

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 4/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AD201621Y
Kings Cove, Metung

Section 173 agreement AD201621Y (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.
3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AD201621Y on 26 October 2004. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).
5. Under the Guidelines:
 - a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. KCM was formally wound up and deregistered on 18 April 2017.

7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

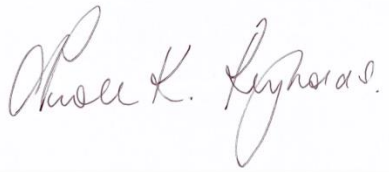
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AD201621Y
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10838/720	17 The Fields, Metung
2.	10838/721	19 The Fields, Metung
3.	10838/722	21 The Fields, Metung
4.	10838/724	31 The Fields, Metung
5.	10838/725	35 The Fields, Metung
6.	10838/726	32 The Fields, Metung
7.	10838/727	24 The Fields, Metung
8.	10838/728	18 The Fields, Metung
9.	10838/729	14 The Fields, Metung
10.	10838/731	Road R1 on PS517828L
11.	10838/732	Reserve 1 on PS517828L
12.	10838/733	Reserve 2 on PS517828L (16A The Fields, Metung)
13.	10932/042	25 The Fields, Metung
14.	10932/043	27 The Fields, Metung
15.	10838/712	5 The Stockyard, Metung
16.	10838/713	11 The Stockyard, Metung
17.	10838/714	15 The Stockyard, Metung
18.	10838/715	19 The Stockyard, Metung
19.	10838/716	20 The Stockyard, Metung
20.	10838/717	16 The Stockyard, Metung
21.	10838/718	12 The Stockyard, Metung
22.	10838/719	6 The Stockyard, Metung

TABLE B – The Agreement is proposed to be ended in respect of these properties

No.	Volume and Folio	Address
1.	10941/484	11 Storth Ryes Avenue, Metung
2.	10941/485	17 Storth Ryes Avenue, Metung
3.	10941/486	19 Storth Ryes Avenue, Metung
4.	10941/487	23 Storth Ryes Avenue, Metung
5.	10941/488	27 Storth Ryes Avenue, Metung
6.	10941/489	31 Storth Ryes Avenue, Metung
1.	10941/490	1 The Billabong, Metung
2.	10941/491	2 The Billabong, Metung
3.	10941/492	8 The Billabong, Metung
4.	10941/493	14 The Billabong, Metung
5.	10941/494	17 The Billabong, Metung
6.	10941/495	15 The Billabong, Metung
7.	10941/496	9 The Billabong, Metung

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18
Section 178C

NOTICE OF PROPOSAL TO AMEND AND END IN PART AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10838 Folios 712-722 (inclusive), Folios 724-729 (inclusive), Folios 731-733 (inclusive)

Volume 10932 Folios 042-043 (inclusive)

Volume 10941 Folios 484-496 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend and end in part the section 173 agreement recorded on title in dealing number AD201621Y on 26 October 2004

APPLICATION REFERENCE NUMBER:

4/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2020**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AD201621Y

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AD201621Y
Number of Pages (excluding this cover sheet)	26
Document Assembled	06/02/2020 13:38

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1x Agreement

LODGED BY Warren, Graham & Murphy,
Kings Cove Metung Pty
CODE 1716W VICTORIA



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Titles Office Use Only

APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for ENTRY OF A
MEMORANDUM OF AGREEMENT under Section 173 of that 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 Agreement be entered on the Certificate of Title to the land referred to.

LAND Certificate of Title Volume 10743 Folio 418

ADDRESS OF LAND 48 Kings Cove Boulevard, Metung

RESPONSIBLE AUTHORITY East Gippsland Shire Council

PLANNING SCHEME East Gippsland Planning Scheme

AGREEMENT DATE The 8th day of October, 2004

AGREEMENT WITH Kings Cove Metung Pty. Ltd. (ACN 006 383 179)

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority

Name of Officer

Date

NICK KEARNS, MANAGER DEVELOPMENT

23/09/2004



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Q. Sullivan

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EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

KINGS COVE METUNG PTY LTD (A.C.N. 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land:

48 Kings Cove Boulevard, METUNG VIC 3904
Certificate of Title Volume 10743 Folio 418 - Lot F PS509057V
"The Fields" & "The Stockyards", Kings Cove
PLAN OF SUBDIVISION NO. 517828L (Stage 1B)



DAD201621Y-2-7

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

THIS AGREEMENT is made the 8th day of October 2004

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL,

Of 273 Main Street, Bairnsdale, ("Council")

- and -

KINGS COVE METUNG PTY LTD (A.C.N. 006 383 179)

Of Level 1, 63 The Esplanade, Paynesville, Victoria ("the Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The Council has issued Planning Permit Number 334/2003/P ("the Planning Permit") allowing the land to be subdivided into 31 Lots in accordance with the Endorsed Plan.

A copy of the Planning Permit is attached to this Agreement and marked "A".
- D. It is a condition of the Planning Permit that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plan and the conditions of the Planning Permit
- E. As at the date of this Agreement the Subject Land is encumbered by Mortgage No. X256305M in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.



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F. The parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; and
- (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

IT IS AGREED:

1. DEFINITIONS



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

- 1.1. "the Act" means the Planning and Environment Act 1987.
- 1.2. "this Agreement" means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. "the Endorsed Plan" means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "C".
- 1.4. "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.
- 1.5. "Planning Permit" means the Planning Permit referred to in recital C. of this Agreement.
- 1.6. "Planning Scheme" means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.

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- 1.7. **"Subject Land"** means the land situated at 48 Kings Cove Boulevard, Metung being the land referred to in Certificate of Title Volume 10743 Folio 418 and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.
- 1.8. **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the 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 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.
- 2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7. 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 covenants and agrees that:

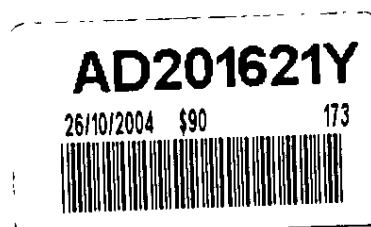
3.1. Development in accordance with Development Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Condition 11 of Planning Permit

the Subject Land shall only be developed in compliance with Condition 11 of the Planning Permit which requires that:-

- *"The development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.*
- *Each lot will be developed and used for the purpose of a single dwelling and associated outbuilding in accordance with the document "Kings Cove – Metung_ Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove ²Stage 2 to 9, Low Density Residential Zone" dated December, 2001 (or as amended) (The Document).*
- *Any amendment to The Document will be to the satisfaction of the Responsible Authority.*
- *No lot created within Stage 1B will have vehicular access to Archibald Drive.*
- *The provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.*
- *A copy of this permit will be attached to and will form part of the contract of sale for every lot.*



- *Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.*
- *The agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.*
- *The agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.*
- *This agreement will be prepared at the owner's cost and to the satisfaction of the responsible authority and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987".*

3.3. Council's Costs to be Paid

the Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:



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4.1. Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;





4.2. Further actions

4.2.1. the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.2. the Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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. Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.



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 effected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner must ensure that successors in title shall be required to give effect to and do all acts and sign all documents which will require those successors in title to give effect to 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 hand delivery or prepaid post.

8.2. 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 two business days after the date of posting; or

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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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.



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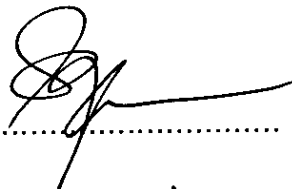


10. ENDING OF AGREEMENT

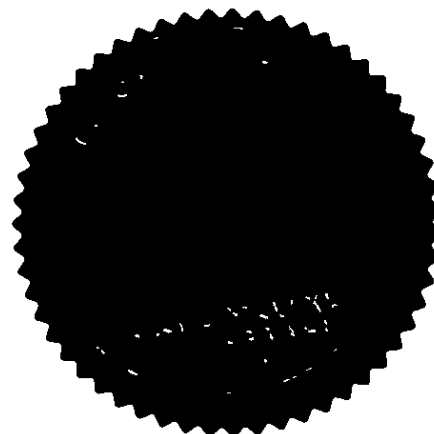
This Agreement may be ended by agreement between Council and the Owner.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The COMMON SEAL of EAST GIPPSLAND)
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the Chief Executive)
Officer on the 22 day of September)
, 200⁴ in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)



.....
chief Executive Officer.....



The COMMON SEAL of KINGS COVE METUNG)
PTY LTD was hereunto affixed in)
accordance with its Constitution in the presence of:-)



..... Director

..... Director/Secretary

Mortgagee's Consent

GIPPSLAND SECURED INVESTMENTS LIMITED as Mortgagee of Registered Mortgage No. **X256305M** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....
For & on behalf of the Mortgagee.





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Form 4.4

PLANNING PERMIT

Permit No: 334/2003/P
Planning Scheme: East Gippsland
Responsible Authority: East Gippsland Shire

ADDRESS OF THE LAND

48 Kings Cove Boulevard METUNG VIC 3904
Lot B LP 448622



THE PERMIT ALLOWS

Subdivision of the land into 31 lots in accordance with the endorsed plans

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
2. The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the requirements of the relevant service authorities.
3. Infrastructure shall be designed in accordance with standard engineering principles and practices. Full and detailed calculations shall be provided. The design shall provide for the following minimum requirements.
 - (a) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of design shall be provided.
 - (b) Pavement design shall be undertaken in accordance with accepted engineering practice. Pavement design for collector roads shall also take into consideration traffic that may be generated from the potential for future development to the south-west of the subject site. Supporting calculations for pavement design including the provision of geotechnical reports shall be provided.
 - (c) The cul-de-sac or turning heads of proposed new roads shall be constructed and sealed to provide sufficient space for the manoeuvring of all service and emergency vehicles. "T" or "Y" shaped turning heads are acceptable. Provision of suitable area for vehicles to perform a 3 point turn will be acceptable.
 - (d) A driveway crossover or culvert shall be constructed for all allotments to Council's satisfaction and in accordance with Council requirements. Crossing places shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices. Proposed details of design and construction for crossovers shall be provided.
 - (e) The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection of all stormwater

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runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by buildings, pavements, and/or siteworks to avoid damage or inundation to any property. Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.

- (f) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, wetlands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.
- (g) Drains shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices placed at regular intervals along the length of the drain.
- (h) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.
- (i) Outlets shall incorporate an energy dissipation devices to prevent any erosion.
- (j) With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 8 horizontal to 1 vertical.
- (k) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.
- (l) Design for the installation of services shall meet the requirements of the relevant authorities and shall be approved by those authorities.
- (m) The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer
- (n) All documentation for the construction of infrastructure shall include adequate provision for:
 - (i) maintenance and repair of damage to existing infrastructure damaged as a result of works associated with this development
 - (ii) quality assurance and testing procedures
 - (iii) provision for adequate notification and inspections by Council representatives at various key stages of the works
- (iv) works to be undertaken with due regard to environmental requirements.
- (o) An agreement shall be entered into which shall be noted on title requiring the property being developed as a golf course to accept all stormwater runoff from the development. This agreement shall be a continuing agreement and binding on all future registered proprietors of that property.
- (p) An appropriately qualified and registered practitioner to the satisfaction of the Responsible Authority must supervise all stages of works to be constructed on the site. Copies of all test results certified by a NATA

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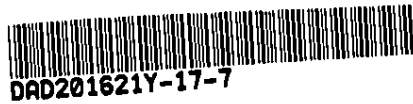
accredited laboratory shall be provided with a certification by a Chartered Professional Engineer that all works have been constructed in accordance with approved plans and specifications will be required.

4. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
5. No works shall commence until such time as all necessary approvals from Council and relevant service authorities have been obtained.
6. Construction works on the subject land may only be conducted between the hours of 7.00 am to 6.00 pm Monday to Saturday (inclusive).
7. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the responsible authority.
8. All earthworks associated with the proposal must be undertaken in accordance with the provisions of Environment Protection Authority (EPA) Publication No. 275 "Construction Techniques for Sediment and Pollution Control" (Copy available from EPA, Traralgon).
9. Prior to the issue of a Statement of Compliance the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations.
10. Trees that do not fit the category of being "planted" as part of the initial development require a separate planning permit for removal unless exempted by provisions of the East Gippsland Planning Scheme.
11. Prior to the issue of a Statement of Compliance, the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the responsible authority to covenant that:
 - the development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
 - each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "Kings Cove - Metung - Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone", dated December 2001 (or as amended) (The Document).
 - Any amendment to The Document will be to the satisfaction of the Responsible Authority.
 - no lot created within Stage 1B will have vehicular access to Archibald Drive.
 - the provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
 - a copy of this permit will be attached to and will form part of the contract of sale for every lot.
 - landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant

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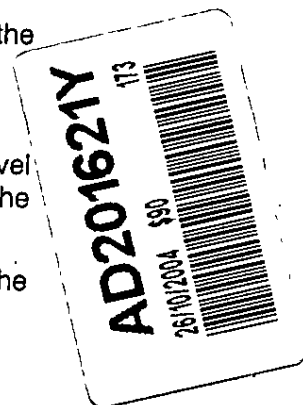
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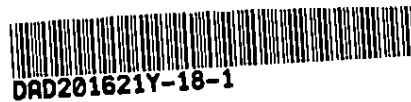


lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.

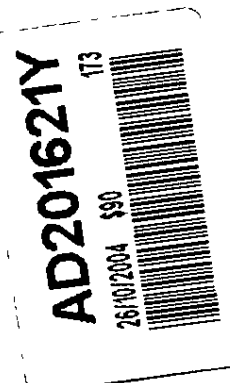
- the agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.
 - the agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.
 - this agreement will be prepared at the owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.
12. The development of lots approved by this permit for the purpose of a dwelling will be exempt from the need to obtain a separate planning permit provided:
- all buildings are constructed wholly within approved building envelopes;
 - all construction and site development works are carried out strictly in accordance with the approved Soil and Water Management Plan, to the satisfaction of the responsible authority, and
 - the requirements of Clause 32.03-2 (Use for one or two dwellings or a dependent persons unit) can be met.
13. Street names must be to the satisfaction of the responsible authority.
14. Prior to the issue of a Statement of Compliance, the subject land must be landscaped and planted in accordance with the requirements of the "Storth Ryes Landscape Concept Report" prepared by Murphy Design Group and dated April 2000. Specifically the following requirements must be met:
- Section 1.13 Other Roads
 - Section 1.15 Pedestrian Walkways
 - Section 1.16 Boundaries
15. Plans detailing the landscaping and streetscaping treatments, consistent with the "Storth Ryes Landscape Concept Report" and the Typical Landscape treatments contained in this report, and must be prepared by an appropriately qualified person and approved by the responsible authority prior to the commencement of any landscaping works.
16. The applicant must enter into an agreement under the Water Act for the provision of water supply works.
17. The applicant must meet the cost of the necessary water mains extension.
18. The applicant must pay a headworks and distribution charge at a level determined by East Gippsland Water at the time of payment. As a guide the level applicable on 17/6/03 is \$2,000 per lot created by the subdivision.
19. The applicant must enter into an agreement under the Water Act for the provision of sewerage works.
20. The applicant must meet the cost of the necessary sewer mains extension.
21. The applicant must pay an outfall and disposal charge at a level determined by East Gippsland Water at the time of payment. As a guide, the level of charge on 17/6/03 is \$2,100 per lot created by the subdivision.
22. The applicant must provide easements as necessary.



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23. The applicant must connect development to East Gippsland Water's water and sewerage services to the satisfaction of the Authority.
24. The applicant must enter into an agreement with TXU Electricity Ltd for supply of electricity to each lot on the endorsed plan.
25. The applicant must enter into an agreement with TXU Electricity Ltd for the rearrangement of the existing electric supply system.
26. The applicant must enter into an agreement with TXU Electricity Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.
27. The applicant must provide easements satisfactory to TXU Electricity Ltd for the purpose of "Electricity (power lines)" in the favour of TXU Electricity Ltd pursuant to Section 44 of the Electricity Industry Act 1993, where easements have not been otherwise provided, for all existing TXU Electricity Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and /or abutting land.
28. The applicant must obtain for the use of TXU any other easement external to the subdivision required to service the lots.
29. The applicant must adjust the position of any existing TXU Electricity Ltd easement to accord with the position of the electricity line(s) as determined by survey.
30. The applicant must set aside on the plan of subdivision for the use of TXU, reserves satisfactory to TXU where any electric substation (other than a pole mounted type) is required to service the subdivision.
31. The applicant must provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.
32. The applicant shall enter into an agreement with Telstra or other licenced Telecommunications carrier for the satisfactory provision of telephone cable reticulation one metre into each lot created.
33. The applicant shall pay to Telstra the reasonable cost of any works necessary, as a result of the subdivision, to remove or alter the position of any existing facility on the subdivision or on any adjacent land or Government Road pursuant to section 91(1) and (2) of the Australian Telecommunications Act 1989.
34. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.
35. All roads must be designed, constructed and maintained for a load capacity of at least 15 tonnes.
36. There must be no obstructions within one metre of the formed width of roads at any time and there must be four metres height clearance above all roads to allow fire vehicle access.
37. The amount and location of parking facilities must be determined in such a manner as to encourage users not to impede access of emergency vehicles.
38. Adequate provisions for turning of brigade vehicles must be provided in dead end roads and cul-de-sacs. This may be through either the provision of a court



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bowl with a trafficable area of minimum 10 metres radius or a "wye" or "tee" head with formed road surface of each leg being of at least 8 metres length from the centre point of the head and four metres width.

39. The water reticulation plan must be approved by the CFA prior to commencement of construction.
40. There must be a hydrant within 120 metres from the outer edge of any building envelope and fire hydrants must be no more than 200 metres apart to CFA's satisfaction.
41. Fire hydrants must be clearly identified in accordance with the Fire Service Guideline – Identification of Hydrants for Fire Fighting Purposes.
42. Areas of public open space must be managed in a minimum fuel condition during the fire danger period.

Time

43. The approval for subdivision will expire if the subdivision is not completed within five years of the date of this permit.
44. The approval for buildings and works associated with the development of dwellings, including vegetation removal within approved building envelopes, will expire if one of the following circumstances applies:
 - The building or works is not started within ten years of the date of this permit.
 - The building or works is not completed within two years of commencement on each lot within the subdivision.


This applies only to the construction of dwellings and the removal of vegetation within approved building envelopes and as permitted in line with the requirements specified in Condition 7 of this permit.

Notes:

1. The payment of headworks and outfall charges will be at the time of sale/settlement of each lot, or all outstanding monies to be paid in full within two years from the date of issue of Statement of Compliance for the subdivision by the Authority, whichever occurs first.
2. It is recommended that, at an early date the applicant commences negotiations with TXU Electricity Ltd in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay.
3. Arrangements for supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.
4. Prospective purchasers of lots on this plan should contact the TXU Electricity Ltd Bairnsdale office to determine the availability of a supply of electricity. Financial contributions may be required.

Date Issued: 26 August 2003

Page 6 of 6


Signature for the
Responsible Authority



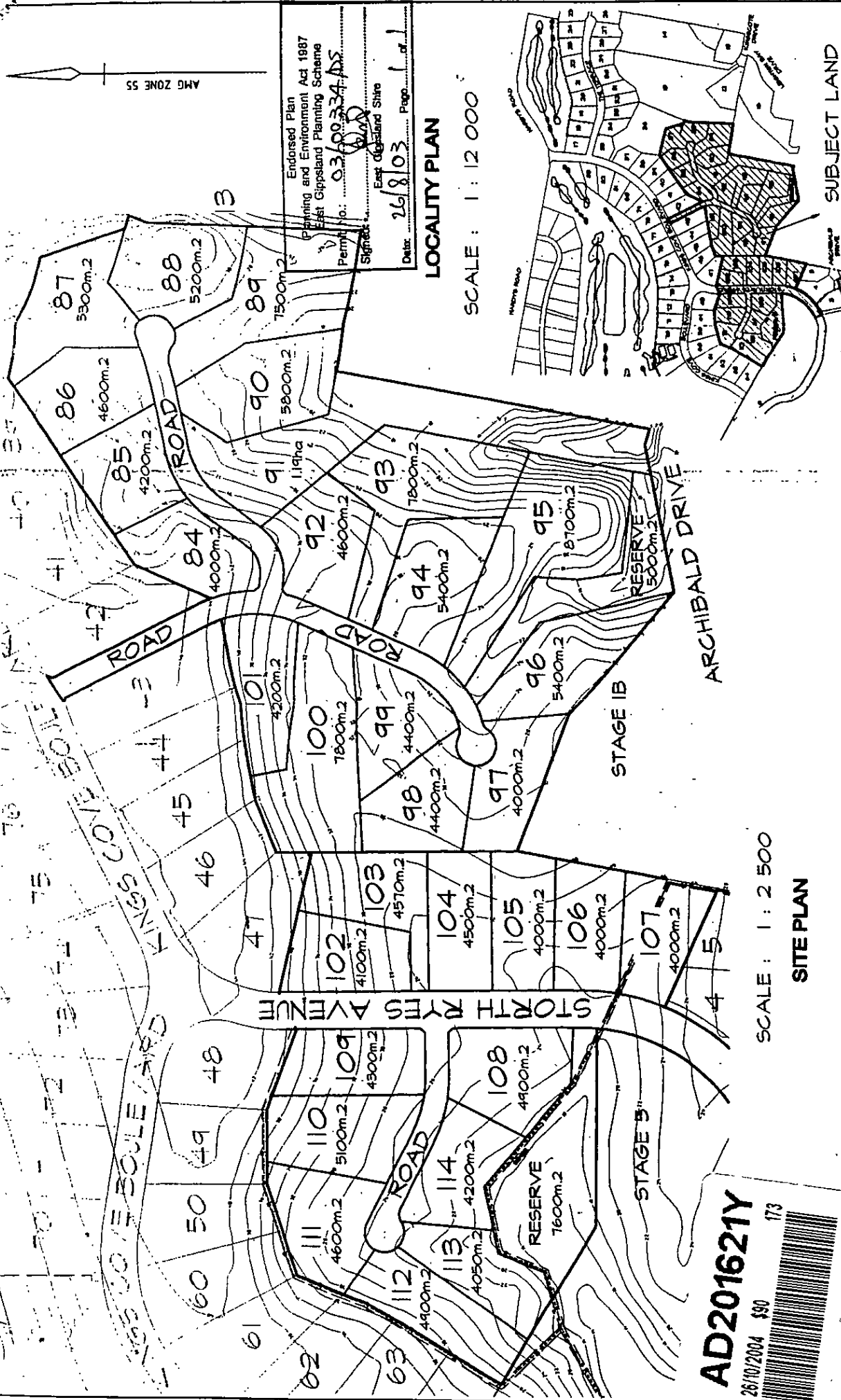
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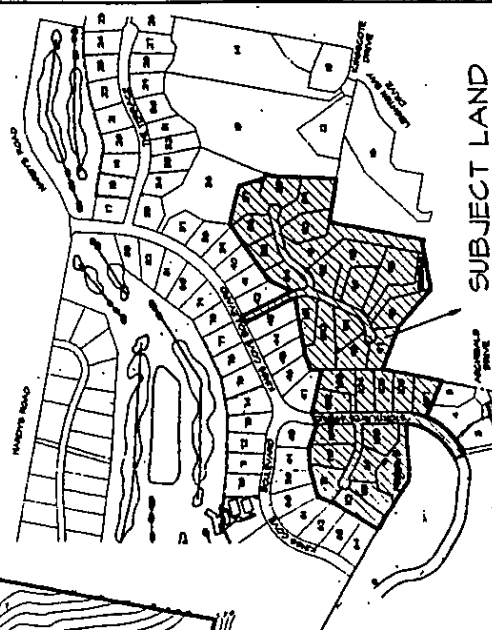
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LOCALITY PLAN
SCALE: 1 : 12 000

SCALE: 1 : 2 500
SITE PLAN

Endorsed Plan
Planning and Environment Act 1987
East Gippsland Planning Scheme
Permit No.: 03/00334/DS
Signed: [Signature]
East Gippsland Shire
Date: 26/8/03 Page 1 of 1



KINGS COVE		NOTATIONS		PROPOSED SUBDIVISION	
KINGS COVE BOULEVARD, METUNG		STAGES 1B & 5 HEIGHTS ARE IN METRES TO AHD DATUM CONTOUR INTERVAL 2 m FINAL LOT DIMENSIONS SUBJECT TO SURVEY AREAS ARE APPROXIMATE ONLY		PARISH OF BUMBERRAH CROWN ALLOTMENTS 78A, 81A, 81E (PARTS) LOT F ON PS 50909TV	
Crowther & Sadler Pty Ltd LICENSED SURVEYORS & TOWN PLANNERS 112 MACLEOD STREET, MARENDALE, VIC. 3675 TELEPHONE (03) 5122 8011 FAX (03) 512 5705		SURVEYORS REF. 10352		DWS No. 10352 - P VERSION 1	
				SHEET 1 OF 1 SHEETS	

AD201621Y
26/10/2004 \$90 173

PLAN OF SUBDIVISION		STAGE No. /	LTO USE ONLY EDITION	PLAN NUMBER PS 517828L
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<p style="text-align: center;">LOCATION OF LAND</p> <p>PARISH: BUMBERRAH TOWNSHIP: BAIRNSDALE SECTION: — CROWN ALLOTMENT: 78A, 81A & 81E (PARTS) CROWN PORTION: —</p> <p>TITLE REFERENCES: VOL 10743 FOL 418</p> <p>LAST PLAN REFERENCE: LOT F - PSS09057V</p> <p>POSTAL ADDRESS: (At time of subdivision) KINGS COVE BOULEVARDE, METUNG, 3904</p> <p>AMG CO-ORDINATES: (Of approx. centre of land in plan) E 573 730 N 5806 880 ZONE: 55</p>	<p style="text-align: center;">COUNCIL CERTIFICATION AND ENDORSEMENT</p> <p>COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 195/2003/CRT</p> <p>1. This plan is certified under Section 6 of the Subdivision Act 1988.</p> <p>2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 15/01/2004</p> <p>3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.</p> <p>OPEN SPACE</p> <p>(i) A requirement for public open space under Section 18 Subdivision Act 1988 has has not been made.</p> <p>(ii) The requirement has been satisfied.</p> <p>(iii) The requirement is to be satisfied in stage Council Delegate Council seal Date / /</p> <p>Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council seal Date 07/10/2004</p>
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VESTING OF ROADS AND/OR RESERVES	
IDENTIFIER	COUNCIL/BODY/PERSON
RI	EAST GIPPSLAND SHIRE COUNCIL
RESERVE No. 1	EAST GIPPSLAND SHIRE COUNCIL
RESERVE No. 2	TXU ELECTRICITY LTD

NOTATIONS	
STAGING	This is / is not a staged subdivision Planning Permit No 03/00334/DS
DEPTH LIMITATION	DOES NOT APPLY

LOTS 1 TO 83 HAVE BEEN OMITTED FROM THIS PLAN

AD201621Y

26/10/2004 \$90 173

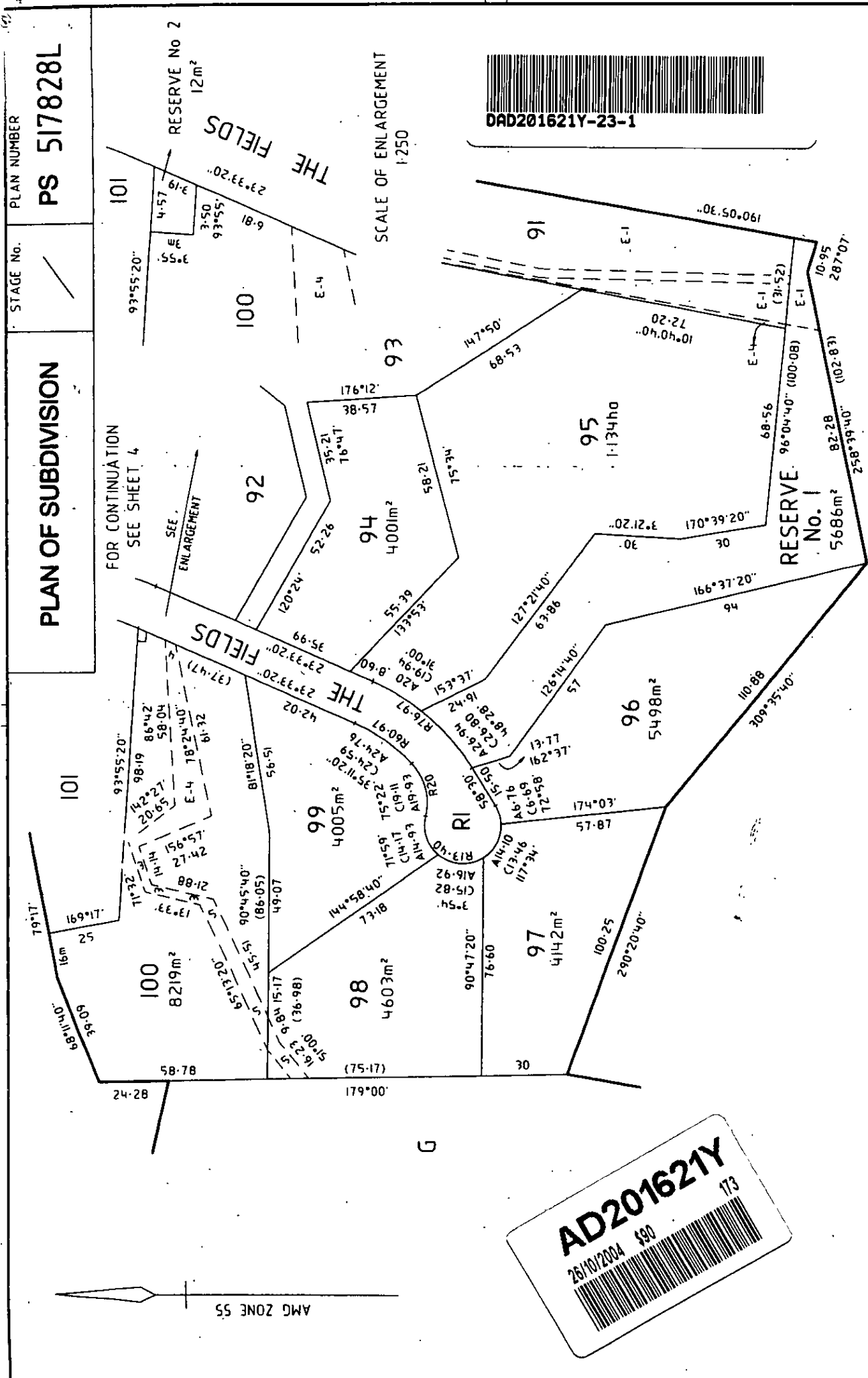
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SURVEY: THIS PLAN IS / IS NOT BASED ON SURVEY
THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s)

EASEMENT INFORMATION					LTO USE ONLY STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT RECEIVED <input type="checkbox"/> DATE / /
LEGEND A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)					
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	
E-1 & E-3	CARRIAGEWAY	30	INST. M22132T	VOL 9369 FOL 9H, VOL 9369 FOL 9I2 & VOL 9369 FOL 9I3	
E-2, E-3	WATER SUPPLY	3	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN THIS PLAN	
E-1, E-4 & E-3	DRAINAGE	SEE DIAG	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL & LAND IN THIS PLAN	

Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875 TELEPHONE (03) 6162 6011		LICENSED SURVEYOR MICHAEL JOSEPH SADLER SIGNATURE <i>[Signature]</i> DATE 6, 10, 2004 REF. 10558 VERSION 6
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DATE 07/10/2004 COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3	SHEET 1 OF 5 SHEETS
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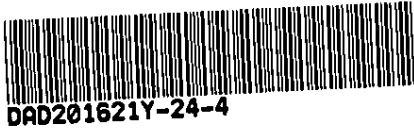
PLAN OF SUBDIVISION PS 517828L		STAGE No. PLAN NUMBER
FOR CONTINUATION SEE SHEET 4 SEE ENLARGEMENT		SHEET 3 OF 5 SHEETS
LICENSED SURVEYOR SIGNATURE <i>Michael Joseph Sadler</i> DATE 6/10/2004		DATE 07/10/2004 COUNCIL DELEGATE SIGNATURE
ORIGINAL SCALE 1:250	SHEET SIZE A3	REF 10558 VERSION 6
SCALE 12.5 0 12.5 25 37.5 50 62.5 LENGTHS ARE IN METRES		
Crownthorpe & Sadler Pty Ltd LICENSED SURVEYORS & TOWN PLANNERS 152 MACLEOD STREET, BARNSDALE, VIC., 3676 TELEPHONE (03) 5152 5011		

PLAN OF SUBDIVISION

STAGE No.

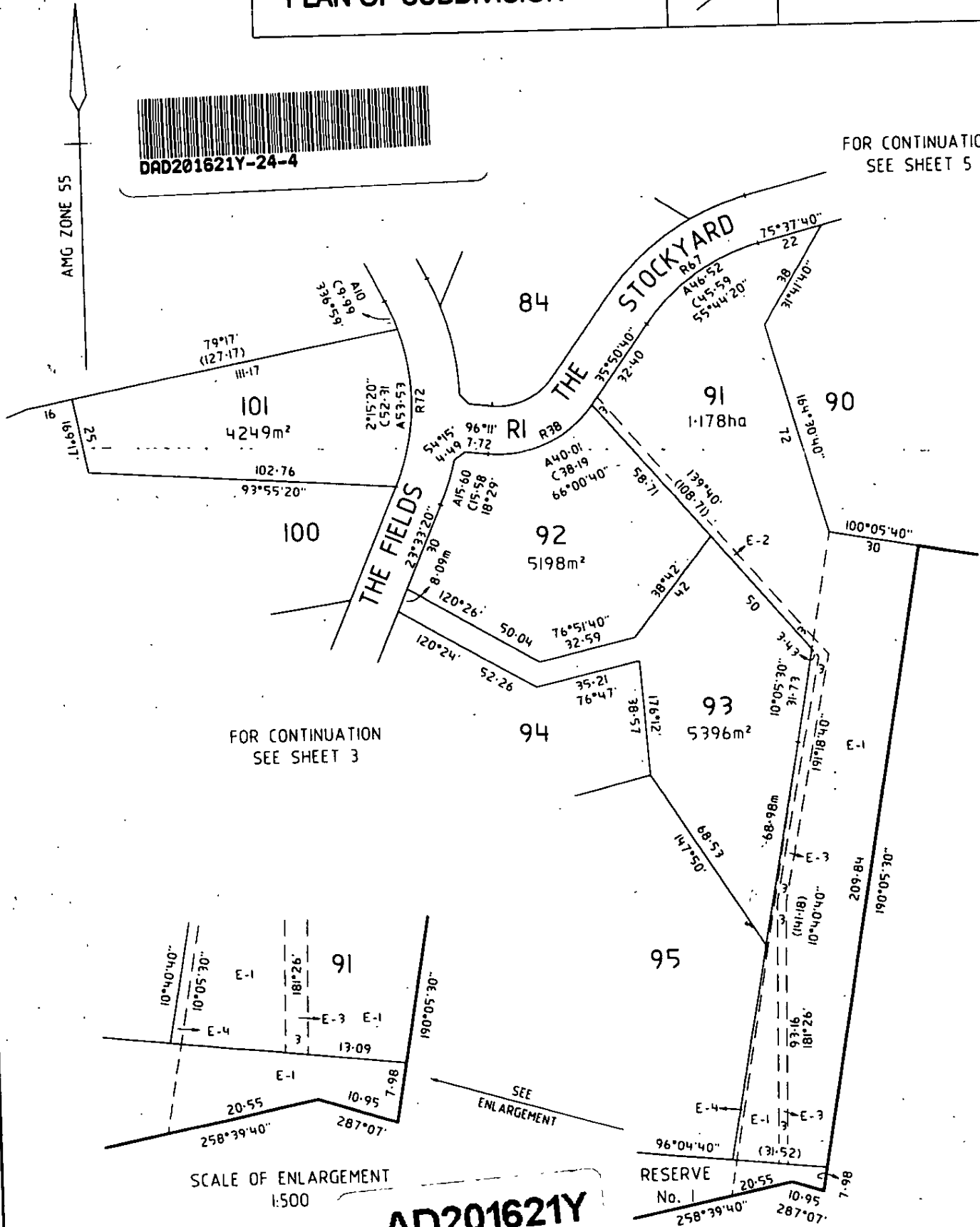
PLAN NUMBER

PS 517828L

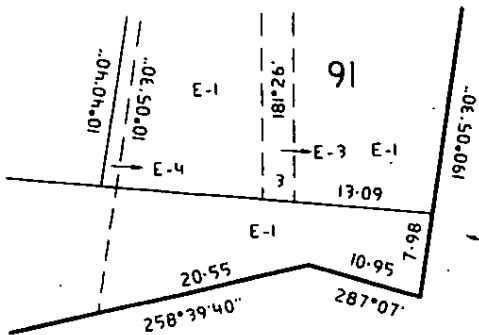


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FOR CONTINUATION
SEE SHEET 5



FOR CONTINUATION
SEE SHEET 3



SCALE OF ENLARGEMENT
1:500

SEE
ENLARGEMENT

RESERVE
No. 1

AD201621Y

26/10/2004 \$90

173



Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
182 MACLEOD STREET, BAIRNSDALE, VIC., 3875

TELEPHONE (03) 6182 8011

ORIGINAL	SCALE
SHEET SIZE	12.5 0 12.5 25 37.5 50
A3	1:1250

LICENSED SURVEYOR

SIGNATURE

REF 10558

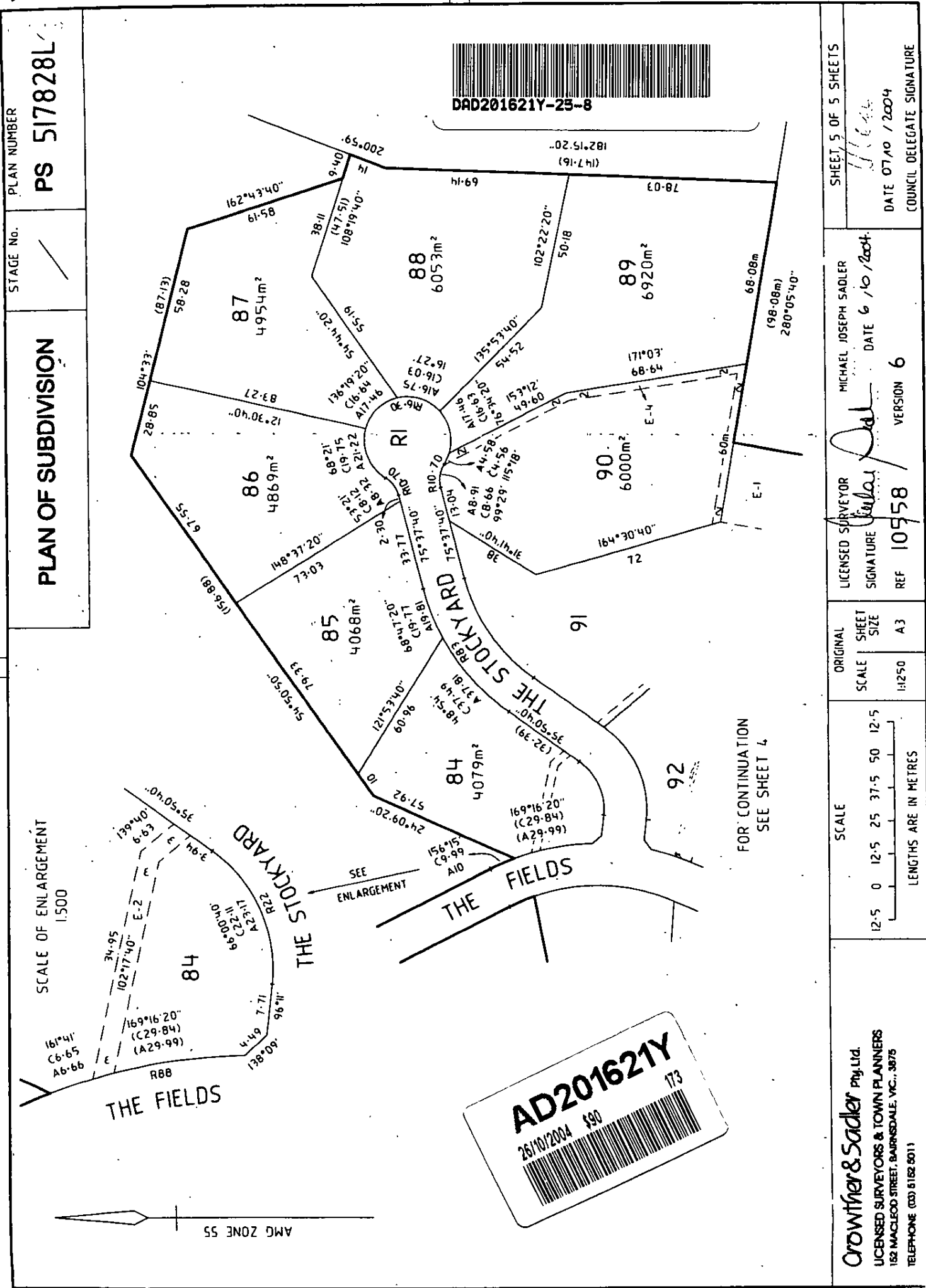
MICHAEL JOSEPH SADLER

DATE 6/10/2004

VERSION 6

SHEET 4 OF 5 SHEETS

DATE 07/10/2004
COUNCIL DELEGATE SIGNATURE



<p>ORIGINAL</p> <p>SCALE 1:1250</p> <p>SHEET SIZE A3</p>		<p>LICENSED SURVEYOR <i>Michael Joseph Sadler</i></p> <p>SIGNATURE <i>Michael Joseph Sadler</i></p> <p>DATE 6/10/2004</p> <p>VERSION 6</p> <p>REF 10558</p>	<p>SHEET 5 OF 5 SHEETS</p> <p>DATE 07/10 / 2004</p> <p>COUNCIL DELEGATE SIGNATURE</p>
<p>SCALE</p> <p>12.5 0 12.5 25 37.5 50 12.5</p> <p>LENGTHS ARE IN METRES</p>		<p>Crowther & Sadler Pty. Ltd.</p> <p>LICENSED SURVEYORS & TOWN PLANNERS</p> <p>152 MACLEOD STREET, BAIRNSDALE, VIC., 3075</p> <p>TELEPHONE (03) 6162 8011</p>	

EAST GIPPSLAND SHIRE COUNCIL

- and -

KINGS COVE METUNG PTY LTD
(A.C.N. 006 383 179)

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND ENVIRONMENT
ACT 1987



DAD201621Y-26-1

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT:act4765/03
PS 517828L
The Fields & The Stockyards

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

KINGS COVE METUNG PTY LTD (ACN 006 383 179)

Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land	48 Kings Cove Boulevard, Metung, VIC 3904 Certificate of Title Volume 10743 Folio 418 – Lot F PS 509057V “The Fields” & “The Stockyards”, Kings Cove PLAN OF SUBDIVISION NO. 517828L (Stage 1B)
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PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL,
Of 273 Main Street, Bairnsdale (**The Council**)

and

KINGS COVE METUNG PTY LTD (ACN 006 383 179)
Of Level 1, 63 The Esplanade, Paynesville (**The Owner**)

INTRODUCTION

- A. Council is the responsible authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The Council has issued Planning Permit Number 334/2003/P (**the Planning Permit**) allowing the land to be subdivided into 31 Lots in accordance with the Endorsed Plan.

A copy of the Planning Permit is attached to this Agreement and marked "A".

- D. It is a condition of the Planning Permit that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and the conditions of the Planning Permit.
- E. On 8 October 2004, Council and Kings Cove Metung Pty Ltd (**the Former Owner**) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AD201621Y on 26 October 2004.
- F. Under clause 3.2 of the Agreement, the Subject Land is required to be used and developed in accordance with the "Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone" dated December 2001 (**the Guidelines**).
- G. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (**ARC**). The consent of the ARC must be obtained before the Subject Land is developed.
- H. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.

~~F. As at the date of this Agreement the Subject Land is encumbered by Mortgage No. X256305M in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.~~

~~I. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.~~

~~G.J.~~ The Parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; ~~and~~
- ~~(b)~~ to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- ~~(c)~~ to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
- ~~(b)(d)~~ to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

1.1 **"the Act"** means the Planning and Environment Act 1987.

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

~~1.3~~ **"Building Envelope"** means a building envelope shown on the Endorsed Plan.

~~1.3~~ ~~1.4~~ **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "C".

~~1.5~~ **"Lot"** means a lot on the Endorsed Plan.

~~1.4~~ ~~1.6~~ **"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.

~~1.5~~1.7 **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.

~~1.6~~1.8 **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.

1.9 **"Soil and Water Management Plan"** means the "Kings Cove - Stage 2 Soil and Water Management Plan – Specifications for Construction of Dwellings" dated December 2001, as amended from time to time. A copy of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

1.10 **"Solid Fence"** means a fence that is less than 50% transparent.

~~1.7~~1.11 **"Subject Land"** means the land situated at 48 Kings Cove Boulevard, Metung being the land referred to in Certificate of Title Volume 10743 Folio 418 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of the Subject Land or any part of it.

~~1.8~~1.12 **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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 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.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Owner's obligations 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, the 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

3.1 Development in accordance with the Development Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by Council.

3.2 [Clause 3.2 deleted]

3.3 Obligations from the Guidelines

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.3.1 the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;

3.3.2 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;

3.3.3 no more than one dwelling may be developed on a Lot;

3.3.4 any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;

3.3.5 all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;

3.3.6 if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;

3.3.7 any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;

3.3.8 vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;

3.3.9 the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and

3.3.10 the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

3.23.4 Council's costs to be paid

the Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

4.1 Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

4.2 Further actions

4.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 the Owner will consent to the Council making 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 enable Council to do so 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 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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 successors in title shall be required to give effect to and do all acts and sign all documents which will require those successors in title to give effect to this Agreement.

8. GENERAL

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;
- 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 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the 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.

10. ENDING OF AGREEMENT

This Agreement may be ended by agreement between Council and the Owner.

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 5/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AB573238L
Kings Cove, Metung

Section 173 agreement AB573238L (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.
3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AB573238L on 20 September 2002. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).
5. Under the Guidelines:
 - a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. KCM was formally wound up and deregistered on 18 April 2017.

7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

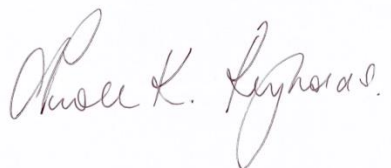
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AB573238L
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10678/232	7 Kings Cove Boulevard, Metung
2.	10678/233	15 Kings Cove Boulevard, Metung
3.	10678/235	23 Kings Cove Boulevard, Metung
4.	10678/236	27 Kings Cove Boulevard, Metung
5.	10678/237	31 Kings Cove Boulevard, Metung
6.	10678/238	35 Kings Cove Boulevard, Metung
7.	10678/239	39 Kings Cove Boulevard, Metung
8.	10678/240	41 Kings Cove Boulevard, Metung
9.	10678/241	42 Kings Cove Boulevard, Metung
10.	10678/242	36 Kings Cove Boulevard, Metung
11.	10678/243	30 Kings Cove Boulevard, Metung
12.	10678/244	24 Kings Cove Boulevard, Metung
13.	10678/245	18 Kings Cove Boulevard, Metung
14.	10678/246	12 Kings Cove Boulevard, Metung
15.	11127/465	19 Kings Cove Boulevard, Metung

TABLE B – The Agreement is proposed to be ended in respect of these properties

No.	Volume and Folio	Address
1.	10743/411	91 Kings Cove Boulevard, Metung
2.	10743/412	97 Kings Cove Boulevard, Metung
3.	10743/413	103 Kings Cove Boulevard, Metung
4.	10743/414	109 Kings Cove Boulevard, Metung
5.	10743/415	115 Kings Cove Boulevard, Metung
6.	10743/416	94 Kings Cove Boulevard, Metung
7.	10743/419	100 Kings Cove Boulevard, Metung
8.	10743/420	90A Kings Cove Boulevard, Metung - Reserve 1
9.	10743/421	Road R1 PS509097V
10.	11857/291	1 Besley Close, Metung
11.	11857/292	5 Besley Close, Metung
12.	11857/293	9 Besley Close, Metung
13.	11857/294	11 Besley Close, Metung
14.	11857/295	36 Besley Close, Metung
15.	11857/296	34 Besley Close, Metung
16.	11857/297	32 Besley Close, Metung
17.	11857/298	30 Besley Close, Metung
18.	11857/299	26 Besley Close, Metung
19.	11857/300	22 Besley Close, Metung
20.	11857/301	18 Besley Close, Metung
21.	11857/302	14 Besley Close, Metung
22.	11857/303	10 Besley Close, Metung
23.	11857/304	6 Besley Close, Metung
24.	11857/305	2 Besley Close, Metung
25.	11857/306	3 Kempton Grove, Metung
26.	11857/307	2 Kempton Grove, Metung
27.	11857/308	5 Kempton Grove, Metung
28.	11857/312	1A Kempton Grove, Metung (Reserve 3)
29.	10769/494	9 The Terrace, Metung
30.	10769/495	15 The Terrace, Metung
31.	10769/496	21 The Terrace, Metung
32.	10769/497	27 The Terrace, Metung
33.	10769/498	33 The Terrace, Metung
34.	10769/499	37 The Terrace, Metung
35.	10769/500	41 The Terrace, Metung
36.	10769/501	45 The Terrace, Metung
37.	10769/502	44 The Terrace, Metung
38.	10769/503	40 The Terrace, Metung
39.	10769/504	36 The Terrace, Metung

No.	Volume and Folio	Address
40.	10769/505	32 The Terrace, Metung
41.	10769/506	26 The Terrace, Metung
42.	10769/507	22 The Terrace, Metung
43.	10769/508	18 The Terrace, Metung
44.	10769/509	14 The Terrace, Metung
45.	10769/510	10 The Terrace, Metung
46.	10769/511	Road Reserve
47.	10941/484	11 Storth Ryes Avenue, Metung
48.	10941/485	17 Storth Ryes Avenue, Metung
49.	10941/486	19 Storth Ryes Avenue, Metung
50.	10941/487	23 Storth Ryes Avenue, Metung
51.	10941/488	27 Storth Ryes Avenue, Metung
52.	10941/489	31 Storth Ryes Avenue, Metung
53.	10941/490	1 The Billabong, Metung
54.	10941/491	2 The Billabong, Metung
55.	10941/492	8 The Billabong, Metung
56.	10941/493	14 The Billabong, Metung
57.	10941/494	17 The Billabong, Metung
58.	10941/495	15 The Billabong, Metung
59.	10941/496	9 The Billabong, Metung
60.	10738/428	47 Kings Cove Boulevard, Metung
61.	10738/429	55 Kings Cove Boulevard, Metung
62.	10738/430	61 Kings Cove Boulevard, Metung
63.	10738/431	65 Kings Cove Boulevard, Metung
64.	10738/432	69 Kings Cove Boulevard, Metung
65.	10738/433	73 Kings Cove Boulevard, Metung
66.	10738/434	79 Kings Cove Boulevard, Metung
67.	10738/435	85 Kings Cove Boulevard, Metung
68.	10738/436	86 Kings Cove Boulevard, Metung
69.	10738/437	82 Kings Cove Boulevard, Metung
70.	10738/438	76 Kings Cove Boulevard, Metung
71.	10738/439	72 Kings Cove Boulevard, Metung
72.	10738/440	66 Kings Cove Boulevard, Metung
73.	10738/441	60 Kings Cove Boulevard, Metung
74.	10738/442	54 Kings Cove Boulevard, Metung
75.	10738/443	50 Kings Cove Boulevard, Metung
76.	10738/444	Road R1 PS448625J
77.	10838/720	17 The Fields, Metung
78.	10838/721	19 The Fields, Metung
79.	10838/722	21 The Fields, Metung
80.	10838/724	31 The Fields, Metung
81.	10838/725	35 The Fields, Metung

No.	Volume and Folio	Address
82.	10838/726	32 The Fields, Metung
83.	10838/727	24 The Fields, Metung
84.	10838/728	18 The Fields, Metung
85.	10838/729	14 The Fields, Metung
86.	10838/731	Road R1 on PS517828L
87.	10838/732	Reserve 1 on PS517828L
88.	10838/733	Reserve 2 on PS517828L (16A The Fields, Metung)
89.	10932/042	25 The Fields, Metung
90.	10932/043	27 The Fields, Metung
91.	10838/712	5 The Stockyard, Metung
92.	10838/713	11 The Stockyard, Metung
93.	10838/714	15 The Stockyard, Metung
94.	10838/715	19 The Stockyard, Metung
95.	10838/716	20 The Stockyard, Metung
96.	10838/717	16 The Stockyard, Metung
97.	10838/718	12 The Stockyard, Metung
98.	10838/719	6 The Stockyard, Metung

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AND END IN PART AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10678 Folios 232-233 (inclusive) and Folios 235-246 (inclusive), Volume 11127 Folio 465, Volume 10743 Folios 411-416 (inclusive) and Folios 419-421 (inclusive), Volume 11857 Folios 291-308 (inclusive) and Folio 312, Volume 10769 Folios 494-511 (inclusive), Volume 10941 Folios 484-496 (inclusive), Volume 10738 Folios 428-444 (inclusive), Volume 10838 Folios 712-722 (inclusive), Folios 724-729 (inclusive) and Folios 731-733 (inclusive), Volume 10932 Folios 042-043 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend and end in part the section 173 agreement recorded on title in dealing number AB573238L on 20 September 2002

APPLICATION REFERENCE NUMBER:

5/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AB573238L

Imaged Document Cover Sheet

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Document Type	Instrument
Document Identification	AB573238L
Number of Pages (excluding this cover sheet)	47
Document Assembled	05/02/2020 11:32

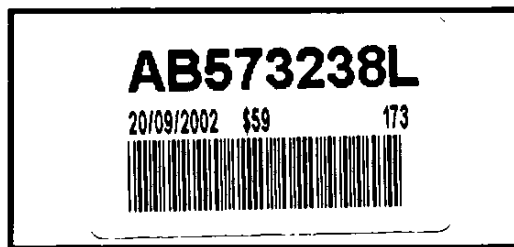
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LODGED BY Warren, Graham & Murphy,

CODE 1716W 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 that Act.**

IX Agreement

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 Agreement be entered on the Certificate of Title to the land referred to.

