor remains intact and planted vegetation along the Forge Creek Road frontage is maintained. Owners of the lots to be created can continue to undertake weed control and feral animal control.

6.4 Section 173 Agreements

The subject land contains four section 173 Agreements on the title, resulting from previous subdivisions of the land.

To facilitate the proposed subdivision and minimise future landowner confusion, a concurrent application will be made to end all four s173 Agreements.

We advise of our client's understanding that if a permit was granted, a further s173 Agreement may be required via a permit condition stipulating that the subject land cannot be further subdivided and a dwelling cannot be developed on proposed lot 2.

Agreement U712902G entered into in 1997, reflects density controls of the time within the Bairnsdale (Shire) Planning Scheme. These controls are now redundant and the Agreement serves no purpose, given current planning provisions.

Agreement AF993373B was entered into in 2008, and reflected mandatory condition requirements within the Farming Zone provisions at the time. These controls are no longer included within the Farming Zone, as the State Government considered that the controls stifled innovation associated with farming and unreasonably burdened landowners.

Agreement AK992729Y entered into in 2014 again reflecting mandatory conditions of the Farming Zone provisions at the time. These controls were removed from the Farming Zone provisions for the above reasons.

Agreement AQ797656L entered into in 2016 was required to maintain the farming outcome achieved, that being the subject land.

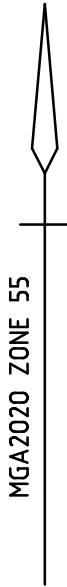
The Agreements did not restrict the ability to develop a dwelling on the land. Without the ability to excise the dwelling encumbrance, the land value is significantly elevated, reducing the attractiveness of the land to be aggregated with other landholdings of a rural enterprise.

It is therefore considered appropriate to end the Agreements as they apply to the land, to facilitate the subdivision and achieve a good farming outcome.

7. Conclusion

The proposed two lot subdivision at 380 Forge Creek Road, Bairnsdale is considered to accord with all relevant provisions of the Farming 1 Zone, Environmental Significance Overlay 1-43 and Erosion Management Overlay of the East Gippsland Planning Scheme. The proposal is consistent with the Planning Policy Framework and Municipal Planning Strategy and has been designed to complement the adjoining properties.

For these reasons we respectfully request that Council consider the merits of the application favourably and resolve to issue a Planning Permit.



MERRY LANE

804.7

764.4

GOVERNMENT ROAD

(672)

2 (PT)
148.69ha
(170.0ha)

764.4

178.23

106.32

500.5

253.23

128.49

281.54

110.72

GOVT ROAD

262.26

323.64

COBBLERS CK

2 (PT)

FORGE CREEK ROAD

363.03

2 (PT)

1

(352.98)

FORGE CREEK ROAD

SEE SHEET 2
FOR ENLARGEMENT

SHEET 1 OF 2

PETER DEVOOGD

380 FORGE CREEK ROAD, BAIRNSDALE

Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS

152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
P. (03) 5152 5011 E. contact@crowthersadler.com.au

FILENAME: Y:\20000-20999\20500-20599\20539 De Voogd\20539 Prop V1.pro

NOTATIONS

AREAS ARE APPROXIMATE ONLY
DIMENSIONS ARE SUBJECT TO SURVEY

SCALE (SHEET SIZE A3)

1 : 8000

SURVEYORS REF.

20539

VERSION 1 - DRAWN 11/08/2023

PROPOSED SUBDIVISION

PARISH OF BAIRNSDALE
CROWN ALLOTMENTS 74F , 187A , 187B , 188
AND PARTS OF
82B , 82C , 190, 74E & G

LOT 1 ON PS748264S

Printed 17/01/2024
Page 62 of 63

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MGA2020 ZONE 55

PROPOSED SUBDIVISION

SHEET 2 OF 2

PARISH OF BAIRNSDALE
CROWN ALLOTMENTS 74F , 187A , 187B , 188
AND PARTS OF
82B , 82C , 190, 74E & G

LOT 1 ON P57482645



PETER DEVOOGD

380 FORGE CREEK ROAD, BAIRNSDALE

Crowther & Sadler Pty.Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
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FILENAME: Y:\20000-20999\20500-20599\20539 De Voogd\20539 Prop V1.pro

NOTATIONS

AREAS ARE APPROXIMATE ONLY
DIMENSIONS ARE SUBJECT TO SURVEY

SCALE (SHEET SIZE A3)

1 : 2000

SURVEYORS REF.

20539

VERSION 1 - DRAWN 11/08/2023