LAND	Certificate of Title Volume 40569 Folio 313 <i>CANC Now = Vol 10678 Fol 232 to 251 (B1)</i> <i>(WH)</i>
ADDRESS OF LAND	15 Hardys Road, Metung, Victoria 3904
RESPONSIBLE AUTHORITY	East Gippsland Shire Council <i>22 NOV 2002</i> <i>With consent of</i> <i>Current Practitioner for</i> <i>Applicant</i>
PLANNING SCHEME	East Gippsland Planning Scheme
AGREEMENT DATE	The <i>28th</i> day of <i>AUGUST</i> 2002
AGREEMENT WITH	Storth Ryes Pty. Ltd. (ACN 006 383 179)

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority

[Signature]

Name of Officer

JOHN TRAA, STATUTORY PLANNER

Date

06/09/2002

12 OCT 2002



DAB573238L-1-0

AB573238L

20/09/2002 \$59 173



EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

STORTH RYES PTY LTD (A.C.N. 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: 15 Hardys Road, METUNG VIC 3904
PLAN OF SUBDIVISION 448622Q (Stage Two)



DAB573238L-2-8

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20/09/2002 \$59

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 - 3.2. **Condition 11 of Planning Permit No. 01/00299/DS**
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10. **ENDING OF AGREEMENT**



DAB573238L-3-6

PLANNING AND ENVIRONMENT ACT 1987 SECTION 173 AGREEMENT

THIS AGREEMENT is made the **28** day of **AUGUST** 2002

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale

("Council")

- and -

STORTH RYES PTY LTD (A.C.N. 006 383 179)

("the Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning Permit Number 01/00299/DS (Amended) ("the Planning Permit") that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked "A".
- D. The parties enter into this Agreement:
 - (a) to give effect to the requirements of the Planning Permit; and
 - (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

AB573238L

20/09/2002 \$59 173



DAB573238L-4-4

IT IS AGREED:



1. DEFINITIONS

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

- 1.1. **"the Act"** means the Planning and Environment Act 1987.
- 1.2. **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".
- 1.4. **"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.
- 1.5. **"Planning Permit"** means the Planning Permit referred to in recital C. of this Agreement.
- 1.6. **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applied to the Subject Land.
- 1.7. **"Subject Land"** means the land situated at 15 Hardys Road, Metung being Lot D on Plan of Subdivision No. 434079N and being the land described in Certificate of Title Volume 10569 Folio 313 and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.



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

2. INTERPRETATION



DAB573238L-6-1

In this Agreement unless the context admits otherwise:

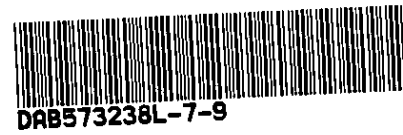
- 2.1. The singular includes the plural and vice versa.
- 2.2. A reference to a gender includes a reference to each other gender.
- 2.3. A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- 2.4. If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- 2.5. A 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.
- 2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7. 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.

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3. SPECIFIC OBLIGATIONS OF THE OWNER



The Owner covenants and agrees that:

3.1. Development in accordance with Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Condition 11 of the Planning Permit No. 01/00299/DS (Amended) requires that:

- (a) The development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
- (b) Each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "*Kings Cove – Metung- Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone*", dated December, 2001 (or as amended) (The Document). A copy of the Document is attached hereto and marked "C".
- (c) Any amendment to The Document will be to the satisfaction of the Responsible Authority.
- (d) No lot created within Stage 1B will have vehicular access to Archibald Drive.
- (e) The provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.

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- (f) A copy of Planning Permit 01/00299/DS (Amended) will be attached to and will form part of the Contract of Sale for every lot.
- (g) Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.
- (h) This Agreement will bind the Owner and must run with the land so that all successors in the title are bound by this Agreement.

3.3. Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:



DAB573238L-8-7

4.1. Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

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4.2. Further actions

- 4.2.1. the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;
- 4.2.2. the Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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. Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.



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6. OWNERS 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 effected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect which 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 hand delivery or prepaid post.

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8.2. 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.

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9. COMMENCEMENT OF AGREEMENT

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

10. ENDING OF AGREEMENT

This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The **COMMON SEAL** of **EAST GIPPSLAND)**
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the Chief Executive)
Officer on the 28th day of August.)
2002 in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)

..... M. Bennett

.....

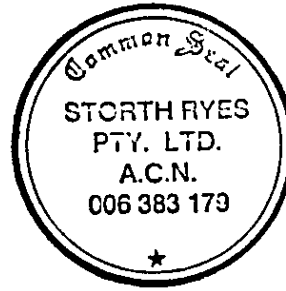


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The **COMMON SEAL** of **STORTH RYES**)
PTY LTD (A.C.N. 006 383 179) was)
Hereunto affixed in accordance with its)
Constitution in the presence of:-




.....
Signature



.....
Signature


.....
Full Name

THOMAS LAGER
.....
Full Name


.....
Usual Address

74 MAIN ST. BAIRNSDALE
.....
Usual Address

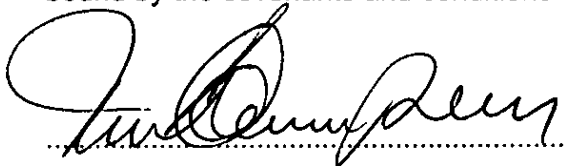

.....
Office Held

SECRETARY
.....
Office Held

Mortgagee's Consent



Gippsland Secured Investments as Mortgagee of Registered Mortgages Numbered W348833Y and X256305M consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.


.....
For and on behalf of the Mortgagee, G.S.I.



AB573238L



PLANNING PERMIT

Permit No: 01/00299/DS (AMENDED)
Planning Scheme: EAST GIPPSLAND
Responsible Authority: East Gippsland Shire

Form 4.4

ADDRESS OF THE LAND

15 Hardys Road, METUNG VIC 3904
Lot 2 LP 420967)

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THE PERMIT ALLOWS

The land to be subdivided into 68 Lot (Stages 2, 3, 4, 5 & 6) in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Subdivision not altered

1. The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Engineering requirements

2. The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the requirements of the relevant service authorities.
3. Infrastructure shall be designed in accordance with standard engineering principles and practices. Full and detailed calculations shall be provided. The design shall provide for the following minimum requirements.

Roads, Pavement and Access

(a) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of design shall be provided.

(b) Pavement design shall be undertaken in accordance with accepted engineering practice. Pavement design for collector roads shall also take into consideration traffic that may be generated from the potential for future development to the south-west of the subject site. Supporting calculations for pavement design including the provision of geotechnical reports shall be provided.

(c) The cul-de-sac or turning heads of proposed new roads shall be constructed and sealed to provide sufficient space for the manoeuvring of all service and emergency vehicles. "T" or "Y" shaped turning heads are acceptable. Provision of suitable area for vehicles to perform a 3 point turn will be acceptable.

(d) A driveway crossover or culvert shall be constructed for all allotments to Council's satisfaction and in accordance with Council requirements. Crossing places shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices. Proposed details of design and construction for crossovers shall be provided.

Drainage

(e) The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection of all stormwater

runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by buildings, pavements, and/or siteworks to avoid damage or inundation to any property. Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.

(f) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, wetlands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.

(g) Drains shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices placed at regular intervals along the length of the drain.

(h) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.

(i) Outlets shall incorporate an energy dissipation devices to prevent any erosion.

Earthworks

(j) With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 8 horizontal to 1 vertical.

(k) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.

Services

(l) Design for the installation of services shall meet the requirements of the relevant authorities and shall be approved by those authorities.

Signage and Traffic Control

(m) The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer

Documentation

(n) All documentation for the construction of infrastructure shall include adequate provision for:

(i) maintenance and repair of damage to existing infrastructure damaged as a result of works associated with this development

(ii) quality assurance and testing procedures

(iii) provision for adequate notification and inspections by Council representatives at various key stages of the works

(iv) works to be undertaken with due regard to environmental requirements.

(o) An agreement shall be entered into which shall be noted on title requiring the property being developed as a golf course to accept all stormwater runoff

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from the development. This agreement shall be a continuing agreement and binding on all future registered proprietors of that property.

Supervision of Works

(p) An appropriately qualified and registered practitioner to the satisfaction of the Responsible Authority must supervise all stages of works to be constructed on the site. Copies of all test results certified by a NATA accredited laboratory shall be provided with a certification by a Chartered Professional Engineer that all works have been constructed in accordance with approved plans and specifications will be required.

4. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
5. No works shall commence until such time as all necessary approvals from Council and relevant service authorities have been obtained.
6. Construction works on the subject land may only be conducted between the hours of 7.00 am to 6.00 pm Monday to Saturday (inclusive).
7. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the responsible authority.
8. All earthworks associated with the proposal must be undertaken in accordance with the provisions of Environment Protection Authority (EPA) Publication No. 275 "Construction Techniques for Sediment and Pollution Control" (Copy available from EPA, Traralgon).
9. Prior to the issue of a Statement of Compliance the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations.

Tree removal

10. Trees that do not fit the category of being "planted" as part of the initial development require a separate planning permit for removal unless exempted by provisions of the East Gippsland Planning Scheme.

173 agreement

11. Prior to the issue of a Statement of Compliance, the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the responsible authority to covenant that:
 - the development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
 - each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "Kings Cove - Metung - Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone", dated December 2001 (or as amended) (The Document).
 - Any amendment to The Document will be to the satisfaction of the Responsible Authority.
 - no lot created within Stage 1B will have vehicular access to Archibald Drive.

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- the provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
- a copy of this permit will be attached to and will form part of the contract of sale for every lot.
- landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.
- the agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.
- the agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.
- this agreement will be prepared at the owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

Construction of dwellings

12. The development of lots approved by this permit for the purpose of a dwelling will be exempt from the need to obtain a separate planning permit provided:
- all buildings are constructed wholly within approved building envelopes;
 - all construction and site development works are carried out strictly in accordance with the approved Soil and Water Management Plan, to the satisfaction of the responsible authority, and
 - the requirements of Clause 32.03-2 (Use for one or two dwellings or a dependent persons unit) can be met.

Street Names

13. Street names must be to the satisfaction of the responsible authority.

Landscaping

14. Prior to the issue of a Statement of Compliance, the subject land must be landscaped and planted in accordance with the requirements of the "Storth Ryes Landscape Concept Report" prepared by Murphy Design Group and dated April 2000. Specifically the following requirements must be met:
- Section 1.13 Other Roads
 - Section 1.15 Pedestrian Walkways
 - Section 1.16 Boundaries
15. Plans detailing the landscaping and streetscaping treatments, consistent with the "Storth Ryes Landscape Concept Report" and the Typical Landscape treatments contained in this report, and must be prepared by an appropriately qualified person and approved by the responsible authority prior to the commencement of any landscaping works.



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East Gippsland Water

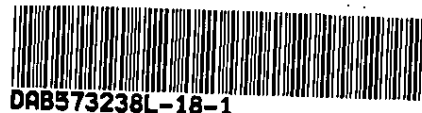
The owner/applicant must:

16. Enter into an agreement under the Water Act for the provision of water supply works.

17. Meet the cost of the necessary water mains extension.
18. Pay a headworks and distribution charge at a level determined by the Authority at the time of payment. As a guide the level applicable on 18/7/01 is \$2,000 per lot created by the subdivision.
19. Enter into an agreement under the Water Act for the provision of sewerage works.
20. Meet the cost of the necessary sewer mains extension.
21. Pay an outfall and disposal charge at a level determined by the Authority at the time of payment. As a guide, the level of charge on 18/7/01 is \$2,100 per lot created by the subdivision.
22. Provide easements as necessary.
23. Connect development to Authority's water and sewerage services to the satisfaction of the Authority.

TXU Electricity Ltd

The applicant must:



24. Enter into an agreement with TXU Electricity Ltd for supply of electricity to each lot on the endorsed plan.
25. Enter into an agreement with TXU Electricity Ltd for the rearrangement of the existing electric supply system.
26. Enter into an agreement with TXU Electricity Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.
27. Provide easements satisfactory to TXU Electricity Ltd for the purpose of "Electricity (power lines)" in the favour of TXU Electricity Ltd pursuant to Section 44 of the Electricity Industry Act 1993, where easements have not been otherwise provided, for all existing TXU Electricity Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and/or abutting land.
28. Obtain for the use of TXU any other easement external to the subdivision required to service the lots.
29. Adjust the position of any existing TXU Electricity Ltd easement to accord with the position of the electricity line(s) as determined by survey.
30. Set aside on the plan of subdivision for the use of TXU, reserves satisfactory to TXU where any electric substation (other than a pole mounted type) is required to service the subdivision.
31. Provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

Telstra

32. The applicant shall enter into an agreement with Telstra or other licensed Telecommunications carrier for the satisfactory provision of telephone cable reticulation one metre into each lot created.
33. The applicant shall set aside on the plan of subdivision reserve/s satisfactory to Telstra, for telecommunication/s substations if required.

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Certification

34. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.

DNRE

35. Prior to any works commencing on the development of the subdivision, the Soil and Water Management Plan prepared for the works shall be referred to DNRE for comment.
36. The siting of building envelopes on individual allotments shall be established so as to ensure minimal vegetation removal and the Envelope Plan shall be submitted to DNRE for comment prior to certification of each stage of the subdivision.

CFA

37. All roads must be designed, constructed and maintained for a load capacity of at least 15 tonnes.
38. There must be no obstructions within one metre of the formed width of roads at any time and there must be four metres height clearance above all roads to allow fire vehicle access.
39. The amount and location of parking facilities must be determined in such a manner as to encourage users not to impede access of emergency vehicles.
40. Adequate provisions for turning of brigade vehicles must be provided in dead end roads and cul-de-sacs. This may be through either the provision of a court bowl with a trafficable area of minimum 10 metres radius or a "wye" or "tee" head with formed road surface of each leg being of at least 8 metres length from the centre point of the head and four metres width.
41. The water reticulation plan must be approved by the CFA prior to commencement of construction.
42. There must be a hydrant within 120 metres from the outer edge of building envelope.
43. Fire hydrants must be clearly identified in accordance with the Fire Service Guideline – Identification of Hydrants for Fire Fighting Purposes.
44. Areas of public open space must be managed in a minimum fuel condition during the fire danger period.

Time

45. The permitted approval for subdivision will expire if the subdivision is not started or completed within five years of the date of this permit.
46. The permitted approval for buildings and works associated with the development of dwellings, including vegetation removal within approved building envelopes, will expire if one of the following circumstances applies:
- The building or works is not started within fifteen years of the date of this permit.
 - The building or works is not completed within two years of commencement on each lot within the subdivision.

This applies only to the construction of dwellings and the removal of vegetation within approved building envelopes and as permitted in line with the requirements specified in Condition 7 of this permit.

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Notes:

East Gippsland Water

The payment of headworks and outfall charges will be at the time of sale/settlement of each lot, or all outstanding monies to be paid in full within two years from the date of issue of Statement of Compliance for the subdivision by the Authority, whichever occurs first.

TXU

It is recommended that, at an early date the applicant commences negotiations with TXU Electricity Ltd in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay.

Arrangements for supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

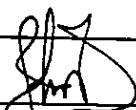
Prospective purchasers of lots on this plan should contact the TXU Electricity Ltd Bairnsdale office to determine the availability of a supply of electricity. Financial contributions may be required.

Permit amended to include a range of extra conditions controlling development of the subdivision.

Date Issued: 19 October, 2001

Amended on: 4 February, 2002

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**Signature for the
Responsible Authority**

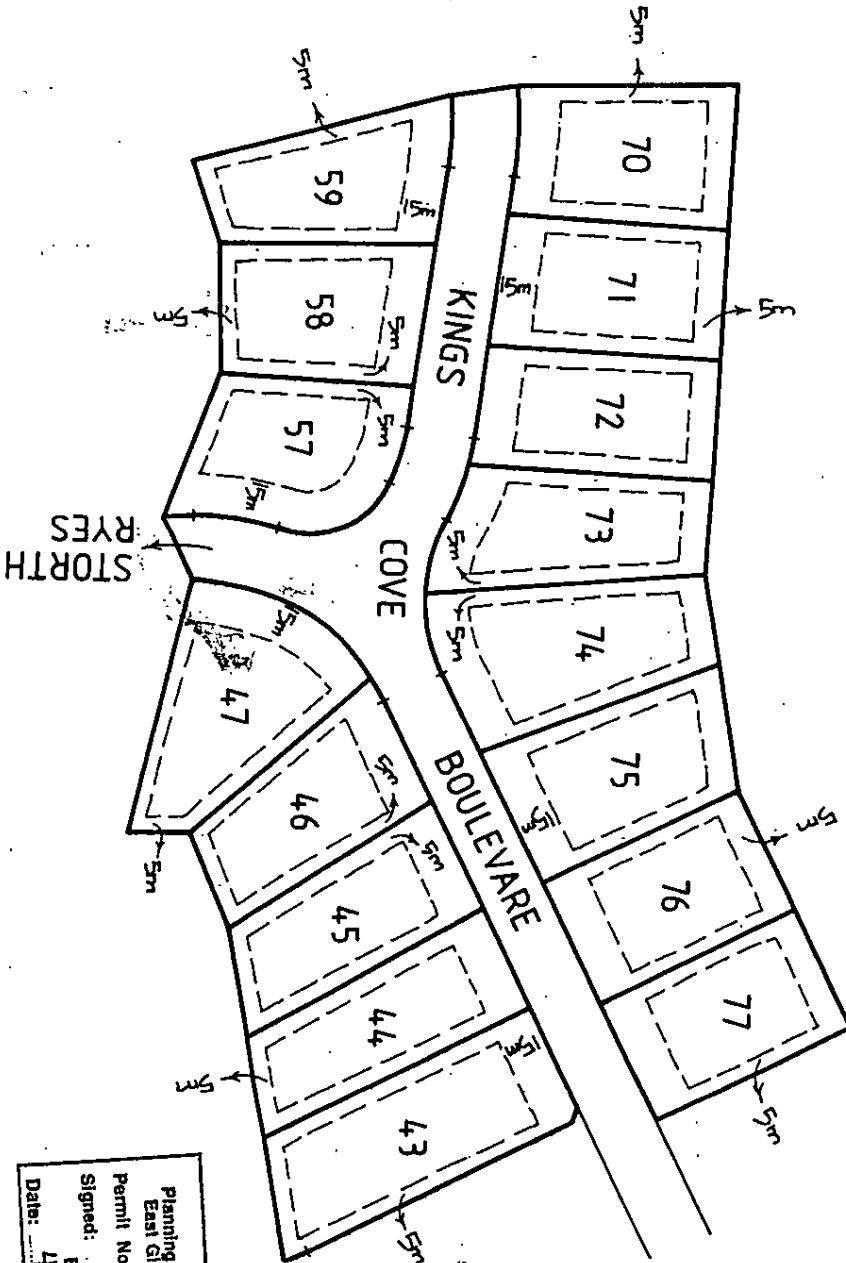
AB573238L



BUILDING ENVELOPE DIAGRAM "KINGS COVE" DEVELOPMENT STAGE 3

REF No: 9804-1
SCALE: 1:2000 (A3)

AB573238L



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Endorsed Plan
Planning and Environment Act 1987
East Gippsland Planning Scheme
Permit No.: 0100279105
Signed: [Signature]
East Gippsland Shire
Date: 4/2/02 Page 2 of 2

BUILDING ENVELOPE DIAGRAM

'KINGS COVE' DEVELOPMENT

STAGE 2

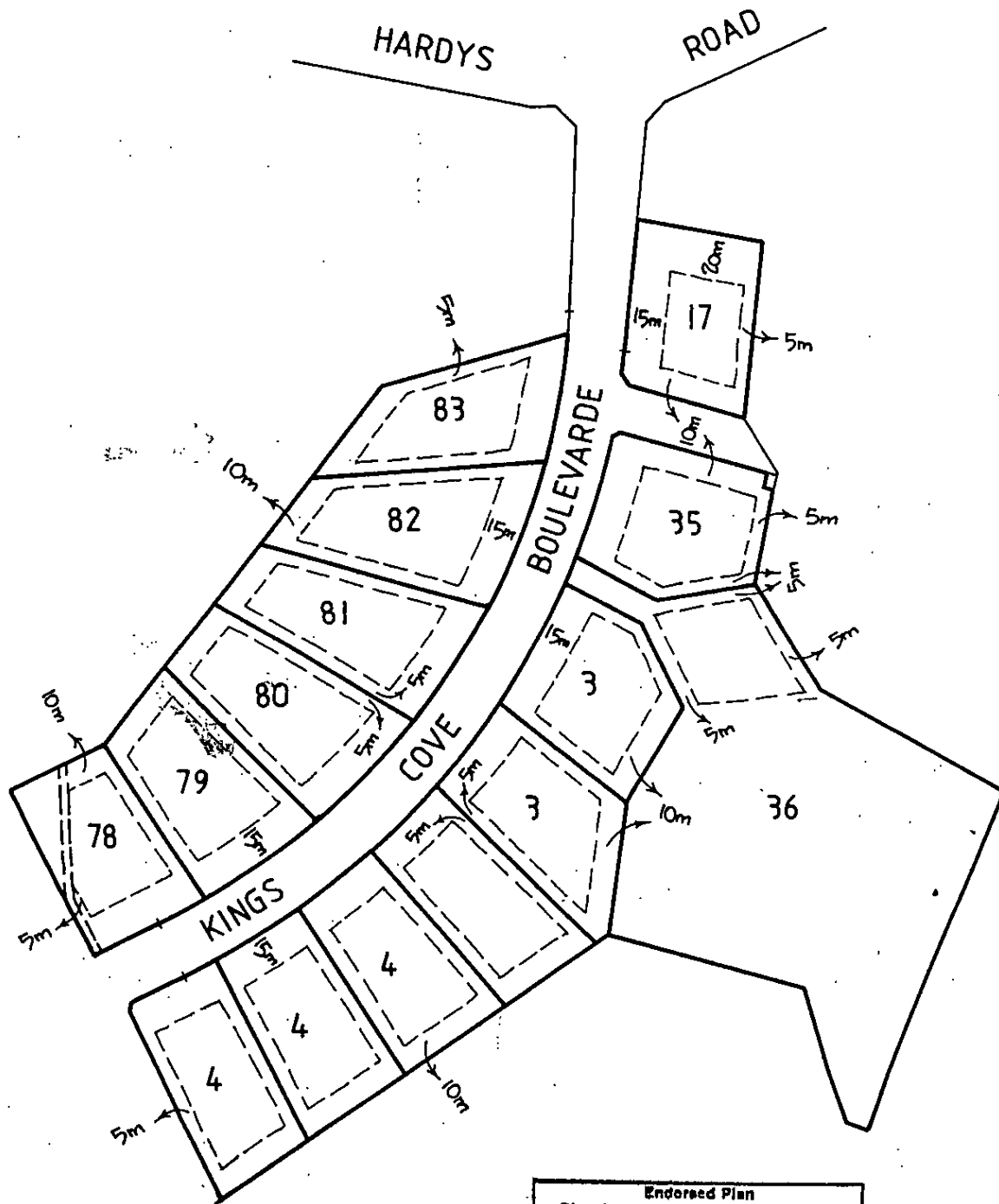
REF NO.: 9803-1

SCALE: 1:2000 (A3)

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Endorsed Plan	
Planning and Environment Act 1987	
East Gippsland Planning Scheme	
Permit No.:	91/00279/03
Signed:	<i>[Signature]</i>
East Gippsland Shire	
Date:	4/2/02 Page 1 of 1



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Crowther & Sadler Pty Ltd

LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, 3875
TELEPHONE (03) 5152 5011

PLAN OF SUBDIVISION

STAGE No. **3**

LTO USE ONLY
EDITION

PLAN NUMBER
PS 448622Q

LOCATION OF LAND

PARISH: BUMBERRAH

TOWNSHIP: —

SECTION: —

CROWN ALLOTMENT: 78A, 81A, 81D, 81E (PARTS) & PART OF FORMER GOVT. ROAD

CROWN PORTION: —

LTO BASE RECORD:
TITLE REFERENCES:

LAST PLAN REFERENCE/S: PS 434079N LOT D

POSTAL ADDRESS: HAROYS ROAD,
(At time of subdivision) METUNG, 3904

AMG Co-ordinates
(of approx centre of land in plan) E 573 700 N 5807 100 ZONE: 55

COUNCIL CERTIFICATION AND ENDORSEMENT

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF:

1. This plan is certified under Section 6 of the Subdivision Act 1988.
2. This plan is certified under Section 11(7) of the Subdivision Act 1988.
Date of original certification under Section 6. / /
3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.

OPEN SPACE

- (i) A requirement for public open space under Section 18 of the Subdivision Act 1988 has/has not been made.
- (ii) The requirement has been satisfied.
- (iii) The requirement is to be satisfied in Stage

Council Delegate
Council Seal
Date / /

Re-certified under Section 11(7) of the Subdivision Act 1988.

Council Delegate
Council Seal
Date / /

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER	COUNCIL/BODY/PERSON
RI RESERVE No 1	EAST GIPPSLAND SHIRE COUNCIL TXU ELECTRICITY LTD.

NOTATIONS

STAGING This is not a staged subdivision.
Planning permit No. 01/00299/DS

DEPTH LIMITATION 15.24 METRES BELOW THE SURFACE
APPLIES TO CROWN ALLOTMENT 81A ONLY

LOT NUMBERS 1 TO 16, 18 TO 34 & 43 TO 77 HAVE BEEN OMITTED FROM THIS PLAN

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SURVEY THIS PLAN IS/IS NOT BASED ON SURVEY
THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No.(s)
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	CARRIAGEWAY	30	INST. M22132T	VOL 9369 FOL 911, VOL 9369 FOL 912 & VOL 9369 FOL 913
E - 2	CARRIAGEWAY	SEE DIAG.	PS 420967K	LOT 2 ON PS 420967K
E - 3	WATER SUPPLY	3	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN THIS PLAN
E - 4	SEWERAGE	SEE DIAG.	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN THIS PLAN
E - 5	POWERLINE	3	THIS PLAN - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	TXU ELECTRICITY LTD.

LTO USE ONLY

STATEMENT OF COMPLIANCE/
EXEMPTION STATEMENT

RECEIVED ☐

DATE / /

LTO USE ONLY

PLAN REGISTERED

TIME

DATE / /

Assistant Registrar of Titles

SHEET 1 OF 5 SHEETS

Crowthier & Sadler Pty Ltd
LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, 3875
TELEPHONE (03) 5152 5011

LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER
SIGNATURE *[Signature]* DATE 4 / 2 / 2002
REF 9803 VERSION 3

DATE / /
COUNCIL DELEGATE SIGNATURE
ORIGINAL SHEET SIZE A3

PLAN OF SUBDIVISION

STAGE No.

PLAN NUMBER

PS 448622Q



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SEE
ENLARGEMENT

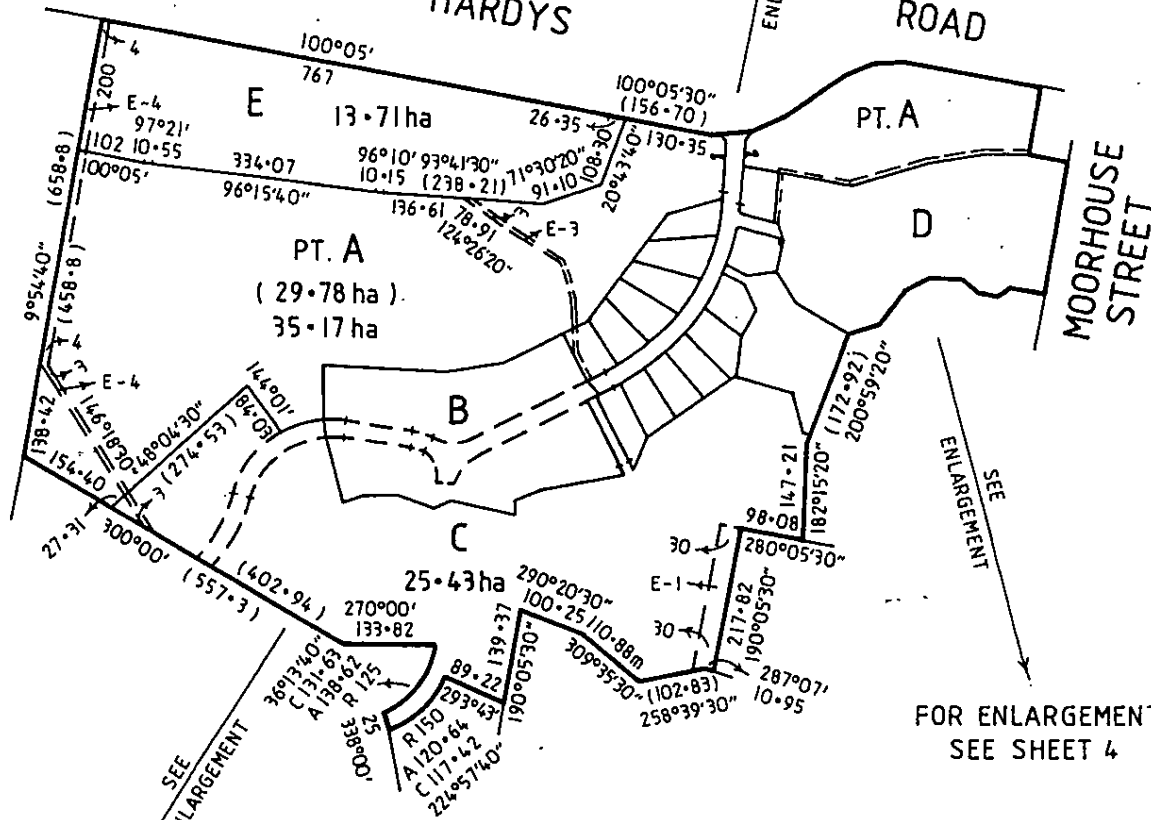
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152 MACLEOD STREET, BAIRNSDALE, 3875
TELEPHONE (03) 5152 5011

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LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER

SIGNATURE

Michael Joseph Sadler

DATE 4 / 2 / 2002

REF 9803

VERSION 3

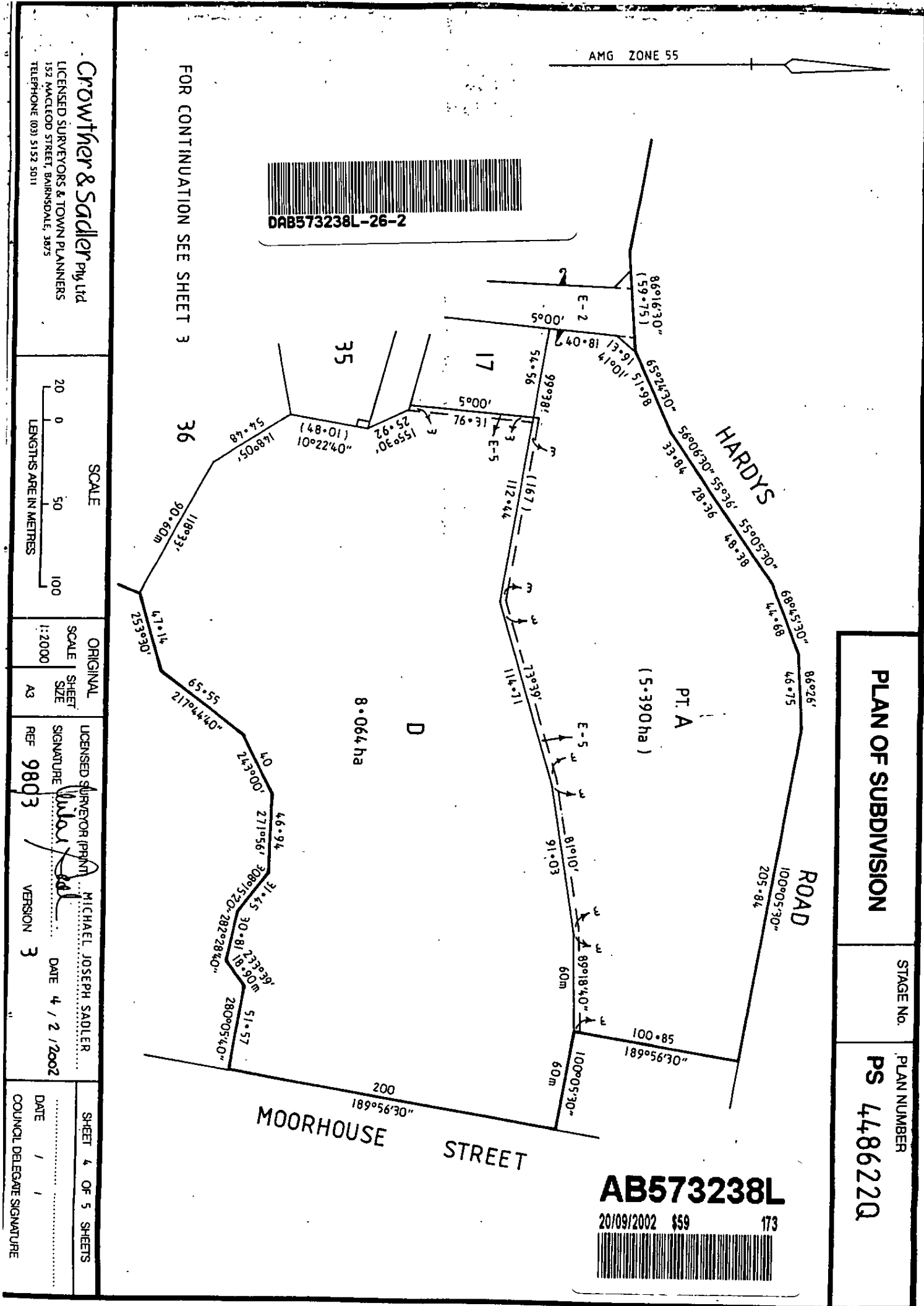
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DATE

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LENGTHS ARE IN METRES

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AMG ZONE 55



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PLAN OF SUBDIVISION

STAGE No.

PLAN NUMBER

PS 448622Q

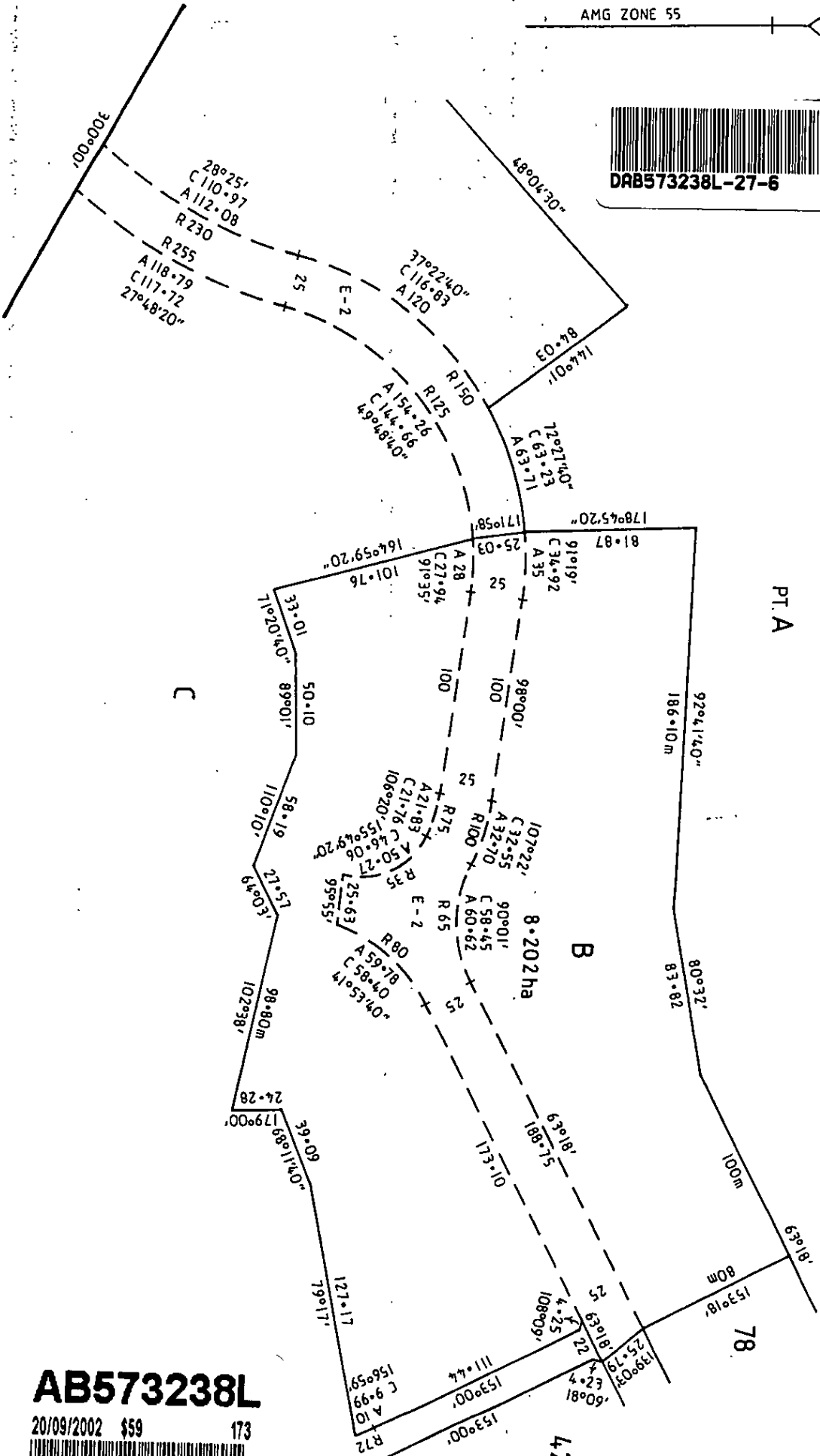
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SCALE

LENGTHS ARE IN METRES

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SIGNATURE

REF 9801-

SHEET 5 OF 5 SHEETS

COUNCIL DELEGATE SIGNATURE

DATE 4 / 2 / 2002

"C"

KING'S COVE – METUNG



**GUIDELINES FOR CONSTRUCTION, SITING OF, EXTERNAL ALTERATION AND ADDITIONS TO
BUILDING AND STRUCTURES ON "KING'S COVE"
STAGE 2 – LOT 17, 35-42, 78-83
"LOW DENSITY RESIDENTIAL ZONE"**

These guidelines are designed to protect the interests of all owners of property in the development and are not intended to be restrictive.

The subject land forms part of a quality residential land development.

For the protection of the purchaser's interest it is desirable that certain controls be implemented in relation to: the nature and type of construction; the preservation of the environment; the aesthetic appearance; and the general amenity of the development. Design of buildings, landscaping, fencing, paving, and all the elements of a high quality living environment, should be guided to establish visual continuity and compatibility throughout the development.

1.0 INTRODUCTION

"King's Cove" is an integrated Residential Resort and Marina development owned by Storth Ryes Pty. Ltd. ("Storth Ryes"). Storth Ryes administers these guidelines, for the benefit of existing and new land owners, through an Architectural Review Committee established by it and consisting of representatives nominated by Storth Ryes.

2.0 DESIGN CONFORMITY

Written application for approval of the design, external finishes and siting of all buildings (and external alterations and additions to buildings) at King's Cove must be made by the allotment owner to the Architectural Review Committee, or its nominee, prior to work commencing or applying for a building permit. These guidelines are intended to provide the criteria for assessment of the application.

2.1 Approval Procedure.

The initial step required is for each designer or builder to provide to the Architectural Review Committee a plan showing the contours of the site and proposed siting of the buildings together with a schematic presentation of the structure including: floor plans; elevations; materials and colours proposed. Once general agreement is reached and prior to lodgement of an application for a building permit from the East Gippsland Shire or its nominated subcontractor, the documents required for such application shall be lodged with the Architectural Review Committee for a final conformity assessment against these guidelines. Representations to the Architectural Review Committee in support of the proposed construction may be made by the applicants or their representatives.

The application and all supporting documents should be forwarded to the Architectural Review Committee at the following address:-

King's Cove Project Manager
PO Box 326
METUNG VIC 3904

The documents, together with a written assessment of conformity and approval, conditional approval or refusal of the proposal, shall be forwarded or given to the applicant as soon as practical and normally within 14 days of lodgement.

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3.0 BUILDING GUIDELINES

3.1 Building Envelopes

Designated Building Envelopes form part of the guidelines and the permitted use of the land under the zoning. These building envelopes, which are designed to maximise views whilst enabling vegetation corridors between buildings, are required by agreement between Storth Ryes and the Responsible Authority. The building envelope positions are designated as part of the Soil and Water Management Plan agreed between Storth Ryes and the Responsible Authority under the zone overlay. The minimum setback from the allotment boundaries are prescribed in the designated building envelopes.

3.2 Soil and Water Management Plan

The permitted use of the land under the zoning is also governed by the Soil and Water Management Plan as approved by the Responsible Authority. The construction of civil works and buildings and associated structures must comply with the Soil and Water Management Plan, in order to protect the subject land, adjacent land and the Gippsland Lakes waterways.

Annexed hereto and marked "A" is the Kings Cove – Stage 2 Soil and Water Management Plan Specifications for Construction of Dwellings.

3.3 Building Types Permitted

A single dwelling is permitted within the zone under the relevant incorporated plan overlay for King's Cove (formerly Storth Ryes).

Any dwelling erected on the site shall have a total floor area of not less than one hundred and seventy (170) square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials.

All outbuildings exposed to public view from the street, reserve, adjoining allotments or the lake shall be designed, constructed and maintained in all ways similar to the principal building on the lot. Garages and carports shall preferably be incorporated into the main roof structure. Where detached garages or carports are permitted they shall also be constructed of the same approved materials as stipulated for the dwelling and be part of an overall integrated design. Each lot shall make a provision for fully enclosed and covered parking for not less than two motor vehicles unless otherwise agreed to in writing by the Architectural Review Committee.

Innovative house plans that meet the requirements of 3.4 Building Form, set out below, but use materials other than those specified will be considered for approval if appropriately submitted to the Architectural Review Committee for assessment.

3.4 Building Form

Simple clear forms will be preferred for all structures. Unduly fragmented or flamboyant forms will not be preferred where they impact on adjoining properties or the amenity of the subject land when viewed from offsite. Sun protection of walls, openings and terraces shall preferably be achieved by roof overhangs, verandahs, pergolas or other structurally integrated elements of the building.

As stipulated by agreement between Storth Ryes and the Responsible Authority, the construction of dwelling shall conform to the following:

Buildings should be designed to minimise visual impacts, erosion and fire hazard.

Buildings should be designed with floor levels and roofs that sit in sympathy with the prevailing ground slopes.

Pergolas, decks and shading devices may be used to soften the interface between buildings and surrounding vegetation.

Split level buildings shall be encouraged on sloping land to reduce the height of the building.



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3.5 External Finishes and Colours

The objective is to provide a level of finish and colours which are compatible with the natural environment of King's Cove. They should reflect the colour and texture of the coastal setting and take account of durability and weathering characteristics. The following list of suitable finishes and colours are considered desirable but not definitive:

- Walls: Brick or masonry-rendered or bagged and painted in colours suited to the coastal environment.
Stone.
Timber and/or composite weatherboards – treated or painted in colours suited to the coastal environment.
Glass – clear, grey or smoked (non-reflective).
Sheeting Materials – Harditex and similar manufactured sheeting materials suitably coated and painted.
Colourbonded metal in corrugated patterns
- Roof: Colourbonded Metal – in colours suited to the coastal environment.
Glass – or Polygal, Laserlight, Sailcloth and similar products.
- Trim: Timber, aluminium, sheeting materials and steelwork in colours suited to the coastal environment.

The above is not intended to be comprehensive and other colours and combinations would be considered against the objectives of suiting the coastal setting of the subject land.

3.6 Service Areas

Areas used for the purpose of drying or airing clothes shall be reasonably screened from public view from the street, reserves, adjoining allotments and the lake. Storage tanks shall be mounted at ground level and reasonably concealed from public view. Refuse storage areas shall be totally screened from public view.

3.7 Vehicle Driveways/Paved Areas

Vehicle driveways and other paved areas exposed to public view should be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface. Adequate drainage and erosion protection measures must be incorporated in line with the Soil and Water Management Plan.

3.8 Alterations and Additions

The guidelines (as amended) shall also apply to all external structural alterations and additions to external surfaces of buildings and structures on the development. Such works shall involve the same application and approval procedure as applies to initial building construction.

3.9 Builders' Site Refuge Guidelines

Lot owners shall ensure that any builder of a residence on a lot complies with the Builders' Site Refuge Guidelines contained in Schedule B of these Guidelines.

3.10 Requirement of Certificate of Occupancy or approval of the Architectural Review Committee

No allotment of the development shall be occupied for residential purposes either temporarily or permanently until a Certificate of Occupancy is issued for the dwelling erected on the site or until such occupancy is otherwise approved by the Architectural Review Committee.



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4 Landscaping

4.1 General

To enhance the amenity of King's Cove and to improve the aesthetic environment, owners of lots shall be required to landscape their properties within 12 months of entering into occupation and obtaining a certificate of occupancy. The plans for such landscaping shall be prepared by a competent landscape designer and submitted to the Architectural Review Committee for a conformity assessment at the same time as plans are presented for the buildings. Lot owners will lodge a Bank Guarantee or cash bond of satisfactory performance for the sum of \$2,000.00 with Storth Ryes or its nominee. The guarantee will be released when the agreed landscaping has been completed.

The use of native species of trees and shrubs is favoured, however, other varieties will be permitted. It is desired that some indigenous trees shall be planted on each site particularly on the setback areas. Landscape plans need to incorporate general schematic layouts only with main species listed and larger trees shown on the plan. Trees which exist on the site either naturally or as part of landscaping works by the developer cannot be removed without the permission of the Architectural Review Committee.

4.2 Maintenance

Maintenance and landscaping of all ground slopes shall be the responsibility of the lot owners. Treatment of the ground slopes incorporating terracing and or retaining walls, including proposed landscaping, shall be incorporated into the landscape plan for approval. The landscape plan shall take account of the Soil and Water Management Plan requirements, maintain vegetative cover on slopes and providing measures to avoid any erosion of the subject land during and following construction.

Where a retaining structure is required to support a swimming pool or to form a terrace, such structure shall preferably include sloping landscaped or stone pitched banks as a means of level transition and shall deal with drainage to avoid erosion.

4.3 Maintenance prior to construction

Maintenance prior to construction of the dwelling and/or site shall be the responsibility of the lot owners who shall be required to ensure that grass height does not exceed 200 millimetres at any time and that the lot is maintained generally in keeping with the overall maintenance of the King's Cove Development. To assist lot owners, Storth Ryes proposes to engage a sub contractor to provide grass cutting and like maintenance services at a reasonably competitive cost, which services will be available to lot owners.

In the event that such maintenance of the dwelling and/or site not being carried out in a timely manner by Lot owners, Storth Ryes shall be entitled to engage a subcontractor for the purpose of effecting the required grass cutting or maintenance works and the Lot owner shall reimburse Storth Ryes for any expenses reasonably incurred by Storth Ryes in so doing.

5 Fences

In principle it is considered that a parklike appearance is appropriate and that solid fences be kept to a minimum subject to the requirements of screening service areas, pools and other outdoor living areas. The use of screen planting areas to define boundaries is most desirable.

Post and wire fencing will be erected by Storth Ryes on most allotment boundaries excluding the street frontage and within 15 metres of the main street frontage which will be unfenced. Boundaries within the more vegetated areas may not be fenced to avoid disturbing the existing cover. No solid fence shall be built within 15 metres of front or rear boundaries or within 5 metres of a side boundary.

Where a solid fence is sought, the preferred materials shall be brush panel, stone, bagged and painted masonry or brickwork, hardwood or treated pine pickets of 75mm x 20mm with 20mm spacings. The planting of landscaping to soften such fences will be preferred. Front boundaries are preferred to be left unfenced. Where the owner seeks greater screening cover than planting alone can provide, fences will

need to be setback 15 metres from the front boundary and significant planting incorporated into the setback area within the landscape plan.

6 Liability

Storth Ryes Pty. Ltd. and its successors and associated companies, Riviera Properties Limited and its successors and the Responsible Authority, shall each be free from any liabilities and claims for damages and/or suits of any kind as a result of or arising out of the enforcement or implementation of all or any of these guidelines or any matters associated with the same or any application for approval hereunder or the decision made.



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SCHEDULE A

Kings Cove – Stage 2 Soil and Water Management Plan

Specifications for Construction of Dwellings

December, 2001

AB573238L

20/09/2002 \$59 173



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Our Ref #: 1046

Your Ref #:



13 December, 2001

Mr Michael Sadler
Crowther And Sadler Surveyors
152 Macleod Street,
BAIRNSDALE VIC 3875



DAB573238L-34-3

Dear Michael,

**Kings Cove, Metung
Stage 2, Kings Cove Boulevard
Soil and Water Management Plan**

Please find enclosed, for your records, a copy of the Kings Cove Stage 2 Soil and Water Management Plan.

The Plan conforms with the requirements of East Gippsland Shire planning permit 01/00299/DS.

A separate copy has been provided directly to Storth Ryes Pty Ltd.

Should you require any further information, please contact me on 5152 6298

Yours faithfully,

ERIC SJERP

Environmental Manager

Encl.

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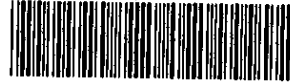
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**KINGS COVE – Stage 2
Soil and Water Management Plan
Specifications for Construction
of Dwellings
December 2001**

AB573238L

20/09/2002 \$59 173



Prepared by:

Crossco Australia Pty Ltd
Engineering and Environmental Consultants
152 Macleod Street, PO Box 858
Bairnsdale VIC 3875
Tel. 03-5152 6298
Fax. 03-5152 5705
consult@crossco.net.au
www.crossco.net.au



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Crossco Australia Pty. Ltd.

ABN 13 300 598 528

152 Macleod Street,

P.O. Box 858, Bairnsdale Vic., 3875

Telephone: (03) 5152 6298

Facsimile: (03) 5152 5705

Email: consult@crossco.net.au

Website: www.crossco.net.au



Quality
Standard
Compliance

ISO 9001
14001
18001

KINGS COVE – Stage 2
Soil and Water Management Plan
Specifications for Construction of Dwellings

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5. INSTALLATION SEQUENCE.....	4

TABLES

TABLE 1: KINGS COVE STAGE 2 LOT NUMBERS AND EROSION CONTROL REQUIREMENTS	3
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FIGURES

DRAWING 1: KING COVE – STAGE 2: DWELLING SOIL & WATER MANAGEMENT PLAN	AT REAR
DRAWING 2: TYPICAL SILT FENCE	AT REAR



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Document Information: 1046 kings cove stage 2 soil & water.doc
Issued: 13th December, 2001

1. BACKGROUND and OBJECTIVE

This Soil and Water Management Plan outlines the minimum erosion control requirements necessary for the construction of dwellings on allotments within Stage 2, Kings Cove Boulevard of the Kings Cove subdivision in Metung, Victoria.

The objective of this Plan is to prevent soil erosion and control sedimentation by adoption of the following key principles:

- Implementation of sensible site planning and compliance with construction specifications
- Diversion of up-slope water from the construction site
- Minimisation of site disturbance
- Rationalisation of movement by construction vehicles
- Installation of sediment traps/controls along low-side of construction site
- Rationalisation of stockpile location
- Protection of stockpiles from erosion
- Minimise waste from wash-down and tile/brick cutting
- Minimisation of stormwater runoff from the construction site
- Reduce the erosive energy of stormwater leaving or diverted around the construction site
- Minimisation of building waste and debris
- Regular maintenance of all erosion control structures
- Prompt rehabilitation of all disturbed areas



A typical dwelling construction site, together with specific erosion control requirements are illustrated on Drawing 1. These controls should be adopted for development of all dwellings within Stage 2 at Kings Cove based on site specific details listed in Table 1.

2. RESPONSIBILITY FOR COMPLIANCE

Compliance with the erosion control techniques specified by this Plan (and accompanying drawings) is a mandatory requirement of East Gippsland Shire Council's Planning Permit 01/00299/DS for development of dwellings within Stage 2 at Kings Cove.

It is the land/dwelling owners responsibility to ensure all contractors engaged in the construction of a dwelling(s) on any allotment within Stage 2 at Kings Cove are aware of the need to implement the erosion controls specified by this Plan.

It is the individual responsibility of the builder and all sub-contractors to implement and maintain the various erosion control structures.

3. SITE-SPECIFIC REQUIREMENTS

This Soil and Water Management Plan stipulates erosion control requirements which can be adopted for all building envelopes within Stage 2 at Kings Cove. The location and orientation of each individual erosion control structure will vary depending on the relative position of the dwelling, access to the construction site, the direction and steepness of the land, and drainage conditions.

Site disturbance should, at all times, be kept to a minimum on all allotments by limiting the extent of cut and fill, limiting the steepness of batter slopes, and prompt rehabilitation of all disturbed sites.

Table 1 lists the different site-specific conditions prevailing across Stage 2 at Kings Cove.

The builder must establish the erosion control requirements in accordance with Table 1.

Table 1. Kings Cove Stage 2 Lot numbers and erosion control requirements

Allotment No.	Landscape Type	Stage	Erosion Control Requirements
All Allotments (ie. 17, 35-42, 78-83)	i) Gently sloping or ii) Gently sloping with steeper escarpment		<ul style="list-style-type: none"> Implement all erosion control structures. Construct silt fences on ALL down slope sides of construction site. Cut & fill batters > 3.0 m long and steeper than 1H in 3V should be structurally retained. Construct silt fence on down slope side of construction site. Establish cut-off drains across high side of construction site. Utilise craneage and pumping for construction on steep erosion-prone slopes. Stormwater discharged on-site should exit via energy dissipater with silt fence across drainage line. Avoid stormwater discharge down steep slopes.
Lots 78 to 83 Inclusive	Gently sloping		<ul style="list-style-type: none"> All stormwater must be drained to the surface drain located immediately below the north-western (rear) boundary of the lots.
Lot 17 and Lots 35 to 42 Inclusive	Gently sloping Gently sloping with steeper escarpment		<ul style="list-style-type: none"> All stormwater must be drained to the drain fronting the allotments along Kings Cove Boulevard.



4. STORMWATER DISCHARGE and DRAINAGE LINE PROTECTION

All stormwater from dwellings and associated access must be drained to an appropriate discharge point as specified below and in Table 1.

For Lots 78-83, Stage 2 Kings Cove, all stormwater must be drained to the surface drain located immediately below the north-western (rear) boundary of the lots.

For Lots 17, 35-42, Stage 2 Kings Cove, all stormwater must be drained to the drain fronting the allotments along Kings Cove Boulevard.

For Lots 36-42, stormwater should not be drained downslope in a south-eastern direction over the steep escarpment along the south-eastern (rear) of these allotments.

Particular care must be taken to protect all drainage lines, gullies and steep erosion-prone slopes. Stormwater discharged onsite (from buildings and driveways etc) must be suitably baffled to dissipate erosive energy. Where there is a threat of erosion, energy dissipaters consisting of rock aggregate (100 mm ALD) securely laid over needle-punched geotextile fabric, should be constructed at stormwater outlet points. Stormwater should exit over the aggregate and onto stable grassed areas. A silt fence should be constructed across the drainage line immediately below the stormwater outlet point during construction activities.

Early connection of stormwater lines and onsite storage for subsequent reuse is encouraged.

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5. INSTALLATION SEQUENCE

Forward planning can minimise the number of erosion control structures required and their potential interference with the building process.

Installation of erosion control structures in an appropriate sequence will maximise the effect of the structures in preventing erosion and sediment movement, and further reduce the interference to builders.

The following sequence should be adopted:

1. Establish a single entry-exit point and 'parking' spot for all vehicles involved in construction activities
2. Peg-out the limits of the dwelling
3. Determine the limits of disturbance / earthworks (ie cut and fill)
4. Install sediment fences along the low side of the site immediately below the limit of disturbance, leaving sufficient room for construction activities and stockpiles. Sediment fence detail is shown in Drawing 2.
5. Install a cut-off drain above the upper limit of the cut batter to divert up-slope water around the site.
6. Stabilise cut-off drains and discharge points to dissipate erosive energy of water
7. Remove any remaining vegetation (confirming for planning approval if required)
8. Strip and stockpile topsoil within the sediment fence perimeter
9. Rehabilitate all disturbed areas (including cut and fill batters) not subject to further construction activity with erosion control matting and suitable fast growing grass species
10. Install on-site building waste and litter receptacles (ie mini skips etc)
11. Undertake construction activity
12. Minimise erosive potential of stormwater generated from the site and dwelling roofs. This will include the need to install and connect roof downpipes and stormwater drainage lines to discharge points.
13. Continue to maintain all erosion and sediment control structures, including regular removal of accumulated sediment.
14. Stabilise and rehabilitate all remaining disturbed slopes (cut and fill batters, service trenches) with suitable fast growing grass species.

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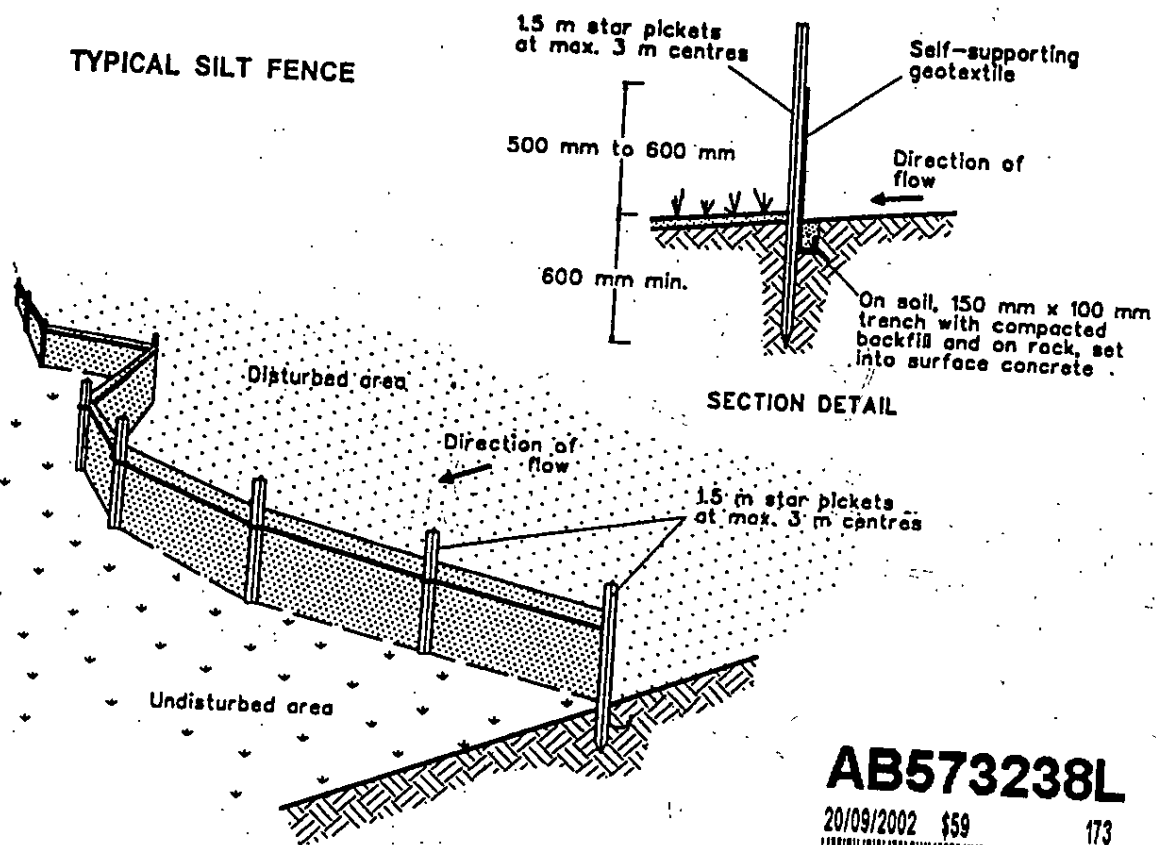


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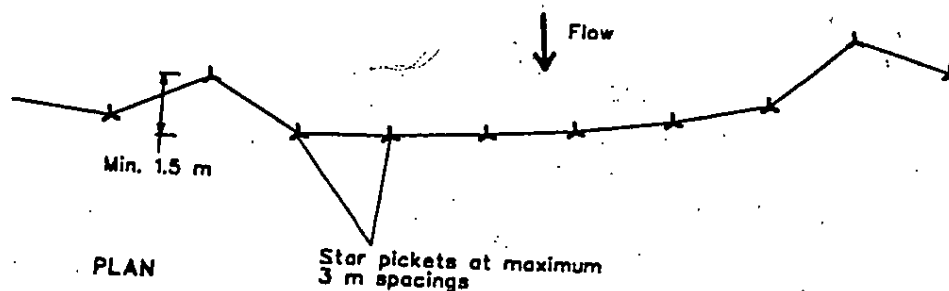
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TYPICAL SILT FENCE



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PLAN

Construction Notes

1. Construct sediment fence at limit of disturbance
2. Drive 1.5 metre long star picket into ground, 3 metres apart.
3. Dig a 150mm deep trench along the upslope line of the fence for the bottom of the fabric to be entrenched.
4. Backfill trench over base of fabric.
5. Fix self-supporting geotextile to upslope side of posts with wire ties or as recommended by geotextile manufacturer.
6. Join sections of fabric at a support post with a 150mm overlap.

Drawing 2

SCHEDULE B

BUILDERS' SITE REFUSE GUIDELINES

1. All Owners have an obligation to keep the whole of "King's Cove" tidy.
2. It is an Owner's responsibility during the construction phase of a Residence on a Lot to inform the builder of the contents of these Builders' Site Refuse Guidelines.
3. All building materials and fittings must be stored within the property boundaries of a Lot at all material times and no building materials are permitted to be stored on the nature strip of a Lot.
4. Builders must provide a lockable 2 metre square bin on a Lot for the storage of all site refuse generated by that Lot and keep all such site refuse within such bin.
5. The "King's Cove Architectural Review Committee will impose a non-littering requirement as a standard clause of any approval granted by the Architectural Review Committee in respect of building works. The builder will be required to be diligent in the control of all site litter and to protect adjoining lots and verges from use by on site construction workers and sub-contractors of the Lot.
6. The owner must ensure that a sign is erected on the Lot during the construction phase of the Residence specifying the builder's obligations in relation to these Builders' Site Refuse Guidelines.
7. An Owner and their builder must comply with any litter notice issued by or on behalf of the Architectural Review Committee specifying breaches of the Builders' Site Refuse Guidelines and rectify such breaches, failing which an Owner and their builder will be exposed to prosecution by East Gippsland Shire Council under the Litter Control Act.

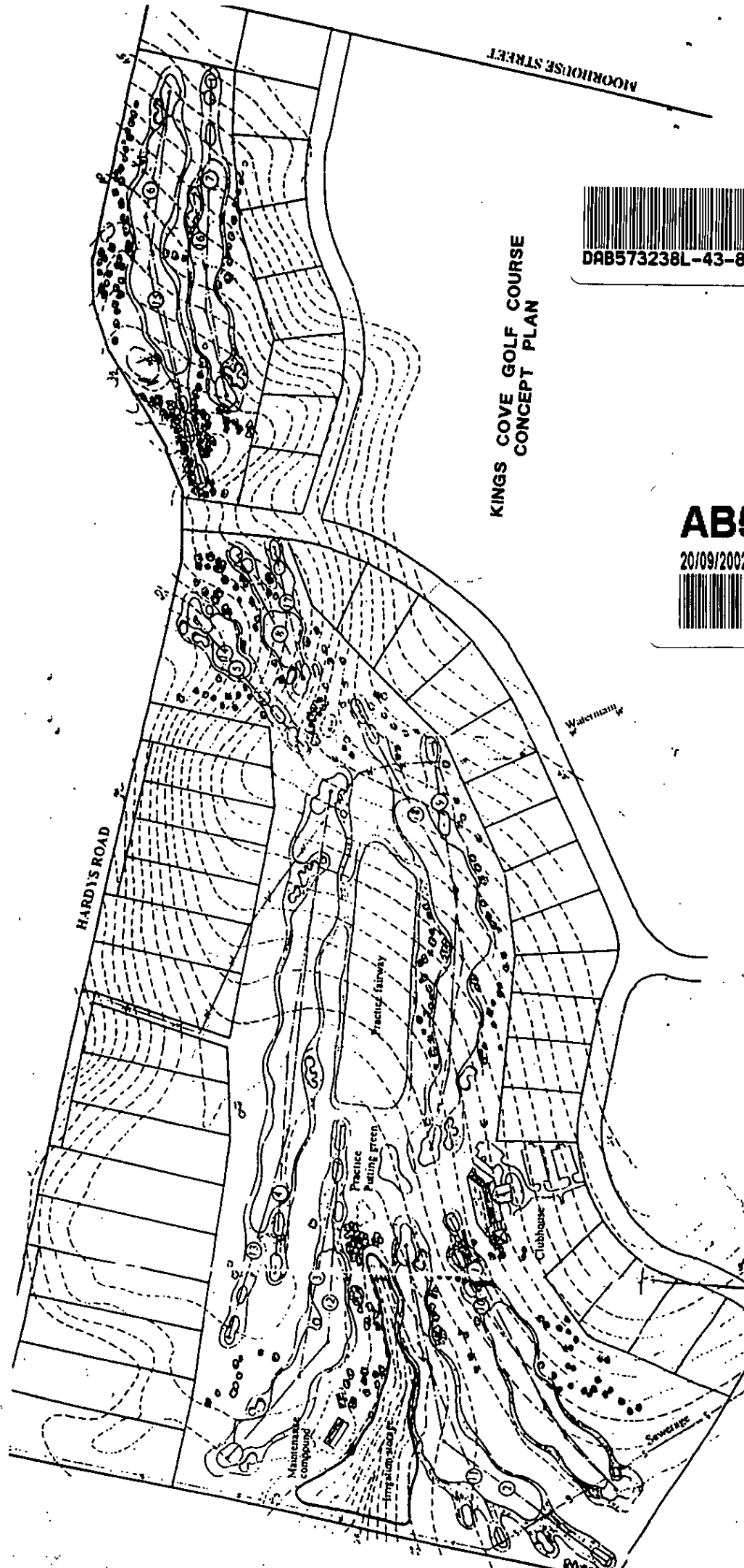


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KINGS COVE GOLF COURSE
CONCEPT PLAN



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KING'S COVE, METUNG

STAGE 2

SUMMARY OF SEWER STRATEGY

Storth Ryes Pty. Ltd. shall design and construct suitable sewer mains for the collection and disposal of all household wastewater. At the completion of the development phase such mains shall be handed over to East Gippsland Regional Water Authority (EGW) for the ongoing maintenance and management.

To service King's Cove Stage 2 there are two distinct catchments namely lots 39 – 42 and lots 17, 35 – 38, 78 – 83.

Lots 39 – 42 shall be adequately commanded by a modified gravity sewer laid in the abutting road reserve. Each allotment shall be serviced by a 100mm diameter property branch sewer installed to just inside the property boundary.

Lots 17, 35 – 38, 78 – 83 shall be serviced by a low pressure sewer rising main installed in King's Cove Boulevard. This small diameter rising main shall be capable of receiving sewage pumped from a packaged grinder pumping station to be installed on each allotment in conjunction with home development. A conventional property drain designed to collect wastes from all fixtures can be plumbed to discharge to the station. The packaged grinder pumping station shall be supplied and installed for the home builder by EGW upon payment of the appropriate purchase price at the time (in December 2001 this was approximately \$7,300.00). Electricity supply to the pump station shall be from the home supply. Electricity supply costs shall be the homeowners responsibility. EGW shall be responsible for the ongoing maintenance and replacement of the pumping stations.

Standard EGW sewerage rating structure shall apply to all allotments.

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Environment One Pressure Sewers
"An equivalent level of service"

02 - A BRIEF DESCRIPTION OF THE PROPOSED PRESSURE SEWER TECHNOLOGY

1. Introduction

Gravity sewers have been around since sewers were first developed. But networked pressure sewers are a relatively new concept. They were conceived and developed by the same people who later formed Environment One (EOne) Corporation in the USA. The first genuine network of pressure sewers was installed and thoroughly studied in Albany, New York in the late 1960s. It was from these studies that EOne developed the design rules that have allowed the subsequent installation of literally thousands of pressure sewer networks. Today 140,000+ EOne positive displacement grinder pumps have been installed.

Although virtually unknown in Australia, low pressure sewerage is a robust cost effective alternative to gravity sewerage, especially in the more difficult to sewer areas.

2. Description of System

EOne low-pressure sewers (LPS) consist of a network of pressure pipe, much like a water pipe network flowing but flowing away from houses, and EOne grinder pumps, which are installed serving all the properties throughout the collection system. Depending on local factors each pump unit may serve one or two residences or several home units or townhouses, or larger facilities. Upstream from the grinder pumps, conventional house drains from within the residence are connected to the unit inlet.

The Pressure Network

The pressure pipe network consists of black MDPE polyethylene SDR11, PE80, PN12.5 pipe. The pipe network is completely sealed through the use of electrofusion welding techniques for jointing. All branch lines and at other suitable locations, isolation valves have been located. Dead ends and other appropriate locations have flushing points. Air valves are used as required. The installation of the pressure network is not dissimilar to the easy installation of irrigation pipe. Depending on the topography, size of the system and planned rate of buildout, appurtenances may include isolation valves, flushing points, air release valves at significant high points, and check and stop valves on the house laterals at the junction of each house connection with the low pressure sewer main.

The pumps discharge a finely ground slurry into small-diameter pressure piping. In a completely pressurised collection system, all the piping downstream from the grinder pump (including laterals and mains) will normally be under low pressure (45m or less). Pipe sizes will start at 40mm for house connections (compared to 100mm in gravity systems) and will be proportionally smaller than the equivalent gravity pipeline throughout the system. All pipes are arranged as branch networks without loops.

The Grinder Pump

The semi-positive displacement pump in the grinder pump station has a nearly vertical H-Q curve. The pump delivers 0.75 L/s at 0m head and 0.47 L/s at 45m. This is the best type of pump for successful parallel operation of many pumps into a system of common pressure mains. Since each pump will be located at different point along common low pressure mains and at various elevations, each pump should operate in an efficient and predictable manner, whether one pump or numerous pumps are operating at any given moment; the pumps in such a system do not have a single fixed "operating point", but must operate consistently over a wide range of heads that are continually, and often rapidly, changing.

The Environment One grinder pump has the capability of operating above the LPS system design criteria of 45m. Based on the maximum daily number of pumps operating simultaneously versus the number of pumps connected to the system at the design pressure of 45m, the capability to operate significantly above the system's design pressure is mandatory in order for the system to operate properly during the approximately bimonthly peaks when the "absolutely maximum" numbers of pumps are operating. This feature also ensures that pumping will continue under those



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conditions when higher-than-normal pressure occurs in the pipeline. With centrifugal type pumps under higher-than-normal pressure conditions, non-delivery or inadequate delivery from some pumps may result. Positive displacement pumps are, therefore, more reliable in pumping every time.

3. Motor Selection

A grinder pump station is an electromechanical system that depends on electric power for its operating, control and alarm functions. The design and selection of Environment One's pump, motor, grinder and level-sensing controls were accomplished by optimising the wastewater transport function of the unit within the necessary constraints for unattended, trouble-free operation in a residential environment.

The one model grinder pump core is common to all models of Environment One grinder pump stations (models GP 2010i 1500, GP2010i 2000, GP 2014i, GP 2015i and GP 2016i). This central core contains all of the working and control elements of the unit and is powered by a 4-pole, 0.75kw, 240v, 1,425 rpm capacitor start, thermally protected induction, single-phase motor. Each of these motor features was carefully considered in the design of the grinder pump station.

4. System Operation

Low pressure sewer systems have become feasible with the availability of the Environment One grinder pump, the reliability of which has been proven in more than 25 years of service. The grinder pump station provides holding capacity, reliable grinding and pressure transport of a fine slurry to an existing gravity sewer, pump station or directly to a wastewater treatment plant.

In operation, the grinder pump station will handle sewage and many items that should not, but often do, appear in domestic wastewater. For example, plastic, wood, rubber and light metal objects can be routinely handled without jamming the grinder or clogging the pump or piping system. Transporting sewage several thousand metres to a discharge point at a higher elevation is possible as long as the sum of the static and friction losses does not exceed design limits of 45m TDH. In fact, higher heads can be sustained without threat to the pump or the system providing the pressure is not sustained.

The grinder pump is actuated when the depth of the sewage in the tank reaches a predetermined "turn on" level, and pumping continues until the "turn off" level is reached. The pump's running time is short, power consumption is low, and long pump life is ensured. The unit is protected against backflow from discharge lines by an integral check valve. Several grinder pump station models are available to satisfy various total and peak demand conditions.

Deposits of solids or air accumulation will be purged from the line since the pump continues to produce an essentially constant flow, even though the cross section will provide the scouring action needed to correct such conditions as soon as they start to appear. Occasionally during "normal" operation, there will be short periods when higher-than-design pressures will be experienced. These can result from a variety of causes including solids buildup (obstructions) or air bubbles.

These higher-than-expected pressure conditions are transitory occurrences. The only requirement is that no damage be done to the pumping equipment, pipelines or appurtenances during these occasional short periods. Environment One grinder pumps are driven by motors rated for continuous operation at 40C above ambient temperature. They can operate at 50 percent above rated pressure for at least 5 minutes without excessive temperature rise. Based on the Albany, New York, demonstration project, for this type of overload to last even as long as one minute would be rare. The greatest pressure the pumps can generate is 98m. As the piping and appurtenances are rated at a minimum operating pressure of >125m, there is no possibility of damage occurring to them.

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EAST GIPPSLAND SHIRE COUNCIL

- and -

STORTH RYES PTY LTD
(A.C.N. 006 383 179)

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND ENVIRONMENT
ACT 1987



DAB573238L-47-2

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT;act4662/01 (Stage 2)

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

STORTH RYES PTY LTD (ACN 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land

15 Hardys Road, METUNG VIC 3904
PLAN OF SUBDIVISION 448622Q (Stage Two)

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL,

(“Council”)

and

STORTH RYES PTY LTD (ACN 006 383 179)

(“the Owner”)

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning permit number 01/00299/DS (Amended) (“the Planning Permit”) that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked “A”.
- D. On 28 August 2002, Council and Storth Ryes Pty Ltd (“the Former Owner”) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AB573238L on 20 September 2002.
- E. Under clause 3.2 of the Agreement, the Subject Land is required to be used and developed in accordance with the “Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone” dated December 2001 (“the Guidelines”).
- F. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (ARC). The consent of the ARC must be obtained before the Subject Land is developed.
- G. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.
- H. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner’s obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.

~~D.I.~~ The Parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; ~~and~~
- ~~(b)~~ to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- ~~(c)~~ to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
- ~~(d)~~ to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

- 1.1 **"the Act"** means the Planning and Environment Act 1987.
- 1.2 **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- 1.3 **"Building Envelope"** means a building envelope shown on the Endorsed Plan.
- ~~1.31.4~~ **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".
- 1.5 **"Lot"** means a lot on the Endorsed Plan.
- ~~1.41.6~~ **"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.
- ~~1.51.7~~ **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.
- 1.8 **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.
- 1.9 **"Soil and Water Management Plan"** means the "Kings Cove - Stage 2 Soil and Water Management Plan – Specifications for Construction of Dwellings" dated December 2001, as amended from time to time. A copy of the Soil and Water

Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

1.10 **"Solid Fence"** means a fence that is less than 50% transparent.

1.61.11 **"Subject Land"** means the land situated at 15 Hardys Road, Metung being Lot D on Plan of Subdivision No. 434079N and being the land described in Certificate of Title Volume 10569 Folio 313 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of the Subject Land or any part of it.

1.71.12 **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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 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.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Owner's obligations 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, the 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

3.1 Development in accordance with the Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by Council.

3.2 [Clause 3.2 deleted]

3.3 Obligations from the Guidelines

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.3.1 the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;

3.3.2 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;

3.3.3 no more than one dwelling may be developed on a Lot;

3.3.4 any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;

3.3.5 all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;

3.3.6 if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;

3.3.7 any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;

3.3.8 vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;

3.3.9 the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and

3.3.10 the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

3.23.4 Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1 Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2 Further actions

4.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 the Owner will consent to the Council making 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 enable Council to do so 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 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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

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;
- 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 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the 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.

10. **ENDING OF AGREEMENT**

[This Agreement may be ended by agreement between Council and the Owner.](#)

~~[This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.](#)~~

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 6/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AC129582R
Kings Cove, Metung

Section 173 agreement AC129582R (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.
3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AC129582R on 13 June 2003. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).
5. Under the Guidelines:
 - a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. KCM was formally wound up and deregistered on 18 April 2017.

7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

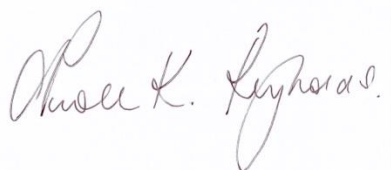
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AC129582R
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10738/428	47 Kings Cove Boulevard, Metung
2.	10738/429	55 Kings Cove Boulevard, Metung
3.	10738/430	61 Kings Cove Boulevard, Metung
4.	10738/431	65 Kings Cove Boulevard, Metung
5.	10738/432	69 Kings Cove Boulevard, Metung
6.	10738/433	73 Kings Cove Boulevard, Metung
7.	10738/434	79 Kings Cove Boulevard, Metung
8.	10738/435	85 Kings Cove Boulevard, Metung
9.	10738/436	86 Kings Cove Boulevard, Metung
10.	10738/437	82 Kings Cove Boulevard, Metung
11.	10738/438	76 Kings Cove Boulevard, Metung
12.	10738/439	72 Kings Cove Boulevard, Metung
13.	10738/440	66 Kings Cove Boulevard, Metung
14.	10738/441	60 Kings Cove Boulevard, Metung
15.	10738/442	54 Kings Cove Boulevard, Metung
16.	10738/443	50 Kings Cove Boulevard, Metung
17.	10738/444	Road R1 PS448625J

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10738 Folios 428-444 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend the section 173 agreement recorded on title in dealing number AC129582R on 13 June 2003

APPLICATION REFERENCE NUMBER:

6/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AC129582R

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LODGED BY Warren, Graham & Murphy,

CODE 1716W VICTORIA

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Titles Office Use

**APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for ENTRY OF A
MEMORANDUM OF AGREEMENT under Section 173 of that 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 Agreement be entered on the Certificate of Title to the land referred to.

LAND CERTIFICATE OF TITLE VOLUME 10678 FOLIO 248

ADDRESS OF LAND 16 HARDYS ROAD, METUNG, VICTORIA 3904

RESPONSIBLE AUTHORITY EAST GIPPSLAND SHIRE COUNCIL

PLANNING SCHEME EAST GIPPSLAND PLANNING SCHEME

AGREEMENT DATE 30TH OF SEPTEMBER, 2002

AGREEMENT WITH STORTH RYES PTY. LTD. (006 383 179)

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority

Name of Officer

JOHN TRAA

Date

23/5/03



DAC129582R-1-1

8.0
18.6-03

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EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

STORTH RYES PTY LTD (A.C.N. 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: 15 Hardys Road, METUNG VIC 3904
PLAN OF SUBDIVISION 448625J (Stage Three)



DAC129582R-2-0

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PLANNING AND ENVIRONMENT ACT 1987 SECTION 173 AGREEMENT

THIS AGREEMENT is made the 30th day of SEPTEMBER 2002

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale

("Council")

- and -

STORTH RYES PTY LTD (A.C.N. 006 383 179)

("the Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning Permit Number 01/00299/DS (Amended) ("the Planning Permit") that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked "A".

- D. The parties enter into this Agreement:



DAC129582R-4-6

- (a) to give effect to the requirements of the Planning Permit; and
- (b) 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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IT IS AGREED:



DAC129582R-5-4

1. DEFINITIONS

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

- 1.1. **"the Act"** means the Planning and Environment Act 1987.
- 1.2. **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".
- 1.4. **"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.
- 1.5. **"Planning Permit"** means the Planning Permit referred to in recital C. of this Agreement.
- 1.6. **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applied to the Subject Land.
- 1.7. **"Subject Land"** means the land situated at 15 Hardys Road, Metung being Lot B on Plan of Subdivision No. 448622Q and being part of the land described in Certificate of Title Volume 10569 Folio 313 and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

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

2. INTERPRETATION



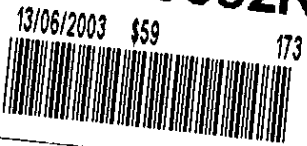
In this Agreement unless the context admits otherwise:

- 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 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.
- 2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7. 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.

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3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that:

3.1. Development In accordance with Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Condition 11 of the Planning Permit No. 01/00299/DS (Amended) requires that:

- (a) The development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
- (b) Each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "*Kings Cove – Metung- Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone*", dated December, 2001 (or as amended) (The Document). A copy of the Document is attached hereto and marked "C".
- (c) Any amendment to The Document will be to the satisfaction of the Responsible Authority.
- (d) No lot created within Stage 1B will have vehicular access to Archibald Drive.
- (e) The provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.



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- (f) A copy of Planning Permit 01/00299/DS (Amended) will be attached to and will form part of the Contract of Sale for every lot.
- (g) Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.
- (h) This Agreement will bind the Owner and must run with the land so that all successors in the title are bound by this Agreement.

3.3. Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:



4.1. Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;



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4.2. Further actions

- 4.2.1. the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;
- 4.2.2. the Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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. Exemption



DAC129582R-9-7

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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6. OWNERS 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 effected by this Agreement.

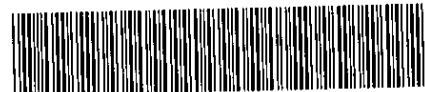
7. SUCCESSORS IN TITLE

Without limiting the operation or effect which 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



DAC129582R-10-4

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 hand delivery or prepaid post.

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8.2. 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.



DAC129582R-11-8

9. **COMMENCEMENT OF AGREEMENT**



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

10. **ENDING OF AGREEMENT**

This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The **COMMON SEAL** of **EAST GIPPSLAND**
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the Chief Executive)
Officer on the 30th day of ~~September~~)
2000 in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)

..... M. Bennett
.....



The **COMMON SEAL** of **STORTH RYES**)
PTY LTD (A.C.N. 006 383 179) was)
 Hereunto affixed in accordance with its)
 Constitution in the presence of:-



[Signature]
 Signature

[Signature]
 Signature

[Signature]
 Full Name

[Signature]
 Full Name

[Signature]
 Usual Address

[Signature]
 Usual Address

[Signature]
 Office Held

[Signature]
 Office Held



Mortgagee's Consent

Gippsland Secured Investments as Mortgagee of Registered Mortgages Numbered W348833Y and X256305M consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

[Signature]
 For and on behalf of the Mortgagee, G.S.I.



AC129582R



PLANNING PERMIT

Permit No:
Planning Scheme:
Responsible Authority:

Form 4.4
01/00299/DS (AMENDED)
EAST GIPPSLAND
East Gippsland Shire



DAC129582R-14-9

BN: 79570

ADDRESS OF THE LAND

15 Hardys Road, METUNG VIC 3904
Lot 2 LP 420967)

THE PERMIT ALLOWS

The land to be subdivided into 68 Lot (Stages 2, 3, 4, 5 & 6) in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Subdivision not altered

1. The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Engineering requirements

2. The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the requirements of the relevant service authorities.
3. Infrastructure shall be designed in accordance with standard engineering principles and practices. Full and detailed calculations shall be provided. The design shall provide for the following minimum requirements.

Roads, Pavement and Access

(a) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of design shall be provided.

(b) Pavement design shall be undertaken in accordance with accepted engineering practice. Pavement design for collector roads shall also take into consideration traffic that may be generated from the potential for future development to the south-west of the subject site. Supporting calculations for pavement design including the provision of geotechnical reports shall be provided.

(c) The cul-de-sac or turning heads of proposed new roads shall be constructed and sealed to provide sufficient space for the manoeuvring of all service and emergency vehicles. "T" or "Y" shaped turning heads are acceptable. Provision of suitable area for vehicles to perform a 3 point turn will be acceptable.

(d) A driveway crossover or culvert shall be constructed for all allotments to Council's satisfaction and in accordance with Council requirements. Crossing places shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices. Proposed details of design and construction for crossovers shall be provided.

Drainage

(e) The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection of all stormwater

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runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by buildings, pavements, and/or siteworks to avoid damage or inundation to any property. Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.

(f) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, wetlands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.

(g) Drains shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices placed at regular intervals along the length of the drain.

(h) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.

(i) Outlets shall incorporate an energy dissipation devices to prevent any erosion.

Earthworks

(j) With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 8 horizontal to 1 vertical.

(k) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.

Services

(l) Design for the installation of services shall meet the requirements of the relevant authorities and shall be approved by those authorities.

Signage and Traffic Control

(m) The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer

Documentation

(n) All documentation for the construction of infrastructure shall include adequate provision for:

(i) maintenance and repair of damage to existing infrastructure damaged as a result of works associated with this development

(ii) quality assurance and testing procedures

(iii) provision for adequate notification and inspections by Council representatives at various key stages of the works

(iv) works to be undertaken with due regard to environmental requirements.

(o) An agreement shall be entered into which shall be noted on title requiring the property being developed as a golf course to accept all stormwater runoff



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from the development. This agreement shall be a continuing agreement and binding on all future registered proprietors of that property.

Supervision of Works

(p) An appropriately qualified and registered practitioner to the satisfaction of the Responsible Authority must supervise all stages of works to be constructed on the site. Copies of all test results certified by a NATA accredited laboratory shall be provided with a certification by a Chartered Professional Engineer that all works have been constructed in accordance with approved plans and specifications will be required.

4. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
5. No works shall commence until such time as all necessary approvals from Council and relevant service authorities have been obtained.
6. Construction works on the subject land may only be conducted between the hours of 7.00 am to 6.00 pm Monday to Saturday (inclusive).
7. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the responsible authority.
8. All earthworks associated with the proposal must be undertaken in accordance with the provisions of Environment Protection Authority (EPA) Publication No. 275 "Construction Techniques for Sediment and Pollution Control" (Copy available from EPA, Traralgon).
9. Prior to the issue of a Statement of Compliance the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations.

Tree removal

10. Trees that do not fit the category of being "planted" as part of the initial development require a separate planning permit for removal unless exempted by provisions of the East Gippsland Planning Scheme.

173 agreement

11. Prior to the issue of a Statement of Compliance, the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the responsible authority to covenant that:

- the development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
- each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "Kings Cove - Metung - Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone", dated December 2001 (or as amended) (The Document).
- Any amendment to The Document will be to the satisfaction of the Responsible Authority.
- no lot created within Stage 1B will have vehicular access to Archibald Drive.



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- the provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
- a copy of this permit will be attached to and will form part of the contract of sale for every lot.
- landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.
- the agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.
- the agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.
- this agreement will be prepared at the owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

Construction of dwellings

12. The development of lots approved by this permit for the purpose of a dwelling will be exempt from the need to obtain a separate planning permit provided:
- all buildings are constructed wholly within approved building envelopes;
 - all construction and site development works are carried out strictly in accordance with the approved Soil and Water Management Plan, to the satisfaction of the responsible authority, and
 - the requirements of Clause 32.03-2 (Use for one or two dwellings or a dependent persons unit) can be met.

Street Names

13. Street names must be to the satisfaction of the responsible authority.

Landscaping

14. Prior to the issue of a Statement of Compliance, the subject land must be landscaped and planted in accordance with the requirements of the "Storth Ryes Landscape Concept Report" prepared by Murphy Design Group and dated April 2000. Specifically the following requirements must be met:
- Section 1.13 Other Roads
 - Section 1.15 Pedestrian Walkways
 - Section 1.16 Boundaries
15. Plans detailing the landscaping and streetscaping treatments, consistent with the "Storth Ryes Landscape Concept Report" and the Typical Landscape treatments contained in this report, and must be prepared by an appropriately qualified person and approved by the responsible authority prior to the commencement of any landscaping works.



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East Gippsland Water

The owner/applicant must:

16. Enter into an agreement under the Water Act for the provision of water supply works.

17. Meet the cost of the necessary water mains extension.
18. Pay a headworks and distribution charge at a level determined by the Authority at the time of payment. As a guide the level applicable on 18/7/01 is \$2,000 per lot created by the subdivision.
19. Enter into an agreement under the Water Act for the provision of sewerage works.
20. Meet the cost of the necessary sewer mains extension.
21. Pay an outfall and disposal charge at a level determined by the Authority at the time of payment. As a guide, the level of charge on 18/7/01 is \$2,100 per lot created by the subdivision.
22. Provide easements as necessary.
23. Connect development to Authority's water and sewerage services to the satisfaction of the Authority.

TXU Electricity Ltd



DAC129582R-18-3

The applicant must:

24. Enter into an agreement with TXU Electricity Ltd for supply of electricity to each lot on the endorsed plan.
25. Enter into an agreement with TXU Electricity Ltd for the rearrangement of the existing electric supply system.
26. Enter into an agreement with TXU Electricity Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.
27. Provide easements satisfactory to TXU Electricity Ltd for the purpose of "Electricity (power lines)" in the favour of TXU Electricity Ltd pursuant to Section 44 of the Electricity Industry Act 1993, where easements have not been otherwise provided, for all existing TXU Electricity Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and /or abutting land.
28. Obtain for the use of TXU any other easement external to the subdivision required to service the lots.
29. Adjust the position of any existing TXU Electricity Ltd easement to accord with the position of the electricity line(s) as determined by survey.
30. Set aside on the plan of subdivision for the use of TXU, reserves satisfactory to TXU where any electric substation (other than a pole mounted type) is required to service the subdivision.
31. Provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

Telstra

32. The applicant shall enter into an agreement with Telstra or other licensed Telecommunications carrier for the satisfactory provision of telephone cable reticulation one metre into each lot created.
33. The applicant shall set aside on the plan of subdivision reserve/s satisfactory to Telstra, for telecommunication/s substations if required.

[Handwritten signature]

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Certification

34. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.

DNRE

35. Prior to any works commencing on the development of the subdivision, the Soil and Water Management Plan prepared for the works shall be referred to DNRE for comment.
36. The siting of building envelopes on individual allotments shall be established so as to ensure minimal vegetation removal and the Envelope Plan shall be submitted to DNRE for comment prior to certification of each stage of the subdivision.

CFA

37. All roads must be designed, constructed and maintained for a load capacity of at least 15 tonnes.
38. There must be no obstructions within one metre of the formed width of roads at any time and there must be four metres height clearance above all roads to allow fire vehicle access.
39. The amount and location of parking facilities must be determined in such a manner as to encourage users not to impede access of emergency vehicles.
40. Adequate provisions for turning of brigade vehicles must be provided in dead end roads and cul-de-sacs. This may be through either the provision of a court bowl with a trafficable area of minimum 10 metres radius or a "wye" or "tee" head with formed road surface of each leg being of at least 8 metres length from the centre point of the head and four metres width.
41. The water reticulation plan must be approved by the CFA prior to commencement of construction.
42. There must be a hydrant within 120 metres from the outer edge of building envelope.
43. Fire hydrants must be clearly identified in accordance with the Fire Service Guideline – Identification of Hydrants for Fire Fighting Purposes.
44. Areas of public open space must be managed in a minimum fuel condition during the fire danger period.

Time

45. The permitted approval for subdivision will expire if the subdivision is not started or completed within five years of the date of this permit.
46. The permitted approval for buildings and works associated with the development of dwellings, including vegetation removal within approved building envelopes, will expire if one of the following circumstances applies:
- The building or works is not started within fifteen years of the date of this permit.
 - The building or works is not completed within two years of commencement on each lot within the subdivision.

This applies only to the construction of dwellings and the removal of vegetation within approved building envelopes and as permitted in line with the requirements specified in Condition 7 of this permit. •



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Notes:

East Gippsland Water

The payment of headworks and outfall charges will be at the time of sale/settlement of each lot, or all outstanding monies to be paid in full within two years from the date of issue of Statement of Compliance for the subdivision by the Authority, whichever occurs first.

TXU

It is recommended that, at an early date the applicant commences negotiations with TXU Electricity Ltd in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay.

Arrangements for supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

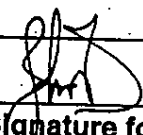
Prospective purchasers of lots on this plan should contact the TXU Electricity Ltd Bairnsdale office to determine the availability of a supply of electricity. Financial contributions may be required.

Permit amended to include a range of extra conditions controlling development of the subdivision.

Date Issued: 19 October, 2001

Amended on: 4 February, 2002

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**Signature for the
Responsible Authority**



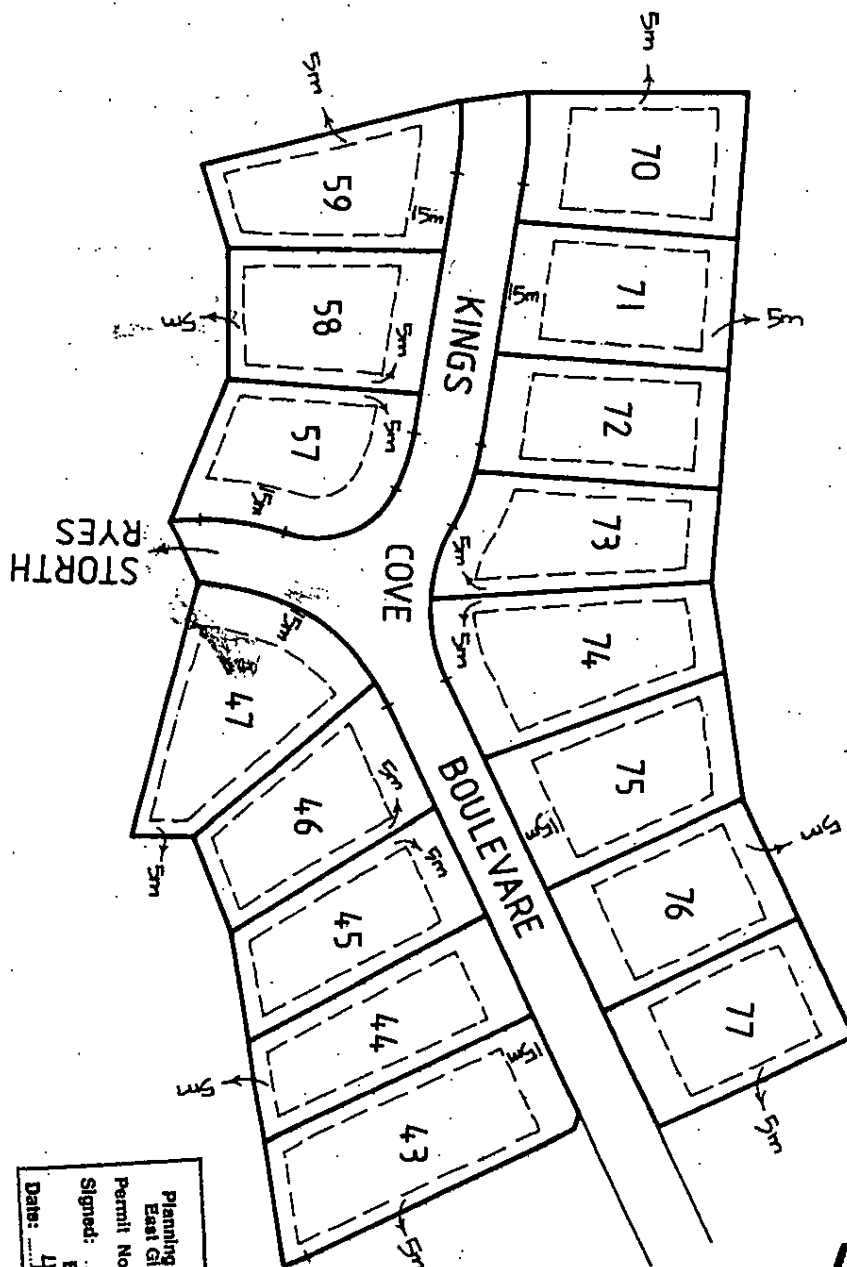
"B"

BUILDING ENVELOPE DIAGRAM "KINGS COVE" DEVELOPMENT STAGE 3

REF No. 9804-1
SCALE 1:2000 (A3)



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STORTH
RYES

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Endorsed Plan	
Planning and Environment Act 1987	
East Gippsland Planning Scheme	
Permit No.: 0100279105	
Signed: [Signature]	
Date: 11/2/02	Page 2 of 2

BUILDING ENVELOPE DIAGRAM

'KINGS COVE' DEVELOPMENT

STAGE 2

REF NO.: 9803-1

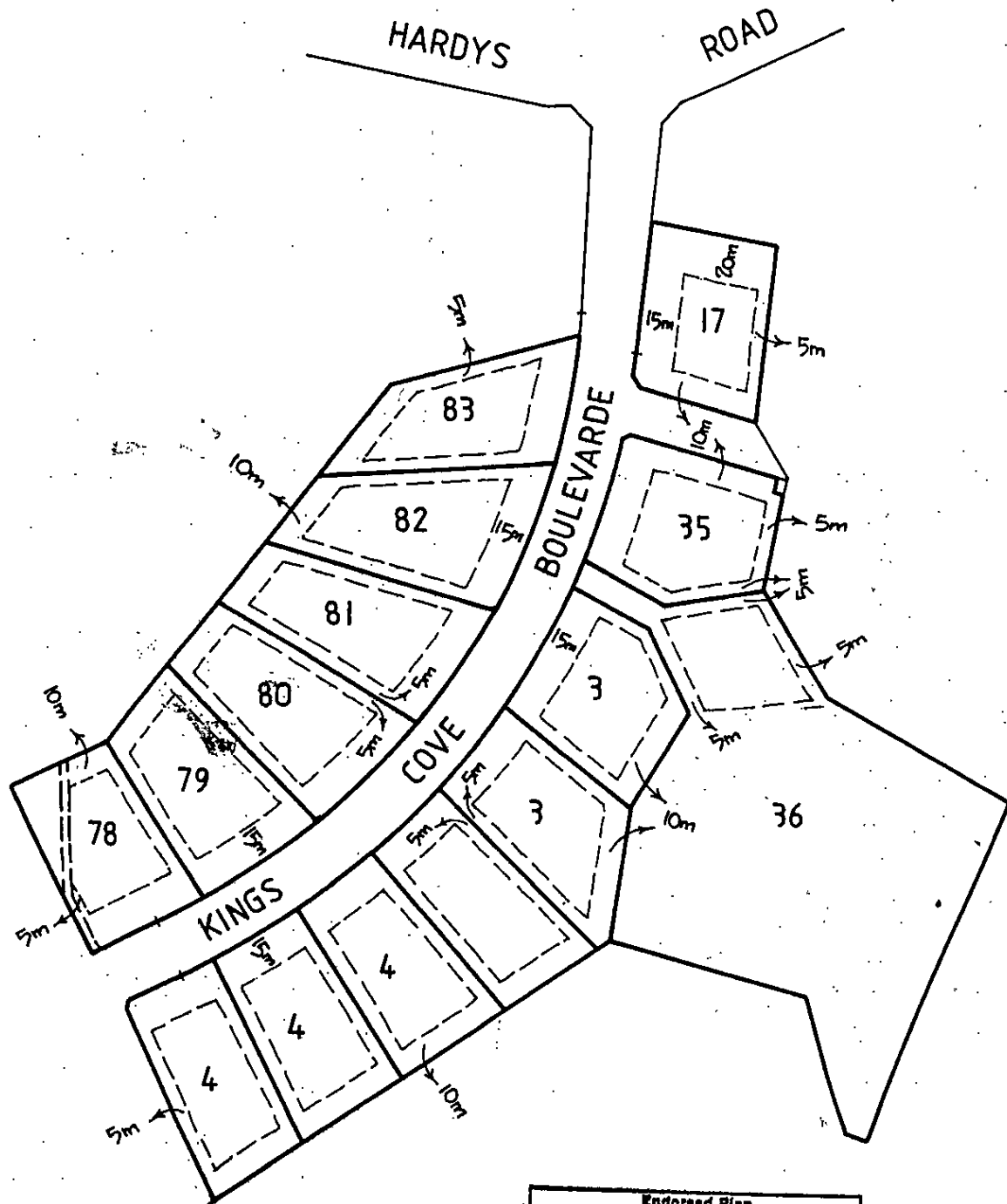
SCALE: 1:2000 (A3)

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Endorsed Plan	
Planning and Environment Act 1987	
East Gippsland Planning Scheme	
Permit No.:	91/00279/03
Signed:	<i>[Signature]</i>
East Gippsland Shire	
Date:	4/2/02 Page 1 of 1



DAC129582R-22-0

Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, 3875
TELEPHONE (03) 5152 5011

" C "

KING'S COVE – METUNG

GUIDELINES FOR CONSTRUCTION, SITING OF, EXTERNAL ALTERATION AND , BUILDING AND STRUCTURES ON "KING'S COVE" STAGE 3 – LOT 43 – 47, 57 - 59 70 – 77 "LOW DENSITY RESIDENTIAL ZONE"

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These guidelines are designed to protect the interests of all owners of property in the development and are not intended to be restrictive.

The subject land forms part of a quality residential land development.

For the protection of the purchaser's interest it is desirable that certain controls be implemented in relation to: the nature and type of construction; the preservation of the environment, the aesthetic appearance; and the general amenity of the development. Design of buildings, landscaping, fencing, paving, and all the elements of a high quality living environment, should be guided to establish visual continuity and compatibility throughout the development.

1.0 INTRODUCTION

"King's Cove" is an integrated Residential Resort and Marina development owned by Storth Ryes Pty. Ltd. ("Storth Ryes"). Storth Ryes administers these guidelines, for the benefit of existing and new land owners, through an Architectural Review Committee established by it and consisting of representatives nominated by Storth Ryes.

2.0 DESIGN CONFORMITY

Written application for approval of the design, external finishes and siting of all buildings (and external alterations and additions to buildings) at King's Cove must be made by the allotment owner to the Architectural Review Committee, or its nominee, prior to work commencing or applying for a building permit. These guidelines are intended to provide the criteria for assessment of the application.

2.1 Approval Procedure

The initial step required is for each designer or builder to provide to the Architectural Review Committee a plan showing the contours of the site and proposed siting of the buildings together with a schematic presentation of the structure including: floor plans, elevations, materials and colours proposed. Once general agreement is reached and prior to lodgement of an application for a building permit from the East Gippsland Shire or its nominated subcontractor, the documents required for such application shall be lodged with the Architectural Review Committee for a final conformity assessment against these guidelines. Representations to the Architectural Review Committee in support of the proposed construction may be made by the applicants or their representatives.

The application and all supporting documents should be forwarded to the Architectural Review Committee at the following address:-

King's Cove Project Manager
PO Box 326
METUNG VIC 3904



The documents, together with a written assessment of conformity and approval, conditional approval or refusal of the proposal, shall be forwarded or given to the applicant as soon as practical and normally within 14 days of lodgement.

3.0 GUIDING GUIDELINES

3.1 Building Envelopes

Designated Building Envelopes form part of the guidelines and the permitted use of the land under the zoning. These building envelopes, which are designed to maximise views whilst enabling vegetation corridors between buildings, are required by agreement between Storth Ryes and the Responsible Authority. The building envelope positions are designated as part of the Soil and Water Management Plan agreed between Storth Ryes and the Responsible Authority under the zone overlay. The minimum setback from the allotment boundaries are prescribed in the designated building envelopes.

3.2 Soil and Water Management Plan

The permitted use of the land under the zoning is also governed by the Soil and Water Management Plan as approved by the Responsible Authority. The construction of civil works and buildings and associated structures must comply with the Soil and Water Management Plan, in order to protect the subject land, adjacent land and the Gippsland Lakes waterways.



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Annexed hereto and marked "A" is the King's Cover – Stage 3 Soil and Water Management Plan Specifications for Construction of Dwellings.

3.3 Building Types Permitted

A single dwelling is permitted within the zone under the relevant incorporated plan overlay for King's Cove (formerly Storth Ryes).

Any dwelling erected on the site shall have a total floor area of not less than one hundred and seventy (170) square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials.

All outbuildings exposed to public view from the street, reserve, adjoining allotments or the lake shall be designed, constructed and maintained in all ways similar to the principal building on the lot. Garages and carports shall preferably be incorporated into the main roof structure. Where detached garages or carports are permitted they shall also be constructed of the same approved materials as stipulated for the dwelling and be part of an overall integrated design. Each lot shall make a provision for fully enclosed and covered parking for not less than two motor vehicles unless otherwise agreed to in writing by the Architectural Review Committee.

Innovative house plans that meet the requirements of 3.4 Building Form, set out below, but use materials other than those specified will be considered for approval if appropriately submitted to the Architectural Review Committee for assessment.

3.4 Building Form

Simple clear forms will be preferred for all structures. Unduly fragmented or flamboyant forms will not be preferred where they impact on adjoining properties or the amenity of the subject land when viewed from offsite. Sun protection of walls, openings and terraces shall preferably be achieved by roof overhangs, verandahs, pergolas or other structurally integrated elements of the building.

As stipulated by agreement between Storth Ryes and the Responsible Authority, the construction of dwelling shall conform to the following:

- Buildings should be designed to minimise visual impacts, erosion and fire hazard.
- Buildings should be designed with floor levels and roofs that sit in sympathy with the prevailing ground slopes.
- Pergolas, decks and shading devices may be used to soften the interface between buildings and surrounding vegetation.
- Split level buildings shall be encouraged on sloping land to reduce the height of the building.

3.5 External Finishes and Colours

The objective is to provide a level of finish and colours which are compatible with the natural environment of King's Cove. They should reflect the colour and texture of the coastal setting and take account of durability and weathering characteristics. The following list of suitable finishes and colours are considered desirable but not definitive.

- Walls: Brick or masonry-rendered or bagged and painted in colours suited to the coastal environment.
- Stone.
- Timber and/or composite weatherboards – treated or painted in colours suited to the coastal environment.
- Glass – clear, grey or smoked (non-reflective).
- Sheeting Materials – Harditex and similar manufactured sheeting suitably coated and painted.
- Colourbonded metal in corrugated patterns.
- Roof: Colourbonded Metal – in colours suited to the coastal environment.
- Glass – or Polygal, Laserlight, Sailcloth and similar products.
- Trim: Timber, aluminium, sheeting materials and steelwork in colours suited to the coastal environment.

The above is not intended to be comprehensive and other colours and combinations would be considered against the objectives of suiting the coastal setting of the subject land.

3.6 Service Areas

Areas used for the purpose of drying or airing clothes shall be reasonably screened from public view from the street, reserved, adjoining allotments and the land. Storage tanks shall be mounted at ground level and reasonably concealed from public view. Refuse storage areas shall be totally screened from public view.

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3.7 Vehicle Driveways/Paved Areas

Vehicle driveways and other paved areas exposed to public view should be constructed of crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed quality gravel surface. Adequate drainage and erosion protection measures must be incorporated in line with the Soil and Water Management Plan.

3.8 Alterations and Additions

The guidelines (as amended) shall also apply to all external structural alterations and additions to external surfaces of buildings and structures on the development. Such works shall involve the same application and approval procedure as applies to initial building construction.

3.9 Builders' Site Refuge Guidelines

Lot owners shall ensure that any builder of a residence on a lot complies with the Builders' Site Refuge Guidelines contained in Schedule B of these Guidelines.

3.10 Requirement of Certificate of Occupancy or approval of the Architectural Review Committee

No allotment of the development shall be occupied for residential purposes either temporarily or permanently until a Certificate of Occupancy is issued for the dwelling erected on the site or until such occupancy is otherwise approved by the Architectural Review Committee.

4. Landscaping



4.1 General

To enhance the amenity of King's Cove and to improve the aesthetic environment, owners of lots shall be required to landscape their properties within 12 months of entering into occupation and obtaining a certificate of occupancy. The plans for such landscaping shall be prepared by a competent landscape designer and submitted to the Architectural Review Committee for a conformity assessment at the same time as plans are presented for the buildings. Lot owners will lodge a Bank Guarantee or cash bond of satisfactory performance for the sum of \$2,000.00 with Storth Ryes or its nominee. The guarantee will be released when the agreed landscaping has been completed.

The use of native species of trees and shrubs is favoured, however, other varieties will be permitted. It is desired that some indigenous trees shall be planted on each site particularly on the setback areas. Landscape plans need to incorporate general schematic layouts only with main species listed and larger trees shown on the plan. Trees which exist on the site either naturally or as part of landscaping worked by the developer cannot be removed without the permission of the Architectural Review Committee.

4.2 Maintenance

Maintenance and landscaping of all ground slopes shall be the responsibility of the lot owners. Treatment of the ground slopes incorporating terracing and or retaining walls, including proposed landscaping, shall be incorporated into the landscape plan for approval. The landscape plan shall take account of the Soil and Water Management Plan requirements, maintain vegetative cover on slopes and providing measures to avoid any erosion of the subject land during and following construction.

Where a retaining structure is required to support a swimming pool or to form a terrace, such structure shall preferably include sloping landscaped or stone pitched banks as a means of level transition and shall deal with drainage to avoid erosion.

4.3 Maintenance prior to construction

Maintenance prior to construction of the dwelling and/or site shall be the responsibility of the lot owners who shall be required to ensure that grass height does not exceed 200 millimetres at any time and that the lot is maintained generally in keeping with the overall maintenance of the King's Cove Development. To assist lot owners, Storth Ryes proposes to engage a subcontractor to provide grass cutting and like maintenance services at a reasonably competitive cost, which services will be available to lot owners.

In the event that such maintenance of the dwelling and/or site not being carried out in a timely manner by Lot owners, Storth Ryes shall be entitled to engage a subcontractor for the purpose of effecting the required grass cutting or maintenance works and the Lot owner shall reimburse Storth Ryes for any expenses reasonably incurred by Storth Ryes in so doing.

5. Fences

In principle it is considered that a parklike appearance is appropriate and that solid fences be kept to a minimum subject to the requirements of screening service areas, pools and other outdoor living areas. The use of screen planting areas to define boundaries is most desirable.

Post and wire fencing will be erected by Storth Ryes on most allotment boundaries excluding the street frontage and within 15 metres of the main street frontage which will be unfenced. Boundaries within the more vegetated areas may not be fenced to avoid disturbing the existing cover. No solid fence shall be built within 15 metres of front or rear boundaries or within 5 metres of a side boundary.

Where a solid fence is sought, the preferred materials shall be brush panel, stone, bagged and painted masonry or brickwork, hardwood or treated pine pickets of 75mm x 20mm with 20mm spacings. The planting of landscaping to soften such fences will be preferred. Front boundaries are preferred to be left unfenced. Where the owner seeks greater screening cover than planting alone can provide, fences will need to be setback 15 metres from the front boundary and significant planting incorporated into the setback area within the landscape plan.

6. Liability

Storth Ryes Pty. Ltd. and its successors and associated companies, Riviera Properties Limited and its successors and the Responsible Authority, shall each be free from any liabilities and claims for damages and/or suits of any kind as a result of or arising out of the enforcement or implementation of all or any of these guidelines or any matters associated with the same or any application for approval hereunder or the decision made.



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SCHEDULE A

King's Cove – Stage 3 Soil and Water Management Plan

Specifications for Construction of Dwellings

June, 2002



DAC129582R-27-8



KINGS COVE – Stage 3 & 4
Soil and Water Management Plan
Specifications for Construction
of Dwellings
June 2002



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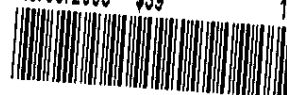
Prepared by:

Crossco Australia Pty Ltd
Engineering and Environmental Consultants
152 Macleod Street, PO Box 858
Bairnsdale VIC 3875
Tel. 03-5152 6298
Fax. 03-5152 5705
consult@crossco.net.au
www.crossco.net.au

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KINGS COVE – Stage 3 & 4
Soil and Water Management Plan
Specifications for Construction of Dwellings

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1. BACKGROUND AND OBJECTIVE	2
2. RESPONSIBILITY FOR COMPLIANCE	2
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5. INSTALLATION SEQUENCE.....	4

TABLES

TABLE 1: KINGS COVE STAGE 3 & 4 LOT NUMBERS AND EROSION CONTROL REQUIREMENTS	3
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FIGURES

DRAWING 1: KING COVE – STAGE 3 & 4: DWELLING SOIL & WATER MANAGEMENT PLAN ..AT REAR



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Document Information: 1072 kings cove stage 3 & 4 soil & water.doc
Issued: 18th June, 2002

1. BACKGROUND and OBJECTIVE

This Soil and Water Management Plan outlines the minimum erosion control requirements necessary for the construction of dwellings on allotments within Stage 3 & 4, Kings Cove Boulevard of the Kings Cove subdivision in Metung, Victoria.

The objective of this Plan is to prevent soil erosion and control sedimentation by adoption of the following key principles:

- Implementation of sensible site planning and compliance with construction specifications
- Diversion of up-slope water from the construction site
- Minimisation of site disturbance
- Rationalisation of movement by construction vehicles
- Installation of sediment traps/controls along low-side of construction site
- Rationalisation of stockpile location
- Protection of stockpiles from erosion
- Minimise waste from wash-down and tile/brick cutting
- Minimisation of stormwater runoff from the construction site
- Reduce the erosive energy of stormwater leaving or diverted around the construction site
- Minimisation of building waste and debris
- Regular maintenance of all erosion control structures
- Prompt rehabilitation of all disturbed areas



A typical dwelling construction site, together with specific erosion control requirements are illustrated on Drawing 1. These controls should be adopted for development of all dwellings within Stage 3 & 4 at Kings Cove based on site specific details listed in Table 1.

2. RESPONSIBILITY FOR COMPLIANCE

Compliance with the erosion control techniques specified by this Plan (and accompanying drawings) is a mandatory requirement of East Gippsland Shire Council's Planning Permit 01/00299/DS for development of dwellings within Stages 3 & 4 at Kings Cove.

It is the land/dwelling owners responsibility to ensure all contractors engaged in the construction of a dwelling(s) on any allotment within Stages 3 & 4 at Kings Cove are aware of the need to implement the erosion controls specified by this Plan.

It is the individual responsibility of the builder and all sub-contractors to implement and maintain the various erosion control structures.

3. SITE-SPECIFIC REQUIREMENTS

This Soil and Water Management Plan stipulates erosion control requirements which can be adopted for all building envelopes within Stages 3 & 4 at Kings Cove. The location and orientation of each individual erosion control structure will vary depending on the relative position of the dwelling, access to the construction site, the direction and steepness of the land, and drainage conditions.

Site disturbance should, at all times, be kept to a minimum on all allotments by limiting the extent of cut and fill, limiting the steepness of batter slopes, and prompt rehabilitation of all disturbed sites.

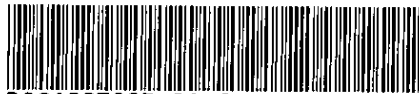
Table 1 lists the different site-specific conditions prevailing across Stages 3 & 4 at Kings Cove.



The builder must establish the erosion control requirements in accordance with Table 1.

Table 1. Kings Cove Stage 3 & 4 Lot numbers and erosion control requirements

Allotment No.	Landscape Type	Stage	Erosion Control Requirements
All Allotments (ie. 43-47, 57-64, 70-77)	i) Gently sloping or ii) Gently sloping with steeper escarpment		<ul style="list-style-type: none"> Implement all erosion control structures. Construct silt fences on ALL down slope sides of construction site. Cut & fill batters > 3.0 m long and steeper than 1H in 3V should be structurally retained. Construct silt fence on down slope side of construction site. Establish cut-off drains across high side of construction site. Utilise craneage and pumping for construction on steep erosion-prone slopes. Stormwater discharged on-site should exit via energy dissipater with silt fence across drainage line. Avoid stormwater discharge down steep slopes.
Lots 70 to 77 inclusive	Gently sloping		<ul style="list-style-type: none"> All stormwater must be drained to the surface drain located immediately below the north-western (rear) boundary of the lots.
Lots 43-47 & 57-64 inclusive	Gently sloping with steeper escarpment		<ul style="list-style-type: none"> All stormwater must be drained to the drain/kerb fronting the allotments along Kings Cove Boulevard.



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4. STORMWATER DISCHARGE and DRAINAGE LINE PROTECTION

All stormwater from dwellings and associated access must be drained to an appropriate discharge point as specified below and in Table 1.

For Lots 70-77, Stage 2 Kings Cove, all stormwater must be drained to the surface drain located immediately below the northern (rear) boundary of the lots.

For Lots 43-47, 57-64 Stage 3 & 4 Kings Cove, all stormwater must be drained to the drain/kerb fronting the allotments along Kings Cove Boulevard.

For Lots 43-47 & 57-64, stormwater should not be drained downslope in a south-eastern direction over the steeper slopes along the south-eastern (rear) of these allotments.

Particular care must be taken to protect all drainage lines, gullies and steep erosion-prone slopes. Stormwater discharged onsite (from buildings and driveways etc) must be suitably baffled to dissipate energy. Where there is a threat of erosion, energy dissipaters consisting of rock aggregate (100 mm ALD) securely laid over needle-punched geotextile fabric, should be constructed at stormwater outlet points. Stormwater should exit over the aggregate and onto stable grassed areas. A silt fence should be constructed across the drainage line immediately below the stormwater outlet point during construction activities.

Early connection of stormwater lines and onsite storage for subsequent reuse is encouraged.

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5. INSTALLATION SEQUENCE

Forward planning can minimise the number of erosion control structures required and their potential interference with the building process.

Installation of erosion control structures in an appropriate sequence will maximise the effect of the structures in preventing erosion and sediment movement, and further reduce the interference to builders.

The following sequence should be adopted:

1. Establish a single entry-exit point and 'parking' spot for all vehicles involved in construction activities
2. Peg-out the limits of the dwelling
3. Determine the limits of disturbance / earthworks (ie cut and fill)
4. Install sediment fences along the low side of the site immediately below the limit of disturbance, leaving sufficient room for construction activities and stockpiles. Sediment fence detail is shown on the Dwelling Soil and Water Management Plan.
5. Install a cut-off drain above the upper limit of the cut batter to divert up-slope water around the site
6. Stabilise cut-off drains and discharge points to dissipate erosive energy of water
7. Remove any remaining vegetation (confirming for planning approval if required)
8. Strip and stockpile topsoil within the sediment fence perimeter
9. Rehabilitate all disturbed areas (including cut and fill batters) not subject to further construction activity with erosion control matting and suitable fast growing grass species
10. Install on-site building waste and litter receptacles (ie mini skips etc)
11. Undertake construction activity
12. Minimise erosive potential of stormwater generated from the site and dwelling roofs. This will include the need to install and connect roof downpipes and stormwater drainage lines to discharge points.
13. Continue to maintain all erosion and sediment control structures, including regular removal of accumulated sediment.
14. Stabilise and rehabilitate all remaining disturbed slopes (cut and fill batters, service trenches) with suitable fast growing grass species.



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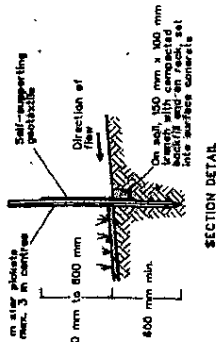
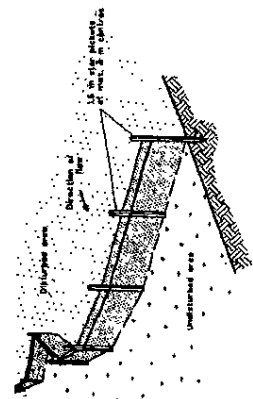
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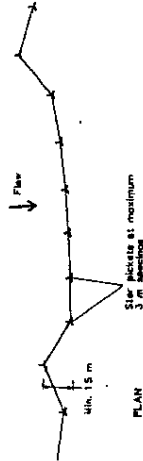




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SECTION DETAIL



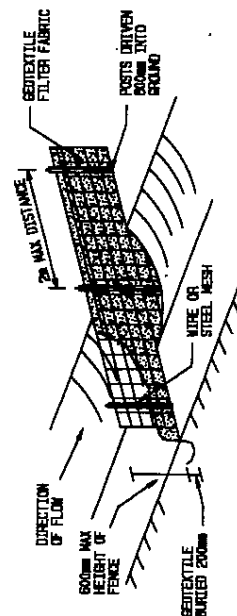
CONSTRUCTION NOTES

1. Construct sediment fence at limit of disturbance.
2. Drive 1.5m long star picket into ground, 3m apart.
3. Dig a 150mm deep trench along the upslope line of the fence for the bottom of the fabric to be entrenched.
4. Backfill trench over base of fabric.
5. Fix self supporting geotextile to upslope side of posts with wire ties or as recommended by geotextile manufacturer.
6. Join sections of fabric at a support post with a 150mm overlap.

TYPICAL SILT FENCE

GENERAL NOTES

1. Restrict cut & fill to minimum necessary and stabilize all disturbed slopes promptly. Establish on-site building waste and litter receptacles
2. Establish a cut-off drain above the upper limit of the cut batter to divert up-slope water around the site
3. Install sediment fences along the low side of site immediately below the limit of disturbance, leaving sufficient room for construction activities and stockpiles
4. Sediment fence detail is shown attached.
5. Strip and stockpile topsoil within sediment fence perimeter
5. Minimize waste from wash-down and tile/prick cutting
6. Minimize erosive potential of stormwater generated from the site and dwelling roofs. This will include the need to install and connect roof downpipes and stormwater drainage lines to discharge points as follows:
 - Stage 3, Lots 70 - 77 inclusive to the surface drain located immediately below the northern (rear) boundary of the lots.
 - Stage 3 & 4, Lots 43 - 46 & 57 - 64 inclusive to the drain, fronting the allotments along Kings Caves Boulevard.
 - Stage 3 Lot 47 to the kerb and channel fronting the allotment.



SILT FENCE ON DRAINAGE LINE

[illegible]

SCHEDULE B

BUILDERS' SITE REFUSE GUIDELINES

1. All Owners have an obligation to keep the whole of "King's Cove" tidy.
2. It is an Owner's responsibility during the construction phase of a Residence on a Lot to inform the builder of the contents of these Builder's Site Refuse Guidelines.
3. All building materials and fittings must be stored within the property boundaries of a Lot at all material times and no building materials are permitted to be stored on the nature strip of a Lot.
4. Builders must provide a lockable 2 metre square bin on a Lot for the storage of all site refuse generated by that Lot and keep all such site refuse within such bin.
5. The King's Cove Architectural Review Committee will impose a non-littering requirement as a standard clause of any approval granted by the Architectural Review Committee in respect of building works. The builder will be required to be diligent in the control of all site litter and to protect adjoining lots and verges from use by on site construction workers and subcontractors of the Lot.
6. The owner must ensure that a sign is erected on the Lot during the construction phase of the Residence specifying the builder's obligations in relation to these Builders' Site Refuse Guidelines.
7. An Owner and their builder must comply with any litter notice issued by or on behalf of the Architectural Review Committee specifying breaches of the Builders' Site Refuse Guidelines and rectify such breaches, failing which an Owner and their builder will be exposed to prosecution by East Gippsland Shire Council under the Litter Control Act.

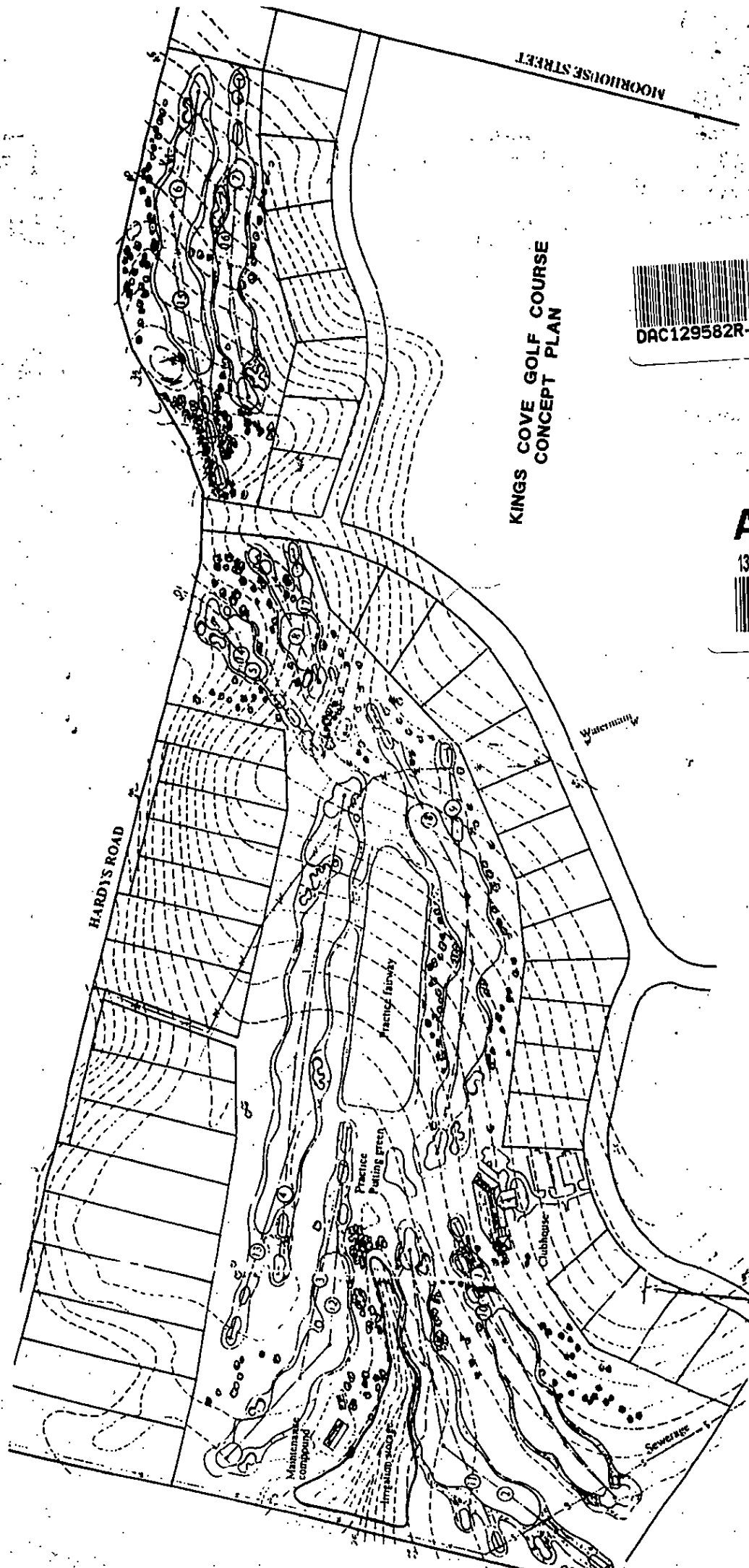


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KINGS COVE GOLF COURSE
CONCEPT PLAN



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EAST GIPPSLAND SHIRE COUNCIL

- and -

STORTH RYES PTY LTD
(A.C.N. 006 383 179)

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND ENVIRONMENT
ACT 1987



DAC129582R-36-2

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT:jl Storthryessection 173(Stage 3)

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

STORTH RYES PTY LTD (ACN 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land

15 Hardys Road, METUNG VIC 3904
PLAN OF SUBDIVISION 448625J (Stage Three)

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL,

(“Council”)

and

STORTH RYES PTY TLD (ACN 006 383 179)

(“the Owner”)

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning permit number 01/00299/DS (Amended) (“the Planning Permit”) that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked “A”.
- D. On 30 September 2002, Council and Storth Ryes Pty Ltd (“the Former Owner”) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AC129582R on 13 June 2003.
- E. Under clause 3.2 of the Agreement, the Subject Land is required to be used and developed in accordance with the “Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone” dated December 2001 (“the Guidelines”).
- F. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (ARC). The consent of the ARC must be obtained before the Subject Land is developed.
- G. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.
- H. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner’s obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.

~~D.I.~~ The Parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; ~~and~~
- ~~(b)~~ to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- ~~(c)~~ to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
- ~~(d)~~ to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

- 1.1 **"the Act"** means the Planning and Environment Act 1987.
- 1.2 **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- ~~1.3~~ **"Building Envelope"** means a building envelope shown on the Endorsed Plan.
- ~~1.31.4~~ **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".
- ~~1.5~~ **"Lot"** means a lot on the Endorsed Plan.
- ~~1.41.6~~ **"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.
- ~~1.51.7~~ **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.
- ~~1.61.8~~ **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.
- ~~1.9~~ **"Soil and Water Management Plan"** means the "Kings Cove – Stage 3 & 4 Soil and Water Management Plan – Specifications for Construction of Dwellings" dated June 2002, as amended from time to time. A copy of the Soil and Water Management

[Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.](#)

[1.10](#) **"Solid Fence"** means a fence that is less than 50% transparent.

[1.71.11](#) **"Subject Land"** means the land situated at 15 Hardys Road, Metung being Lot B on Plan of Subdivision No. 448622Q and being part of the land described in Certificate of Title Volume 10569 Folio 313 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of the Subject Land or any part of it.

[1.81.12](#) **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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 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.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Owner's obligations 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, the 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

3.1 Development in accordance with the Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by Council.

3.2 [Clause 3.2 deleted]

3.3 Obligations from the Guidelines

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.3.1 the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;

3.3.2 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;

3.3.3 no more than one dwelling may be developed on a Lot;

3.3.4 any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;

3.3.5 all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;

3.3.6 if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;

3.3.7 any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;

3.3.8 vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;

3.3.9 the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and

3.3.10 the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

3.23.4 Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1 Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2 Further actions

4.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 the Owner will consent to the Council making 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 enable Council to do so 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 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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;
- 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 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the 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.

10. **ENDING OF AGREEMENT**

[This Agreement may be ended by agreement between Council and the Owner.](#)

~~This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.~~

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 7/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AC166290V
Kings Cove, Metung

Section 173 agreement AC166290V (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.
3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AC166290V on 30 June 2003. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).
5. Under the Guidelines:
 - a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. KCM was formally wound up and deregistered on 18 April 2017.

7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

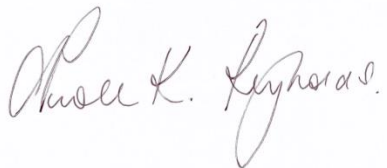
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AC166290V
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10743/411	91 Kings Cove Boulevard, Metung
2.	10743/412	97 Kings Cove Boulevard, Metung
3.	10743/413	103 Kings Cove Boulevard, Metung
4.	10743/414	109 Kings Cove Boulevard, Metung
5.	10743/415	115 Kings Cove Boulevard, Metung
6.	10743/416	94 Kings Cove Boulevard, Metung
7.	10743/419	100 Kings Cove Boulevard, Metung
8.	10743/420	90A Kings Cove Boulevard, Metung - Reserve 1
9.	10743/421	Road R1 PS509097V
10.	11857/291	1 Besley Close, Metung
11.	11857/292	5 Besley Close, Metung
12.	11857/293	9 Besley Close, Metung
13.	11857/294	11 Besley Close, Metung
14.	11857/295	36 Besley Close, Metung
15.	11857/296	34 Besley Close, Metung
16.	11857/297	32 Besley Close, Metung
17.	11857/298	30 Besley Close, Metung
18.	11857/299	26 Besley Close, Metung
19.	11857/300	22 Besley Close, Metung
20.	11857/301	18 Besley Close, Metung
21.	11857/302	14 Besley Close, Metung
22.	11857/303	10 Besley Close, Metung
23.	11857/304	6 Besley Close, Metung
24.	11857/305	2 Besley Close, Metung
25.	11857/306	3 Kempton Grove, Metung
26.	11857/307	2 Kempton Grove, Metung
27.	11857/308	5 Kempton Grove, Metung
28.	11857/312	1A Kempton Grove, Metung (Reserve 3)

TABLE B – The Agreement is proposed to be ended in respect of these properties

No.	Volume and Folio	Address
1.	10941/484	11 Storth Ryes Avenue, Metung
2.	10941/485	17 Storth Ryes Avenue, Metung
3.	10941/486	19 Storth Ryes Avenue, Metung
4.	10941/487	23 Storth Ryes Avenue, Metung
5.	10941/488	27 Storth Ryes Avenue, Metung
6.	10941/489	31 Storth Ryes Avenue, Metung
7.	10941/490	1 The Billabong, Metung
8.	10941/491	2 The Billabong, Metung
9.	10941/492	8 The Billabong, Metung
10.	10941/493	14 The Billabong, Metung
11.	10941/494	17 The Billabong, Metung
12.	10941/495	15 The Billabong, Metung
13.	10941/496	9 The Billabong, Metung
14.	10838/720	17 The Fields, Metung
15.	10838/721	19 The Fields, Metung
16.	10838/722	21 The Fields, Metung
17.	10838/724	31 The Fields, Metung
18.	10838/725	35 The Fields, Metung
19.	10838/726	32 The Fields, Metung
20.	10838/727	24 The Fields, Metung
21.	10838/728	18 The Fields, Metung
22.	10838/729	14 The Fields, Metung
23.	10838/731	Road R1 on PS517828L
24.	10838/732	Reserve 1 on PS517828L
25.	10838/733	Reserve 2 on PS517828L (16A The Fields, Metung)
26.	10932/042	25 The Fields, Metung
27.	10932/043	27 The Fields, Metung
28.	10838/712	5 The Stockyard, Metung
29.	10838/713	11 The Stockyard, Metung
30.	10838/714	15 The Stockyard, Metung
31.	10838/715	19 The Stockyard, Metung
32.	10838/716	20 The Stockyard, Metung
33.	10838/717	16 The Stockyard, Metung
34.	10838/718	12 The Stockyard, Metung
35.	10838/719	6 The Stockyard, Metung

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AND END IN PART AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10743 Folios 411-416 (inclusive) and Folios 419-421 (inclusive)

Volume 11857 Folios 291-308 (inclusive) and Folio 312

Volume 10941 Folios 484-496 (inclusive)

Volume 10838 Folios 712-722 (inclusive), Folios 724-729 (inclusive), Folios 731-733 (inclusive)

Volume 10932 Folios 042-043 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend and end in part the section 173 agreement recorded on title in dealing number AC166290V on 30 June 2003

APPLICATION REFERENCE NUMBER:

7/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done during office hours and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection. In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AC166290V

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AC166290V
Number of Pages (excluding this cover sheet)	39
Document Assembled	06/02/2020 12:51

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The document is invalid if this cover sheet is removed or altered.

LODGED BY Warren, Graham & Murphy,
STORTH RYES PIL
CODE 1716W VICTORIA

X Agreement



AC166290V
30/06/2003 \$59 173

Titles Office Use Only

**APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for ENTRY OF A
MEMORANDUM OF AGREEMENT under Section 173 of that 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 Agreement be entered on the Certificate of Title to the land referred to.

LAND	Certificates of Title Volume 10678 Folios 247, 249 and 251
ADDRESS OF LAND	15 Hardys Road, Metung, Victoria 3904
RESPONSIBLE AUTHORITY	East Gippsland Shire Council
PLANNING SCHEME	East Gippsland Planning Scheme
AGREEMENT DATE	23 day of <i>June</i> , 2003
AGREEMENT WITH	Storth Ryes Pty. Ltd. (ACN 006 383 179)

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority

[Signature]

Name of Officer

JOHN TRAA (STATUTORY PLANNER)

Date

23/6/03

DAC166290V-1-4

Rt 30000



EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

STORTH RYES PTY LTD (A.C.N. 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: 15 Hardys Road, METUNG VIC 3904
PLAN OF SUBDIVISION NO. 509097 (Stage Four)

AC166290V

30/06/2003 \$59

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PLANNING AND ENVIRONMENT ACT 1987 SECTION 173 AGREEMENT

THIS AGREEMENT is made the 23 day of June 2003

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale

("Council")

- and -

STORTH RYES PTY LTD (A.C.N. 006 383 179)

("the Owner")

INTRODUCTION



- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning Permit Number 01/00299/DS (Amended) ("the Planning Permit") that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked "A".
- D. The parties enter into this Agreement:
 - (a) to give effect to the requirements of the Planning Permit; and
 - (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

AC166290V



IT IS AGREED:

1. DEFINITIONS

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

- 1.1. **"the Act"** means the Planning and Environment Act 1987.
- 1.2. **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".
- 1.4. **"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.
- 1.5. **"Planning Permit"** means the Planning Permit referred to in recital C. of this Agreement.
- 1.6. **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applied to the Subject Land.

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1.7. **“Subject Land”** means the land situated at King's Cove Boulevard, Metung being:-

- Lot A on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 247; and
- Lot C on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 249; and
- Lot E on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 251.

Any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

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

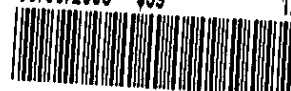
2. INTERPRETATION

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 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.

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2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

2.7. 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 covenants and agrees that:

3.1. Development in accordance with Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and the conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Condition 11 of the Planning Permit No. 01/00299/DS (Amended) requires that:

- (a) The development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
- (b) Each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "*Kings Cove – Metung- Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone*", dated December, 2001 (or as amended) (The Document). A copy of the Document is attached hereto and marked "C".
- (c) Any amendment to The Document will be to the satisfaction of the Responsible Authority.

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- (d) No lot created within Stage 1B will have vehicular access to Archibald Drive.
- (e) The provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
- (f) A copy of Planning Permit 01/00299/DS (Amended) will be attached to and will form part of the Contract of Sale for every lot.
- (g) Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive “pest” plants will not be encouraged.
- (h) This Agreement will bind the Owner and must run with the land so that all successors in the title are bound by this Agreement.

3.3. Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.





4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1. Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2. Further actions

4.2.1. the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.2. the Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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. Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any

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person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT



The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

6. OWNERS 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 effected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect which 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 hand delivery or prepaid post.

8.2. 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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.





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8.5. No Fettering of the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.

10. ENDING OF AGREEMENT

This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The **COMMON SEAL** of **EAST GIPPSLAND)**
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the Chief Executive)
Officer on the 23RD day of JUNE)
2003 in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)

.....

.....

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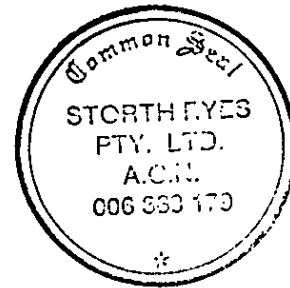
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The **COMMON SEAL** of **STORTH RYES**)
PTY LTD (A.C.N. 006 383 179) was)
Hereunto affixed in accordance with its)
Constitution in the presence of:-



Signature

Charles Harry Heath
Full Name

Gilbertan Drive, Melung
Usual Address

Director
Office Held

Signature

Thomas Eager
Full Name

74 MAJ STREET BARRISALL
Usual Address

SECRETARY
Office Held



Mortgagee's Consent

A Gippsland Secured Investments as Mortgagee of Registered Mortgages Numbered ~~W348833Y~~ and X256305M consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

[Signature]
For and on behalf of the Mortgagee, G.S.I.

PETER MILTON MURPHY AS DIRECTOR

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"A"

PLANNING PERMIT

Permit No: 01/00299/DS (AMENDED)
Planning Scheme: EAST GIPPSLAND
Responsible Authority: East Gippsland Shire

Form 4.4

ADDRESS OF THE LAND

15 Hardys Road, METUNG VIC 3904
Lot 2 LP 420967)

BN: 79570

THE PERMIT ALLOWS

The land to be subdivided into 68 Lot (Stages 2, 3, 4, 5 & 6) in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:



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Subdivision not altered

1. The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Engineering requirements

2. The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the requirements of the relevant service authorities.
3. Infrastructure shall be designed in accordance with standard engineering principles and practices. Full and detailed calculations shall be provided. The design shall provide for the following minimum requirements.

Roads, Pavement and Access

(a) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of design shall be provided.

(b) Pavement design shall be undertaken in accordance with accepted engineering practice. Pavement design for collector roads shall also take into consideration traffic that may be generated from the potential for future development to the south-west of the subject site. Supporting calculations for pavement design including the provision of geotechnical reports shall be provided.

(c) The cul-de-sac or turning heads of proposed new roads shall be constructed and sealed to provide sufficient space for the manoeuvring of all service and emergency vehicles. "T" or "Y" shaped turning heads are acceptable. Provision of suitable area for vehicles to perform a 3 point turn will be acceptable.

(d) A driveway crossover or culvert shall be constructed for all allotments to Council's satisfaction and in accordance with Council requirements. Crossing places shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices. Proposed details of design and construction for crossovers shall be provided.

Drainage

(e) The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection of all stormwater



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runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by buildings, pavements, and/or siteworks to avoid damage or inundation to any property. Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.

(f) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, wetlands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.

(g) Drains shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices placed at regular intervals along the length of the drain.

(h) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.

(i) Outlets shall incorporate an energy dissipation devices to prevent any erosion.

Earthworks

(j) With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 8 horizontal to 1 vertical.

(k) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.

Services

(l) Design for the installation of services shall meet the requirements of the relevant authorities and shall be approved by those authorities.

Signage and Traffic Control

(m) The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer

Documentation

(n) All documentation for the construction of infrastructure shall include adequate provision for:

- (i) maintenance and repair of damage to existing infrastructure damaged as a result of works associated with this development
- (ii) quality assurance and testing procedures
- (iii) provision for adequate notification and inspections by Council representatives at various key stages of the works
- (iv) works to be undertaken with due regard to environmental requirements.

(o) An agreement shall be entered into which shall be noted on title requiring the property being developed as a golf course to accept all stormwater runoff



from the development. This agreement shall be a continuing agreement and binding on all future registered proprietors of that property.

Supervision of Works

(p) An appropriately qualified and registered practitioner to the satisfaction of the Responsible Authority must supervise all stages of works to be constructed on the site. Copies of all test results certified by a NATA accredited laboratory shall be provided with a certification by a Chartered Professional Engineer that all works have been constructed in accordance with approved plans and specifications will be required.

4. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
5. No works shall commence until such time as all necessary approvals from Council and relevant service authorities have been obtained.
6. Construction works on the subject land may only be conducted between the hours of 7.00 am to 6.00 pm Monday to Saturday (inclusive).
7. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the responsible authority.
8. All earthworks associated with the proposal must be undertaken in accordance with the provisions of Environment Protection Authority (EPA) Publication No. 275 "Construction Techniques for Sediment and Pollution Control" (Copy available from EPA, Traralgon).
9. Prior to the issue of a Statement of Compliance the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations.

Tree removal

10. Trees that do not fit the category of being "planted" as part of the initial development require a separate planning permit for removal unless exempted by provisions of the East Gippsland Planning Scheme.

173 agreement

11. Prior to the issue of a Statement of Compliance, the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the responsible authority to covenant that:
 - the development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
 - each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "Kings Cove - Metung - Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone", dated December 2001 (or as amended) (The Document).
 - Any amendment to The Document will be to the satisfaction of the Responsible Authority.
 - no lot created within Stage 1B will have vehicular access to Archibald Drive.



[Signature]



- the provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
- a copy of this permit will be attached to and will form part of the contract of sale for every lot.
- landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.
- the agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.
- the agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.
- this agreement will be prepared at the owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

Construction of dwellings

12. The development of lots approved by this permit for the purpose of a dwelling will be exempt from the need to obtain a separate planning permit provided:
- all buildings are constructed wholly within approved building envelopes;
 - all construction and site development works are carried out strictly in accordance with the approved Soil and Water Management Plan, to the satisfaction of the responsible authority, and
 - the requirements of Clause 32.03-2 (Use for one or two dwellings or a dependent persons unit) can be met.

Street Names

13. Street names must be to the satisfaction of the responsible authority.

Landscaping

14. Prior to the issue of a Statement of Compliance, the subject land must be landscaped and planted in accordance with the requirements of the "Storth Ryes Landscape Concept Report" prepared by Murphy Design Group and dated April 2000. Specifically the following requirements must be met:
- Section 1.13 Other Roads
 - Section 1.15 Pedestrian Walkways
 - Section 1.16 Boundaries
15. Plans detailing the landscaping and streetscaping treatments, consistent with the "Storth Ryes Landscape Concept Report" and the Typical Landscape treatments contained in this report, and must be prepared by an appropriately qualified person and approved by the responsible authority prior to the commencement of any landscaping works.

East Gippsland Water

The owner/applicant must:

16. Enter into an agreement under the Water Act for the provision of water supply works.

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17. Meet the cost of the necessary water mains extension.
18. Pay a headworks and distribution charge at a level determined by the Authority at the time of payment. As a guide the level applicable on 18/7/01 is \$2,000 per lot created by the subdivision.
19. Enter into an agreement under the Water Act for the provision of sewerage works.
20. Meet the cost of the necessary sewer mains extension.
21. Pay an outfall and disposal charge at a level determined by the Authority at the time of payment. As a guide, the level of charge on 18/7/01 is \$2,100 per lot created by the subdivision.
22. Provide easements as necessary.
23. Connect development to Authority's water and sewerage services to the satisfaction of the Authority.

TXU Electricity Ltd

The applicant must:

24. Enter into an agreement with TXU Electricity Ltd for supply of electricity to each lot on the endorsed plan.
25. Enter into an agreement with TXU Electricity Ltd for the rearrangement of the existing electric supply system.
26. Enter into an agreement with TXU Electricity Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.
27. Provide easements satisfactory to TXU Electricity Ltd for the purpose of "Electricity (power lines)" in the favour of TXU Electricity Ltd pursuant to Section 44 of the Electricity Industry Act 1993, where easements have not been otherwise provided, for all existing TXU Electricity Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and /or abutting land.
28. Obtain for the use of TXU any other easement external to the subdivision required to service the lots.
29. Adjust the position of any existing TXU Electricity Ltd easement to accord with the position of the electricity line(s) as determined by survey.
30. Set aside on the plan of subdivision for the use of TXU, reserves satisfactory to TXU where any electric substation (other than a pole mounted type) is required to service the subdivision.
31. Provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

Telstra

32. The applicant shall enter into an agreement with Telstra or other licensed Telecommunications carrier for the satisfactory provision of telephone cable reticulation one metre into each lot created.
33. The applicant shall set aside on the plan of subdivision reserve/s satisfactory to Telstra, for telecommunication/s substations if required.

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Certification

34. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.

DNRE

35. Prior to any works commencing on the development of the subdivision, the Soil and Water Management Plan prepared for the works shall be referred to DNRE for comment.
36. The siting of building envelopes on individual allotments shall be established so as to ensure minimal vegetation removal and the Envelope Plan shall be submitted to DNRE for comment prior to certification of each stage of the subdivision.

CFA

37. All roads must be designed, constructed and maintained for a load capacity of at least 15 tonnes.
38. There must be no obstructions within one metre of the formed width of roads at any time and there must be four metres height clearance above all roads to allow fire vehicle access.
39. The amount and location of parking facilities must be determined in such a manner as to encourage users not to impede access of emergency vehicles.
40. Adequate provisions for turning of brigade vehicles must be provided in dead end roads and cul-de-sacs. This may be through either the provision of a court bowl with a trafficable area of minimum 10 metres radius or a "wye" or "tee" head with formed road surface of each leg being of at least 8 metres length from the centre point of the head and four metres width.
41. The water reticulation plan must be approved by the CFA prior to commencement of construction.
42. There must be a hydrant within 120 metres from the outer edge of building envelope.
43. Fire hydrants must be clearly identified in accordance with the Fire Service Guideline – Identification of Hydrants for Fire Fighting Purposes.
44. Areas of public open space must be managed in a minimum fuel condition during the fire danger period.

Time

45. The permitted approval for subdivision will expire if the subdivision is not started or completed within five years of the date of this permit.
46. The permitted approval for buildings and works associated with the development of dwellings, including vegetation removal within approved building envelopes, will expire if one of the following circumstances applies:
- The building or works is not started within fifteen years of the date of this permit.
 - The building or works is not completed within two years of commencement on each lot within the subdivision.

This applies only to the construction of dwellings and the removal of vegetation within approved building envelopes and as permitted in line with the requirements specified in Condition 7 of this permit.



Notes:

East Gippsland Water



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The payment of headworks and outfall charges will be at the time of sale/settlement of each lot, or all outstanding monies to be paid in full within two years from the date of issue of Statement of Compliance for the subdivision by the Authority, whichever occurs first.

TXU

It is recommended that, at an early date the applicant commences negotiations with TXU Electricity Ltd in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay.

Arrangements for supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.


Prospective purchasers of lots on this plan should contact the TXU Electricity Ltd Bairnsdale office to determine the availability of a supply of electricity. Financial contributions may be required.

Permit amended to include a range of extra conditions controlling development of the subdivision.




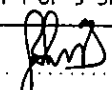
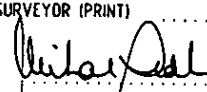
Date Issued: 19 October, 2001

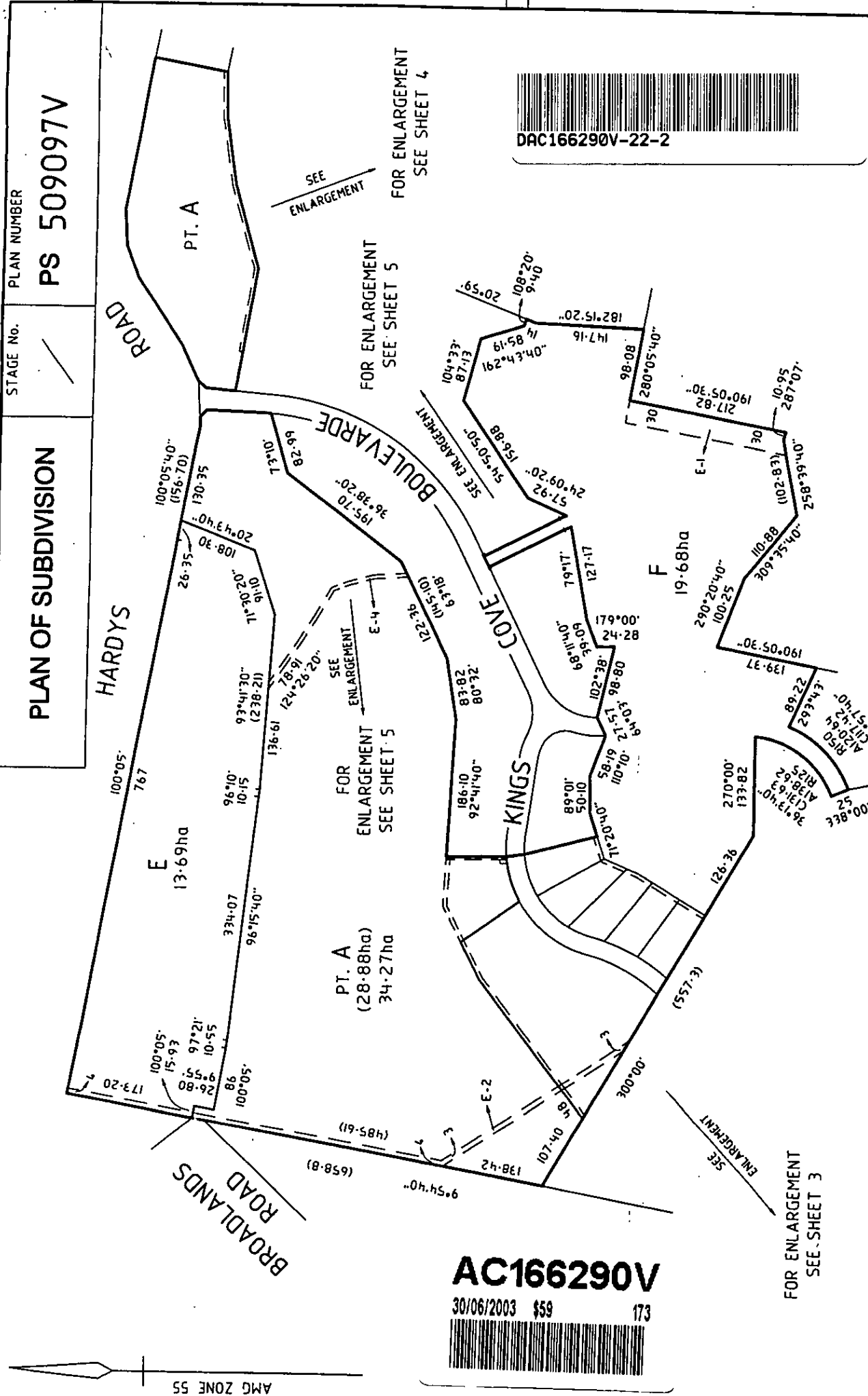
Amended on: 4 February, 2002

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Signature for the
Responsible Authority



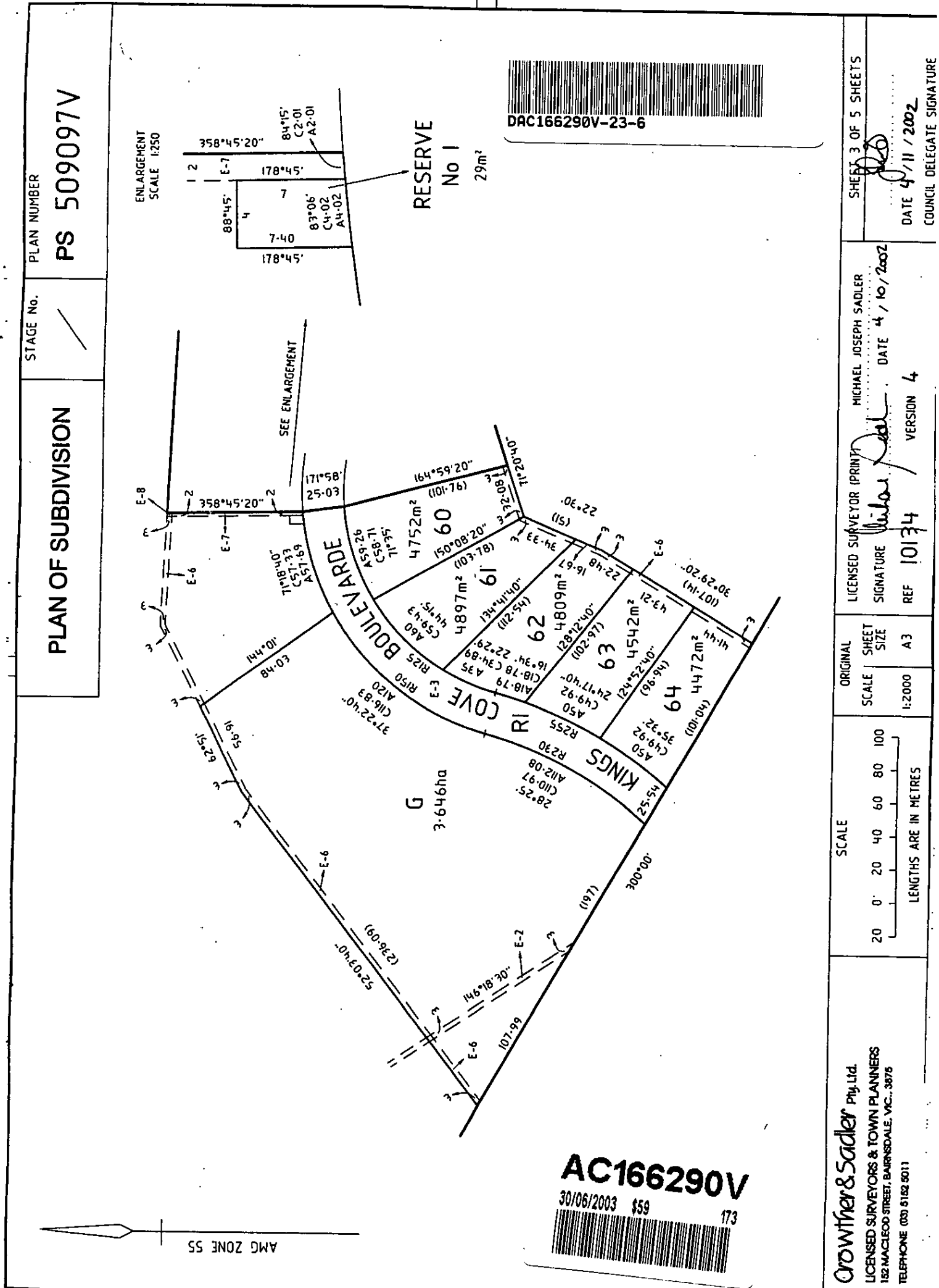
PLAN OF SUBDIVISION				STAGE No. /	LTO USE ONLY EDITION	PLAN NUMBER PS 509097V
LOCATION OF LAND PARISH: BUMBERRAH TOWNSHIP: — SECTION: — CROWN ALLOTMENT: 78 ^A , 81 ^A , 81 ^E (PARTS) CROWN PORTION: — TITLE REFERENCES: LAST PLAN REFERENCE: LOTS A, C & E ON PS 448622Q POSTAL ADDRESS: KINGS COVE BOULEVARDE, (At time of subdivision) METUNG, 3904 AMG CO-ORDINATES: E 573 750 (Of approx. centre of land in plan) N 5807 000 ZONE: 55				COUNCIL CERTIFICATION AND ENDORSEMENT COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 02/00053/SD 1. This plan is certified under Section 6 of the Subdivision Act 1988. 2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 / / 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. OPEN SPACE (i) A requirement for public open space under Section 18 Subdivision Act 1988 has has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in stage Council Delegate  Council seal Date 4 / 11 / 2002 Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council seal Date / /		
VESTING OF ROADS AND/OR RESERVES				NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON					
RI RESERVE No 1	EAST GIPPSLAND SHIRE COUNCIL TXU ELECTRICITY LTD.			STAGING This is / is not a staged subdivision Planning Permit No 01/00299/DS DEPTH LIMITATION DOES NOT APPLY		
LOTS 1 TO 59 HAVE BEEN OMITTED FROM THIS PLAN SURVEY: THIS PLAN IS / IS NOT BASED ON SURVEY THIS SURVEY IS CONNECTED TO PERMANENT MARK (No)s				 30/06/2003 \$59 173 AC166290V		
 DAC166290V-21-9					LTO USE ONLY STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT RECEIVED <input type="checkbox"/> DATE / / LTO USE ONLY PLAN REGISTERED TIME DATE / / Assistant Registrar of Titles SHEET 1 OF 5 SHEETS  DATE 4 / 11 / 2002 COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3	
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	CARRIAGEWAY	30	INST. M22132T	VOL 9369 FOL 911, VOL 9369 FOL 912 & VOL 9369 FOL 913		
E-2	SEWERAGE	3	PS 448622Q	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN THIS PLAN		
E-3	CARRIAGEWAY	SEE DIAG.	PS 420967K	LOT 2 ON PS 420967K		
E-4	WATER SUPPLY	3	PS 448622Q	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN THIS PLAN		
E-5	POWERLINE	3	PS 448622Q	TXU ELECTRICITY LTD.		
E-6, E-8	SEWERAGE	3	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN THIS PLAN		
E-7, E-8	DRAINAGE	2	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL		
Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 182 MACLEOD STREET, BAIRNSDALE, VIC., 3875 PHONE (03) 5152 5011					LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER SIGNATURE  DATE 4 / 10 / 2002 REF 10134 VERSION 4	



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Crowthier & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 182 MACLEOD STREET, BARRISDALE, VIC. 3875 TELEPHONE (03) 9182 8011	SCALE LENGTHS ARE IN METRES	ORIGINAL SCALE 1:5000 SHEET A3	LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER	SHEET 2 OF 5 SHEETS
			SIGNATURE <i>Michael Sadler</i> DATE 4 / 10 / 2002 VERSION 4 DATE 4 / 11 / 2002 COMPILED BY <i>Michael Sadler</i>	



Crowther & Sadler Pty Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
182 MACLEOD STREET, BARRISDALE, VIC. 3875
TELEPHONE (03) 5182 5011

ORIGINAL SCALE 1:2000

SHEET SIZE A3

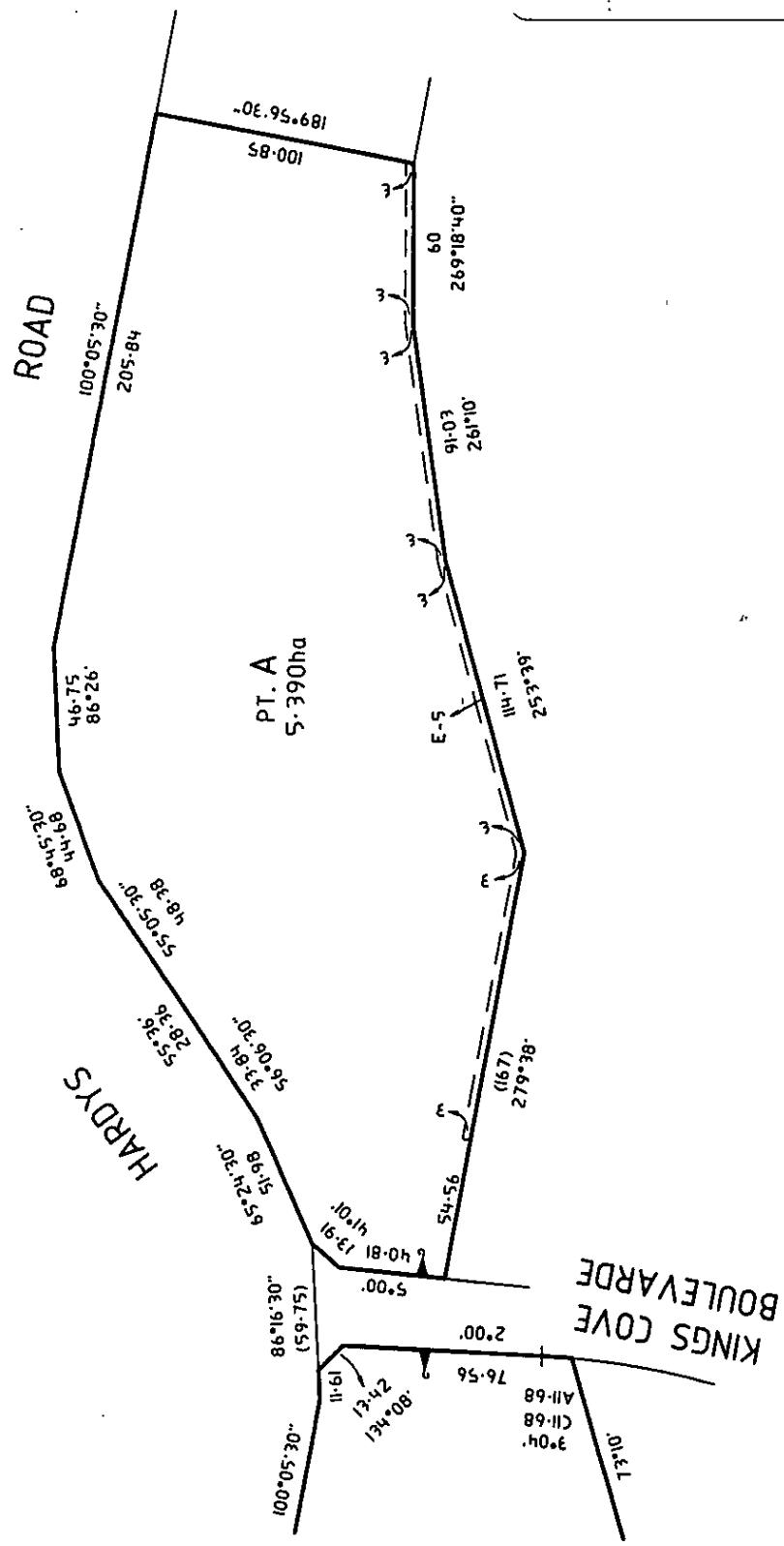
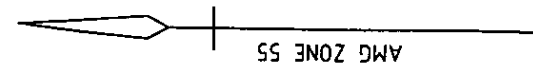
LENGTHS ARE IN METRES

LICENSED SURVEYOR (PRINT) **MICHAEL JOSEPH SADLER**

SIGNATURE *[Signature]* DATE **4/10/2002**

REF **10134** VERSION **4**

PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER
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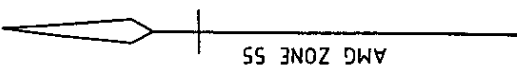
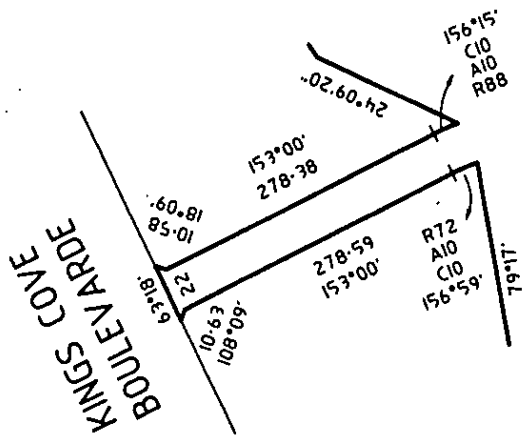
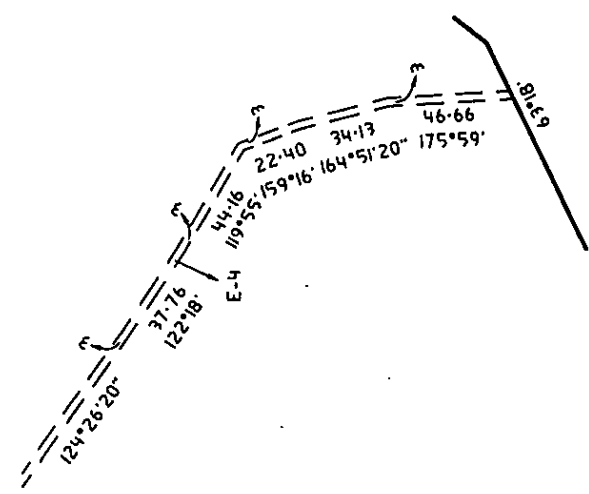
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Crowthier & Sadler Pty Ltd LICENSED SURVEYORS & TOWN PLANNERS 152 MACLEOD STREET, BARNSDALE, VIC., 3676 TELEPHONE (03) 5162 8011	ORIGINAL SCALE 1:2000 A3	LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER SIGNATURE <i>Michael Sadler</i> DATE 4 / 10 / 2002 REF 10134 VERSION 4	SHEET 4 OF 5 SHEETS DATE 4 / 11 / 2002 COUNCIL DELEGATE SIGNATURE <i>[Signature]</i>
	SCALE 20 0 20 40 60 80 100 LENGTHS ARE IN METRES		

PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER
		PS 509097V



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AMG ZONE 55

Crownthorpe & Sadler Pty Ltd LICENSED SURVEYORS & TOWN PLANNERS 152 MACLEOD STREET, BAIRNSDALE, VIC., 3875 TELEPHONE (03) 5102 5011	ORIGINAL SCALE 1:2000	SHEET SIZE A3	LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER	SHEET 5 OF 5 SHEETS
	DATE 4/10/2002		DATE 4/10/2002	DATE 4/10/2002
REF 10134		VERSION 4	SIGNATURE <i>Michael Sadler</i>	COUNCIL DELEGATE SIGNATURE

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**KING'S COVE – METUNG**

**GUIDELINES FOR CONSTRUCTION, SITING OF, EXTERNAL ALTERATION AND ADDITIONS TO
BUILDING AND STRUCTURES ON "KING'S COVE"
STAGE 4 – LOTS 60 – 64 "LOW DENSITY RESIDENTIAL ZONE"**

These guidelines are designed to protect the interests of all owners of property in the development and are not intended to be restrictive.

The subject land forms part of a quality residential land development.

For the protection of the purchaser's interest it is desirable that certain controls be implemented in relation to: the nature and type of construction; the preservation of the environment, the aesthetic appearance; and the general amenity of the development. Design of buildings, landscaping, fencing, paving, and all the elements of a high quality living environment, should be guided to establish visual continuity and compatibility throughout the development.

1.0 INTRODUCTION

King's Cove is an integrated Residential Resort and Marina development owned by Storth Ryes Pty. Ltd. ("Storth Ryes"). Storth Ryes administers these guidelines, for the benefit of existing and new land owners, through an Architectural Review Committee established by it and consisting of representatives nominated by Storth Ryes.

2.0 DESIGN CONFORMITY

Written application for approval of the design, external finishes and siting of all buildings (and external alterations and additions to buildings) at King's Cove must be made by the allotment owner to the Architectural Review Committee, or its nominee, prior to work commencing or applying for a building permit. These guidelines are intended to provide the criteria for assessment of the application.

2.1 Approval Procedure

The initial step required is for each designer or builder to provide to the Architectural Review Committee a plan showing the contours of the site and proposed siting of the buildings together with a schematic presentation of the structure including: floor plans, elevations, materials and colours proposed. Once general agreement is reached and prior to lodgement of an application for a building permit from the East Gippsland Shire or its nominated subcontractor, the documents required for such application shall be lodged with the Architectural Review Committee for a final conformity assessment against these guidelines. Representations to the Architectural Review Committee in support of the proposed construction may be made by the applicants or their representatives.

The application and all supporting documents should be forwarded to the Architectural Review Committee at the following address:-

King's Cove Project Manager
PO Box 326
METUNG VIC 3904

The documents, together with a written assessment of conformity and approval, conditional approval or refusal of the proposal, shall be forwarded or given to the applicant as soon as practical and normally within 14 days of lodgement.

3.0 BUILDING GUIDELINES**3.1 Building Envelopes****DAC166290V-26-7**

Designated Building Envelopes form part of the guidelines and the permitted use of the land under the zoning. These building envelopes, which are designed to maximise views whilst enabling vegetation corridors between buildings, are required by agreement between Storth Ryes and the Responsible Authority. The building envelope positions are designated as part of the Soil and Water Management Plan agreed between Storth Ryes

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and the Responsible Authority under the zone overlay. The minimum setback from the allotment boundaries are prescribed in the designated building envelopes.

3.2 Soil and Water Management Plan

The permitted use of the land under the zoning is also governed by the Soil and Water Management Plan as approved by the Responsible Authority. The construction of civil works and buildings and associated structures must comply with the Soil and Water Management Plan, in order to protect the subject land, adjacent land and the Gippsland Lakes waterways.

Annexed hereto and marked "**Schedule A**" is the King's Cove – Stage 4 Soil and Water Management Plan Specifications for Construction of Dwellings.

3.3 Building Types Permitted



A single dwelling is permitted within the zone under the relevant incorporated plan overlay for King's Cove (formerly Storth Ryes).

Any dwelling erected on the site shall have a total floor area of not less than one hundred and seventy (170) square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials.

All outbuildings exposed to public view from the street, reserve, adjoining allotments or the lake shall be designed, constructed and maintained in all ways similar to the principal building on the lot. Garages and carports shall preferably be incorporated into the main roof structure. Where detached garages or carports are permitted they shall also be constructed of the same approved materials as stipulated for the dwelling and be part of an overall integrated design. Each lot shall make a provision for fully enclosed and covered parking for not less than two motor vehicles unless otherwise agreed to in writing by the Architectural Review Committee.

Innovative house plans that meet the requirements of 3.4 Building Form, set out below, but use materials other than those specified will be considered for approval if appropriately submitted to the Architectural Review Committee for assessment.

3.4 Building Form

Simple clear forms will be preferred for all structures. Unduly fragmented or flamboyant forms will not be preferred where they impact on adjoining properties or the amenity of the subject land when viewed from offsite. Sun protection of walls, openings and terraces shall preferably be achieved by roof overhangs, verandahs, pergolas or other structurally integrated elements of the building.

As stipulated by agreement between Storth Ryes and the Responsible Authority, the construction of dwelling shall conform to the following:

- Buildings should be designed to minimise visual impacts, erosion and fire hazard.
- Buildings should be designed with floor levels and roofs that sit in sympathy with the prevailing ground slopes.
- Pergolas, decks and shading devices may be used to soften the interface between buildings and surrounding vegetation.
- Split level buildings shall be encouraged on sloping land to reduce the height of the building.

3.5 External Finishes and Colours

The objective is to provide a level of finish and colours which are compatible with the natural environment of King's Cove. They should reflect the colour and texture of the coastal setting and take account of durability and weathering characteristics. The following list of suitable finishes and colours are considered desirable but not definitive.

- Walls: Brick or masonry-rendered or bagged and painted in colours suited to the coastal environment.
- Stone.
- Timber and/or composite weatherboards – treated or painted in colours suited to the coastal environment.

Glass – clear, grey or smoked (non-reflective).

Sheeting Materials – Harditex and similar manufactured sheeting suitably coated and painted.
Colourbonded metal in corrugated patterns.

Roof: Colourbonded Metal – in colours suited to the coastal environment.

Glass – or Polygal, Laserlight, Sailcloth and similar products.

Trim: Timber, aluminium, sheeting materials and steelwork in colours suited to the coastal environment.

The above is not intended to be comprehensive and other colours and combinations would be considered against the objectives of suiting the coastal setting of the subject land.

3.6 Service Areas

Areas used for the purpose of drying or airing clothes shall be reasonably screened from public view from the street, reserved, adjoining allotments and the land. Storage tanks shall be mounted at ground level and reasonably concealed from public view. Refuse storage areas shall be totally screened from public view.

3.7 Vehicle Driveways/Paved Areas

Vehicle driveways and other paved areas exposed to public view should be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface. Adequate drainage and erosion protection measures must be incorporated in line with the Soil and Water Management Plan.

3.8 Alterations and Additions

The guidelines (as amended) shall also apply to all external structural alterations and additions to external surfaces of buildings and structures on the development. Such works shall involve the same application and approval procedure as applies to initial building construction.

3.9 Builders' Site Refuge Guidelines

Lot owners shall ensure that any builder of a residence on a lot complies with the Builders' Site Refuge Guidelines contained in **Schedule B** of these Guidelines.

3.10 Requirement of Certificate of Occupancy or approval of the Architectural Review Committee

No allotment of the development shall be occupied for residential purposes either temporarily or permanently until a Certificate of Occupancy is issued for the dwelling erected on the site or until such occupancy is otherwise approved by the Architectural Review Committee.

4. Landscaping

4.1 General



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To enhance the amenity of King's Cove and to improve the aesthetic environment, owners of lots shall be required to landscape their properties within 12 months of entering into occupation and obtaining a certificate of occupancy. The plans for such landscaping shall be prepared by a competent landscape designer and submitted to the Architectural Review Committee for a conformity assessment at the same time as plans are presented for the buildings. Lot owners will lodge a Bank Guarantee or cash bond of satisfactory performance for the sum of \$2,000.00 with Storth Ryes or its nominee. The guarantee will be released when the agreed landscaping has been completed.

The use of native species of trees and shrubs is favoured, however, other varieties will be permitted. It is desired that some indigenous trees shall be planted on each site particularly on the setback areas. Landscape plans need to incorporate general schematic layouts only with main species listed and larger trees shown on the plan. Trees which exist on the site either naturally or as part of landscaping worked by the developer cannot be removed without the permission of the Architectural Review Committee.

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4.2 Maintenance

Maintenance and landscaping of all ground slopes shall be the responsibility of the lot owners. Treatment of the ground slopes incorporating terracing and or retaining walls, including proposed landscaping, shall be incorporated into the landscape plan for approval. The landscape plan shall take account of the Soil and Water Management Plan requirements, maintain vegetative cover on slopes and providing measures to avoid any erosion of the subject land during and following construction.

Where a retaining structure is required to support a swimming pool or to form a terrace, such structure shall preferably including sloping landscaped or stone pitched banks as a means of level transition and shall deal with drainage to avoid erosion.

4.3 Maintenance prior to construction

Maintenance prior to construction of the dwelling and/or site shall be the responsibility of the lot owners who shall be required to ensure that grass height does not exceed 200 millimetres at any time and that the lot is maintained generally in keeping with the overall maintenance of the King's Cove Development. To assist lot owners, Storth Ryes proposes to engage a subcontractor to provide grass cutting and like maintenance services at a reasonably competitive cost, which services will be available to lot owners.

In the event that such maintenance of the dwelling and/or site not being carried out in a timely manner by Lot owners, Storth Ryes shall be entitled to engage a subcontractor for the purpose of effecting the required grass cutting or maintenance works and the Lot owner shall reimburse Storth Ryes for any expenses reasonably incurred by Storth Ryes in so doing.

5. Fences

In principle it is considered that a parklike appearance is appropriate and that solid fences be kept to a minimum subject to the requirements of screening service areas, pools and other outdoor living areas. The use of screen planting areas to define boundaries is most desirable.

Post and wire fencing will be erected by Storth Ryes on most allotment boundaries excluding the street frontage and within 15 metres of the main street frontage which will be unfenced. Boundaries within the more vegetated areas may not be fenced to avoid disturbing the existing cover. No solid fence shall be built within 15 metres of front or rear boundaries or within 5 metres of a side boundary.

Where a solid fence is sought, the preferred materials shall be brush panel, stone, bagged and painted masonry or brickwork, hardwood or treated pine pickets of 75mm x 20mm with 20mm spacings. The planting of landscaping to soften such fences will be preferred. Front boundaries are preferred to be left unfenced. Where the owner seeks greater screening cover than planting alone can provide, fences will need to be setback 15 metres from the front boundary and significant planting incorporated into the setback area within the landscape plan.

6. Liability

Storth Ryes Pty. Ltd. and its successors and associated companies, Riviera Properties Limited and its successors and the Responsible Authority, shall each be free from any liabilities and claims for damages and/or suits of any kind as a result of or arising out of the enforcement or implementation of all or any of these guidelines or any matters associated with the same or any application for approval hereunder or the decision made.





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SCHEDULE A

King's Cove – Stage 4 Soil and Water Management Plan

Specifications for Construction of Dwellings

June, 2002

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KINGS COVE – Stage 3 & 4
Soil and Water Management Plan
Specifications for Construction
of Dwellings
June 2002



Prepared by:

Crossco Australia Pty Ltd
Engineering and Environmental Consultants
152 Macleod Street, PO Box 858
Bairnsdale VIC 3875
Tel. 03-5152 6298
Fax. 03-5152 5705
consult@crossco.net.au
www.crossco.net.au



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KINGS COVE – Stage 3 & 4
Soil and Water Management Plan
Specifications for Construction of Dwellings

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2. RESPONSIBILITY FOR COMPLIANCE	2
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5. INSTALLATION SEQUENCE.....	4

TABLES

TABLE 1: KINGS COVE STAGE 3 & 4 LOT NUMBERS AND EROSION CONTROL REQUIREMENTS	3
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FIGURES

DRAWING 1: KING COVE – STAGE 3 & 4: DWELLING SOIL & WATER MANAGEMENT PLAN ..AT REAR

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Document Information: 1072 kings cove stage 3 & 4 soil & water.doc
Issued: 18th June, 2002



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1. BACKGROUND and OBJECTIVE

This Soil and Water Management Plan outlines the minimum erosion control requirements necessary for the construction of dwellings on allotments within Stage 3 & 4, Kings Cove Boulevard of the Kings Cove subdivision in Metung, Victoria.

The objective of this Plan is to prevent soil erosion and control sedimentation by adoption of the following key principles:

- Implementation of sensible site planning and compliance with construction specifications
- Diversion of up-slope water from the construction site
- Minimisation of site disturbance
- Rationalisation of movement by construction vehicles
- Installation of sediment traps/controls along low-side of construction site
- Rationalisation of stockpile location
- Protection of stockpiles from erosion
- Minimise waste from wash-down and tile/brick cutting
- Minimisation of stormwater runoff from the construction site
- Reduce the erosive energy of stormwater leaving or diverted around the construction site
- Minimisation of building waste and debris
- Regular maintenance of all erosion control structures
- Prompt rehabilitation of all disturbed areas

A typical dwelling construction site, together with specific erosion control requirements are illustrated on Drawing 1. These controls should be adopted for development of all dwellings within Stage 3 & 4 at Kings Cove based on site specific details listed in Table 1.

2. RESPONSIBILITY FOR COMPLIANCE

Compliance with the erosion control techniques specified by this Plan (and accompanying drawings) is a mandatory requirement of East Gippsland Shire Council's Planning Permit 01/00299/DS for development of dwellings within Stages 3 & 4 at Kings Cove.

It is the land/dwelling owners responsibility to ensure all contractors engaged in the construction of a dwelling(s) on any allotment within Stages 3 & 4 at Kings Cove are aware of the need to implement the erosion controls specified by this Plan.

It is the individual responsibility of the builder and all sub-contractors to implement and maintain the various erosion control structures.

3. SITE-SPECIFIC REQUIREMENTS

This Soil and Water Management Plan stipulates erosion control requirements which can be adopted for all building envelopes within Stages 3 & 4 at Kings Cove. The location and orientation of each individual erosion control structure will vary depending on the relative position of the dwelling, access to the construction site, the direction and steepness of the land, and drainage conditions.

Site disturbance should, at all times, be kept to a minimum on all allotments by limiting the extent of cut and fill, limiting the steepness of batter slopes, and prompt rehabilitation of all disturbed sites.

Table 1 lists the different site-specific conditions prevailing across Stages 3 & 4 at Kings Cove.



Kings Cove – Stage 3 & 4: Soil and Water Management Plan

The builder must establish the erosion control requirements in accordance with Table 1.

Table 1: Kings Cove Stage 3 & 4 Lot numbers and erosion control requirements

Allotment No.	Landscape Type	Stage	Erosion Control Requirements
All Allotments (ie. 43-47, 57-64, 70-77)	i). Gently sloping or ii) Gently sloping with steeper escarpment		<ul style="list-style-type: none"> Implement all erosion control structures. Construct silt fences on ALL down slope sides of construction site. Cut & fill batters > 3.0 m long and steeper than 1H in 3V should be structurally retained. Construct silt fence on down slope side of construction site. Establish cut-off drains across high side of construction site. Utilise crange and pumping for construction on steep erosion-prone slopes. Stormwater discharged on-site should exit via energy dissipater with silt fence across drainage line. Avoid stormwater discharge down steep slopes.
Lots 70 to 77 inclusive	Gently sloping		<ul style="list-style-type: none"> All stormwater must be drained to the surface drain located immediately below the north-western (rear) boundary of the lots.
Lots 43-47 & 57-64 inclusive	Gently sloping with steeper escarpment		<ul style="list-style-type: none"> All stormwater must be drained to the drain/kerb fronting the allotments along Kings Cove Boulevard.

4. STORMWATER DISCHARGE and DRAINAGE LINE PROTECTION

All stormwater from dwellings and associated access must be drained to an appropriate discharge point as specified below and in Table 1.

For Lots 70-77, Stage 2 Kings Cove, all stormwater must be drained to the surface drain located immediately below the northern (rear) boundary of the lots.

For Lots 43-47, 57-64 Stage 3 & 4 Kings Cove, all stormwater must be drained to the drain/kerb fronting the allotments along Kings Cove Boulevard.

For Lots 43-47 & 57-64, stormwater should not be drained downslope in a south-eastern direction over the steeper slopes along the south-eastern (rear) of these allotments.

Particular care must be taken to protect all drainage lines, gullies and steep erosion-prone slopes. Stormwater discharged onsite (from buildings and driveways etc) must be suitably baffled to dissipate erosive energy. Where there is a threat of erosion, energy dissipaters consisting of rock aggregate (100 mm ALD) securely laid over needle-punched geotextile fabric, should be constructed at stormwater outlet points. Stormwater should exit over the aggregate and onto stable grassed areas. A silt fence should be constructed across the drainage line immediately below the stormwater outlet point during construction activities.

Early connection of stormwater lines and onsite storage for subsequent reuse is encouraged.



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5. INSTALLATION SEQUENCE

Forward planning can minimise the number of erosion control structures required and their potential interference with the building process.

Installation of erosion control structures in an appropriate sequence will maximise the effect of the structures in preventing erosion and sediment movement, and further reduce the interference to builders.

The following sequence should be adopted:

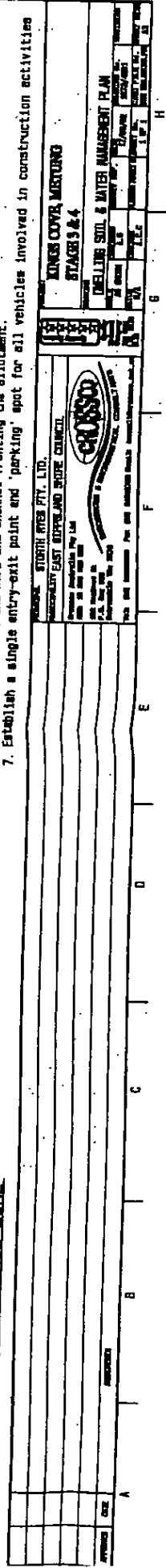
1. Establish a single entry-exit point and 'parking' spot for all vehicles involved in construction activities
2. Peg-out the limits of the dwelling
3. Determine the limits of disturbance / earthworks (ie cut and fill)
4. Install sediment fences along the low side of the site immediately below the limit of disturbance, leaving sufficient room for construction activities and stockpiles. Sediment fence detail is shown on the Dwelling Soil and Water Management Plan.
5. Install a cut-off drain above the upper limit of the cut batter to divert up-slope water around the site
6. Stabilise cut-off drains and discharge points to dissipate erosive energy of water
7. Remove any remaining vegetation (confirming for planning approval if required)
8. Strip and stockpile topsoil within the sediment fence perimeter
9. Rehabilitate all disturbed areas (including cut and fill batters) not subject to further construction activity with erosion control matting and suitable fast growing grass species
10. Install on-site building waste and litter receptacles (ie mini skips etc)
11. Undertake construction activity
12. Minimise erosive potential of stormwater generated from the site and dwelling roofs. This will include the need to install and connect roof downpipes and stormwater drainage lines to discharge points.
13. Continue to maintain all erosion and sediment control structures, including regular removal of accumulated sediment.
14. Stabilise and rehabilitate all remaining disturbed slopes (cut and fill batters, service trenches) with suitable fast growing grass species.

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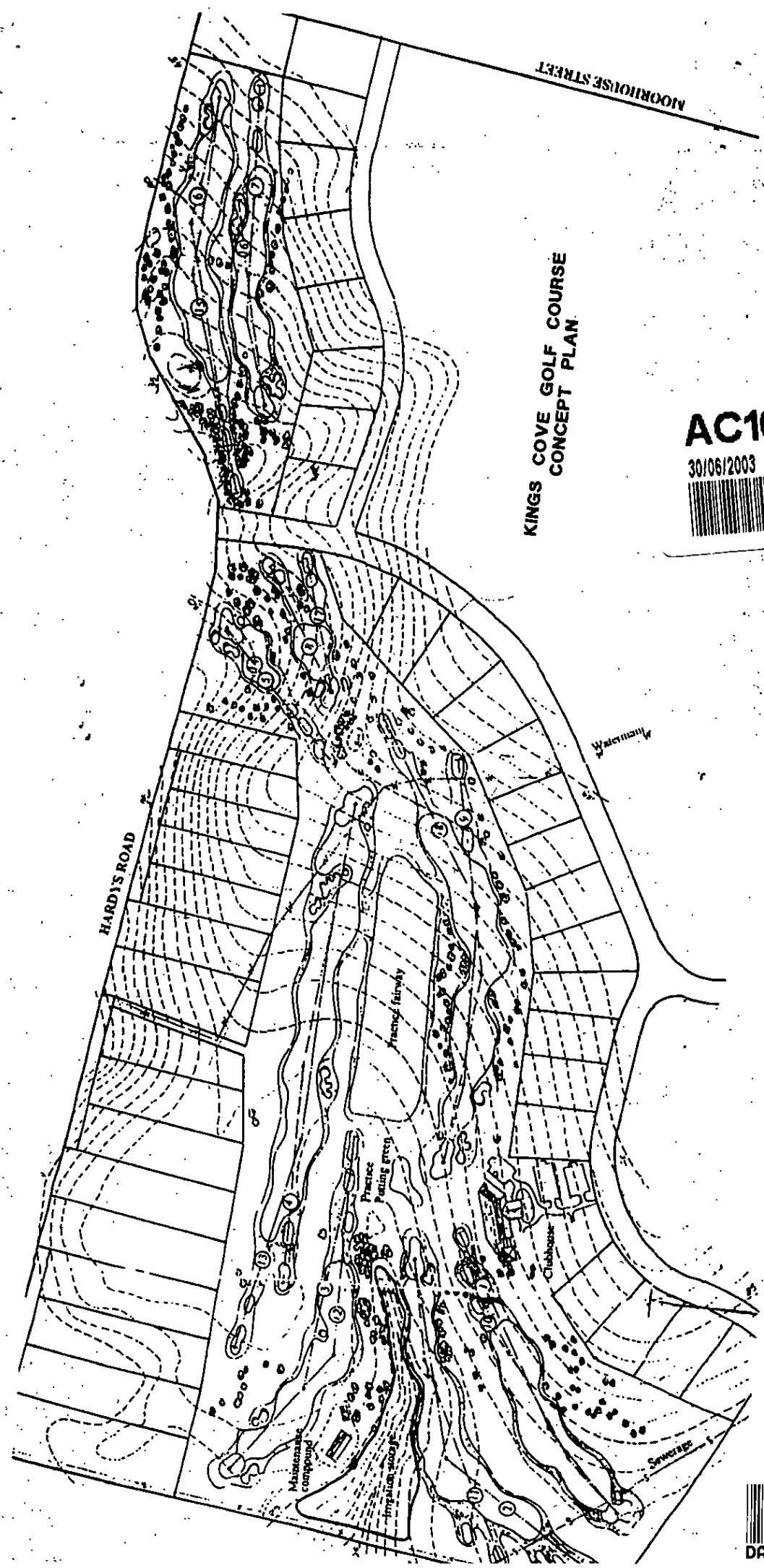
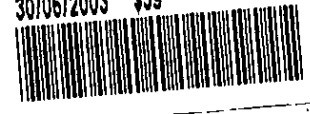


KINGS COVE GOLF COURSE
CONCEPT PLAN

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SCHEDULE B

BUILDERS' SITE REFUSE GUIDELINES

1. All Owners have an obligation to keep the whole of "King's Cove" tidy.
2. It is an Owner's responsibility during the construction phase of a Residence on a Lot to inform the builder of the contents of these Builder's Site Refuse Guidelines.
3. All building materials and fittings must be stored within the property boundaries of a Lot at all material times and no building materials are permitted to be stored on the nature strip of a Lot.
4. Builders must provide a lockable 2 metre square bin on a Lot for the storage of all site refuse generated by that Lot and keep all such site refuse within such bin.
5. The King's Cove Architectural Review Committee will impose a non-littering requirement as a standard clause of any approval granted by the Architectural Review Committee in respect of building works. The builder will be required to be diligent in the control of all site litter and to protect adjoining lots and verges from use by on site construction workers and subcontractors of the Lot.
6. The owner must ensure that a sign is erected on the Lot during the construction phase of the Residence specifying the builder's obligations in relation to these Builders' Site Refuse Guidelines.
7. An Owner and their builder must comply with any litter notice issued by or on behalf of the Architectural Review Committee specifying breaches of the Builders' Site Refuse Guidelines and rectify such breaches, failing which an Owner and their builder will be exposed to prosecution by East Gippsland Shire Council under the Litter Control Act.

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EAST GIPPSLAND SHIRE COUNCIL

- and -

STORTH RYES PTY LTD
(A.C.N. 006 383 179)

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND ENVIRONMENT
ACT 1987

AC166290V

30/06/2003 \$59

173



WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT:jl Storthryessection 173(Stage 4)

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

STORTH RYES PTY LTD (ACN 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land

15 Hardys Road, METUNG VIC 3904
PLAN OF SUBDIVISION NO. 509097 (Stage Four)

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL

(“Council”)

and

STORTH RYES PTY LTD (ACN 006 383 179)

(“the Owner”)

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning permit number 01/00299/DS (Amended) (“the Planning Permit”) that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked “A”.
- D. On 23 June 2003, Council and Storth Ryes Pty Ltd (“the Former Owner”) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AC166290V on 30 June 2003.
- E. Under clause 3.2 of the Agreement, the Subject Land is required to be used and developed in accordance with the “Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone” dated December 2001 (“the Guidelines”).
- F. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (ARC). The consent of the ARC must be obtained before the Subject Land is developed.
- G. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.
- H. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner’s obligation to use and develop the Subject Land in accordance with the Guidelines.

~~E.I.~~ The Parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; ~~and~~
- ~~(b)~~ to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land; ~~and~~
- ~~(c)~~ to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
- ~~(b)(d)~~ to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

- 1.1 **"the Act"** means the Planning and Environment Act 1987.
- 1.2 **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- 1.3 **"Building Envelope"** means a building envelope shown on the Endorsed Plan.
- ~~1.3~~ 1.4 **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".
- 1.5 **"Lot"** means a lot on the Endorsed Plan.
- ~~1.4~~ 1.6 **"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.
- ~~1.5~~ 1.7 **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.
- 1.8 **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.
- 1.9 **"Soil and Water Management Plan"** means the "Kings Cove - Stage 3 & 4 Soil and Water Management Plan – Specifications for Construction of Dwellings" dated June 2002, as amended from time to time. A copy of the Soil and Water Management

Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

1.10 **“Solid Fence”** means a fence that is less than 50% transparent.

1.61.11 **“Subject Land”** means the land situated at King’s Cove Boulevard, Metung being:-

- Lot A on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 247; and
- Lot C on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 249; and
- Lot E on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 251.

Any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

1.71.12 **“Mortgagee”** means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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 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.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Owner's obligations 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, the 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

3.1 Development in accordance with the Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by Council.

3.2 [Clause 3.2 deleted]

3.3 Obligations from the Guidelines

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.3.1 the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;

3.3.2 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;

3.3.3 no more than one dwelling may be developed on a Lot;

3.3.4 any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;

3.3.5 all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;

3.3.6 if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;

3.3.7 any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments and the lake;

3.3.8 vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;

3.3.9 the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and

3.3.10 the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

3.23.4 Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1 Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

4.2 Further actions

4.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 the Owner will consent to the Council making 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 enable Council to do so 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 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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;
- 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 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the 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.

10. **ENDING OF AGREEMENT**

[This Agreement may be ended by agreement between Council and the Owner.](#)

~~[This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.](#)~~

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

..... Chief Executive

..... Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 8/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AC499295B
Kings Cove, Metung

Section 173 agreement AC499295B (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.
3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AC499295B on 26 November 2003. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).
5. Under the Guidelines:
 - a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. KCM was formally wound up and deregistered on 18 April 2017.

7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

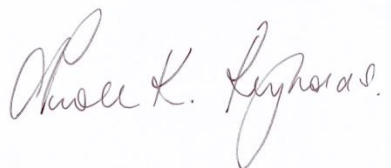
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AC499295B
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10769/494	9 The Terrace, Metung
2.	10769/495	15 The Terrace, Metung
3.	10769/496	21 The Terrace, Metung
4.	10769/497	27 The Terrace, Metung
5.	10769/498	33 The Terrace, Metung
6.	10769/499	37 The Terrace, Metung
7.	10769/500	41 The Terrace, Metung
8.	10769/501	45 The Terrace, Metung
9.	10769/502	44 The Terrace, Metung
10.	10769/503	40 The Terrace, Metung
11.	10769/504	36 The Terrace, Metung
12.	10769/505	32 The Terrace, Metung
13.	10769/506	26 The Terrace, Metung
14.	10769/507	22 The Terrace, Metung
15.	10769/508	18 The Terrace, Metung
16.	10769/509	14 The Terrace, Metung
17.	10769/510	10 The Terrace, Metung
18.	10769/511	Road Reserve

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10769 Folios 494-511 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend the section 173 agreement recorded on title in dealing number AC499295B on 26 November 2003

APPLICATION REFERENCE NUMBER:

8/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AC499295B

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

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Document Identification	AC499295B
Number of Pages (excluding this cover sheet)	35
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LODGED BY Warren, Graham & Murphy,

CODE 1716W VICTORIA



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AC499295B

26/11/2003 \$59 173



**APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for ENTRY OF A
MEMORANDUM OF AGREEMENT under Section 173 of that 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 Agreement be entered on the Certificate of Title to the land referred to.

LAND Certificate of Title Volume 10678 Folio 250.

ADDRESS OF LAND The Terrace, METUNG VIC 3904

RESPONSIBLE AUTHORITY East Gippsland Shire Council

PLANNING SCHEME East Gippsland Planning Scheme

AGREEMENT DATE 21st day of November, 2003.

AGREEMENT WITH Kings Cove Metung Pty Ltd (A.C.N. 006 383 179)

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority

Name of Officer

JOHN TRAN (PLANNING OFFICER)

Date

25/11/03



DAC499295B-1-0

26/11/03 u



DAC499295B-2-8

EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

KINGS COVE METUNG PTY LTD
(formerly Storth Ryes Pty Ltd)
(A.C.N. 006 383 179)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: The Terrace, METUNG VIC 3904
 PLAN OF SUBDIVISION NO. 509111F (Stage Six)



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 - 3.3. Council's Costs to be paid
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DAC499295B-3-6





DAC499295B-4-4

PLANNING AND ENVIRONMENT ACT 1987 SECTION 173 AGREEMENT

THIS AGREEMENT is made the 21st day of November ~~2002~~ 2003

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale

("Council")

- and -

KINGS COVE METUNG PTY LTD (formerly STORTH RYES PTY LTD) (A.C.N. 006
383 179)

("the Owner")

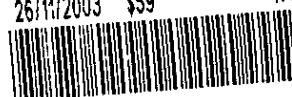
INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning Permit Number **01/00299/DS** (Amended) ("the Planning Permit") that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked "A".
- D. The parties enter into this Agreement:
 - (a) to give effect to the requirements of the Planning Permit; and
 - (b) 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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IT IS AGREED:



1. DEFINITIONS

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

- 1.1. **"the Act"** means the Planning and Environment Act 1987.
- 1.2. **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council, that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter **"B"**.
- 1.4. **"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.
- 1.5. **"Planning Permit"** means the Planning Permit referred to in recital C. of this Agreement.
- 1.6. **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applied to the Subject Land.



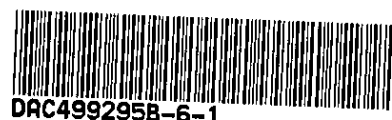
1.7. **"Subject Land"** means the land situated at King's Cove Boulevard, Metung being:-

- Lot D on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 250.

Any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

1.8. **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the 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 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.
- 2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7. 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



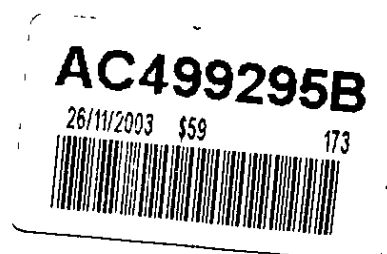
The Owner covenants and agrees that:

3.1. Development in accordance with Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and the conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Condition 11 of the Planning Permit No. 01/00299/DS (Amended) requires that:

- (a) The development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
- (b) Each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "*Kings Cove – Metung- Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone*", dated December, 2001 (or as amended) (The Document). A copy of the Document is attached hereto and marked "C".
- (c) Any amendment to The Document will be to the satisfaction of the Responsible Authority.
- (d) No lot created within Stage 1B will have vehicular access to Archibald Drive.



- (e) The provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
- (f) A copy of Planning Permit **01/00299/DS** (Amended) will be attached to and will form part of the Contract of Sale for every lot.
- (g) Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive “pest” plants will not be encouraged.
- (h) This Agreement will bind the Owner and must run with the land so that all successors in the title are bound by this Agreement.

3.3. Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.



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4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:



4.1. Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2. Further actions

4.2.1. the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.2. the Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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. Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any

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person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

6. OWNERS 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 effected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect which 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

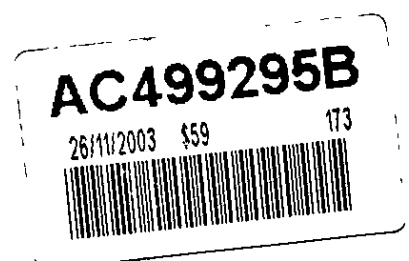
8.1. Notices

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;



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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 hand delivery or prepaid post.

8.2. 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 two 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.

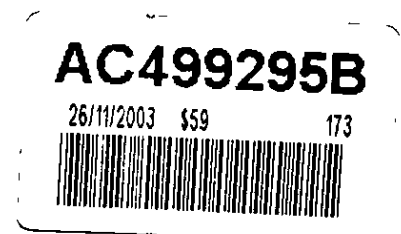
8.3. No Waiver



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

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.

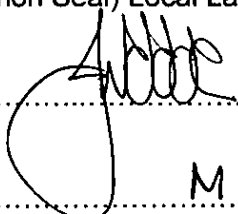
10. ENDING OF AGREEMENT

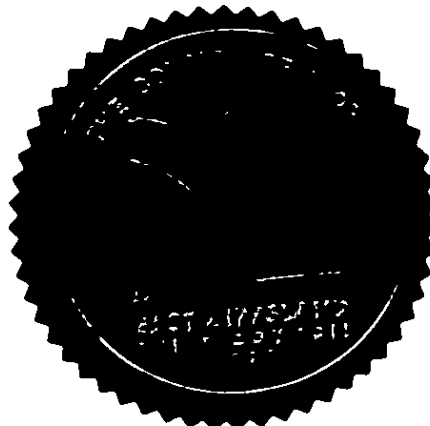
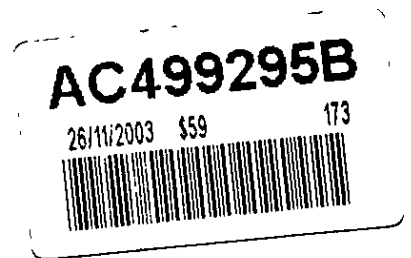


This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The **COMMON SEAL** of **EAST GIPPSLAND**
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the ^{ACTING} Chief Executive)
Officer on the 24TH day of November)
2003 in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)


.....
..... M Bennett



The **COMMON SEAL** of **KINGS COVE**)
METUNG PTY LTD (A.C.N. 006 383 179))
was hereunto affixed in accordance with its)
Constitution in the presence of:-





.....
Signature

CHARLES H. HEATH
.....
Full Name

*55 KINGS COVE DRIVE
METUNG*
.....
Usual Address

DIRECTOR
.....
Office Held


.....
Signature

THOMAS RICHARD WERNKE
.....
Full Name

Level 1 63 The Esplanade, Portarlington
.....
Usual Address

DIRECTOR
.....
Office Held

Mortgagee's Consent



Gippsland Secured Investments as Mortgagee of Registered Mortgages Numbered **W348833Y** and **X256305M** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....
For and on behalf of the Mortgagee, G.S.I.



CONSENT OF MORTGAGEE

Gippsland Secured Investments Limited (A.C.N 004 860 057)
119 Main Street, Bairnsdale, Vic, 3875

The Mortgagee under registered Mortgage X256305M being land comprised in Plan of Subdivision No. 509111F hereby consent to the registration of the within Agreement under Section 173 of the Planning and Environment Act 1987.

Dated this 15th day of October, 2003

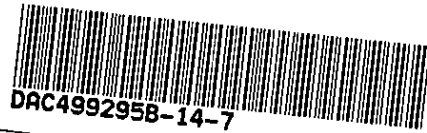
EXECUTION OF MORTGAGEE

Signed for and on behalf of **GIPPSLAND SECURED INVESTMENTS LIMITED**
(A.C.N 004 860 057)

By its duly authorised Director **PETER MILTON MURPHY**

.....
PETER MILTON MURPHY

119 Main Street, Bairnsdale Vic 3875
(usual address)



PLANNING PERMIT

Permit No:
Planning Scheme:
Responsible Authority:

Form 4.4
01/00299/DS (AMENDED)
EAST GIPPSLAND
East Gippsland Shire

ADDRESS OF THE LAND

15 Hardys Road, METUNG VIC 3904
Lot 2 LP 420967)



DAC499295B-15-1

BN: 79570

THE PERMIT ALLOWS

The land to be subdivided into 68 Lot (Stages 2, 3, 4, 5 & 6) in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

Subdivision not altered

1. The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Engineering requirements

2. The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the requirements of the relevant service authorities.
3. Infrastructure shall be designed in accordance with standard engineering principles and practices. Full and detailed calculations shall be provided. The design shall provide for the following minimum requirements.

Roads, Pavement and Access

(a) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of design shall be provided.

(b) Pavement design shall be undertaken in accordance with accepted engineering practice. Pavement design for collector roads shall also take into consideration traffic that may be generated from the potential for future development to the south-west of the subject site. Supporting calculations for pavement design including the provision of geotechnical reports shall be provided.

(c) The cul-de-sac or turning heads of proposed new roads shall be constructed and sealed to provide sufficient space for the manoeuvring of all service and emergency vehicles. "T" or "Y" shaped turning heads are acceptable. Provision of suitable area for vehicles to perform a 3 point turn will be acceptable.

(d) A driveway crossover or culvert shall be constructed for all allotments to Council's satisfaction and in accordance with Council requirements. Crossing places shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices. Proposed details of design and construction for crossovers shall be provided.

Drainage

(e) The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection of all stormwater

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runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by buildings, pavements, and/or siteworks to avoid damage or inundation to any property. Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.

(f) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, wetlands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.

(g) Drains shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices placed at regular intervals along the length of the drain.

(h) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.

(i) Outlets shall incorporate an energy dissipation devices to prevent any erosion.

Earthworks

(j) With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 8 horizontal to 1 vertical.

(k) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.

Services

(l) Design for the installation of services shall meet the requirements of the relevant authorities and shall be approved by those authorities.

Signage and Traffic Control

(m) The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer

Documentation

(n) All documentation for the construction of infrastructure shall include adequate provision for:

(i) maintenance and repair of damage to existing infrastructure damaged as a result of works associated with this development

(ii) quality assurance and testing procedures

(iii) provision for adequate notification and inspections by Council representatives at various key stages of the works

(iv) works to be undertaken with due regard to environmental requirements.

(o) An agreement shall be entered into which shall be noted on title requiring the property being developed as a golf course to accept all stormwater runoff



from the development. This agreement shall be a continuing agreement and binding on all future registered proprietors of that property.

Supervision of Works

(p) An appropriately qualified and registered practitioner to the satisfaction of the Responsible Authority must supervise all stages of works to be constructed on the site. Copies of all test results certified by a NATA accredited laboratory shall be provided with a certification by a Chartered Professional Engineer that all works have been constructed in accordance with approved plans and specifications will be required.

4. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
5. No works shall commence until such time as all necessary approvals from Council and relevant service authorities have been obtained.
6. Construction works on the subject land may only be conducted between the hours of 7.00 am to 6.00 pm Monday to Saturday (inclusive).
7. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the responsible authority.
8. All earthworks associated with the proposal must be undertaken in accordance with the provisions of Environment Protection Authority (EPA) Publication No. 275 "Construction Techniques for Sediment and Pollution Control" (Copy available from EPA, Traralgon).
9. Prior to the issue of a Statement of Compliance the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations.

Tree removal

10. Trees that do not fit the category of being "planted" as part of the initial development require a separate planning permit for removal unless exempted by provisions of the East Gippsland Planning Scheme.

173 agreement

11. Prior to the issue of a Statement of Compliance, the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the responsible authority to covenant that:
 - the development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
 - each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "Kings Cove - Metung - Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone", dated December 2001 (or as amended) (The Document).
 - Any amendment to The Document will be to the satisfaction of the Responsible Authority.
 - no lot created within Stage 1B will have vehicular access to Archibald Drive.



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- the provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
- a copy of this permit will be attached to and will form part of the contract of sale for every lot.
- landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.
- the agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.
- the agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.
- this agreement will be prepared at the owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

Construction of dwellings

12. The development of lots approved by this permit for the purpose of a dwelling will be exempt from the need to obtain a separate planning permit provided:
- all buildings are constructed wholly within approved building envelopes;
 - all construction and site development works are carried out strictly in accordance with the approved Soil and Water Management Plan, to the satisfaction of the responsible authority, and
 - the requirements of Clause 32.03-2 (Use for one or two dwellings or a dependent persons unit) can be met.

Street Names

13. Street names must be to the satisfaction of the responsible authority.

Landscaping

14. Prior to the issue of a Statement of Compliance, the subject land must be landscaped and planted in accordance with the requirements of the "Storth Ryes Landscape Concept Report" prepared by Murphy Design Group and dated April 2000. Specifically the following requirements must be met:
- Section 1.13 Other Roads
 - Section 1.15 Pedestrian Walkways
 - Section 1.16 Boundaries
15. Plans detailing the landscaping and streetscaping treatments, consistent with the "Storth Ryes Landscape Concept Report" and the Typical Landscape treatments contained in this report, and must be prepared by an appropriately qualified person and approved by the responsible authority prior to the commencement of any landscaping works.



East Glippsland Water

The owner/applicant must:

16. Enter into an agreement under the Water Act for the provision of water supply works.

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17. Meet the cost of the necessary water mains extension.
18. Pay a headworks and distribution charge at a level determined by the Authority at the time of payment. As a guide the level applicable on 18/7/01 is \$2,000 per lot created by the subdivision.
19. Enter into an agreement under the Water Act for the provision of sewerage works.
20. Meet the cost of the necessary sewer mains extension.
21. Pay an outfall and disposal charge at a level determined by the Authority at the time of payment. As a guide, the level of charge on 18/7/01 is \$2,100 per lot created by the subdivision.
22. Provide easements as necessary.
23. Connect development to Authority's water and sewerage services to the satisfaction of the Authority.

TXU Electricity Ltd

The applicant must:



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24. Enter into an agreement with TXU Electricity Ltd for supply of electricity to each lot on the endorsed plan.
25. Enter into an agreement with TXU Electricity Ltd for the rearrangement of the existing electric supply system.
26. Enter into an agreement with TXU Electricity Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.
27. Provide easements satisfactory to TXU Electricity Ltd for the purpose of "Electricity (power lines)" in the favour of TXU Electricity Ltd pursuant to Section 44 of the Electricity Industry Act 1993, where easements have not been otherwise provided, for all existing TXU Electricity Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and /or abutting land.
28. Obtain for the use of TXU any other easement external to the subdivision required to service the lots.
29. Adjust the position of any existing TXU Electricity Ltd easement to accord with the position of the electricity line(s) as determined by survey.
30. Set aside on the plan of subdivision for the use of TXU, reserves satisfactory to TXU where any electric substation (other than a pole mounted type) is required to service the subdivision.
31. Provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

Telstra

32. The applicant shall enter into an agreement with Telstra or other licensed Telecommunications carrier for the satisfactory provision of telephone cable reticulation one metre into each lot created.
33. The applicant shall set aside on the plan of subdivision reserve/s satisfactory to Telstra, for telecommunication/s substations if required.

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Certification

34. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.

DNRE

35. Prior to any works commencing on the development of the subdivision, the Soil and Water Management Plan prepared for the works shall be referred to DNRE for comment.
36. The siting of building envelopes on individual allotments shall be established so as to ensure minimal vegetation removal and the Envelope Plan shall be submitted to DNRE for comment prior to certification of each stage of the subdivision.

CFA

37. All roads must be designed, constructed and maintained for a load capacity of at least 15 tonnes.
38. There must be no obstructions within one metre of the formed width of roads at any time and there must be four metres height clearance above all roads to allow fire vehicle access.
39. The amount and location of parking facilities must be determined in such a manner as to encourage users not to impede access of emergency vehicles.
40. Adequate provisions for turning of brigade vehicles must be provided in dead end roads and cul-de-sacs. This may be through either the provision of a court bowl with a trafficable area of minimum 10 metres radius or a "wye" or "tee" head with formed road surface of each leg being of at least 8 metres length from the centre point of the head and four metres width.
41. The water reticulation plan must be approved by the CFA prior to commencement of construction.
42. There must be a hydrant within 120 metres from the outer edge of building envelope.
43. Fire hydrants must be clearly identified in accordance with the Fire Service Guideline – Identification of Hydrants for Fire Fighting Purposes.
44. Areas of public open space must be managed in a minimum fuel condition during the fire danger period.

Time

45. The permitted approval for subdivision will expire if the subdivision is not started or completed within five years of the date of this permit.
46. The permitted approval for buildings and works associated with the development of dwellings, including vegetation removal within approved building envelopes, will expire if one of the following circumstances applies:
- The building or works is not started within fifteen years of the date of this permit.
 - The building or works is not completed within two years of commencement on each lot within the subdivision.

This applies only to the construction of dwellings and the removal of vegetation within approved building envelopes and as permitted in line with the requirements specified in Condition 7 of this permit.

[Handwritten signature]

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26/11/2003



Notes:

East Gippsland Water

The payment of headworks and outfall charges will be at the time of sale/settlement of each lot, or all outstanding monies to be paid in full within two years from the date of issue of Statement of Compliance for the subdivision by the Authority, whichever occurs first.

TXU

It is recommended that, at an early date the applicant commences negotiations with TXU Electricity Ltd in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay.

Arrangements for supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

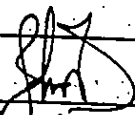
Prospective purchasers of lots on this plan should contact the TXU Electricity Ltd Bairnsdale office to determine the availability of a supply of electricity. Financial contributions may be required.

Permit amended to include a range of extra conditions controlling development of the subdivision.

Date Issued: 19 October, 2001

Amended on: 4 February, 2002

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**Signature for the
Responsible Authority**



DAC499295B-21-4



PLAN OF SUBDIVISION

STAGE No.

LTO USE ONLY

PLAN NUMBER

EDITION

PS 509111F

LOCATION OF LAND

PARISH: BUMBERRAH
 TOWNSHIP: —
 SECTION: —
 CROWN ALLOTMENT: 78^A 81^E (PARTS)
 CROWN PORTION: —

TITLE REFERENCES:

LAST PLAN REFERENCE: LOT D ON PS 448622Q

POSTAL ADDRESS: THE TERRACE,
 (At time of subdivision) METUNG, 3904

AMG CO-ORDINATES: E 574 300
 (Of approx. centre of land in plan) N 5807 375

ZONE: 55

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER	COUNCIL/BODY/PERSON
RI	EAST GIPPSLAND SHIRE COUNCIL

COUNCIL CERTIFICATION AND ENDORSEMENT

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 02/00085/SD

- ~~This plan is certified under Section 6 of the Subdivision Act 1988.~~
- This plan is certified under Section 11(7) of the Subdivision Act 1988.
Date of original certification under Section 6 04 / 11 / 2002
- ~~This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.~~

OPEN SPACE

(i) A requirement for public open space under Section 18 Subdivision Act 1988 ~~has~~ has not been made.(ii) ~~The requirement has been satisfied.~~(iii) ~~The requirement is to be satisfied in stage~~
Council Delegate
Council seal

Date: / /

Re-certified under Section 11(7) of the Subdivision Act 1988

Council Delegate
Council seal

Date 03 / 05 / 2003

NOTATIONS

STAGING This is / is not a staged subdivision
 Planning Permit No 01/00299/D5

DEPTH LIMITATION DOES NOT APPLY

LOTS 1 TO 17 & 35 TO 83 HAVE BEEN OMITTED FROM THIS PLAN



DAC499295B-22-8

SURVEY: THIS PLAN IS / IS NOT BASED ON SURVEY

THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s)

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	DRAINAGE	2	THIS PLAN	LOTS ON THIS PLAN & EAST GIPPSLAND SHIRE COUNCIL
E-2	POWERLINE	3	PS 448622Q - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	TXU ELECTRICITY LTD.

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LTO USE ONLY

STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT

RECEIVED



DATE / /

LTO USE ONLY

PLAN REGISTERED

TIME

DATE / /

Assistant Registrar of Titles

SHEET 1 OF 2 SHEETS

Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
 152 MACLEOD STREET, BAIRNSDALE, VIC., 3875

TELEPHONE (03) 6152 6011

LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER

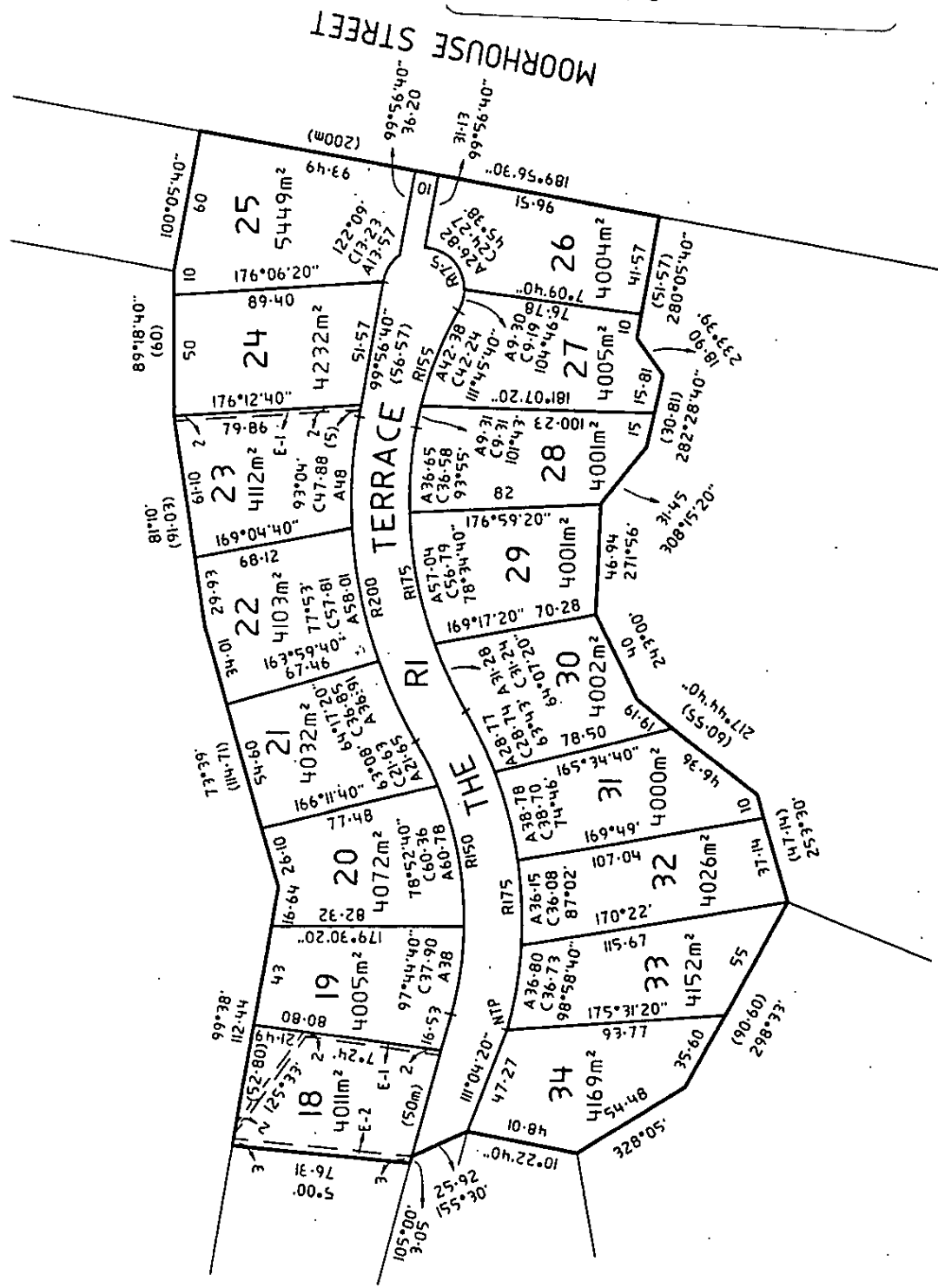
SIGNATURE *Michael Joseph Sadler* DATE 24 / 4 / 2003

REF 10175 VERSION 3

DATE 03 / 05 / 2003

COUNCIL DELEGATE SIGNATURE

PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER
		PS 509111F



DAC499295B-23-1



Crowthier & Sadler Pty Ltd LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BARNSDALE, VIC., 3676 TELEPHONE (030) 5152 5011	ORIGINAL SCALE 1:2000 SHEET SIZE A3	LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER SIGNATURE <i>Michael Sadler</i> DATE 24 / 4 / 2003 REF 10175 / VERSION 3	SHEET 2 OF 2 SHEETS DATE 03/05/2003 COUNCIL DELEGATE SIGNATURE
	SCALE 20 0 20 40 60 80 100 LENGTHS ARE IN METRES 110 120 130 140 150 160 170 180 190 1000 1100 1200 1300 1400 1500 mm		

KING'S COVE – METUNG

GUIDELINES FOR CONSTRUCTION, SITING OF, EXTERNAL ALTERATION AND ADDITIONS TO BUILDING AND STRUCTURES ON “KING'S COVE” STAGE 6 – LOTS 18 – 34 “LOW DENSITY RESIDENTIAL ZONE”

These guidelines are designed to protect the interests of all owners of property in the development and are not intended to be restrictive.

The subject land forms part of a quality residential land development.

For the protection of the purchaser's interest it is desirable that certain controls be implemented in relation to: the nature and type of construction; the preservation of the environment, the aesthetic appearance; and the general amenity of the development. Design of buildings, landscaping, fencing, paving, and all the elements of a high quality living environment, should be guided to establish visual continuity and compatibility throughout the development.

1.0 INTRODUCTION

King's Cove is an integrated Residential Resort and Marina development owned by Storth Ryes Pty. Ltd. (“Storth Ryes”). Storth Ryes administers these guidelines, for the benefit of existing and new land owners, through an Architectural Review Committee established by it and consisting of representatives nominated by Storth Ryes.

2.0 DESIGN CONFORMITY

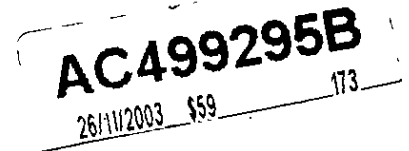
Written application for approval of the design, external finishes and siting of all buildings (and external alterations and additions to buildings) at King's Cove must be made by the allotment owner to the Architectural Review Committee, or its nominee, prior to work commencing or applying for a building permit. These guidelines are intended to provide the criteria for assessment of the application.

2.1 Approval Procedure

The initial step required is for each designer or builder to provide to the Architectural Review Committee a plan showing the contours of the site and proposed siting of the buildings together with a schematic presentation of the structure including: floor plans, elevations, materials and colours proposed. Once general agreement is reached and prior to lodgement of an application for a building permit from the East Gippsland Shire or its nominated subcontractor, the documents required for such application shall be lodged with the Architectural Review Committee for a final conformity assessment against these guidelines. Representations to the Architectural Review Committee in support of the proposed construction may be made by the applicants or their representatives.

The application and all supporting documents should be forwarded to the Architectural Review Committee at the following address:-

King's Cove Project Manager
PO Box 326
METUNG VIC 3904



The documents, together with a written assessment of conformity and approval, conditional approval or refusal of the proposal, shall be forwarded or given to the applicant as soon as practical and normally within 14 days of lodgement.

3.0 GUIDING GUIDELINES

3.1 Building Envelopes

Designated Building Envelopes form part of the guidelines and the permitted use of the land under the zoning. These building envelopes, which are designed to maximise views whilst enabling vegetation corridors between buildings, are required by agreement between Storth Ryes and the Responsible Authority. The building envelope positions are designated as part of the Soil and Water Management Plan agreed between Storth Ryes



and the Responsible Authority under the zone overlay. The minimum setback from the allotment boundaries are prescribed in the designated building envelopes.

3.2 Soil and Water Management Plan

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The permitted use of the land under the zoning is also governed by the Soil and Water Management Plan as approved by the Responsible Authority. The construction of civil works and buildings and associated structures must comply with the Soil and Water Management Plan, in order to protect the subject land, adjacent land and the Gippsland Lakes waterways.

Annexed hereto and marked "**Schedule A**" is the King's Cove – Stage 6 Soil and Water Management Plan Specifications for Construction of Dwellings.



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3.3 Building Types Permitted

A single dwelling is permitted within the zone under the relevant incorporated plan overlay for King's Cove (formerly Storth Ryes).

Any dwelling erected on the site shall have a total floor area of not less than one hundred and seventy (170) square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials.

All outbuildings exposed to public view from the street, reserve, adjoining allotments or the lake shall be designed, constructed and maintained in all ways similar to the principal building on the lot. Garages and carports shall preferably be incorporated into the main roof structure. Where detached garages or carports are permitted they shall also be constructed of the same approved materials as stipulated for the dwelling and be part of an overall integrated design. Each lot shall make a provision for fully enclosed and covered parking for not less than two motor vehicles unless otherwise agreed to in writing by the Architectural Review Committee.

Innovative house plans that meet the requirements of 3.4 Building Form, set out below, but use materials other than those specified will be considered for approval if appropriately submitted to the Architectural Review Committee for assessment.

3.4 Building Form

Simple clear forms will be preferred for all structures. Unduly fragmented or flamboyant forms will not be preferred where they impact on adjoining properties or the amenity of the subject land when viewed from offsite. Sun protection of walls, openings and terraces shall preferably be achieved by roof overhangs, verandahs, pergolas or other structurally integrated elements of the building.

As stipulated by agreement between Storth Ryes and the Responsible Authority, the construction of dwelling shall conform to the following:

Buildings should be designed to minimise visual impacts, erosion and fire hazard.

Buildings should be designed with floor levels and roofs that sit in sympathy with the prevailing ground slopes.

Pergolas, decks and shading devices may be used to soften the interface between buildings and surrounding vegetation.

Split level buildings shall be encouraged on sloping land to reduce the height of the building.

3.5 External Finishes and Colours

The objective is to provide a level of finish and colours which are compatible with the natural environment of King's Cove. They should reflect the colour and texture of the coastal setting and take account of durability and weathering characteristics. The following list of suitable finishes and colours are considered desirable but not definitive.

Walls: Brick or masonry-rendered or bagged and painted in colours suited to the coastal environment.
Stone.
Timber and/or composite weatherboards – treated or painted in colours suited to the coastal environment.

Glass – clear, grey or smoked (non-reflective).

Sheeting Materials – Harditex and similar manufactured sheeting suitably coated and painted.

Colourbonded metal in corrugated patterns.

Roof: Colourbonded Metal – in colours suited to the coastal environment.

Glass – or Polygal, Laserlight, Sailcloth and similar products.

Trim: Timber, aluminium, sheeting materials and steelwork in colours suited to the coastal environment.

The above is not intended to be comprehensive and other colours and combinations would be considered against the objectives of suiting the coastal setting of the subject land.

3.6 Service Areas

Areas used for the purpose of drying or airing clothes shall be reasonably screened from public view from the street, reserved, adjoining allotments and the land. Storage tanks shall be mounted at ground level and reasonably concealed from public view. Refuse storage areas shall be totally screened from public view.

3.7 Vehicle Driveways/Paved Areas

Vehicle driveways and other paved areas exposed to public view should be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface. Adequate drainage and erosion protection measures must be incorporated in line with the Soil and Water Management Plan.

3.8 Alterations and Additions

The guidelines (as amended) shall also apply to all external structural alterations and additions to external surfaces of buildings and structures on the development. Such works shall involve the same application and approval procedure as applies to initial building construction.

3.9 Builders' Site Refuge Guidelines

Lot owners shall ensure that any builder of a residence on a lot complies with the Builders' Site Refuge Guidelines contained in **Schedule B** of these Guidelines.

3.10 Requirement of Certificate of Occupancy or approval of the Architectural Review Committee

No allotment of the development shall be occupied for residential purposes either temporarily or permanently until a Certificate of Occupancy is issued for the dwelling erected on the site or until such occupancy is otherwise approved by the Architectural Review Committee.

4. Landscaping

4.1 General



To enhance the amenity of King's Cove and to improve the aesthetic environment, owners of lots shall be required to landscape their properties within 12 months of entering into occupation and obtaining a certificate of occupancy. The plans for such landscaping shall be prepared by a competent landscape designer and submitted to the Architectural Review Committee for a conformity assessment at the same time as plans are presented for the buildings. Lot owners will lodge a Bank Guarantee or cash bond of satisfactory performance for the sum of \$2,000.00 with Storth Ryes or its nominee. The guarantee will be released when the agreed landscaping has been completed.

The use of native species of trees and shrubs is favoured, however, other varieties will be permitted. It is desired that some indigenous trees shall be planted on each site particularly on the setback areas. Landscape plans need to incorporate general schematic layouts only with main species listed and larger trees shown on the plan. Trees which exist on the site either naturally or as part of landscaping worked by the developer cannot be removed without the permission of the Architectural Review Committee.

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4.2 Maintenance

Maintenance and landscaping of all ground slopes shall be the responsibility of the lot owners. Treatment of the ground slopes incorporating terracing and or retaining walls, including proposed landscaping, shall be incorporated into the landscape plan for approval. The landscape plan shall take account of the Soil and Water Management Plan requirements, maintain vegetative cover on slopes and providing measures to avoid any erosion of the subject land during and following construction.

Where a retaining structure is required to support a swimming pool or to form a terrace, such structure shall preferably including sloping landscaped or stone pitched banks as a means of level transition and shall deal with drainage to avoid erosion.

4.3 Maintenance prior to construction

Maintenance prior to construction of the dwelling and/or site shall be the responsibility of the lot owners who shall be required to ensure that grass height does not exceed 200 millimetres at any time and that the lot is maintained generally in keeping with the overall maintenance of the King's Cove Development. To assist lot owners, Storth Ryes proposes to engage a subcontractor to provide grass cutting and like maintenance services at a reasonably competitive cost, which services will be available to lot owners.

In the event that such maintenance of the dwelling and/or site not being carried out in a timely manner by Lot owners, Storth Ryes shall be entitled to engage a subcontractor for the purpose of effecting the required grass cutting or maintenance works and the Lot owner shall reimburse Storth Ryes for any expenses reasonably incurred by Storth Ryes in so doing.

5. Fences

In principle it is considered that a parklike appearance is appropriate and that solid fences be kept to a minimum subject to the requirements of screening service areas, pools and other outdoor living areas. The use of screen planting areas to define boundaries is most desirable.

Post and wire fencing will be erected by Storth Ryes on most allotment boundaries excluding the street frontage and within 15 metres of the main street frontage which will be unfenced. Boundaries within the more vegetated areas may not be fenced to avoid disturbing the existing cover. No solid fence shall be built within 15 metres of front or rear boundaries or within 5 metres of a side boundary.

Where a solid fence is sought, the preferred materials shall be brush panel, stone, bagged and painted masonry or brickwork, hardwood or treated pine pickets of 75mm x 20mm with 20mm spacings. The planting of landscaping to soften such fences will be preferred. Front boundaries are preferred to be left unfenced. Where the owner seeks greater screening cover than planting alone can provide, fences will need to be setback 15 metres from the front boundary and significant planting incorporated into the setback area within the landscape plan.

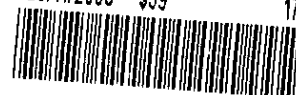
6. Liability

Storth Ryes Pty. Ltd. and its successors and associated companies, Riviera Properties Limited and its successors and the Responsible Authority, shall each be free from any liabilities and claims for damages and/or suits of any kind as a result of or arising out of the enforcement or implementation of all or any of these guidelines or any matters associated with the same or any application for approval hereunder or the decision made.

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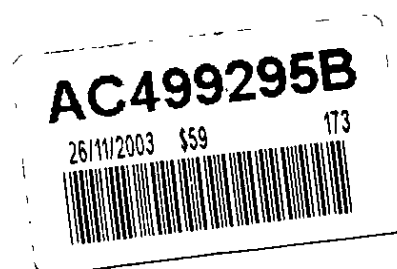


SCHEDULE A

King's Cove – Stage 6 Soil and Water Management Plan

Specifications for Construction of Dwellings

November, 2002



KINGS COVE – Stage 6
Soil and Water Management Plan
Specifications for Construction
of Dwellings
November 2002



DAC499295B-29-3

Prepared by:

Crossco Australia Pty Ltd
Engineering and Environmental Consultants
152 Macleod Street, PO Box 858
Bairnsdale VIC 3875
Tel. 03-5152 6298
Fax. 03-5152 5705
consult@crossco.net.au
www.crossco.net.au



1. BACKGROUND and OBJECTIVE

This Soil and Water Management Plan outlines the minimum erosion control requirements necessary for the construction of dwellings on allotments within Stage 6, The Terrace of the Kings Cove subdivision in Metung, Victoria.

The objective of this Plan is to prevent soil erosion and control sedimentation by adoption of the following key principles:

- Implementation of sensible site planning and compliance with construction specifications
- Diversion of up-slope water from the construction site
- Minimisation of site disturbance
- Rationalisation of movement by construction vehicles
- Installation of sediment traps/controls along low-side of construction site
- Rationalisation of stockpile location
- Protection of stockpiles from erosion
- Minimise waste from wash-down and tile/brick cutting
- Minimisation of stormwater runoff from the construction site
- Reduce the erosive energy of stormwater leaving or diverted around the construction site
- Minimisation of building waste and debris
- Regular maintenance of all erosion control structures
- Prompt rehabilitation of all disturbed areas



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A typical dwelling construction site, together with specific erosion control requirements are illustrated on Drawing 1. These controls should be adopted for development of all dwellings within Stage 6 at Kings Cove based on site specific details listed in Table 1.

2. RESPONSIBILITY FOR COMPLIANCE

Compliance with the erosion control techniques specified by this Plan (and accompanying drawings) is a mandatory requirement of East Gippsland Shire Council's Planning Permit 01/00299/DS for development of dwellings within Stage 6 at Kings Cove.

It is the land/dwelling owners responsibility to ensure all contractors engaged in the construction of a dwelling(s) on any allotment within Stage 6 at Kings Cove are aware of the need to implement the erosion controls specified by this Plan.

It is the individual responsibility of the builder and all sub-contractors to implement and maintain the various erosion control structures.

3. SITE-SPECIFIC REQUIREMENTS

This Soil and Water Management Plan stipulates erosion control requirements which can be adopted for all building envelopes within Stage 6 at Kings Cove. The location and orientation of each individual erosion control structure will vary depending on the relative position of the dwelling, access to the construction site, the direction and steepness of the land, and drainage conditions.

Site disturbance should, at all times, be kept to a minimum on all allotments by limiting the extent of cut and fill, limiting the steepness of batter slopes, and prompt rehabilitation of all disturbed sites.

Table 1 lists the different site-specific conditions prevailing across Stage 6 at Kings Cove.

The builder must establish the erosion control requirements in accordance with Table 1.

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Table 1. Kings Cove Stage 6 Lot numbers and erosion control requirements

Allotment No.	Landscape Type	Stage	Erosion Control Requirements
All Allotments (ie. 18-34)	i) Gently sloping or ii) Gently sloping with steeper escarpment		<ul style="list-style-type: none"> Implement all erosion control structures. Construct silt fences on ALL down slope sides of construction site. Cut & fill batters > 3.0 m long and steeper than 1H in 3V should be structurally retained. Construct silt fence on down slope side of construction site. Establish cut-off drains across high side of construction site. Utilise craneage and pumping for construction on steep erosion-prone slopes. Stormwater discharged on-site should exit via energy dissipater with silt fence across drainage line. Avoid stormwater discharge down steep slopes.
Lots 18 to 25 inclusive	Gently sloping		<ul style="list-style-type: none"> All stormwater must be drained to the surface drain located immediately below the northern (rear) boundary of the lots.
Lots 26 to 34 inclusive	Gently sloping with steeper escarpment		<ul style="list-style-type: none"> All stormwater must be drained to the table drain fronting the allotments along The Terrace



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4. STORMWATER DISCHARGE and DRAINAGE LINE PROTECTION

All stormwater from dwellings and associated access must be drained to an appropriate discharge point as specified below and in Table 1.

For Lots 18-25, Stage 6 Kings Cove, all stormwater must be drained to the surface drain located immediately below the northern (rear) boundary of the lots.

For Lots 26-34, all stormwater must be drained to the table drain fronting the allotments along The Terrace.

For Lots 26-34, stormwater should not be drained downslope in a southerly direction over the steeper slopes along the southern (rear) of these allotments.

Particular care must be taken to protect all drainage lines, gullies and steep erosion-prone slopes. Stormwater discharged onsite (from buildings and driveways etc) must be suitably baffled to dissipate erosive energy. Where there is a threat of erosion, energy dissipaters consisting of rock aggregate (100 mm ALD) securely laid over needle-punched geotextile fabric, should be constructed at stormwater outlet points. Stormwater should exit over the aggregate and onto stable grassed areas. A silt fence should be constructed across the drainage line immediately below the stormwater outlet point during construction activities.

Early connection of stormwater lines and onsite storage for subsequent reuse is encouraged.

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5. INSTALLATION SEQUENCE

Forward planning can minimise the number of erosion control structures required and their potential interference with the building process.

Installation of erosion control structures in an appropriate sequence will maximise the effect of the structures in preventing erosion and sediment movement, and further reduce the interference to builders.

The following sequence should be adopted:

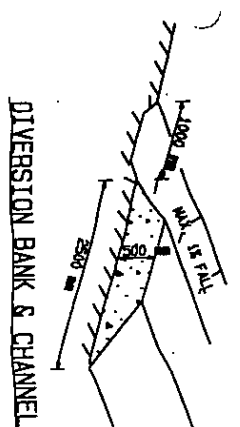
1. Establish a single entry-exit point and 'parking' spot for all vehicles involved in construction activities
2. Peg-out the limits of the dwelling
3. Determine the limits of disturbance / earthworks (ie cut and fill)
4. Install sediment fences along the low side of the site immediately below the limit of disturbance, leaving sufficient room for construction activities and stockpiles. Sediment fence detail is shown on the Dwelling Soil and Water Management Plan.
5. Install a cut-off drain above the upper limit of the cut batter to divert up-slope water around the site
6. Stabilise cut-off drains and discharge points to dissipate erosive energy of water
7. Remove any remaining vegetation (confirming for planning approval if required)
8. Strip and stockpile topsoil within the sediment fence perimeter
9. Rehabilitate all disturbed areas (including cut and fill batters) not subject to further construction activity with erosion control matting and suitable fast growing grass species
10. Install on-site building waste and litter receptacles (ie mini skips etc)
11. Undertake construction activity
12. Minimise erosive potential of stormwater generated from the site and dwelling roofs. This will include the need to install and connect roof downpipes and stormwater drainage lines to discharge points.
13. Continue to maintain all erosion and sediment control structures, including regular removal of accumulated sediment.
14. Stabilise and rehabilitate all remaining disturbed slopes (cut and fill batters, service trenches) with suitable fast growing grass species.



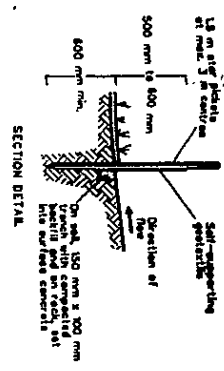
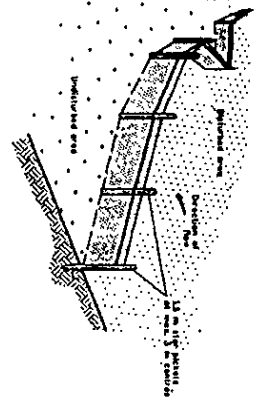
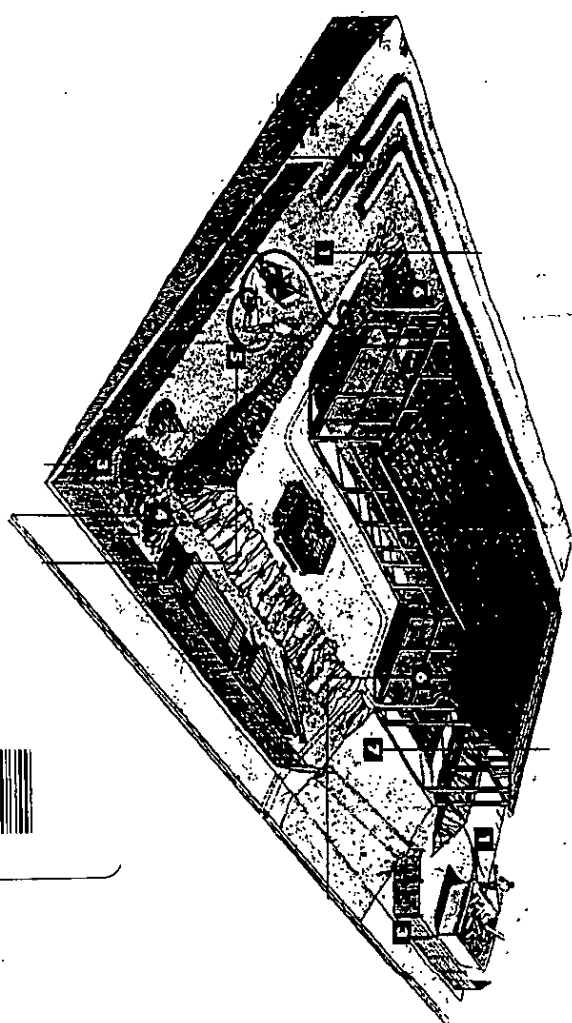
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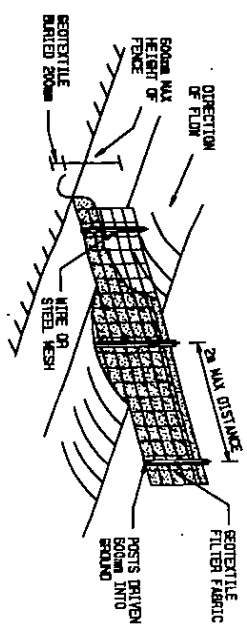
DIVERSION BANK & CHANNEL



CONSTRUCTION NOTES.

1. Construct sediment fence at limit of disturbance.
2. Drive 1.5m long steel picket into ground, 3m apart.
3. Dig a 150mm deep trench along the upslope line of the fence for the bottom of the fabric to be entrenched.
4. Backfill trench over base of fabric.
5. Fix self supporting geotextile to upslope side of posts with wire ties or as recommended by geotextile manufacturer.
6. Join sections of fabric at a support post with a 150mm overlap.

TYPICAL SILT FENCE



SILT FENCE ON DRAINAGE LINE



DAC499295B-33-0

GENERAL NOTES:

1. Restrict cut & fill to minimum necessary and stabilize all disturbed slopes promptly. Establish on-site building waste and litter receptacles
2. Establish a cut-off drain above the upper limit of the cut better to divert up-slope water around the site
3. Install sediment fences along the low side of site immediately below the limit of disturbance, leaving sufficient room for construction activities and stockpiles. Sediment fence detail is shown attached.
4. Strip and stockpile topsoil within sediment fence perimeter
5. Minimize waste from wash-down and tile/brick cutting
6. Minimize erosive potential of stormwater generated from the site and dwelling roofs. This will include the need to install and connect roof downpipes and stormwater drainage lines to discharge points as follows:
 - Lots 18 - 25 boundary to the surface drain located immediately below the northern (rear) boundary of the lots.
 - Lots 26 - 34 inclusive to the drain fronting the allotments along The Terrace.
7. Establish a single entry-exit point and 'parking' spot for all vehicles involved in construction activities

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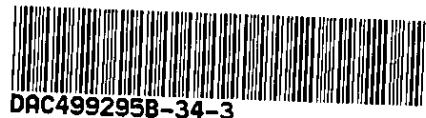
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SCHEDULE B

BUILDERS' SITE REFUSE GUIDELINES

1. All Owners have an obligation to keep the whole of "King's Cove" tidy.
2. It is an Owner's responsibility during the construction phase of a Residence on a Lot to inform the builder of the contents of these Builder's Site Refuse Guidelines.
3. All building materials and fittings must be stored within the property boundaries of a Lot at all material times and no building materials are permitted to be stored on the nature strip of a Lot.
4. Builders must provide a lockable 2 metre square bin on a Lot for the storage of all site refuse generated by that Lot and keep all such site refuse within such bin.
5. The King's Cove Architectural Review Committee will impose a non-littering requirement as a standard clause of any approval granted by the Architectural Review Committee in respect of building works. The builder will be required to be diligent in the control of all site litter and to protect adjoining lots and verges from use by on site construction workers and subcontractors of the Lot.
6. The owner must ensure that a sign is erected on the Lot during the construction phase of the Residence specifying the builder's obligations in relation to these Builders' Site Refuse Guidelines.
7. An Owner and their builder must comply with any litter notice issued by or on behalf of the Architectural Review Committee specifying breaches of the Builders' Site Refuse Guidelines and rectify such breaches, failing which an Owner and their builder will be exposed to prosecution by East Gippsland Shire Council under the Litter Control Act.



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EAST GIPPSLAND SHIRE COUNCIL

- and -

KINGS COVE METUNG PTY LTD
(A.C.N. 006 383 179)

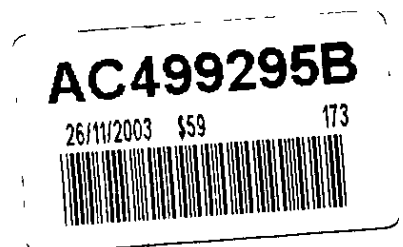
AGREEMENT UNDER SECTION 173
OF THE PLANNING AND ENVIRONMENT
ACT 1987

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT:jl Storthryessection 173(Stage 6)

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale



ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

**KINGS COVE METUNG PTY LTD
(formerly Storth Ryes Pty Ltd)
(ACN 006 383 179)**

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land

The Terrace, METUNG VIC 3904
PLAN OF SUBDIVISION NO. 509111F (Stage Six)

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL,

(“Council”)

and

KINGS COVE METUNG PTY LTD (formerly Storth Ryes Pty Ltd) (ACN 006 383 179)

(“the Owner”)

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning permit number 01/00299/DS (Amended) (“the Planning Permit”) that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked “A”.
- D. On 21 November 2003, Council and Kings Cove Metung Pty Ltd (“the Former Owner”) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AC499N95B on 26 November 2003.
- E. Under clause 3.2 of the Agreement, the Subject Land is required to be used and developed in accordance with the “Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone” dated December 2001 (“the Guidelines”).
- F. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (ARC). The consent of the ARC must be obtained before the Subject Land is developed.
- G. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.

H. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.

E.I. The Parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; ~~and~~
- (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- (c) to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
- (d) to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

1.1 **"the Act"** means the Planning and Environment Act 1987.

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

1.3 "Building Envelope" means a building envelope shown on the Endorsed Plan.

1.31.4 **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".

1.5 "Lot" means a lot on the Endorsed Plan.

1.41.6 **"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.

1.51.7 **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.

1.61.8 **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.

1.9 "Soil and Water Management Plan" means the "Kings Cove - Stage 6 Soil and Water Management Plan – Specifications for Construction of Dwellings" dated

[November 2002, as amended from time to time. A copy of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.](#)

[1.10](#) **“Solid Fence”** means a fence that is less than 50% transparent.

[1.71.11](#) **“Subject Land”** means the land situated at King’s Cove Boulevard, Metung being:

- Lot D on Plan of Subdivision No. 448622Q and being the land described in Certificate of Title Volume 10678 Folio 250.

Any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

[1.81.12](#) **“Mortgagee”** means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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 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.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Owner's obligations 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, the 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

3.1 Development in accordance with the Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by Council.

3.2 [Clause 3.2 deleted]

3.3 Obligations from the Guidelines

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.3.1 the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;

3.3.2 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;

3.3.3 no more than one dwelling may be developed on a Lot;

3.3.4 any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;

3.3.5 all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;

3.3.6 if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;

3.3.7 any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;

3.3.8 vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;

3.3.9 the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and

3.3.10 the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

3.23.4 Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1 Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns.

4.2 Further actions

4.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 the Owner will consent to the Council making 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 enable Council to do so 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 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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;
- 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 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the 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.

10. ENDING OF AGREEMENT

[This Agreement may be ended by agreement between Council and the Owner.](#)

~~[This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.](#)~~

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 9/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AD247186G
Riviera Harbours, Paynesville

Section 173 agreement AD247186G (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Riviera Properties Projects Limited (**Riviera Properties**) commenced developing land in Paynesville for an integrated residential and commercial development known as Riviera Harbours.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, Riviera Properties entered into a section 173 agreement with Council.
3. Council and Riviera Properties entered into the Agreement, which was recorded on title in dealing number AD247186G on 17 November 2004. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours' (**Guidelines**).
5. Under the Guidelines:
 - a. Riviera Properties is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. Riviera Properties was formally wound up and deregistered on 18 April 2017.

7. As Riviera Properties no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

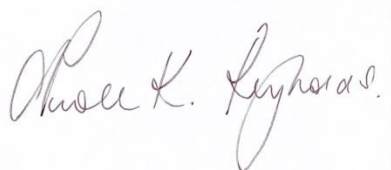
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AD247186G
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10844/055	25 Driftwood Close, Paynesville
2.	10844/056	23 Driftwood Close, Paynesville
3.	10844/057	21 Driftwood Close, Paynesville
4.	10844/058	19 Driftwood Close, Paynesville
5.	10844/060	15 Driftwood Close, Paynesville
6.	10844/062	11 Driftwood Close, Paynesville
7.	10844/063	9 Driftwood Close, Paynesville
8.	10844/064	7 Driftwood Close, Paynesville
9.	10844/065	5 Driftwood Close, Paynesville
10.	10844/066	3 Driftwood Close, Paynesville
11.	10844/067	1 Driftwood Close, Paynesville
12.	10844/068	15 Government Road, Paynesville
13.	10844/069	11 Government Road, Paynesville
14.	10844/070	9 Government Road, Paynesville
15.	11129/337	17 Driftwood Close, Paynesville
16.	11147/971	13 Driftwood Close, Paynesville
17.	10949/731	3 The Inlet, Paynesville
18.	10949/733	7 The Inlet, Paynesville
19.	10949/735	11 The Inlet, Paynesville
20.	10949/736	13 The Inlet, Paynesville
21.	10949/737	15 The Inlet, Paynesville
22.	10949/740	21 The Inlet, Paynesville
23.	10949/741	23 The Inlet, Paynesville
24.	10949/742	25 The Inlet, Paynesville
25.	10949/744	29 The Inlet, Paynesville
26.	10949/745	31 The Inlet, Paynesville
27.	11074/842	9A The Inlet, Paynesville
28.	11074/843	9B The Inlet, Paynesville
29.	11335/746	27A The Inlet, Paynesville
30.	11335/747	27B The Inlet, Paynesville
31.	11397/833	17 The Inlet, Paynesville
32.	11695/440	19A The Inlet, Paynesville
33.	11695/441	19B The Inlet, Paynesville
34.	11019/504	Road R1
35.	11019/505	Reserve 1
36.	11034/600	5A The Inlet, Paynesville
37.	11034/601	5B The Inlet, Paynesville
38.	10844/075	Canals, Paynesville
39.	10844/076	Road R1 on PS524602Y

TABLE B – The Agreement is proposed to be ended in respect of these properties

No.	Volume and Folio	Address
1.	11019/489	22 The Point, Paynesville
2.	11019/490	21 The Point, Paynesville
3.	11019/491	20 The Point, Paynesville
4.	11019/492	19 The Point, Paynesville
5.	11019/493	18 The Point, Paynesville
6.	11019/494	17 The Point, Paynesville
7.	11019/495	16 The Point, Paynesville
8.	11019/497	11 The Point, Paynesville
9.	11019/498	10 The Point, Paynesville
10.	11019/499	9 The Point, Paynesville
11.	11019/500	8 The Point, Paynesville
12.	11019/501	7 The Point, Paynesville
13.	11019/502	6 The Point, Paynesville
14.	11019/503	2 The Point, Paynesville
15.	11168/200	6/12 The Point, Paynesville
16.	11168/201	5/12 The Point, Paynesville
17.	11168/202	4/12 The Point, Paynesville
18.	11168/203	3/12 The Point, Paynesville
19.	11168/204	2/12 The Point, Paynesville
20.	11168/205	1/12 The Point, Paynesville

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AND END IN PART AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10844 Folios 055-058 (inclusive), Folio 060, Folios 062-070 (inclusive) and Folios 075-076 (inclusive), Volume 11129 Folio 337, Volume 11147 Folio 971, Volume 10949 Folio 731, Folio 733, Folios 735-737 (inclusive), Folios 740-742 (inclusive), Folios 744-745 (inclusive), Volume 11074 Folios 842-843 (inclusive), Volume 11335 Folios 746-747 (inclusive), Volume 11397 Folio 833, Volume 11695 Folios 440-441 (inclusive) , Volume 11019 Folios 489-495 (inclusive), Folios 497-505 (inclusive), Volume 11034 Folios 600-601 (inclusive), Volume 11168 Folios 200-205 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend and end in part the section 173 agreement recorded on title in dealing number AD247186G on 17 November 2004

APPLICATION REFERENCE NUMBER:

9/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AD247186G

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AD247186G
Number of Pages (excluding this cover sheet)	36
Document Assembled	31/01/2020 09:54

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The document is invalid if this cover sheet is removed or altered.

LODGED BY Warren, Graham & Murphy,

CODE 1716W VICTORIA

*Ref. Riviera Properties
Projects Ltd.*



Titles Office U:

AD247186G



**APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for ENTRY OF A
MEMORANDUM OF AGREEMENT under Section 173 of that 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 Agreement be entered on the Certificate of Title to the land referred to.

LAND 10662 Folio 008

ADDRESS OF LAND Driftwood Close and Government Road, North Quay, Paynesville

RESPONSIBLE AUTHORITY East Gippsland Shire Council

PLANNING SCHEME East Gippsland Planning Scheme

AGREEMENT DATE 2 day of November, 2004

AGREEMENT WITH Riviera Properties Projects Limited (ABN 86 061 677 218)

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority

Name of Officer

NICK KEARNS, MANAGER DEVELOPMENT

Date

23rd SEPTEMBER 2004

17 NOV 2004



AD247186G-1-9

AD247186G

17/11/2004 \$90

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EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

RIVIERA PROPERTIES PROJECTS LIMITED (A.B.N. 86 061 677 218)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: Driftwood Close & government Road, North Quay, Paynesville
PLAN OF SUBDIVISION NO. 524602Y (Riviera Harbours 'Stage 10)

**Parent Certificate
Pf Title** Volume 10662 Folio 008



DAD247186G-2-7

AD247186G

17/11/2004 \$90

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- 9. COMMENCEMENT OF AGREEMENT**
- 10. ENDING OF AGREEMENT**



DAD247186G-3-5

PLANNING AND ENVIRONMENT ACT 1987 SECTION 173 AGREEMENT

THIS AGREEMENT is made the *2nd* day of *November*, 200*4*

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale, Victoria

("Council")

- and -

RIVIERA PROPERTIES PROJECTS LIMITED (A.B.N. 86 061 677 218) of
Level 1, 63 The Esplanade, Paynesville, Victoria

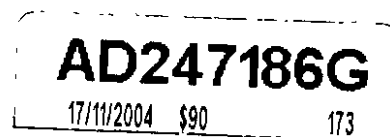
("the Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning Permit Number 574/2003/P ("the Planning Permit") that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the **Planning Permit**. A copy of the **Planning Permit** is attached to this Agreement and marked "A".
- D. The parties enter into this Agreement:
 - (a) to give effect to the requirements of the Planning Permit; and
 - (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

IT IS AGREED:

1. DEFINITIONS



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

- 1.1. **"the Act"** means the Planning and Environment Act 1987.
- 1.2. **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter **"B"**.
- 1.4. **"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.
- 1.5. **"Planning Permit"** means the Planning Permit referred to in recital C. of this Agreement.
- 1.6. **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applied to the Subject Land.
- 1.7. **"Subject Land"** means the land situated at Driftwood Close, Paynesville being Lot A on Plan of Subdivision No. 501030Y and being the land described in Certificate of Title Volume 10662 Folio 008.
Any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.
- 1.8. **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.



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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 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.
- 2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7. 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 covenants and agrees that:



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**3.1. Development in accordance with Planning Permit**

the Subject Land shall only be developed in accordance with the Endorsed Plans and the conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Condition 16 of the Planning Permit No. 574/2003/P requires that:

- (a) Each Lot (excepting Lots A, B, C and D) will be developed with a single dwelling, associated outbuildings and jetties in accordance with the document "Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours Stage 10" (or as amended). A copy of the said **Guidelines** are annexed hereto and marked "C".
- (b) All maintenance and repair works associated with the revetment wall structure including the footings and footing foundations are the responsibility of each lot owner. The revetment wall structure, footings and footing foundations will be inspected every five years, or after any flood event, by an independent and appropriately qualified professional to the satisfaction of the Responsible Authority, to check the structural stability and integrity of the wall. All necessary works and actions recommended by the inspection assessment will be carried out at the expense of the lot owners at no cost to Council to the satisfaction of the Responsible Authority. A copy of the inspection assessment and recommendations will be lodged with Council within one month of the inspection and assessment having been carried out.
- (c) The lot owners will ensure that no operations, actions or practices are undertaken from land and water forming part of the approved subdivision which will result in contamination or pollution of the canals system.

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- (d) The location, design and structure of any proposed jetty, landing or deck will be designed as part of the overall dwelling development on the lot and will be to the satisfaction of the Responsible Authority. Such structures will comply with the East Gippsland Shire Jetty Construction Policy.
- (e) This will bind the applicant as the Owner and shall run with the land so that all successors in the title are also bound by it.

3.3. Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:



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4.1. Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2. Further actions

- 4.2.1. the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of

ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

- 4.2.2. the Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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. Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

6. OWNERS 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 effected by this Agreement.

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7. SUCCESSORS IN TITLE

Without limiting the operation or effect which 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 hand delivery or prepaid post.

8.2. 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 two business days after the date of posting; or



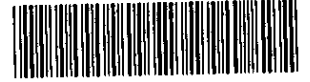
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8.2.3. if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

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8.3. No Waiver

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

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.

10. ENDING OF AGREEMENT

This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by

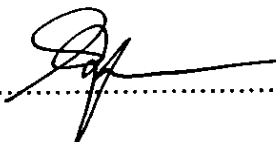


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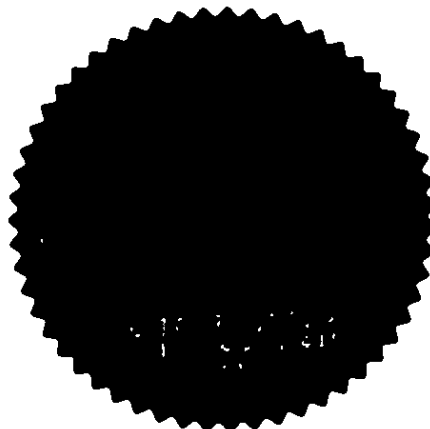
agreement between the Responsible Authority and all persons who are bound by the agreement.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The COMMON SEAL of EAST GIPPSLAND)
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the Chief Executive)
Officer on the day of)
2003 in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)



STEVE KOLLINS
CHIEF EXECUTIVE OFFICER



The COMMON SEAL of RIVIERA)
PROPERTIES PROJECTS LIMITED)
(A.B.N. 86 061 677 218) was)
hereunto affixed in accordance with its)
Constitution in the presence of:-)



Signature

TIMOTHY RICHARD WEBSTER

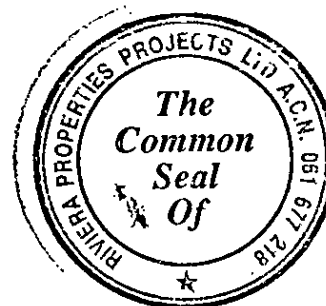
Full Name

Level 1 63 The Esplanade
Maresville

Usual Address

Director

Office Held





Signature

THOMAS EAGER

Full Name

74 MAIN ST. BARRISPALE

Usual Address

SECRETARY

Office Held



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Mortgagee's Consent

~~ANZ BANKING GROUP LTD.~~
~~Gippsland Secured Investments~~ as Mortgagee of Registered Mortgage Number
AB181450X consents to the Owner entering into this Agreement and in the event that
the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the
covenants and conditions of this Agreement.

.....
For and on behalf of the Mortgagee, ANZ Banking Group Limited

EXECUTED BY AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED
by being SIGNED by its Attorney

Trevor J. Stevens

.....
under Power of Attorney dated
9/10/1992 a certified copy of
which is filed in the permanent
order Book Number 277 at Page 5
in the presence of:

[Handwritten signatures of witnesses]

AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED
by its Attorney

[Handwritten signature]
who hereby certifies that
he is a(n)
REGIONAL EXECUTIVE
for the time being of
AUSTRALIA AND NEW ZEALAND
BANKING GROUP LIMITED
IN VICTORIA



DAD247186G-13-2

"A"

PLANNING PERMIT

Permit No: 574/2003/P
Planning Scheme: East Gippsland
Responsible Authority: East Gippsland Shire

Form 4

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ADDRESS OF THE LAND

28 Windermere Terrace PAYNESVILLE
Lot A LP 501030

BN: 82315 3

THE PERMIT ALLOWS

20 lot subdivision and use and construction of jetties in accordance with the endorsed plans.

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. Before the plan of subdivision can be certified or any development commenced, amended plans to the satisfaction of the Responsible Authority must be submitted to and approved by the Responsible Authority. When approved, the plans will be endorsed and will then form part of the permit. The plans must be drawn to scale with dimensions and two copies must be provided. The plans must be generally in accordance with the plans submitted with the application but modified to show:
 - a streetscape plan for the new road showing the location of carriageway pavement, parking bays, kerbs, crossovers, footpaths, bicycle paths and speed control devices to the standards set out in ResCode for an access street;
 - a streetscape plan for Government Road showing the location of carriageway pavement, parking bays, kerbs, crossovers, footpaths, bicycle paths and speed control devices;
 - location and species of proposed street trees and other vegetation, including for the Government Road reserve;
 - any relevant details for the location of street furniture, lighting, seats, etc.;
 - easements as required
2. The subdivision and works as shown on the endorsed plans must not be altered without the written consent of the Responsible Authority.
3. Plans for the proposed road where it encroaches onto Crown Land must be suitable for the Responsible Authority to make application to have the road proclaimed.
4. The applicant shall be required to provide for and complete the construction of all necessary infrastructure to service the proposed allotments. Infrastructure shall be constructed in accordance with current construction standards. Additionally full construction of the Government Road is a requirement of the works to be undertaken. Infrastructure shall be constructed to Council satisfaction.
5. The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the



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requirements of the relevant service authorities. All documentation shall be submitted to and approved by Council prior to the commencement of construction.

6. The applicant shall appoint an appropriately qualified consultant to act as Superintendent for all infrastructure works. The role of the Superintendent shall be to certify that all works have been constructed in accordance with approved plans and specifications.
7. All jetties shall be constructed to the requirements of the East Gippsland Shire Council Jetty Policy. Additionally, the shared jetties shall be located to provide for adequate vessel manoeuvring.
8. A stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection, control and disposal of all stormwater runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by future development of buildings, pavements, and/or siteworks to avoid damage or inundation to any property. Full and detailed calculations shall be provided.
9. The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, weilands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.
10. Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.
NOTE: Allotments with drainage connections through the revetment wall to the constructed canal shall be provided with a pit incorporating a litter basket.
11. With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 20 horizontal to 1 vertical.
12. The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer
NOTE: This may require the installation of signage and pavement marking in adjacent streets due to increased vehicle movements arising from this approval. These requirements will be dependent on a Road safety Audit which shall be required as part of the construction approvals process, costs of which shall be borne by the Applicant.
13. The works shall be subject to a twelve month defects liability period. Documentation shall also provide for an extended defects liability period of five years providing for all maintenance and repair to revetment walls, footings and footing foundations and dredging of the constructed waterway
14. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
15. Prior to the commencement of works, the owner shall prepare a Soil and Water Management Plan outlining the debris and sediment control measures to be

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installed to prevent erosion during all construction stages of both the subdivision and future development on the proposed allotments. Pollution prevention measures shall be in accordance with the Environmental Protection Authority's Publication Number 275 "Construction Techniques for Sediment Pollution Control" and "Environmental Guidelines for Major Construction Sites" (Publication No. 480).

16. Prior to the issue of a Statement of Compliance the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority to provide for the following:

- Each lot (excepting Lots A, B, C and D) will be developed with a single dwelling, associated outbuildings and jetties in accordance with the document "Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours stage 10" (or as amended).
- That all maintenance and repair works associated with the revetment wall structure including the footings and footing foundations are the responsibility of each lot owner. The revetment wall structure, footings and footing foundations will be inspected every five years, or after any flood event, by an independent and appropriately qualified professional to the satisfaction of the Responsible Authority, to check the structural stability and integrity of the wall. All necessary works and actions recommended by the inspection assessment will be carried out at the expense of the lot owners at no cost to Council to the satisfaction of the Responsible Authority. A copy of the inspection assessment and recommendations will be lodged with Council within one month of the inspection and assessment having been carried out.
- That the lot owners will ensure that no operations, actions or practices are undertaken from land and water forming part of the approved subdivision which will result in contamination or pollution of the canals system.
- That the location, design and structure of any proposed jetty, landing or deck will be designed as part of the overall dwelling development on the lot and will be to the satisfaction of the Responsible Authority. Such structures will comply with the East Gippsland Shire Jetty Construction Policy.

The agreement will bind the applicant as the owner and shall run with the land so that all successors in title are also bound by the agreement. This agreement will be prepared at the applicant's 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.

17. Construction works on the subject land shall be limited to the following hours:

Monday to Friday	7.30am to 6.00pm	All works
Saturday	7.30am to 12.30pm	Maintenance works only
	(i.e. no movement of heavy machinery)	

No works at any other times.

18. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the Responsible Authority.

19. Spoil must be removed from the site via an approved cartage route to the satisfaction of the Responsible Authority and must be placed in accordance with the requirements of the 1984 agreement on the "Placement of Fill and

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Landscaping on Crown Land" between the Department of Natural Resources and Environment and East Gippsland Properties Proprietary Limited or in accordance with the soil and water management plan on freehold areas of the project.

20. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.
21. The applicant must enter into an agreement for the extension, upgrading or rearrangement of the electricity supply system to the lots on the plan of subdivision as required by TXU. (A payment to cover the cost of such work will be required and easements internal and external to the subdivision and provision of sites for substations may be required).
22. The applicant must set aside on the plan of subdivision reserves for the use of TXU Electricity Ltd, for electric substations.
23. The applicant must provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.
24. The applicant shall enter into an agreement with Telstra or other licensed Telecommunications carrier for the satisfactory provision of telephone cable reticulation one metre into each lot created.
25. The applicant shall set aside on the plan of subdivision reserve/s satisfactory to Telstra, for telecommunication/s substations if required.
26. The applicant shall pay to Telstra the reasonable cost of any works necessary, as a result of the subdivision, to remove, or alter the position of any existing facility on the subdivision, or on any adjacent land or Government Road, pursuant to Section 91(1) & (2) of the Australian Telecommunications Corporation act, 1989.
27. The applicant shall enter into an agreement under the Water Act for the provision of water supply works.
28. The applicant shall meet the cost of the necessary water mains extension.
29. The applicant shall pay East Gippsland Water a headworks and distribution charge at a level determined by the Authority at the time of payment. As a guide the level applicable on 3/9/03 is \$1,000 for the each additional lot created by the subdivision.
30. The applicant shall modify existing water service piping (if necessary).
31. The applicant shall enter into an agreement under the Water Act for the provision of sewerage works.
32. The applicant shall meet the cost of the necessary sewer mains extension.
33. The applicant shall pay East Gippsland Water an outfall and disposal charge at a level determined by the Authority at the time of payment. As a guide the level applicable at 3/9/03 is \$850 for each lot created by the subdivision.

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34. The applicant shall connect development to East Gippsland Water's water and sewerage services to the satisfaction of the Authority.
35. Emergency vehicle access within the subdivision must be provided in accordance with the following:
- A minimum trafficable road width of 6 metres
 - A minimum height clearance of 4 metres above all roads
 - Court bowls with a minimum trafficable radius of 10 metres
 - Road structures designed and constructed to a minimum load limit of 15 tonnes
36. CFA requires that:
- The water reticulation plans must be approved by the CFA.
 - There must be a hydrant within 120 metres from the outer edge of any building envelope and at no more than 200 metre intervals.
 - Fire hydrants must be clearly identified in accordance with the Fire Service Guideline - "Identification of Street Hydrants for Fire Fighting Purposes".
37. This permit will expire if:
- the subdivision is not certified within two years, of the date this permit was issued, or
 - if certified within two years, is not registered within five years of the date of Certification

The Responsible Authority may consider extending the periods referred to above if a request is made in writing before the permit expires or within three months afterwards.

Notes

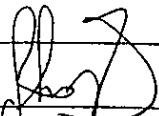
All works associated with the development must be in a manner consistent with the provisions of the Archaeological and Aboriginal Relics Preservation Act 1992 and Part 11A of the Commonwealth Aboriginal and Torres Strait Islander Heritage Protection Act, 1984. Aboriginal Affairs Victoria is the authority for administration of those Acts and the proponent is advised to contact Mr Gerry Laughton, PO Box 1240 Sale 3850 of phone 4143 1644 in relation to the above.

Prior to the commencement of works the Proponent shall submit to the Responsible Authority and the Department of Sustainability and Environment a revised rehabilitation plan of the fill sites associated with the development. It must be clearly show the amount of fill that has been placed on the site and the projected fill space available. This plan shall be endorsed by DSE prior to commencement of works.

There is Telstra Cabling located inside the boundary of the subject land. It is important that the correct procedures and care are taken regarding the cabling. For all cable locations and information please contact Melbourne one call centre.

Date Issued: 19 December 2003

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Signature for the
Responsible Authority



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"B"

PLAN OF SUBDIVISION		STAGE No. /	LTO USE ONLY EDITION	PLAN NUMBER PS 524602Y										
LOCATION OF LAND PARISH: BAIRNSDALE TOWNSHIP: _____ SECTION: _____ CROWN ALLOTMENT: 146 (PART) & 146 ^G CROWN PORTION: _____ TITLE REFERENCES: VOL 10662 FOL 008 LAST PLAN REFERENCE: LOT A ON PS 501030Y POSTAL ADDRESS: GOVERNMENT ROAD, (At time of subdivision) PAYNESVILLE, 3880 AMG CO-ORDINATES: E 563 460 (Of approx. centre of land in plan) N 5804 410 ZONE: 55		COUNCIL CERTIFICATION AND ENDORSEMENT COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 11/2004/CRT 1. This plan is certified under Section 6 of the Subdivision Act 1988. 2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 / / 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. OPEN SPACE (i) A requirement for public open space under Section 18 Subdivision Act 1988 has / has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in stage Council Delegate <i>Hean</i> Council seal Date 22/10/2004 Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council seal Date / /												
VESTING OF ROADS AND/OR RESERVES <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 20%;">IDENTIFIER</th> <th>COUNCIL/BODY/PERSON</th> </tr> <tr> <td>RI ROAD</td> <td>EAST GIPPSLAND SHIRE COUNCIL</td> </tr> <tr> <td>RESERVE No. 1</td> <td>EAST GIPPSLAND SHIRE COUNCIL</td> </tr> </table>		IDENTIFIER	COUNCIL/BODY/PERSON	RI ROAD	EAST GIPPSLAND SHIRE COUNCIL	RESERVE No. 1	EAST GIPPSLAND SHIRE COUNCIL	NOTATIONS <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20%;">STAGING</td> <td>This is / is not a staged subdivision Planning Permit No JT/574/2003/P</td> </tr> <tr> <td>DEPTH LIMITATION</td> <td>15 METRES BELOW THE SURFACE APPLIES TO CROWN ALLOTMENT 146^G ONLY</td> </tr> </table>			STAGING	This is / is not a staged subdivision Planning Permit No JT/574/2003/P	DEPTH LIMITATION	15 METRES BELOW THE SURFACE APPLIES TO CROWN ALLOTMENT 146 ^G ONLY
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RI ROAD	EAST GIPPSLAND SHIRE COUNCIL													
RESERVE No. 1	EAST GIPPSLAND SHIRE COUNCIL													
STAGING	This is / is not a staged subdivision Planning Permit No JT/574/2003/P													
DEPTH LIMITATION	15 METRES BELOW THE SURFACE APPLIES TO CROWN ALLOTMENT 146 ^G ONLY													



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SURVEY THIS PLAN IS / IS NOT BASED ON SURVEY

THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s) 434

EASEMENT INFORMATION					LTO USE ONLY
EGEND A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)					STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT
					RECEIVED <input type="checkbox"/>
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					LTO USE ONLY PLAN REGISTERED TIME DATE / /
					Assistant Registrar of Titles
					SHEET 1 OF 3 SHEETS
<div style="display: flex; justify-content: space-between;"> <div> Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 152 MACLEOD STREET, BAIRNSDALE, VIC., 3875 TELEPHONE (03) 6182 6011 </div> <div> LICENSED SURVEYOR SIGNATURE <i>Michael Joseph Sadler</i> REF 10929 DATE 7, 9, 2004. VERSION 2 </div> <div> MICHAEL JOSEPH SADLER </div> </div>					<i>Hean</i> DATE 22/10/2004 COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3

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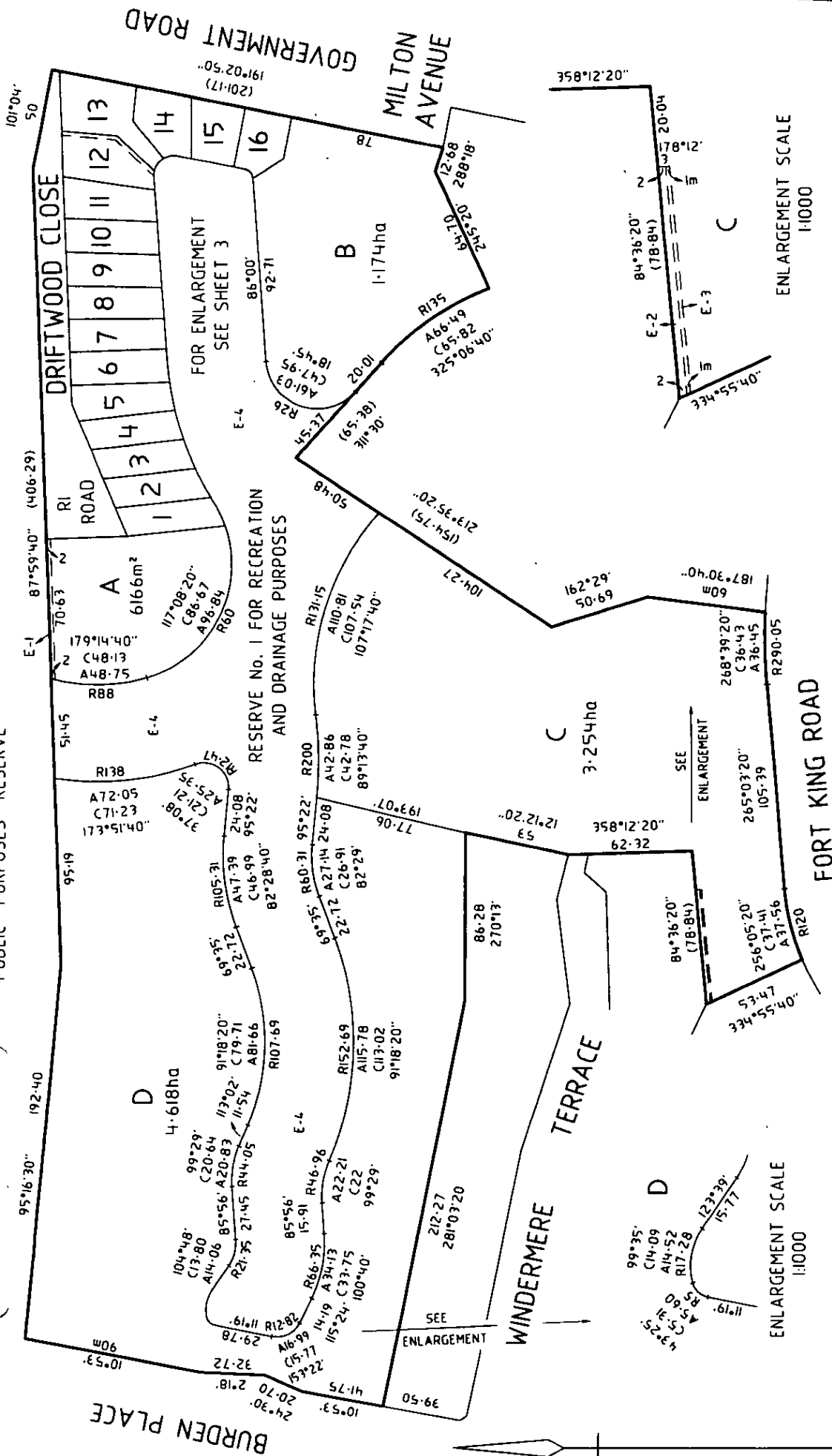
PLAN OF SUBDIVISION

STAGE No.

PLAN NUMBER

PS 524602Y

PUBLIC PURPOSES RESERVE



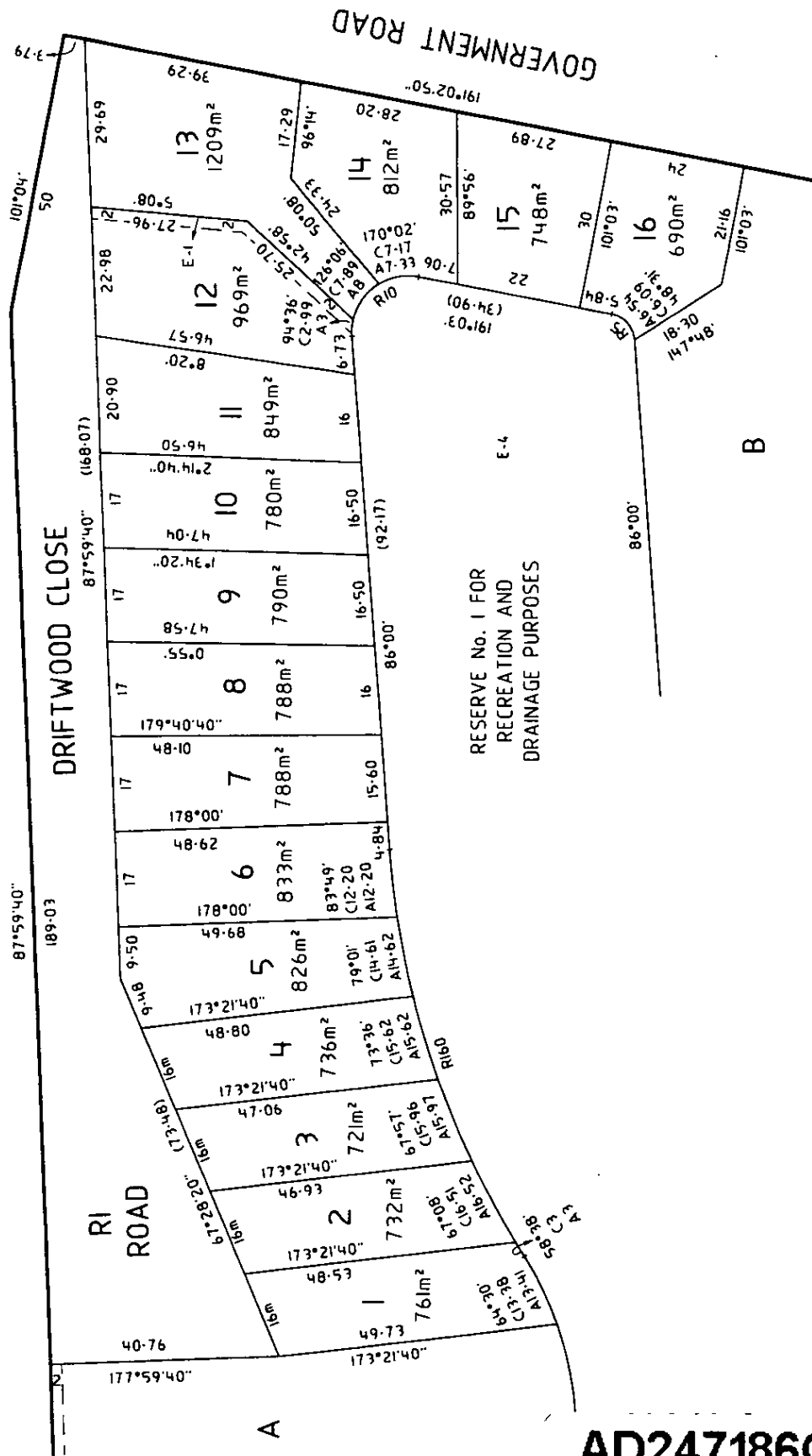
Crowther & Sadler Pty Ltd
LICENSED SURVEYORS & TOWN PLANNERS
182 MACLEOD STREET, BARNSDALE, VIC. 3676
TELEPHONE (03) 5162 6011

SCALE
20 0 20 40 60 80 100
LENGTHS ARE IN METRES

ORIGINAL SCALE 1:2000 A3
SHEET SIZE
LICENSED SURVEYOR
SIGNATURE *Michael Joseph Sadler*
DATE 7/9/2004
VERSION 2
REF 10929

SHEET 2 OF 3 SHEETS
DATE 22/10/2004
COUNCIL DELEGATE SIGNATURE

PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER
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Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BAIRNSDALE, VIC. 3075 TELEPHONE (03) 6162 6011	ORIGINAL SCALE 1:800 A3	LICENSED SURVEYOR SIGNATURE <i>Michael Joseph Sadler</i> DATE 7/7/2004 REF 10929 VERSION 2	SHEET 3 OF 3 SHEETS DATE 22/10/2004 COUNCIL DELEGATE SIGNATURE <i>Heather</i>
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AMG ZONE 55

"C"

"RIVIERA HARBOURS"



**GUIDELINES FOR CONSTRUCTION, SITING OF, EXTERNAL ALTERATIONS AND ADDITIONS
TO BUILDINGS AND STRUCTURES ON RIVIERA HARBOURS – DECEMBER 2003**

"NORTH QUAY"

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Project Aim and Objectives

The subject land forms part of a prestigious residential and commercial real estate development – Riviera Harbours.

The aim of the development is to establish a residential precinct that provides excellence in waterfront living for Paynesville.

The vision is to provide for a residential living environment synonymous with high quality and well designed built form.

The objectives guiding the development of the built form and residential and residential environment include the following:

- Enjoyment and optimisation of views and waterfront experiences for all properties.
- The integration of the 'water element' into the living experience.
- The encouragement of the integration of indoor and outdoor living.
- Positive use of solar and passive energy sources.
- Well designed and site responsive built form consistent with the amenity of the area.
- Incorporation of nautical and maritime visual and aesthetic qualities in the development.
- To provide for a diverse range of living experiences to accommodate a variety of household types and forms.
- Use of a variation of mediums, materials and colours to reinforce the waterfront living experience.
- The inclusion of extensive landscaping and pavement treatments to enhance the built form.
- To encourage the use of native species and designed garden environments.
- To encourage the use of multi-levelled transitional landings and decks to enhance the 'living adjoining water' experience.
- To achieve high amenity and aesthetic values associated with the project to the benefit of Paynesville.

For the purchaser's interest it is desirable that certain controls be implemented in relation to the nature and type of construction, the preservation of the environment, the aesthetic appearance and the general amenity of the development. Design of buildings, landscaping, fencing, paving, and all other elements of a high quality living environment, should be guided to establish visual continuity and compatibility throughout the development.

These guidelines are not intended to be restrictive but to protect the interests of all owners of property in the development, and to provide certainty that a quality living environment may be enjoyed by all future residents.

1.0 - INTRODUCTION



"Riviera Harbours" is a waterfront canal development owned by Riviera Properties Projects Limited and managed by Riviera Properties Limited (RPL) who will appoint an Architectural Review Panel (ARP) to administer these guidelines and covenants applicable to the land. This panel shall consist of up to three persons including a registered architect nominated by RPL.

Canals when created are vested in the East Gippsland Shire as reserve for recreation, way and drainage and the Council will administer controls and maintenance in relation to the canals. The Council will have the option to strike a special rate or levy charged on abutting properties to assist with maintenance costs associated with the waterways when and if the need arises, and insurance liability cover for the Council as necessary.

2.0 – DESIGN CONFORMITY

Written Application for approval to the design, external finish and siting of and external alterations and additions to all buildings to be erected, constructed, externally altered or added to at *"Riviera Harbours"* must be made by the allotment owner to the Architectural Review Panel nominated by RPL prior to work being commenced or undertaken.

These guidelines are intended to provide the criteria for assessment of the application.

Criteria of Assessment shall be inclusive of the following elements:

- Dwelling Plans and Elevation details which shall comprise building structures nominating form and height and include foundation details.
- Where any buildings exceed 5.0 metres above the natural ground surface of any allotment a solar shading plan shall accompany the application.
- Landscaping plans showing species types and locations, retaining walls and garden structures, paved areas, driveways and fences including material types and colours.
- Site Plan indicating compliance with nominated envelopes.
- Assessment addressing the Soil & Water Management Plan principles.
- A statement nominating building materials and colours. This statement should indicate the feature of the design which incorporate the "Maritime" theme.
- Elevations of presentation to constructed waterways.
- Plans illustrating incorporation of principles for creation of 'private living' environments.
- A statement addressing the elements and aspects of the design that embrace principles of maximization of energy efficiency.
- Details of proposed landings and jetties. Plans must show conformity with the East Gippsland Shire Jetty Policy Document.

2.1 – APPROVAL PROCEDURE

The initial step required is for each owner/architect to provide to the ARP plans showing contours of the site and proposed siting of the building or structures together with a schematic presentation of the structure, including floor plan, elevations, materials and colours proposed.



Two copies of the plans must be lodged one of which will be retained by the ARP.

Once general agreement is reached and prior to lodgement of an application for a building permit, the documents required for such application shall be lodged for a final conformity assessment to the ARP. Representation to the ARP in support or explanation of the proposed construction may be made by the applicant, personally or through representatives.

Costs of the ARP are payable by RPL.

The documents, together with a written assessment of conformity and approval, conditional approval or refusal of the proposal, shall be forwarded or given to the applicant within fourteen (14) days of lodgement.

Where buildings exceed 5.0 metres above the natural ground surface of any allotment a solar shading plan should accompany the application. In addition a landscape plan should be lodged at this time.

3.0 – BUILDING GUIDELINES

3.1 – Nominated Building Envelope

Nominated building envelopes form part of the guidelines, and a plan of these is attached.

The envelopes form part of Planning Permit (574/2003/P). Any variation to the approved building envelope plans are subject to further written approval from RPL and East Gippsland Shire Council. Consent to lodge an application with Council for variation must first be considered by the ARP.

Designs which aim to maximise views, to create useable outdoor living, present a varied form when viewed from or across the canals, and where buildings are sited within the “envelope” shown in the diagrams will be preferred.

All buildings must be constructed wholly within the approved building envelopes (including shade sails and the like). Unroofed decking, landings and jetties may be constructed outside the nominated building envelope subject to meeting all other relevant requirements of the original planning permit.

3.2 – Setbacks

The minimum setback from the canal and street frontage is determined by the Responsible Authority. The building envelopes are specified to meet these requirements. A continuous row of uniformly setback buildings is considered undesirable.

3.3 – Buildings Permitted and Multi Dwelling Development

Only one single or multi-storey detached dwelling is permitted on each lot.

Exceptions apply to Lots A, B, C and D upon which multi dwelling development may be permitted subject to Responsible Authority and ARP approval.

3.4 – Building Form and Height

Minimum floor levels are nominated at 2.5 AHD.



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Persons wishing to erect multi-storey buildings must demonstrate at design stage that upper storey windows or balconies will not unduly prejudice neighbours' rights to privacy. The effects of overshadowing of adjoining property must be taken into account and plans showing this effect shall accompany the application. All building siting and design must comply with Rescode as well as these guidelines.

Any dwellings or multi dwelling development erected on the site shall have a total floor area of not less than one hundred and fifty square metres within the outer wall thereof calculated by excluding the area of any carport, garage, deck, terrace, pergola or verandah and must be built only of new materials and not have the external wall area (exclusive of window area) constructed of any material other than:

bricks, concrete or masonry that are bagged, and painted or finished with an approved permanent render-like coating; exceptions may apply to clay brickwork where it can be demonstrated that partial use of an untreated finish will not prejudice the overall design; painted weatherboards; with coverage no greater than 180mm; timber cladding; or natural stone or approved look alike masonry products in natural colours; flat sheet harditex materials finished with "flo-coat" style approved permanent render-like coating.

The use of a single material type on all external walls will be discouraged.

All buildings exposed to public view from street or canal shall be designed, constructed and maintained in all ways similar to the principal building on the lot.

Garages/carports shall preferably be incorporated within the main roof structure. Where detached garages/carports are permitted they shall be of the same material as the dwelling and be part of an overall integrated design.

Sun protection of walls, openings and terraces shall preferably be achieved by roof overhangs, verandahs, pergolas or other structurally integral elements.

Roofs shall be of colour-bonded metal, glass or polygal, zincalume or similar products reflecting the colours of the maritime environment.

Look alike tile products are not permitted. The roof is an integral part of the design and excessive roof mass without variation in the plane of roof, as viewed from the street, adjoining properties or the waterway should be avoided.

RPL acknowledged that new products designed as substitutes for the above materials will be developed and marketed from time to time and, provided these materials are not inconsistent with the aim of these guidelines, they will be considered.

3.5 – External Finishes & Colours

The objective is to provide a level of finish and colours which are compatible with the 'maritime' theme and environment of "Riviera Harbours".

The following list of suitable finishes and colours are considered desirable but not definitive.

3.6.1 - Walls



3.6.1.1

Masonry, Brick and Concrete walls – must be bagged and painted, or finished with an approved permanent render-like coating. Colours must emphasize the maritime environment and the use of accent colours will be considered.

3.6.1.2

Timber finishes must be painted or treated in similar colours to those above.

3.6.1.3

Glass – clear, green, grey or smoked (non-reflective). Increased external reflectivity of glass should be avoided.

3.6.1.4

Stone – natural or approved look alike masonry products in natural colours.

3.6.1.5

Clay brick – limited partial use of natural finish brick may be permitted where it can be demonstrated to the satisfaction of the ARP, that the use will not prejudice the overall design.

3.6.1.6

Harditex flat sheet finished with "flo-coat" style approved permanent render-like coating is able to be used.

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3.6.2 - Roof

Shall reflect the colours of the maritime environment.

3.6.3 - Deck Jetties and Landings

In materials and finishes acceptable to the ARP.

3.7 – Clothes Drying Areas



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Areas used for the purpose of drying clothes shall be screened from public view from street or canal.

3.8 – Storage Tanks

Shall be mounted at ground level and concealed from public view from street or canal.

3.9 – Vehicle Driveways and Paved Areas

Vehicle driveways and other paved areas exposed to the public view preferably shall be constructed of clay brick, masonry pavers, stone sheeted bitumen, hot mix, patterned and coloured concrete or exposed aggregate concrete.

3.10 – Energy Efficiency Principles

The design should incorporate energy efficiency principles into the built form and site layout to achieve reduced energy costs and maximization of residential amenity.

The orientation, layout and landscaping of allotments shall be designed to maximise usage of natural ventilation, daylight and solar energy.

Design should be site responsive and take account of prevailing winds and climatic conditions.

The provision of suitable vegetation for shading and allowing winter sunlight on to windows will be encouraged.

3.11 – Soil and Water Management Principles

Any proposed development must accord with the principles contained in the attached “*Soil & Water Management Plan – Riviera Harbours Allotment Development*”.

Any proposed development must be consistent with the protection from erosion, landslip or other land degradation processes. Development shall aim to minimise land disturbance and alteration of the natural ground surface.

In addition to the Management Plan provision of landscaping and terracing works should be included.

3.12 – Presentation to Constructed Waterways

Design of built form and site layout of external decks, landings and jetties shall have due regard for the retention of the amenity of the waterway (Public Open Space). Design should aim to protect and enhance the visual amenity of the public areas within the constructed waterways.

Designs which incorporate multi-levelled landings and decks will be strongly encouraged to result in a gradual progression from water level to floor level.

4.0 – STRUCTURAL ALTERATIONS OR ADDITIONS AND CHANGES TO EXTERNAL SURFACES

The guidelines shall apply to all external structural alterations and additions and changes to external surfaces of buildings and structures on the development including the same application and approval procedures as apply to initial construction.

4.1 – Site Works

The ground levels over any lot shall not be substantially changed from those existing on the day of settlement without the permission of the Responsible Authority and the ARP. Any alterations proposed shall be submitted simultaneously with plans for any buildings.

4.2 – Landscaping

4.3.1 - Allotment Maintenance

Any vacant allotment must be maintained to ensure a maximum grass height of 200mm and in general keeping with the overall maintenance of the Estate.

The buyer hereby covenants with the developer that they will accept responsibility for costs of this maintenance if it is required to be carried out by RPL.

The waterways adjacent to the land should be maintained to remove floating debris – dead and floating weed or other unsightly material.

4.2.2 - Landscape Plan and Bond

To enhance the amenity of “Riviera Harbours” and to improve the aesthetic environment, owners of lots shall be required to landscape their properties within 6 months of entering into occupation and obtaining a certificate of occupancy. The plans for such landscaping shall be submitted to RPL or its nominee for a conformity assessment at the same time as plans are presented for the buildings. Lot owners will lodge a Landscape Bond in the form of a Bank Guarantee or cash bond for the sum of \$2,000.00 with RPL or its nominee to ensure satisfactory performance. The guarantee will be released when the agreed landscaping has been completed.

4.2.3 - Trees

The use of some native species of trees and shrubs is favoured; however, other varieties will be permitted. It is desired that a number of indigenous trees shall be planted on each site particularly on the building setbacks from street and canals. Landscape plans need to incorporate schematic layouts only with main species listed and larger trees shown on the plan. To achieve an horizon of trees rather than roofs it is desirable that a number of canopy type trees are planted on each lot but not within 3m of the revetment wall.

Trees which exist on the site either naturally or as part of a landscaping plan of the developers, cannot be removed without the permission of the Responsible Authority.

4.3– Batter Slopes

4.3.1 Maintenance and landscaping of all ground slopes is the responsibility of the lot owners.

4.3.2 Treatment of the ground slopes down to the canal revetment wall incorporating terracing and or retaining walls, including proposed landscaping shall be approved by the ARP.

5.0 – SWIMMING POOLS

Where a retaining structure is required to support a swimming pool or to form a terrace, located between a canal and a dwelling, such structure shall preferably include sloping landscaped or stone pitched banks as a means of level transition.

Where a swimming pool is constructed, safety fences shall be at least 1.2m from adjoining neighbours boundaries or otherwise positioned to avoid any effect on adjoining neighbours property.

6.0 – FENCES

In principle it is considered that a parklike appearance is appropriate and fences be kept to a minimum subject to the requirements of screening service areas, pools, patios and other outdoor living areas



etc. The use of screen planting to define boundaries is most desirable with the emphasis on fence panels for courtyard and outdoor living area screening rather than on defining the full length of property boundaries.

6.1 – Street Boundary

6.1.1 Canal Lots – All service areas shall be screened from both canal and street view. Fences may not exceed 1.8 metres in height above ground level. Front fences cannot be built within the minimum building setback without the permission of the ARP.

6.1.2 Where fences are constructed on the setback the area between the fence-line and the street boundary shall be landscaped with appropriate vegetation.

6.1.3 Non-canal Lots – It is preferred that no front fences are built within 4.5 metres of the front street boundary and in any case no fences shall be built without permission of the ARP.

6.2 – Side Boundaries

Side fences shall not exceed 1.8 metres in height above ground level. Within the front building setback from the street boundary, any fences are subject to approval of the ARP.

6.4 – Rear Boundaries

Canal Lots – Fencing along the canal boundary and/or the revetment wall will not be permitted, and no side boundary fence will be permitted within 5 metres of the canal boundary except with the specific approval of the ARP for a special purpose.

Non-Canal Lots – Fences shall not exceed 1.8 metres in height above ground level.

6.5 – Materials for Fencing and Screening

Preferred materials will be: Timber Pickets in OBHW, KDHW or treated pine, approximately 75mm x 20mm with 20mm or similar spacing with wooden or concrete posts, brush fence with wooden posts, masonry; or bagged bricks of colour compatible with the external walls of the dwelling; or a combination of such materials. In the case of OBHW and KDHW picket fences being used on street boundaries, these shall be painted in colours compatible with the external finishes of the main building.

Conventional paling fencing will not be permitted on street boundaries.

Where allotments adjoin properties, other than roads, outside the control of the “Riviera Harbours Guidelines” fences on those boundaries will not be subject to control.

7.0 – REFUSE STORAGE

Refuse storage areas shall be totally screened from view.

8.0 – CANAL WATERWAYS

8.1 – General Rules and Regulations

All Gippsland Ports Authority rules and regulations applicable to the Gippsland Lakes shall apply to all vessels within the canal waterway.

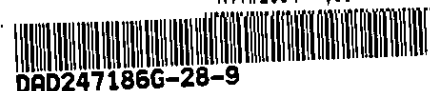
8.2 – Revetment Walls, Footings and Footing Foundations

8.2.1 The canal walling and associated grid cabling system (1.7m wide from the wall) is constructed inside the lot boundary. All necessary repair and maintenance shall be the responsibility of the lot owners. Design of the revetment walling does not allow for any structural loading. No finish shall be applied to the wall.

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- 8.2.2 No shackles, cables and fixing eyes shall be attached to the revetment wall without written approval of the Responsible Authority.

8.3 – Beaching

- 8.3.1 Cleaning and general maintenance of the canal beaching on the frontage of each allotment will be the responsibility of the lot owners.
- 8.3.2 No excavation of the beaching or canal bank profile (submerged) shall be allowed without written permission of the Responsible Authority.

8.4 - Pollution of Canals

Lot owners must ensure that no operations, actions or practices are undertaken from the land forming part of this development which will result in contamination or pollution which is deleterious to the water quality of the canals system.

8.5 – Boat Ramps and Similar Structures

8.5.1 Prior to removal of any part of the revetment wall for the purpose of constructing a boat ramp or similar structure and prior to any construction of a boat ramp or similar structure, written approval must be obtained from the Responsible Authority and the ARP.

8.5.2 The revetment wall may only be removed in designated panels for the purpose of construction of a boat ramp or similar structure.

8.5.3 Where an approved structure is constructed on a lot, repair and maintenance shall be the responsibility of the lot owner. It will be the responsibility of the owner to refrain from any operation, action or practice which would result in the emanation from the structure of any material deleterious to the water quality of the canals.

8.5.4 Any lighting installed on the jetties, landings and decks must be designed, baffled and located to the satisfaction of the ARP, RPL and the Responsible Authority to prevent any adverse impact on adjoining land or the waterway.

9.0 – JETTIES AND LANDINGS

9.1 – General

All jetty, landings or mooring structures must be approved by the ARP. Allotment owners must make application to the Responsible Authority for a jetty outside their title boundary, subject to the approval of the ARP. Annual licenses for jetties are issued by the Responsible Authority. Allotments 11 and 12; 13 and 14; 15 and 16 are required to construct shares jetties on their common boundaries as illustrated on the attached site plan.

The location, form and structure of any proposed jetty, or landing must be designed as part of the overall dwelling development on the lots and must be to the satisfaction of the ARP and the Responsible Authority. Such structures must comply with the East Gippsland Shire Jetty Construction Policy.

9.2 – Number of Boats Moored

Allotments 11 to 16 have a single berth allocation on their shared jetties. On other allotments, a maximum number of two vessels per lot owner may be permanently moored at any one time within the canal waters, except in the case of multi-unit developments when specific approval to construct more substantial or numerically greater moorings will need to be obtained from the Responsible Authority and ARP. Small boats less than 4.0 metres long not used for commercial purposes are excluded from this provision.

9.3 – Commercial Vessels

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No approval shall be issued by the ARP or RPL for commercial boating operations within the residential areas.

9.4 – Boatsheds

A boatshed can be constructed on the canal frontage or waterway, provided it is built within an approved building envelope and conforms to other requirements within these guidelines.

10.0 – LIABILITY

Riviera Properties Limited and its successors and associated companies, Riviera Properties Projects Limited and its successors, and the Responsible Authority, shall be free from any liabilities and claims for damages and/or suits of any kind as a result of or arising out of the enforcement or implementation of all or any of these guidelines or any matters associated with the same or any application for approval hereunder or the decision made. The ARP is constituted as an expert panel and no appeal will be accepted.

11.0 – BUILDING ENVELOPES AND BUILDING SETBACKS FROM THE CANAL

The East Gippsland Shire has issued a Planning Permit for the construction of buildings within the whole of the building envelopes, subject to approval of the ARP. (Copy building envelopes attached).

12.0 – RESTRICTIVE COVENANT

The following restrictive covenant shall be inserted into the Transfer of Land:

The Transferee with the intent that the benefit of this covenant shall until the 31st December 2020, be attached to and run at law and in equity with the whole of the land comprised in Plan of Subdivision Number 524602Y (other than the land hereby transferred) and that the burden thereof shall be annexed to and run at law and in equity with the said lot hereby transferred and each and every part thereof and that the same shall be noted and appear on every Certificate of Title for the said lot and every part thereof as an encumbrance affecting the same **DOTH HEREBY COVENANT** with the Transferor and other the registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the Transferee will not:

- (a) Permit the land hereby transferred or any part thereof to be used for the purpose of commercial breeding or boarding of, or training kennels for, cats or dogs or for the purpose of keeping poultry or pigeons thereon or for the parking garaging or servicing of any motor vehicle in excess of five tonnes gross vehicle mass (GVM) except for the purpose of loading or unloading of goods unless the vehicle is a construction vehicle engaged on construction works thereon or unless the vehicle is a caravan or similar vehicle and does not exceed 2.5 metres in height and is screened from view from the roadways and canals;
- (b) Permit the land hereby transferred or any part thereof to be used for parking garaging or servicing of any boat (on a trailer or hardstand), caravan, campervan, or similar vehicle unless it is screened from view from the roadways and canals.
- (c) Construct or externally alter or allow to be constructed or externally altered on the land hereby transferred any building or structure (including fences) other than in accordance with plans and specifications previously submitted to and approved in writing by the Transferor or its nominee..
- (d) Permit or authorise any part of the land hereby transferred to be used for the purposes of the drying of clothes, storage of garbage, or housing of gas, fuel or water tanks, or similar uses unless such areas are screened from public view from adjoining roadways and canals.
- (e) With the exception of Lots A, B, C and D on the said Plan no allotment shall be further subdivided so as to create an additional lot or lots.

Annexed to the Statement prescribed by Section 32 of the Sale of Land Act are the guidelines, aims and objectives to be adopted by the Transferor or its nominee.

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ATTACHMENT NO. 1 TO GUIDELINES: SOIL & WATER MANAGEMENT PLAN



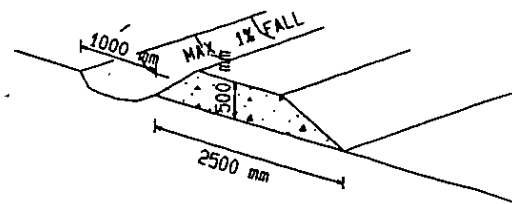
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GENERAL NOTES:

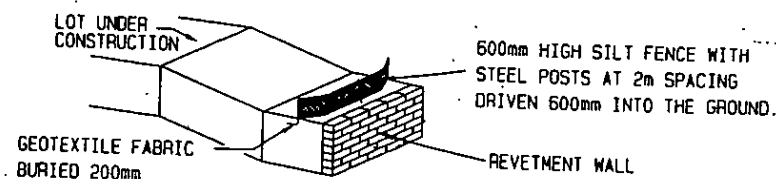
1. ALL WORKS MUST BE CARRIED OUT SO AS NOT TO IMPACT ON ADJACENT LOTS OR CANAL WATERS.
2. ALL VEHICLE ACCESS TO THE SITE MUST BE RESTRICTED TO A SINGLE ENTRY/EXIT POINT AND A PARKING AREA ON THE SITE. THE SINGLE ENTRY/EXIT POINT MUST BE STABILISED WITH A RUMBLE GRID TO MINIMISE THE TRACKING OF SEDIMENT ON TO PUBLIC ROADS. THE RUMBLE GRID MAY COMPRISE OF 100MM X 75MM HARDWOOD BOARDS SECURED AT 150MM INTERVALS ON 3M OF CHAIN LAID ALONG THE GROUND OR A CATTLE GRID BEARING ON END LOGS OVER A 200MM DITCH.
3. WASTE AND RECYCLING RECEPTACLES MUST BE ESTABLISHED ON THE SITE AND EMPTIED AT SUFFICIENT FREQUENCIES TO PREVENT OVERFLOWING.
4. WASTE FROM EQUIPMENT AND VEHICLE WASH DOWN AREAS AND TILE / BRICK CUTTING MUST BE MINIMISED.
5. ALL SEDIMENT CONTROL STRUCTURES MUST BE IN PLACE PRIOR TO THE COMMENCEMENT OF ANY SITE WORKS.
6. A DIVERSION BANK AND CHANNEL MUST BE CONSTRUCTED ABOVE THE UPPER LIMIT OF THE CUT BATTER TO DIVERT UP-SLOPE WATER AROUND THE SITE.
7. SILT FENCES MUST BE CONSTRUCTED AT THE LOW SIDE OF THE SITE IMMEDIATELY BELOW THE LIMIT OF DISTURBANCE, LEAVING SUFFICIENT ROOM FOR STOCKPILES AND CONSTRUCTION ACTIVITIES.
8. A SEDIMENT TRAP MUST BE LOCATED AT THE LOWEST POINT ALONG THE SILT FENCE.
9. TOPSOIL MUST BE STRIPPED, STOCKPILED AND IMMEDIATELY STABILISED ON SITE.
10. THE NUMBER OF STOCKPILES MUST BE MINIMISED AND LOCATED WITHIN DESIGNATED STOCKPILE AREAS IN THE SITE. STOCKPILES MUST NOT BE PLACED ON THE NATURE STRIP, FOOTPATH NOR KERB AND NOT WITHIN 3M OF DRAINAGE FLOW PATHS. SEDIMENT CONTROLS SUCH AS SILT FENCES AND COVERING OF STOCKPILES MUST BE CONSTRUCTED AROUND UNSTABLE STOCKPILES.
11. EARTHWORKS AND DISTURBED AREAS MUST BE MINIMISED AND ALL DISTURBED SLOPES STABILISED PROMPTLY.
12. ALL SEDIMENT CONTROL STRUCTURES MUST BE INSPECTED AFTER EACH RAINFALL EVENT AND ANY STRUCTURAL DAMAGE MUST BE RECTIFIED IMMEDIATELY.
13. ALL TRAPPED SEDIMENT FROM ALL SEDIMENT CONTROL STRUCTURES, UNTIL REMOVED, MUST BE DEPOSITED IN STABLE LOCATIONS AND ITS SURFACE STABILISED.
14. SEDIMENT DEPOSITION IN SEDIMENT CONTROL STRUCTURES MUST BE REMOVED AT SUFFICIENT FREQUENCIES TO ENSURE A MAXIMUM SEDIMENT DEPOSITION OF ONE THIRD OF THE TOTAL SEDIMENT RETENTION CAPACITY OF THE STRUCTURE.
15. SEDIMENT DEPOSITION BEHIND SILT FENCES MUST BE REMOVED AT SUFFICIENT FREQUENCIES TO ENSURE A MAXIMUM SEDIMENT DEPTH OF 200MM.
16. ALL PREMIX CONCRETE TRUCKS MUST BE WASHED DOWN ON-SITE PRIOR TO LEAVING THE SITE.
17. THE EROSION POTENTIAL OF STORMWATER GENERATED FROM THE SITE, INCLUDING PAVED AREAS AND DWELLING ROOFS MUST BE MINIMISED. THIS SHALL BE CARRIED OUT BY CONNECTING ROOF DOWNPIPES AND STORMWATER DRAINAGE LINES TO DISCHARGE POINTS IN THE CANAL REVETMENT WALL OR BACK OF KERB.
18. ALL DISTURBED AREAS MUST BE STABILISED WITH VEGETATIVE COVER AND/OR GEOTEXTILE MATERIAL IMMEDIATELY UPON COMPLETION OF WORKS.



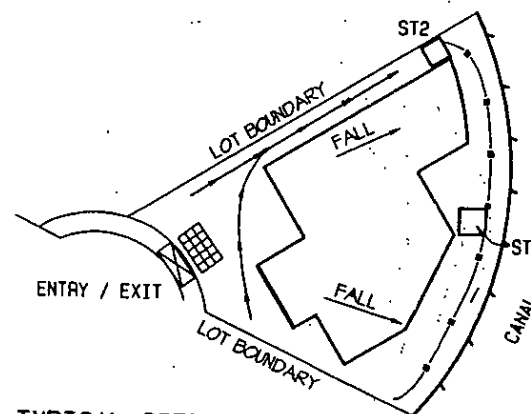
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DIVERSION BANK & CHANNEL



SILT FENCE DETAIL



TYPICAL SITE PLAN

LEGEND

---	CONTOURS	□	SEDIMENT TRAP
---	SILT FENCE	ST1	
---	REVETMENT WALL	■	RUMBLE GRID
---	DIVERSION BANK AND CHANNEL	⊠	CONTROLLED ENTRY / EXIT

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RIVIERA PROPERTIES LTD

RIVIERA HARBOURS

STANDARD SOIL AND WATER
MANAGEMENT PLAN FOR
DWELLING CONSTRUCTION



Crossco Australia Pty Ltd
ABN: 13 300 599 528
152 Macleod St
P.O. Box 898
Bairnsdale Vic 3875
Tel: (03) 51526298
Fax: (03) 51525705

ENGINEERING & ENVIRONMENTAL CONSULTANTS
Email: consult@crossco.net.au
Web: www.crossco.net.au

SCALE:	DATE:	DESIGN:	DRAWING NO.:	REVISION:
NOT TO SCALE		A.S.	1052/4004	
DATE:	SURVEY REF:	SHEET NO.:	FILE NAME:	SHEET SIZE
17/07/01		1 of 1	1052_L01.PRO	A3

ATTACHMENT NO. 2 TO GUIDELINES: SITE PLAN



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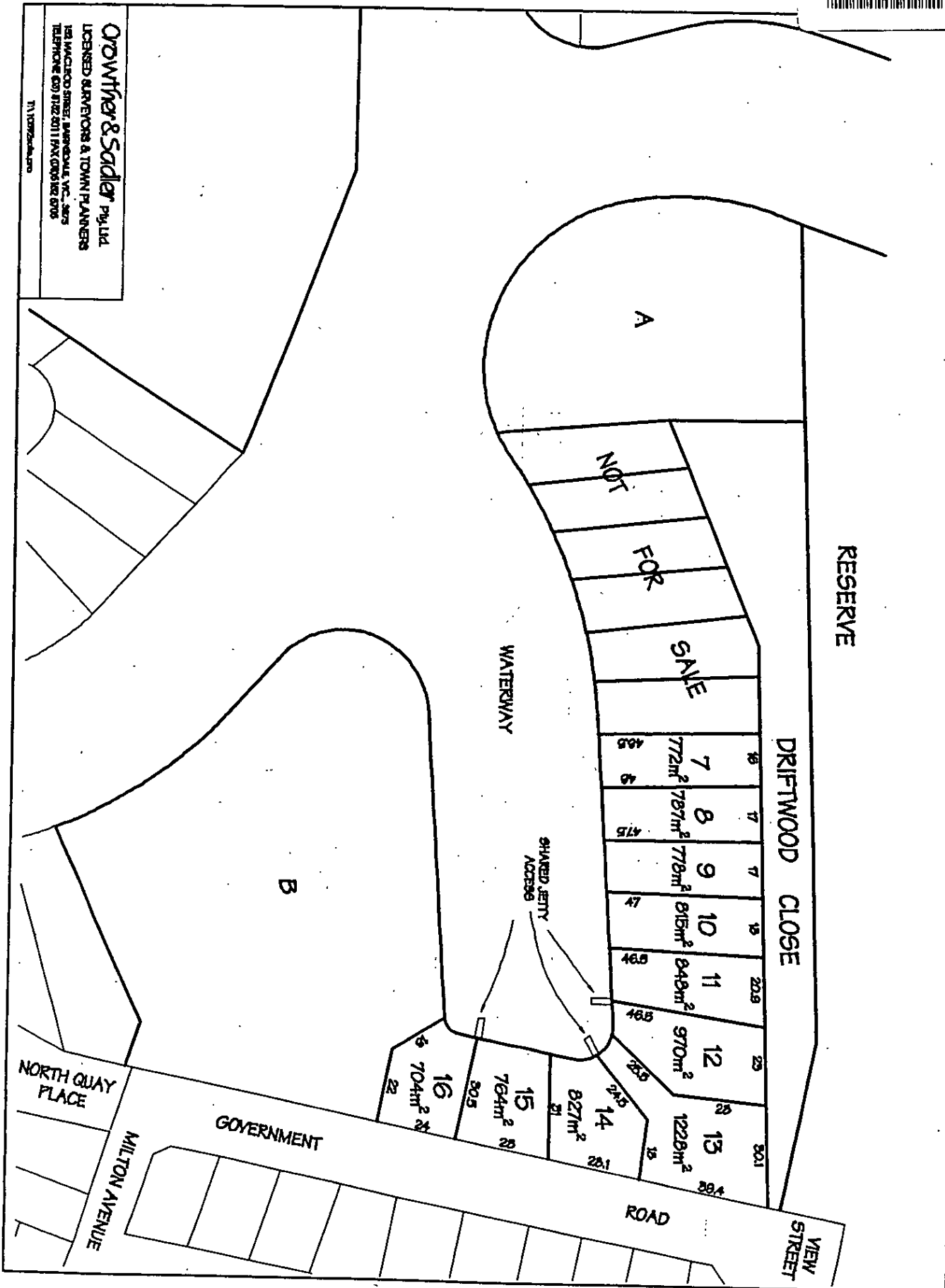
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Crowther & Sadler Pty Ltd
 LICENSED SURVEYORS & TOWN PLANNERS
 125 MACLEOD STREET, BARRACLOUGH VIC 3005
 TELEPHONE (03) 9322 0111 FAX (03) 9322 0700

11/10/2004/2004

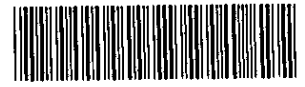


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ATTACHEMENT NO. 3 TO GUIDELINES: BUILDING ENVELOPE DIAGRAM



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Crowtiner & Sadler Phy.Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
162 MACLEOD STREET, BAIRDSDALE, VIC. 3075
TELEPHONE (03) 6162 6011



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APPROX TRUE NORTH

BUILDING ENVELOPE DIAGRAM

RIVIERA PROPERTIES Ltd.

TO BE READ IN CONJUNCTION WITH DESIGN AND
DEVELOPMENT GUIDELINES FOR FURTHER REQUIREMENTS
AND RELEVANT PROVISIONS OF RESCUE

RIVIERA HARBOURS

STAGE 10, LOTS 1-16

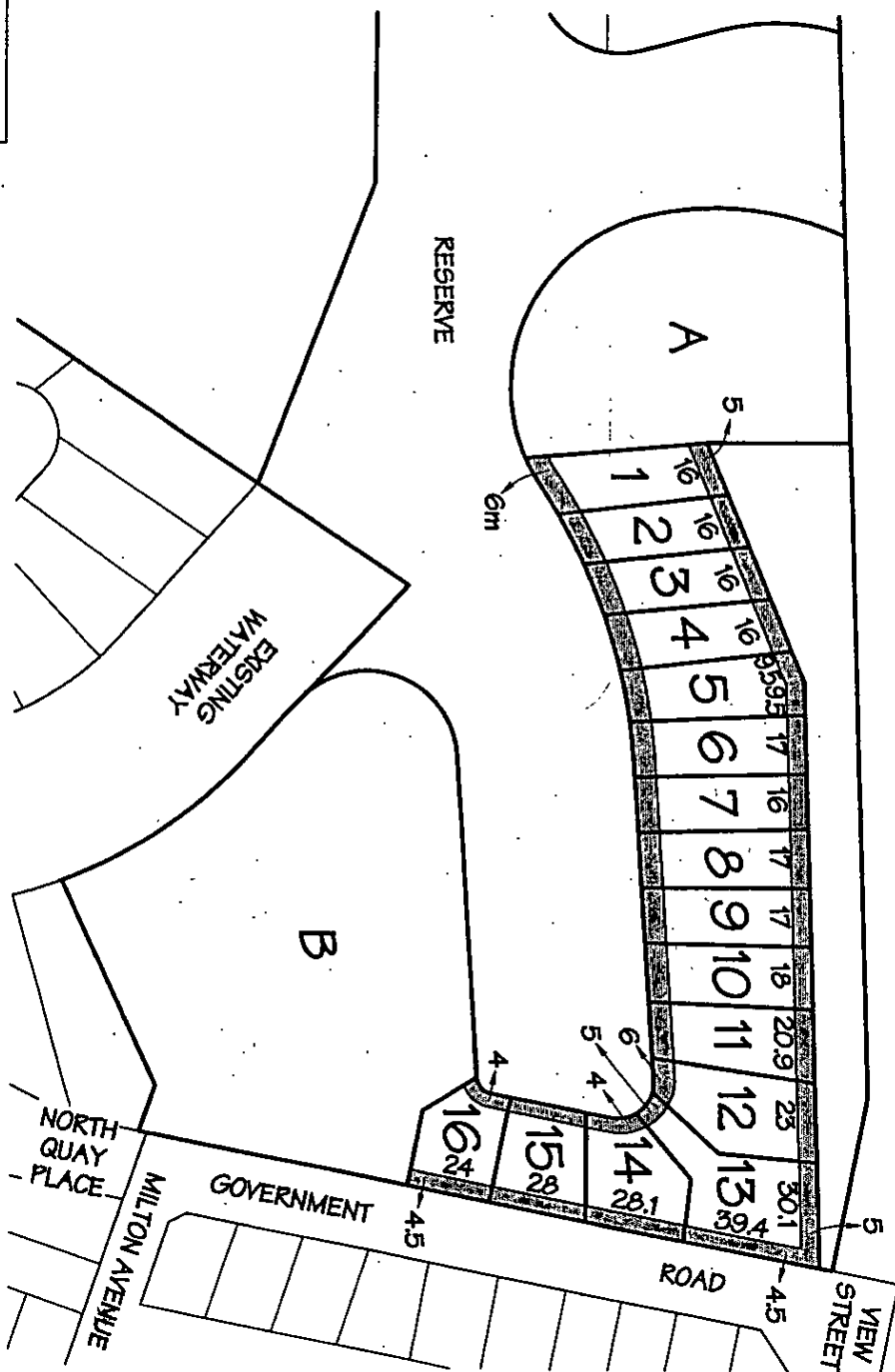
VERSION 1

SCALE 1:1500

NOTATIONS



DENOTES AREA EXCLUDED
 FROM BUILDING ENVELOPES



AD247186G

17/11/2004 \$90

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ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

RIVIERA PROPERTIES PROJECTS LIMITED (ABN 86 061 677 218)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land Driftwood Close & Government Road, North Quay, Paynesville
PLAN OF SUBDIVISION NO. 524602Y (Riviera Harbours Stage 10)

Parent Certificate Volume 10662 Folio 008
Of Title

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale, Victoria
("Council")
and

RIVIERA PROPERTIES PROJECTS LIMITED (ABN 86 061 677 218) of
Level 1, 63 The Esplanade, Paynesville, Victoria
("the Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. It is a condition of planning permit number 574/2003/P (Amended) ("the Planning Permit") that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and conditions of the Planning Permit. A copy of the Planning Permit is attached to this Agreement and marked "A".
- D. On 2 November 2004, Council and Riviera Properties Projects Limited ("the Former Owner") entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AD247186G on 17 November 2004.
- E. Under clause 3.2 of the Agreement, the Subject Land is required to be used and developed in accordance with the "Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours" ("the Guidelines").
- F. Under the Guidelines, the Former Owner is entitled to appoint the Architectural Review Panel (ARP). The consent of the ARP must be obtained before the Subject Land is developed.
- G. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARP under the Guidelines.
- H. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.

~~E.I.~~ The Parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; ~~and~~
- ~~(b)~~ to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- ~~(c)~~ to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
- ~~(d)~~ to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

- 1.1 **"the Act"** means the Planning and Environment Act 1987.
- 1.2 **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- ~~1.3~~ **"Beaching"** means sand and stone mounding abutting the revetment wall intended to protect the revetment wall and prevent water vehicles from running aground.
- ~~1.4~~ **"the Building Envelope"** means a building envelope shown on the Endorsed Plan.
- ~~1.5~~ **"Canal Lot"** means a Lot that adjoins a canal.
- ~~1.31.6~~ **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "B".
- ~~1.7~~ **"Lot"** means a lot on the Endorsed Plan.
- ~~1.41.8~~ **"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.
- ~~1.51.9~~ **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.
- ~~1.61.10~~ **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.
- ~~1.11~~ **"Soil and Water Management Plan"** means the "Soil and Water Management Plan – Riviera Harbours Allotment Development", as amended from time to time. A copy

[of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.](#)

[1.71.12](#) **“Subject Land”** means the land situated at Driftwood Close, Paynesville being Lot A on Plan of Subdivision No. 501030Y and being the land described in Certificate of Title Volume 10662 Folio 008.

Any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

[1.13](#) **“Tree”** means a tree capable of reaching a height of 5 metres or more.

[1.81.14](#) **“Mortgagee”** means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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 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.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Owner's obligations 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, the 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 covenants and agrees that:

3.1 Development in accordance with Planning Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by Council.

3.2 [Clause 3.2 deleted]

3.3 Obligations from the Guidelines – General

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.3.1 the Owner must not construct, or permit to be constructed, a building (excluding unroofed decking, landings and jetties) outside the Building Envelope on the Subject Land;

3.3.2 no more than one dwelling may be developed on a Lot;

3.3.3 any dwelling erected on a Subject Land must:

(a) have a minimum floor level of 2.5 metres Australian Height Datum;

(b) have a floor area of not less than 150 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah; and

(c) be built only of new materials;

3.3.4 all buildings visible from the street or canal must be designed, constructed and maintained to be similar to the main building on that lot;

3.3.5 any areas used for the purpose of drying, storage tanks or refuse storage must not be visible from the street or canal;

3.3.6 vehicle driveways and other paved areas visible from the street or canal must be constructed of clay brick, masonry pavers, stone sheeted bitumen, hot mix, patterned and coloured concrete or exposed aggregate concrete;

3.3.7 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;

3.3.8 no Trees may be planted within 3 metres of the revetment wall;

3.3.9 any service areas on a Canal Lot must not be visible from the street or canal;

3.3.10 the Owner must not erect, or permit to be erected any fence on a Canal Lot:

(a) exceeding 1.8 metres in height;

(b) along the canal boundary or the revetment wall; or

(c) within 5 metres of the canal boundary; and

3.3.11 the Owner must not erect, or permit to be erected any fence on any boundary of a Lot adjoining a road reserve.

3.4 Obligations from the Guidelines – Revetment wall

the Owner covenants and agrees that:

3.4.1 the Owner must maintain and repair all works associated with:

(a) the revetment wall structure adjoining the Owner's Lot, including the footings and footing foundations, the canal walling and associated grid cabling system;

(b) the canal Beaching adjoining the Owner's Lot; and

(c) boat ramps, jetties, landings and decks adjoining the Owner's Lot;

at the full cost of the Owner to the satisfaction of Council;

3.4.2 the Owner must not alter, demolish, or attach any shackles, cables or fixing eyes to, any part of the revetment wall unless with Council's prior written consent;

3.4.3 the revetment wall structure, footings and footing foundations adjoining the Owner's Lot must be inspected every five years, and after any flood event, by an independent and appropriately qualified professional to the satisfaction of Council in order:

(a) to check the structural stability and integrity of the wall; and

(b) to recommend any necessary works and actions, which must be carried out. A copy of the inspection assessment and recommendations must be lodged with Council within one month of the inspection and assessment having been carried out;

at the full cost of the Owner to the satisfaction of Council;

3.4.4 the Owner must ensure that no operations, actions or practices are carried out on the Subject Land which result in contamination or pollution of the canals system; and

3.4.5 the Owner must not construct, or permit to be constructed, any jetty, landing, boatshed or mooring structure unless with the prior written consent of Council.

3.23.5 Council's Costs to be Paid

This Agreement will be prepared at the Owner's cost and to the satisfaction of the responsible authority, and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.

The Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1 Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2 Further actions

4.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 the Owner will consent to the Council making 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 enable Council to do so 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 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any

suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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;
- 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 hand delivery or prepaid post.

8.2 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the 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.

10. ENDING OF AGREEMENT

[This Agreement may be ended by agreement between Council and the Owner.](#)

[This Agreement may be ended wholly or in part or as to any part of the land by the Responsible Authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the agreement.](#)

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 10/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AE324337A
Kings Cove, Metung

Section 173 agreement AE324337A (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.
3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AE324337A on 7 March 2006. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).
5. Under the Guidelines:
 - a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. KCM was formally wound up and deregistered on 18 April 2017.

7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

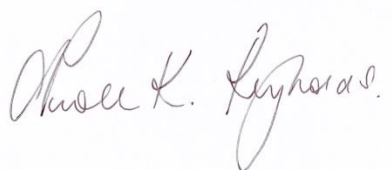
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AE324337A
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10941/484	11 Storth Ryes Avenue, Metung
2.	10941/485	17 Storth Ryes Avenue, Metung
3.	10941/486	19 Storth Ryes Avenue, Metung
4.	10941/487	23 Storth Ryes Avenue, Metung
5.	10941/488	27 Storth Ryes Avenue, Metung
6.	10941/489	31 Storth Ryes Avenue, Metung
7.	10941/490	1 The Billabong, Metung
8.	10941/491	2 The Billabong, Metung
9.	10941/492	8 The Billabong, Metung
10.	10941/493	14 The Billabong, Metung
11.	10941/494	17 The Billabong, Metung
12.	10941/495	15 The Billabong, Metung
13.	10941/496	9 The Billabong, Metung

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10941 Folio 484-496 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend the section 173 agreement recorded on title in dealing number AE324337A on 1 May 2006

APPLICATION REFERENCE NUMBER:

10/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AE324337A

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AE324337A
Number of Pages (excluding this cover sheet)	8
Document Assembled	06/02/2020 13:15

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LODGED BY Warren, Graham & Murphy,

CODE 1716W VICTORIA

AE324337A



Titles Office Use Only

**APPLICATION BY A RESPONSIBLE AUTHORITY under Section 181
Planning and Environment Act 1987 for ENTRY OF A
MEMORANDUM OF AGREEMENT under Section 173 of that 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 Agreement be entered on the Certificate of Title to the land referred to.

LAND CERTIFICATE OF TITLE VOLUME 10838 FOLIO 730

ADDRESS OF LAND 48 KINGS COVE BOULEVARD, METUNG 3904

RESPONSIBLE AUTHORITY EAST GIPPSLAND SHIRE COUNCIL

PLANNING SCHEME EAST GIPPSLAND PLANNING SCHEME

AGREEMENT DATE THE ~~10~~ 7 DAY OF *March*, 2006

AGREEMENT WITH KINGS COVE METUNG PTY LTD

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority

Aaron Houlton

Name of Officer

AARON HOULTON, MANAGER DEVELOPMENT

Date

07 March 2006

[Signature]
1 MAY 2006

AE324337A

01/05/2006 \$92.30 173



EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

KINGS COVE METUNG PTY LTD (A.C.N. 006 383 179)

Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: 48 Kings Cove Boulevard, METUNG VIC 3904
Certificate of Title Volume 10838 Folio 730
Lot G on PS 517828L
"Storth Ryes Avenue" & "The Billabong", Kings Cove
PLAN OF SUBDIVISION NO. 517830A
(Stage 5 - Lots 102 - 114)

AE324337A

01/05/2006 \$92.30

173



PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the 7 day of March 2006

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

- and -

KINGS COVE METUNG PTY LTD (A.C.N. 006 383 179) of Level 1, 63 The Esplanade, Paynesville, in the said State ("the Owner")

BACKGROUND PROVISIONS:

- A. The Owner is the registered proprietor of all that piece of land being the whole of the land described in Certificate of Title **Volume 10838 Folio 730**.
- B. The Owner has made application to the Council for a Planning Permit.
- C. The Council has issued Planning Permit Number **334/2003/P** subject to certain conditions, one of which is that the parties enter into an agreement pursuant to Section 173 of the Planning and Environment Act.

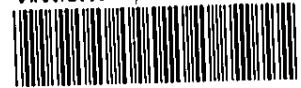
OPERATIVE PROVISIONS:

- 1. The parties confirm the Background Provisions to this agreement.
- 2. This agreement is made pursuant to Section 173 of the Planning & Environment Act.

AE324337A

01/05/2006 \$92.30

173



3. The Owner covenants, pursuant to Clause 11 of the Planning Permit, that:-
- (a) The development of each lot approved by the Planning Permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
 - (b) Each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "*Kings Cove - Metung- Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone*", dated December, 2001 (or as amended) (The Document).
 - (c) Any amendment to The Document will be to the satisfaction of the Responsible Authority.
 - (d) The Provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the Responsible Authority.
 - (e) A copy of the Planning Permit will be attached to and will form part of the Contract of Sale for every lot.
 - (f) Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.

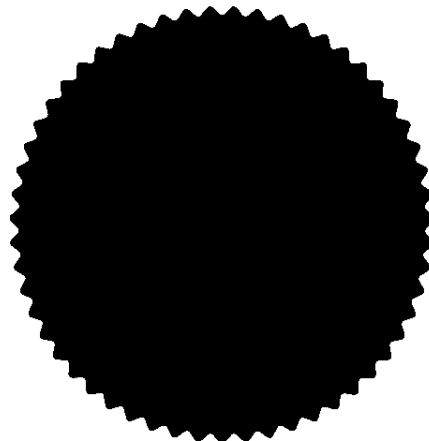
- (g) This Agreement may be ended wholly or in part or as to any of the land by the Responsible Authority with the approval of the responsible authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the Agreement.
 - (h) This Agreement will bind the Owner(s) and will run with the land so that all successors in the title are bound by the agreement.
 - (i) This Agreement will be prepared at the Owner's cost and to the satisfaction of the Responsible Authority and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.
4. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.
5. The parties acknowledge and agree that the covenants and agreements entered into by the Owner in this agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, his successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof.

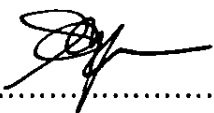
AE324337A



EXECUTED by the parties on the date set out at the commencement of this Agreement.

The COMMON SEAL of EAST GIPPSLAND
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the Chief Executive)
Officer on the 21st day of February)
, 200⁸ in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)






.....

.....P. Wiseman.....

The COMMON SEAL of KINGS COVE METUNG)
PTY LTD was hereunto affixed in)
accordance with its Constitution in the presence of:-)

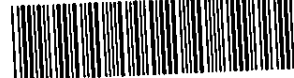



..... Director


..... Director/Secretary

AE324337A

01/05/2006 \$92.30 173





Mortgagee's Consent

GIPPSLAND SECURED INVESTMENTS LIMITED as Mortgagee of Registered Mortgage No. **X256305M** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....
For & on behalf of the Mortgagee.

AE324337A

01/05/2006 \$92.30 173



EAST GIPPSLAND SHIRE COUNCIL

- and -

KINGS COVE METUNG PTY LTD

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND
ENVIRONMENT
ACT 1987

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT;act4020/05
PS 517830A (Stage 5)

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

KINGS COVE METUNG PTY LTD (ACN 006 383 179)

Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land	48 Kings Cove Boulevard, METUNG VIC 3904 Certificate of Title Volume 10838 Folio 730 Lot G on PS 517828L <i>"Storth Ryes Avenues"& "The Billabong", Kings Cove</i> PLAN OF SUBDIVISION NO. 517830A (Stage 5 – Lots 102-114)
--------------	--

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

and

KINGS COVE METUNG PTY LTD (ACN 006 383 179) of Level 1, 63 The Esplanade, Paynesville, in the said State ("the Owner")

BACKGROUND PROVISIONS:

- A. The Owner is the registered proprietor of all that price of land being the whole of the land described in Certificate of Title **Volume 10838 Folio 730**.
- B. The Owner has made application to the Council for a Planning Permit.
- C. The Council has issued Planning Permit Number **334/2003/P** subject to certain conditions, one of which is that the parties enter into an agreement pursuant to Section 173 of the Planning and Environment Act.
- D. [On 7 March 2006, Council and Kings Cove Metung Pty Ltd \(the Former Owner\) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AE3224337A on 1 May 2006.](#)
- E. [Under clause 3 of the Agreement, the Subject Land is required to be used and developed in accordance with the "Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone" dated December 2001 \(the Guidelines\).](#)
- F. [Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee \(ARC\). The consent of the ARC must be obtained before the Subject Land is developed.](#)
- G. [Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.](#)

H. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.

I. The Parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit;
- (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- (c) to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
- (d) to include certain obligations under the Guidelines in the Agreement.

OPERATIVE PROVISIONS:

1. The parties confirm the Background Provisions to this agreement.
2. This agreement is made pursuant to Section 173 of the Planning & Environment Act.
3. [Clause 3 deleted]
4. **Definitions**

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

"Building Envelope" means a building envelope shown on the Endorsed Plan.

"the Endorsed Plan" means the plan, endorsed with the stamp of the Council, that forms part of the Planning Permit.

"Lot" means a lot on the Endorsed Plan.

"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.

"Planning Permit" means the Planning Permit referred to in recital C of this Agreement.

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

"Soil and Water Management Plan" means the "Kings Cove – Soil and Water Management Plan – Specifications for Construction of Dwellings", as amended from time to time. A copy of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

“Solid Fence” means a fence that is less than 50% transparent.

“Subject Land” means the land situated at 48 Kings Cove Boulevard, Metung being the land referred to in Certificate of Title Volume 10838 Folio 730 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of the Subject Land or any part of it.

5. Obligations from the Guidelines

The Owner covenants and agrees that, unless with the prior written consent of Council:

- (a) the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;
- (b) the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;
- (c) no more than one dwelling may be developed on a Lot;
- (d) any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;
- (e) all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;
- (f) if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;
- (g) any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;
- (h) vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;
- (i) the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and
- (j) the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

- 4.6. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.

5.7. The parties acknowledge and agree that the covenants and agreements entered into by the Owner in this agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, his successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof.

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 11/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AF246024X
Kings Cove, Metung

Section 173 agreement AF246024X (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.
3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AF246024X on 2 August 2007. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).
5. Under the Guidelines:
 - a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. KCM was formally wound up and deregistered on 18 April 2017.

7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

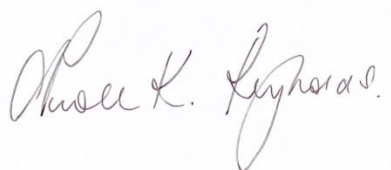
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AF246024X
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	11029/846	23 The Sanctuary, Metung
2.	11029/847	22 The Sanctuary, Metung
3.	11029/848	21 The Sanctuary, Metung
4.	11029/852	17 The Sanctuary, Metung
5.	11029/853	16 The Sanctuary, Metung
6.	11029/854	15 The Sanctuary, Metung
7.	11029/855	14 The Sanctuary, Metung
8.	11029/856	13 The Sanctuary, Metung
9.	11029/857	12 The Sanctuary, Metung
10.	11029/860	9 The Sanctuary, Metung
11.	11029/861	8 The Sanctuary, Metung
12.	11029/862	7 The Sanctuary, Metung
13.	11029/863	5 The Sanctuary, Metung
14.	11029/864	5 The Sanctuary, Metung
15.	11029/865	4 The Sanctuary, Metung
16.	11029/866	3 The Sanctuary, Metung
17.	11029/867	2 The Sanctuary, Metung
18.	11029/868	1 The Sanctuary, Metung
19.	11029/869	Road R1
20.	11029/870	Reserve 1
21.	11488/225	18 The Sanctuary, Metung
22.	11178/198	11 The Sanctuary, Metung
23.	12032/798	20 The Sanctuary, Metung
24.	11124/488	78 Storth Ryes Avenue, Metung
25.	11124/489	82 Storth Ryes Avenue, Metung
26.	11245/289	75 Storth Ryes Avenue, Metung
27.	11245/290	77 Storth Ryes Avenue, Metung
28.	11245/291	79 Storth Ryes Avenue, Metung
29.	11245/292	81 Storth Ryes Avenue, Metung
30.	11245/293	83 Storth Ryes Avenue, Metung
31.	11245/294	85 Storth Ryes Avenue, Metung
32.	11124/479	2 The Habitat, Metung
33.	11124/480	4 The Habitat, Metung
34.	11124/481	6 The Habitat, Metung
35.	11124/482	10 The Habitat, Metung
36.	11124/483	12 The Habitat, Metung
37.	11124/484	14 The Habitat, Metung
38.	11124/485	11 The Habitat, Metung
39.	11124/486	9 The Habitat, Metung
40.	11124/487	5 The Habitat, Metung
41.	11124/490	123 Kings Cove Boulevard, Metung
42.	11124/491	121 Kings Cove Boulevard, Metung

No.	Volume and Folio	Address
43.	11124/492	119 Kings Cove Boulevard, Metung
44.	11124/493	Road R1 PS600889B
45.	11274/575	149 Kings Cove Boulevard, Metung
46.	11274/576	147 Kings Cove Boulevard, Metung
47.	11274/577	143 Kings Cove Boulevard, Metung
48.	11274/578	139 Kings Cove Boulevard, Metung
49.	11274/579	135 Kings Cove Boulevard, Metung
50.	11274/580	131 Kings Cove Boulevard, Metung
51.	11274/581	129 Kings Cove Boulevard, Metung
52.	11274/582	127 Kings Cove Boulevard, Metung
53.	11274/583	125 Kings Cove Boulevard, Metung
54.	11245/301	1 Plateau Avenue, Metung
55.	11245/302	3 Plateau Avenue, Metung
56.	11245/303	5 Plateau Avenue, Metung
57.	11245/304	7 Plateau Avenue, Metung
58.	11245/305	9 Plateau Avenue, Metung
59.	11245/306	11 Plateau Avenue, Metung
60.	11245/307	13 Plateau Avenue, Metung
61.	11245/308	15 Plateau Avenue, Metung
62.	11245/309	17 Plateau Avenue, Metung
63.	11245/310	19 Plateau Avenue, Metung
64.	11245/311	2 Plateau Avenue, Metung
65.	11245/312	6 Plateau Avenue, Metung
66.	11245/313	8 Plateau Avenue, Metung
67.	11245/314	10 Plateau Avenue, Metung
68.	11245/315	12 Plateau Avenue, Metung
69.	11245/316	16 Plateau Avenue, Metung
70.	11245/317	20 Plateau Avenue, Metung
71.	11274/564	24 Plateau Avenue, Metung
72.	11274/565	26 Plateau Avenue, Metung
73.	11274/571	28 Plateau Avenue, Metung
74.	11274/572	30 Plateau Avenue, Metung
75.	11274/573	30 Plateau Avenue, Metung
76.	11274/574	34 Plateau Avenue, Metung
77.	11274/566	7 Murray Graham Place, Metung
78.	11274/567	6 Murray Graham Place, Metung
79.	11274/568	5 Murray Graham Place, Metung
80.	11274/569	4 Murray Graham Place, Metung
81.	11274/570	3 Murray Graham Place, Metung

TABLE B – The Agreement is proposed to be ended in respect of these properties

No.	Volume and Folio	Address
1.	12090/685	73 Storth Ryes Avenue, Metung
2.	12090/689	69 Storth Ryes Avenue, Metung (Reserve 4)
3.	11542/943	120A Kings Cove Boulevard, Metung - Reserve 1
4.	11812/449	120 Kings Cove Boulevard, Metung
5.	11812/450	120 Kings Cove Boulevard, Metung
6.	11812/481	160 Kings Cove Boulevard, Metung
7.	11812/482	158 Kings Cove Boulevard, Metung
8.	11812/483	156 Kings Cove Boulevard, Metung
9.	11812/484	154 Kings Cove Boulevard, Metung
10.	11812/485	152 Kings Cove Boulevard, Metung
11.	11812/486	150 Kings Cove Boulevard, Metung
12.	11812/487	148 Kings Cove Boulevard, Metung
13.	11812/488	146 Kings Cove Boulevard, Metung
14.	11542/932	21 Plateau Avenue, Metung
15.	11542/933	23 Plateau Avenue, Metung
16.	11542/934	25 Plateau Avenue, Metung
17.	11542/935	27 Plateau Avenue, Metung
18.	11542/936	29 Plateau Avenue, Metung
19.	11542/937	31 Plateau Avenue, Metung
20.	11542/938	33 Plateau Avenue, Metung
21.	11542/939	35 Plateau Avenue, Metung
22.	11542/940	37 Plateau Avenue, Metung
23.	11542/941	39 Plateau Avenue, Metung
24.	11831/254	1 Bearham Chase, Metung
25.	11831/255	3 Bearham Chase, Metung
26.	11831/256	5 Bearham Chase, Metung
27.	11831/257	7 Bearham Chase, Metung
28.	11831/258	9 Bearham Chase, Metung
29.	11831/259	11 Bearham Chase, Metung
30.	11831/260	15 Bearham Chase, Metung
31.	11831/262	23 Bearham Chase, Metung
32.	11831/263	25 Bearham Chase, Metung
33.	11831/264	27 Bearham Chase, Metung
34.	11831/265	29 Bearham Chase, Metung
35.	11831/266	31 Bearham Chase, Metung
36.	11831/267	33 Bearham Chase, Metung
37.	11831/269	34 Bearham Chase, Metung
38.	11831/271	20 Bearham Chase, Metung
39.	11831/272	18 Bearham Chase, Metung
40.	11831/273	16 Bearham Chase, Metung
41.	11831/274	10 Bearham Chase, Metung
42.	11831/275	8 Bearham Chase, Metung

No.	Volume and Folio	Address
43.	11831/276	4 Bearham Chase, Metung
44.	11831/278	6 Bearham Chase, Metung
45.	11957/158	19 Bearham Chase, Metung
46.	11957/159	21 Bearham Chase, Metung
47.	12090/677	40 Bearham Chase, Metung
48.	12090/678	48 Bearham Chase, Metung
49.	12090/679	35 Bearham Chase, Metung
50.	12090/680	37 Bearham Chase, Metung
51.	12090/681	39 Bearham Chase, Metung
52.	12090/682	41 Bearham Chase, Metung
53.	12090/683	43 Bearham Chase, Metung
54.	12090/684	49 Bearham Chase, Metung
55.	11831/268	3 Thompson Terrace, Metung
56.	11831/270	4 Thompson Terrace, Metung
57.	12090/686	24 Thompson Terrace, Metung
58.	12090/688	Reserve 3 - 2A Thompson Terrace, Metung

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AND END IN PART AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 11029 Folios 846-848 (inclusive), Folios 852-857 (inclusive) and Folios 860-870 (inclusive), Volume 11488 Folio 225, Volume 11178 Folio 198, Volume 12032 Folio 798, Volume 11124 Folios 479-493 (inclusive), Volume 11245 Folios 289-294 (inclusive) and Folios 301-317 (inclusive), Volume 11274 Folios 564-583 (inclusive), Volume 12090 Folios 677-686 (inclusive) and Folios 688-689 (inclusive), Volume 11542 Folios 932-941 (inclusive) and Folio 943, Volume 11812 Folios 449-450 (inclusive) and Folios 481-488 (inclusive), Volume 11831 Folios 254-260 (inclusive), Folios 262-276 (inclusive) and Folio 278, Volume 11957 Folios 158-159 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend and end in part the section 173 agreement recorded on title in dealing number AF246024X on 2 August 2007

APPLICATION REFERENCE NUMBER:

11/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AF246024X

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AF246024X
Number of Pages (excluding this cover sheet)	16
Document Assembled	30/01/2020 09:52

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Section 181



AF246024X



**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING
OF A RECORDING OF AN AGREEMENT**

Planning & Environment Act 1987

Privacy Collection Statement

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Lodged by:

Name: Warren Graham & Murphy
Phone: (03) 5152-2661
Address: 119 Main Street, Bairnsdale
Ref: ACT:mm:5734/05
Customer Code: 1716W

The Authority having made an agreement referred to in Section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

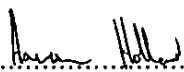
Land: Certificate of Title Volume 10516 Folio 542

Authority: East Gippsland Shire Council, Corporate Centre, 273 Main Street, Bairnsdale, 3875

Section and Act under which agreement made: Section 173 of the Planning & Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:



Name of Officer:

AARON HOLLOW, MANAGER DEVELOPMENT
(full name)

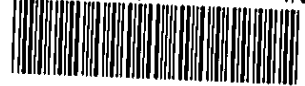
Date:

18th June, 2007

EAST GIPPSLAND SHIRE COUNCIL

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- and -

KINGS COVE METUNG PTY LTD
(formerly Storth Ryes Pty Ltd)
(A.C.N. 006 383 179)

The Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987 for Registration on Title**

Subject Land: Stage 1 ("*The Sanctuary*" - PS 548109V Lots 115 - 137)
 Stage 2 ("*The Habitat*" - PS 600889B Lots 138 - 151)
 Storth Ryes Avenue METUNG VIC 3904

Parent Title: Certificate of Title Volume 10516 Folio 542
 Lot 2 on Plan of Subdivision No. 420967K

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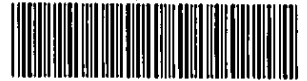
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- INTRODUCTION (A - E)
- 1. DEFINITIONS
- 2. INTERPRETATION
- 3. SPECIFIC OBLIGATIONS OF THE OWNER
 - 3.1. Development in accordance with The Schedule
 - 3.2. Schedule's "Guidelines for Houses & Flats"
 - 3.3. Soil & Water Management Plan
 - 3.4. Kings Cove Guidelines ("The Document")
 - 3.5. Building Height & Roof Pitch
 - 3.6. Mean Ground Level
 - 3.7. Amendments to The Document
 - 3.8. Contracts of Sale
 - 3.9. Landscape Concept Report
 - 3.10. Single Dwelling
 - 3.11. No Further Subdivision
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- 4. FURTHER OBLIGATIONS OF THE OWNER
 - 4.1. Notice and Registration
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- 5. AGREEMENT UNDER SECTION 173 OF THE ACT
- 6. OWNER'S WARRANTIES
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PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the *2nd* day of *May* 2007.

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

- and -

KINGS COVE METUNG PTY LTD (formerly Storth Ryes Pty Ltd) (A.C.N. 006 383 179) of Level 1, 63 The Esplanade, Paynesville in the said State ("The Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. East Gippsland Shire - Specific Sites and Exemptions Schedule dated May 1999 made pursuant to Clause 52.03 of the East Gippsland Planning Scheme ("the Schedule") applies to the Subject Land and (subject to certain conditions) allows:-

"the subdivision use and development of the land for the purpose of a licensed resort hotel/motel including convention facilities and ancillary restaurant, café, service premises, bar/lounges, offices, clinic (including geo thermal baths) and retail facilities (including the harbourside commercial centre), flats, townhouses, attached houses and associated advertising signs, landscaping, roads, drains, access, utility services, maintenance and workshop facilities, car parking, boat storage and loading areas and recreation and landscaped garden

areas including tennis courts and swimming pools and maintenance facilities."

- D. It is a condition of the Schedule (Condition 6) that, *"prior to the commencement of the use and development authorized by (the) Schedule the Owner of the land must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987...to regulate the approved use and development including...controls and guidelines regarding land use activities established pursuant to this Schedule including road construction, landscaping, car parking, buildings and service installation works"*.
- E. The parties enter into this Agreement:
- to give effect to the requirements of the Schedule; and
 - to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

IT IS AGREED:

1. DEFINITIONS

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

- 1.1. *"the Act"* means the Planning and Environment Act 1987.
- 1.2. *"this Agreement"* means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. *"the Endorsed Plans"* means the plans, endorsed with the stamp of the Council, that are anticipated in Clause 2 of the Schedule.

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- 1.4. "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.
- 1.5. "Planning Scheme" means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.
- 1.6. "the Schedule" means the East Gippsland Shire - Specific Sites and Exemptions Schedule - Resort Hotel/Motel and Convention Facility Development dated May 1999 made pursuant to Clause 52.03 of the East Gippsland Planning Scheme referred to in Recital C of this Agreement.
- 1.7. "Subject Land" means the land situated at Stage 1 ("The Sanctuary" – identified on proposed plan of subdivision PS 548109V Lots 115 - 137) and Stage 2 ("The Habitat" – identified on proposed plan of subdivision PS 600889B Lots 138 - 151) Storth Ryes Avenue, King's Cove, Metung and being part of the land currently described in Parent Certificate of Title Volume 10516 Folio 542 (Lot 2 on Plan of Subdivision No. 420967K). Any reference to the Subject Land in this Agreement will include a reference to any lot created by the Stage 1 and 2 plans of subdivision.
- 1.8. "Mortgagee" means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.

2. INTERPRETATION

In this Agreement unless the context admits otherwise:

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- 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 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.
- 2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7. 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 allotments created by the subdivision of the Subject Land.

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that:

3.1. Development in accordance with the Schedule

The Subject Land shall only be developed in accordance with the Endorsed Plans and the conditions of the Schedule or any

subsequent amendment to the Schedule approved by the Council.

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3.2. Schedule's Guidelines For Houses & Flats

The development of the Subject Land will comply with the requirements of the "*Guidelines for Houses and Flats*" contained in the Schedule to the satisfaction of Council.

3.3. Soil & Water Management Plan

Development of the Subject Land will only be carried out in accordance with the requirements of Kings Cove, Metung Billabong East and West Soil and Water Management Plan for Dwelling Construction – October 2005 ("The Soil and Water Management Plan") to the satisfaction of Council.

3.4. Kings Cove Guidelines ("The Document")

Each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document:

*"Kings Cove – Metung- Australia
Guidelines for Construction, Siting of, External Alteration
and Additions to Buildings and Structures on Kings Cove
Stage 1 - "The Sanctuary" & Stage 2 "The Habitat"
Medium Density Residential",
dated 3 May 2006 (or as amended)
("The Document").*

3.5. Building Height and Roof Pitch

No building on the Subject Land shall exceed six (6) metres in height when measured from mean ground level to the eaves or two storeys in height, whichever is the lesser to the satisfaction of Council. No roof of any building constructed on the Subject

Land must have a pitch greater than 45 degrees to the satisfaction of Council.

3.6 Mean Ground Level

For the purposes of this Agreement, mean ground level means one half of the sum of the highest and lowest levels established along the line representing natural ground level (whether or not so occurring) to the extreme outer surface of a wall of a building module measured from outer wall to outer wall.

3.7 Amendments to The Document

Any amendment to the Document will be to the satisfaction of Council.

3.8 Contracts of Sale

A copy of the Document will be attached to and will form part of the Contract of Sale for every lot created in the subdivision of Stages 1 & 2 of the Subject Land.

3.9 Landscape Concept Report

Landscaping works around private residences will be designed, approved and developed in accordance with the Document and will also have regard to the landscape plans which form part of the Endorsed Plans for Stages 1 & 2 of the Subject Land.

3.10 Single Dwellings

Each allotment created within Stages 1 & 2 will only be developed for a single dwelling and no multiple dwelling units, duplex or separate dependent relative unit or relocatable moveable dwellings will be permitted to be erected or placed on the allotment .

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3.11 No Further Subdivision

No further subdivision of allotments within Stages 1 and 2 will be permitted other than:-

- (a) a subdivision which is by a public authority or utility service provider to create an allotment for a utility installation; or
- (b) a subdivision which is the re-subdivision of existing lots for the purpose of boundary re-alignment, and the number of lots is not increased.

3.12 Allotment Use

Allotments created within this stage will be restricted to use for residential purposes only and that no commercial use of the land or buildings approved herein will be permitted.

3.13 Other Uses

Other uses as approved in Clause 52.03 do not form part of Stages 1 & 2 and will not be permitted within Stages 1 & 2.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1. Notice and Registration

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

4.2. Further actions

- 4.2.1. The Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the

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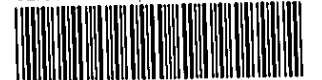


Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

- 4.2.2. The Owner will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register as a follower to the plans of subdivision for Stages 1 & 2 so that it shall appear on the Certificate of Title of the Stage 1 & 2 allotments in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgement 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;

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5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and Deed between Council and the Owner and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

6. OWNERS WARRANTIES

Without limiting the operation or effect that 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 effected 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 hand delivery or prepaid post.

- 8.2. A notice or other communication is deemed served:

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8.2.1. If delivered, on the next following business day;

8.2.2. If posted, on the expiration of two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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.

9. COMMENCEMENT OF AGREEMENT

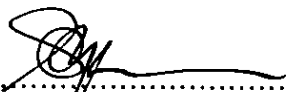

Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

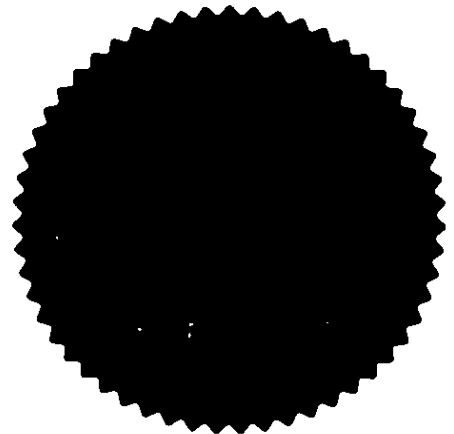
10. ENDING OF AGREEMENT

Except in relation to the Owner's Covenants pursuant to Clauses 3.4, 3.5, 3.10, 3.11, 3.12 and 3.13 of this agreement, the remaining provisions of this Agreement may be ended wholly or in part or as to any part of the land as between the Council and the owner of the relevant land.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The COMMON SEAL of EAST GIPPSLAND]
SHIRE COUNCIL was affixed on behalf of]
Council by authority of the Chief Executive]
Officer on the 19th day of March]
2007 in exercise of the power delegated]
under Administrative Procedures (Use of]
Common Seal) Local Law in the presence of)


.....

.....

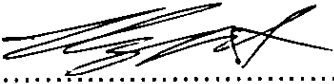


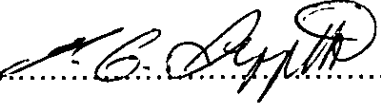
AF246024X


02/08/2007 \$97 173


The COMMON SEAL of KINGS COVE]
METUNG PTY LTD (A.C.N. 006 383 179)]
was hereunto affixed in accordance with its]
Constitution in the presence of:-

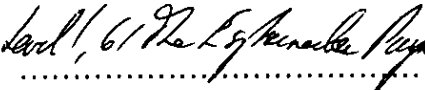



.....
Signature

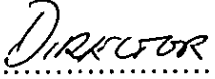

.....
Signature


.....
Full Name

MARGARET GAE SUPPLITT
.....
Full Name


.....
Usual Address

Level 1, 63 Esplanade Payreville
.....
Usual Address


.....
Office Held

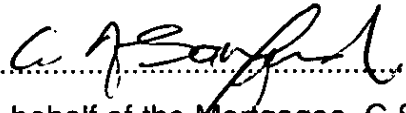
Company Secretary
.....
Office Held

AF246024X



Mortgagee's Consent

Gippsland Secured Investments (G.S.I.) as Mortgagee of Registered Mortgage No. **X256305M** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.


.....
For and on behalf of the Mortgagee, G.S.I.

AF246024X

02/08/2007 \$97 173



EAST GIPPSLAND SHIRE COUNCIL

- and -

KINGS COVE METUNG PTY LTD
(A.C.N. 006 383 179)

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND
ENVIRONMENT
ACT 1987

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT;act5734/05
(Stages 1 & 2 Storth Ryes Avenue)

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

**KINGS COVE METUNG PTY LTD
(formerly Storth Ryes Pty Ltd)
(ACN 006 383 179)**

The Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987 for Registration on Title**

Subject Land	Stage 1 ("The Sanctuary" – PS 548109V Lots 115-137) Stage 2 ("The Habitat" – PS 600889B Lots 138-151) Storth Ryes Avenue METUNG VIC 3904
Parent Title	Certificate of Title Volume 10516 Folio 542 Lot 2 on Plan of Subdivision No. 420967K

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

and

KINGS COVE METUNG PTY LTD (formerly Storth Ryes Pty Ltd) (ACN 006 383 179) of Level 1, 63 The Esplanade, Paynesville, in the said State ("The Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. East Gippsland Shire – Specific Sites and Exemptions Schedule dated May 1999 made pursuant to Clause 52.03 of the East Gippsland Planning Scheme ("the Schedule") applies to the Subject Land and (subject to certain conditions) allows:-

"the subdivision use and development of the land for the purpose of a licensed resort hotel/motel including convention facilities and ancillary restaurant, café, service premises, bar/lounges, offices, clinic (including geo thermal baths) and retails facilities (including harbourside commercial centre), flats, townhouses, attached houses and associated advertising signs, landscaping, roads, drains, access, utility services, maintenance and workshop facilities, car parking, boat storage and loading areas and recreation and landscaped garden areas including tennis courts and swimming pools and maintenance facilities."

- D. It is a condition of the Schedule (Condition 6) that, *"prior to the commencement of the use and development authorised by (the) Schedule the Owner of the land must enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987...to regulate the approved use and development including...controls and guidelines regarding land use activities established pursuant to this Schedule including road construction, landscaping, car parking, buildings and service installation works"*.
- E. [On 2 May 2007, the Council and Kings Cove Metung Pty Ltd \("the Former Owner"\) entered into this Agreement in accordance with the Schedule. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AF246024X on 2 August 2007.](#)

F. Under clause 3.4 of the Agreement, the Subject Land is required to be used and developed in accordance with the “Kings Cove – Metung – Australia, Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stage 1 – The Sanctuary & Stage 2 – The Habitat Medium Density Residential (“the Guidelines”).

G. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (“ARC”). The consent of the ARC must be obtained before the Subject Land is developed.

H. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.

I. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner’s obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.

F.J. The parties enter into this Agreement:

- to give effect to the requirements of the Schedule; ~~and~~
- to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- to remove the Owner’s obligation to use and develop the Subject Land in accordance with the Guidelines; and
- to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

1.1 “the Act” means the Planning and Environment Act 1987.

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

1.3 “Building Envelope” means a building envelope shown on the Endorsed Plans.

~~1.3~~ 1.4 “the Endorsed Plans” means the plans, endorsed with the stamp of the Council that are anticipated in Clause 2 of the Schedule.

1.5 “Lot” means a lot on the Endorsed Plans.

~~1.4~~ 1.6 “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.

~~1.5~~1.7 *"Planning Scheme"* means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.

~~1.6~~1.8 *"the Schedule"* means the East Gippsland Shire – Specific Sites and Exemptions Schedule – Resort Hotel/Motel and Convention Facility Development dated May 1999 made pursuant to Clause 52.03 of the East Gippsland Planning Scheme referred to in Recital C of this Agreement.

~~1.7~~1.9 *"Subject Land"* means the land situated at Stage 1 ("The Sanctuary") – identified on proposed plan of subdivision PS 548109v Lots 115-137) and Stage 2 ("The Habitat" – identified on proposed plan of subdivision PS 600889B Lots 138-151) Storth Ryes Avenue, King's Cove, Metung and being part of the land currently described in Parent Certificate of Title Volume 10516 Folio 543 (Lot 2 on Plan of Subdivision No. 420967K). Any reference to the Subject Land in this Agreement will include a reference to any lot created by the Stage 1 and 2 plans of subdivision.

1.10 *"Solid Fence"* means a fence that is less than 50% transparent.

~~1.8~~1.11 *"Mortgagee"* means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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 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.
- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 The Owner's obligations under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the allotments created by the subdivision of the Subject Land.

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that:

3.1 Development in accordance with the Schedule

The Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Schedule or any subsequent amendment to the Schedule approved by the Council.

3.2 Schedule's Guidelines for Houses & Flats

The development of the Subject Land will comply with the requirements of the "*Guidelines for Houses and Flats*" contained in the Schedule to the satisfaction of Council.

3.3 Soil & Water Management Plan

The development of the Subject Land will only be carried out in accordance with the requirements of Kings Cove, Metung Billabong East and West Soil and Water Management Plan for Dwelling Construction – October 2005 ("The Soil and Water Management Plan") to the satisfaction of Council.

3.4 [\[Clause 3.4 deleted\]](#)

3.5 Building Height and Roof Pitch

No building on the Subject Land shall exceed six (6) metres in height when measured from mean ground level to the eaves or two storeys in height, whichever is the lesser to the satisfaction of Council. No roof of any building constructed on the Subject Land must have a pitch greater than 45 degrees to the satisfaction of Council.

3.6 Mean Ground Level

For the purposes of this Agreement, mean ground level means one half of the sum of the highest and lowest levels established along the line representing natural ground level (whether or not so occurring) to the extreme outer surface of a wall of a building module measured from outer wall to outer wall.

3.7 [\[Clause 3.7 deleted\]](#)

3.8 [\[Clause 3.8 deleted\]](#)

3.9 [\[Clause 3.9 deleted\]](#)

3.10 Single Dwellings

Each allotment created within Stages 1 & 2 will only be developed for a single dwelling and no multiple dwelling units, duplex or separate dependent relative unit or relocatable moveable dwellings will be permitted to be erected or placed on the allotment.

3.11 No Further Subdivision

No further subdivision of allotments within Stages 1 and 2 will be permitted other than:-

- (a) a subdivision which is by a public authority or utility service provider to create an allotment for a utility installation; or
- (b) a subdivision which is the re-subdivision of existing lots for the purpose of boundary re-alignment, and the number of lots is not increased.

3.12 Allotment Use

Allotments created within this stage will be restricted to use for residential purposes only and that no commercial use of the land or buildings approved herein will be permitted.

3.13 Other Uses

Other uses as approved in Clause 52.03 do not form part of Stages 1 & 2 and will not be permitted within Stages 1 & 2.

3.14 Obligations from the Guidelines

Unless with the prior written consent of Council:

3.14.1 the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;

3.14.2 any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;

3.14.3 all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;

3.14.4 if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;

3.14.5 any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;

3.14.6 vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;

3.14.7 the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and

3.14.8 the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1 Notice and Registration

The Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2 Further actions

4.2.1 The Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 The Owner will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register as a follower to the plans of subdivision for Stages 1 & 2 so that it shall appear on the Certificate of Title of the Stage 1 & 2 allotments in accordance with Section 181 of the Act and do all things necessary to enable Council to do so 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;

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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;
- 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 hand delivery or prepaid post.

8.2 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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.

9. COMMENCEMENT OF AGREEMENT

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

10. ENDING OF AGREEMENT

[This Agreement may be ended by agreement between Council and the Owner.](#)

~~Except in relation to the Owner's Covenants pursuant to Clauses 3.4, 3.5, 3.10, 3.11, 3.12 and 3.13 of this agreement, the remaining provisions of this Agreement may be ended wholly or in part or as to any part of the land as between the Council and the owner of the relevant land.~~

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 12/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AF357298N
Riviera Harbours, Paynesville

Section 173 agreement AF357298N (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Riviera Properties Projects Limited (**Riviera Properties**) commenced developing land in Paynesville for an integrated residential and commercial development known as Riviera Harbours.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, Riviera Properties entered into a section 173 agreement with Council.
3. Council and Riviera Properties entered into the Agreement, which was recorded on title in dealing number AF357298N on 24 September 2007. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours' (**Guidelines**).
5. Under the Guidelines:
 - a. Riviera Properties is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. Riviera Properties was formally wound up and deregistered on 18 April 2017.

7. As Riviera Properties no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

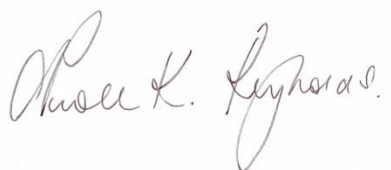
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AF357298N
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	11019/489	22 The Point, Paynesville
2.	11019/490	21 The Point, Paynesville
3.	11019/491	20 The Point, Paynesville
4.	11019/492	19 The Point, Paynesville
5.	11019/493	18 The Point, Paynesville
6.	11019/494	17 The Point, Paynesville
7.	11019/495	16 The Point, Paynesville
8.	11019/497	11 The Point, Paynesville
9.	11019/498	10 The Point, Paynesville
10.	11019/499	9 The Point, Paynesville
11.	11019/500	8 The Point, Paynesville
12.	11019/501	7 The Point, Paynesville
13.	11019/502	6 The Point, Paynesville
14.	11019/503	2 The Point, Paynesville

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18
Section 178C

NOTICE OF PROPOSAL TO AMEND AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 11019 Folios 489-495 (inclusive) and Folios 497-503 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend the section 173 agreement recorded on title in dealing number AF357298N on 24 September 2007

APPLICATION REFERENCE NUMBER:

12/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AF357298N

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AF357298N
Number of Pages (excluding this cover sheet)	15
Document Assembled	05/02/2020 10:48

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Form 13

AF357298N



Section 181

**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING OF A
RECORDING OF AN AGREEMENT**

Planning and Environment Act 1987

Lodged at the Land Titles Office by:

Name: Maddocks

Phone: 9288 0555

Address: 140 William Street, Melbourne 3000 or DX 259 Melbourne

Ref: TGM:KJM:LGC:5297198

Customer Code: 1167E

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

Land: ~~part of Certificate of Title Volume 10844 Folio 072 and more particularly being lots 1-7-
(inclusive) and lots 14-20 (inclusive) on the proposed plan, a copy of which is attached.~~

Volume 11019 Folios 489 - 495 (inclusive) and Volume 11019 Folios 497-
503 (inclusive)

Authority: East Gippsland Shire Council of 273 Main Street, Bairnsdale, Victoria

Section and Act under which agreement made: Section 173 of the *Planning and Environment Act 1987*.

A copy of the agreement is attached to this application

Signature for the Authority: Aaron Hollow

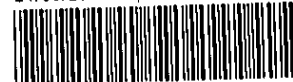
Name of officer: AARON HOLLOW

Office held: MANAGER DEVELOPMENT

Date: 4/9/2007

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PLAN OF SUBDIVISION

STAGE No.

LTD USE ON

EDITIO

LOCATION OF LAND

PARISH: BAIRNSDALE
 TOWNSHIP: _____
 SECTION: _____
 CROWN ALLOTMENT: 146 & 146 G(PARTS)
 CROWN PORTION: _____

TITLE REFERENCES: VOL 10844 FOL 072

LAST PLAN REFERENCE: LOT B ON PSS24602

POSTAL ADDRESS: GOVERNMENT ROAD,
 (At time of subdivision) PAYNESVILLE, 3880

MGA 94 CO-ORDINATES: E 563 830
 (Of approx. centre of
 land in plan) N 5804 560

ZONE: 55

COUNCIL CERTIFICATION

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 102/2006/CRT

1. This plan is certified under Section 6 of the Subdivision Act 1988.
2. ~~This plan is certified under Section 11(7) of the Subdivision Act 1988.~~
~~Date of original certification under Section 6 / /~~
3. ~~This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.~~

OPEN SPACE

- (i) A requirement for public open space under Section 18 Subdivision Act 1988 ~~has / has not been made.~~
- (ii) ~~The requirement has been satisfied.~~
- (iii) ~~The requirement is to be satisfied in stage~~
 Council Delegate *[Signature]*
 Council seal

Date 1 / 6 / 2007

~~Re-certified under Section 11(7) of the Subdivision Act 1988.~~

~~Council Delegate~~
~~Council seal~~

Date / /

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER

COUNCIL/BODY/PERSON

RI ROAD
 RESERVE No. 1

EAST GIPPSLAND SHIRE COUNCIL
 EAST GIPPSLAND SHIRE COUNCIL

NOTATIONS

STAGING This + / is not a staged subdivision
 Planning Permit No 309/2005/P

DEPTH LIMITATION 15 METRES BELOW THE SURFACE
 APPLIES TO CROWN ALLOTMENT 146 G ONLY

LOTS 8 TO 13 HAVE BEEN OMITTED FROM THIS PLAN.
 LOTS 19 & 20 CONSIST OF 2 PIECES.

SURVEY. THIS PLAN IS / ~~IS NOT~~ BASED ON SURVEY

THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s) _____

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	DRAINAGE	2	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL

LTD USE ONLY

STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT

RECEIVED



DATE / /

LTD USE ONLY

PLAN REGISTERED

TIME

DATE / /

Assistant Registrar of Titles

SHEET 1 OF 3 SHEETS

Crowthier & Sadler Pty. Ltd.
 LICENSED SURVEYORS & TOWN PLANNERS
 152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
 TELEPHONE (03) 5162 5011

LICENSED SURVEYOR

MICHAEL JOSEPH SADLER

SIGNATURE

REF 12067

VERSION

6

DATE 16 / 5 / 2007

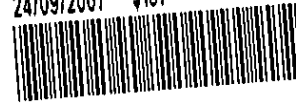
COUNCIL DELEGATE SIGNATURE

ORIGINAL SHEET SIZE A3

AF357298N

24/09/2007 \$187

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PLAN OF SUBDIVISION

STAGE No.

FOR ENLARGEMENT
SEE SHEET 3

RESERVE FOR
DRAINAGE & RECREATION
PURPOSES

SEE ENLARGEMENT

AMG ZONE 55

GOVERNMENT ROAD (78)

THE POINT

RI ROAD

SEE ENLARGEMENT

RESERVE FOR
DRAINAGE & RECREATION
PURPOSES

FOR ENLARGEMENT
SEE SHEET 3

SCALE OF ENLARGEMENT
1:250

Crowthen & Sadler Pty Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRRISSDALE, VIC., 3875

TELEPHONE (03) 5152 5011

ORIGINAL

SHEET
SIZE

1:800 A3

SCALE

8 0 8 16 24 32 40

LENGTHS ARE IN METRES

LICENSED SURVEYOR

MICHAEL JOSEPH SADLER

SIGNATURE

DATE 16/5/2007

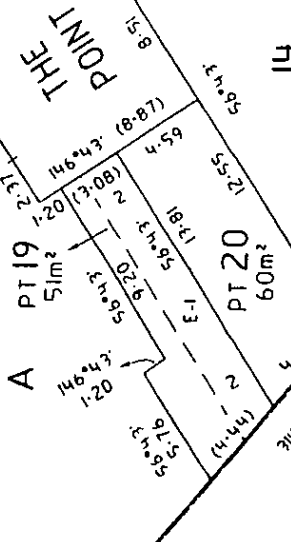
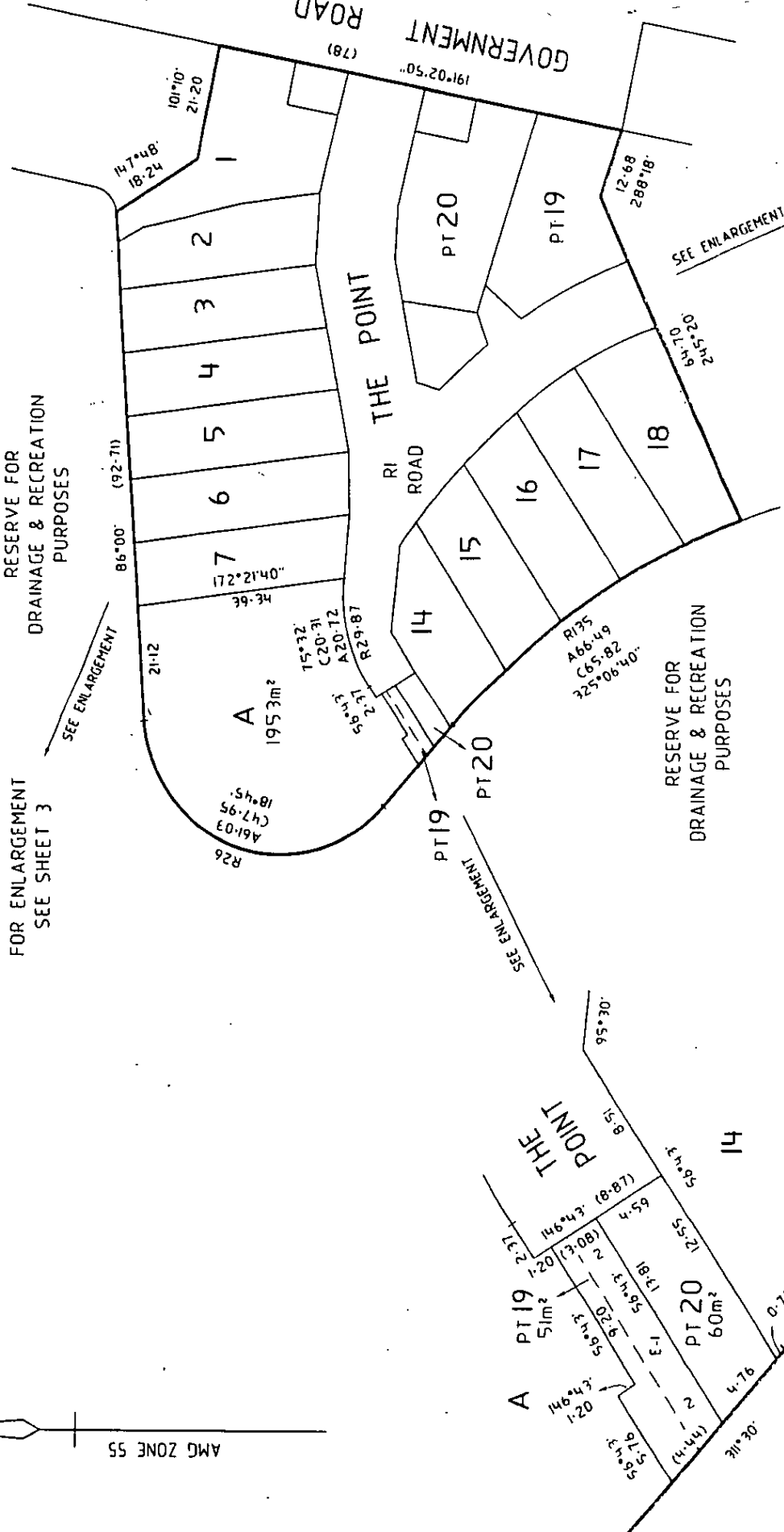
VERSION 6

REF 12067

SHEET 2 OF 3 SHEETS

DATE 1/6/2007

COUNCIL DELEGATE SIGNATURE



PLAN OF SUBDIVISION

STAGE No.

AF357298N

24/09/2007 \$187

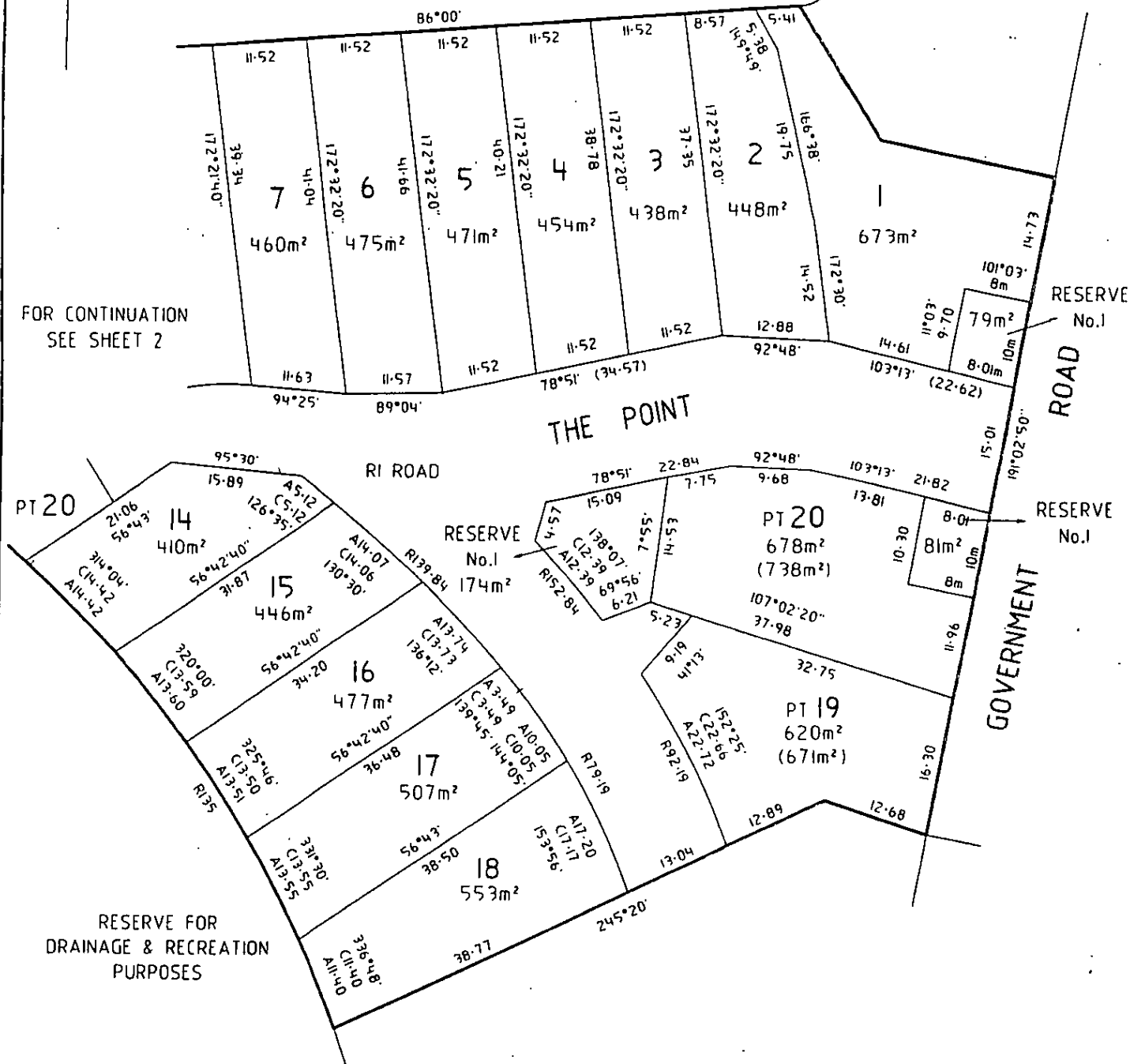
173



AMG ZONE 55

RESERVE FOR
DRAINAGE & RECREATION
PURPOSES

FOR CONTINUATION
SEE SHEET 2



Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS

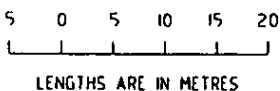
162 MACLEOD STREET, BAIRNSDALE, VIC., 3875

TELEPHONE (03) 6162 6011

ORIGINAL

SCALE

SHEET
SIZE
A3



LICENSED SURVEYOR

MICHAEL JOSEPH SADLER

SIGNATURE

DATE 16/5/2007.

REF 12067

VERSION 6

SHEET 3 OF 3 SHEETS

DATE 1/6/2007

COUNCIL DELEGATE SIGNATURE

EAST GIPPSLAND SHIRE COUNCIL

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Council

- and -

RIVIERA PROPERTIES PROJECTS LIMITED (A.B.N. 86 061 677 218)

The Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: 1-7 Government Road PAYNESVILLE VIC 3880
Plan of Subdivision No. 548098X
Lots 1 - 7 (inclusive) & Lots 14 - 20 (inclusive)
Riviera Harbours Stage 12

Parent Certificate
of Title Volume Volume 10844 Folio 072
Lot B PS 524602Y

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PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the 4th day of September 2007

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

- and -

RIVIERA PROPERTIES PROJECTS LIMITED (A.B.N. 86 061 677 218) of Level 1, 61 The Esplanade, Paynesville in the said State ("The Owner")

RECITALS

- A. The Owner is the registered proprietor of all that piece of land being the whole of the land described in Certificate of Title Volume 10844 Folio 072.
- B. On the 13th of December, 2005 Council issued Planning Permit No. 309/2005/P ("the **Planning Permit**") allowing the land to be subdivided into "20 lots including building envelopes, development of six dwellings and outbuildings, jetties and landings, and removal of one tree in accordance with the *Endorsed Plan*". Condition 5 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.
- C. The Owner has prepared *Riviera Harbours Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours November, 2006 The Point* ("the **Guidelines**").
- D. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.

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E. As at the date of this Agreement, the land is encumbered by Mortgage No. AB 181450X in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the land.

F. The parties enter into this Agreement:

- (i) To give effect to the requirements of the Planning Permit; and
- (ii) To achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the land.

NOW THIS AGREEMENT WITNESSETH:

1. The parties confirm the recitals to this Agreement.
2. This Agreement is made pursuant to Section 173 of the Act.
3. The Owner covenants and agrees that the land shall only be developed in accordance with the Planning Permit, the Endorsed Plans, or any subsequent amendment to the Planning Permit approved by Council.
4. The Owner covenants that:
 - (a) pursuant to condition 5 (b) of the Planning Permit, no jetty or landing or extension to a jetty or landing will be constructed other than in accordance with the Endorsed Plans.
 - (b) the Owner must not build, construct, erect or carry out or cause or permit to be built, constructed, erected or carried out any

Building on the land outside of a Building Envelope, without the prior written consent of Council.

- (c) the Owner must maintain and repair the Revetment Walls within that Owner's lot to the satisfaction of Council.
 - (d) the Owner must maintain and replenish Beaching adjacent to any Revetment Wall within that Owner's lot to the satisfaction of Council.
 - (e) the Owner of each respective lot is responsible for the maintenance and repair of any jetty associated with that lot to the satisfaction of Council.
5. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.
6. The parties acknowledge and agree that *the Guidelines* and the covenants and agreements entered into by the Owner in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, its successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof provided that if the land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is responsible for those covenants and obligations which relate to that owner's lot.
7. 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.

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

Beaching means sand and stone mounding abutting the Revetment Wall intended to protect the Revetment Wall and prevent water vehicles from running aground.

Building has the same meaning as in the Act and includes dwellings, swimming pools, carports, tennis courts and outbuildings.

Building Envelope means any area delineated and identified on the Endorsed Plan as a "building envelope" or the like.

Endorsed Plan means the plan (including the Guidelines) 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.

land means part of the land situated at 1-7 Government Road, Paynesville being part of the land referred to in Certificate of Title Volume 10844 Folio 072 and more particularly being lots 1-7 (inclusive) and lots 14-20 (inclusive) on Plan of Subdivision No. 548098X and any reference to the land in this Agreement includes any lot created by the subdivision of the land or any part of it.

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 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

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proprietors or an estate in fee simple of the 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 land.

Revetment Wall means the canal wall.

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8. In this Agreement unless the context admits otherwise:
- (a) The singular includes the plural and vice versa.
 - (b) A reference to a gender includes a reference to each other gender.
 - (c) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
 - (d) If a party consists of more than one person this Agreement binds them jointly and each of them severally.
 - (e) 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.
 - (f) 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.
 - (g) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

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9. The Owner further covenants and agrees that:
 - (a) the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns
 - (b) the Owner will do all things reasonably necessary to give effect to this Agreement;
 - (c) the Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register in accordance with Section 181 of the Act on the Land and will do all things necessary to enable this to be done including signing any further agreement, acknowledgement 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.
10. 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, review, finalization, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.
11. 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 land which may be affected by this Agreement.
12. 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 land, successors in title shall be required to:

- (a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
 - (b) execute a deed agreeing to be bound by the terms of this Agreement.
13. 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.
14. 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.
15. 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 land or relating to any use or development of the land.
16. Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

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EXECUTED 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 3rd day of September , 2007)
in the presence of:)



.....
[Signature]

Chief Executive

.....
[Signature]

Witness

Executed by **RIVIERA PROPERTIES**)
PROJECTS LIMITED by being signed by those)
persons who are authorised to sign for the company)

AF357298N



Director:.....
[Signature]

Full name: *Timothy Richard Wehr*

Usual Address: *Level 1 61 The Esplanade Pymbyl.*

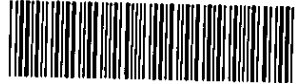
Secretary: *[Signature]*
Director:.....

Full name: *JANINE PEARSON*

Usual Address: *8 DEAKIN AVENUE
BARNESDALE 3875*

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Mortgagee's Consent

ANZ Banking Group Limited as Mortgagee of Registered Mortgage No. **AB181450X** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

For and on behalf of the Mortgagee, ANZ

**EXECUTED by AUSTRALIA AND NEW
ZEALAND BANKING GROUP LIMITED
by being SIGNED by its Attorney Partner
of Gadens Lawyers**

PETER DANIEL MOORE
Under Power of Attorney dated 9/10/1992
A certified copy of which is filed
in the permanent order book Number 277
Page 016 and Power of Attorney
Dated 26/06/2001 a certified copy of which
is filed in Permanent order Book Number
277 as page 017 in the presence of:

AF357298N

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EAST GIPPSLAND SHIRE COUNCIL

- and -

RIVIERA PROPERTIES PROJECTS
LIMITED

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND
ENVIRONMENT
ACT 1987

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT;act0778/06 (Stage 12)
Lots 1-7 (inclusive) &
Lots 14-20 (inclusive).

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

RIVIERA PROPERTIES PROJECTS LIMITED (ABN 86 061 677 218)

The Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land	1-7 Government Road PAYNESVILLE VIC 3880 Plan of Subdivision No. 548098X Lots 1-7 (inclusive) & Lots 14-20 (inclusive) Riviera Harbours Stage 12
Parent Certificate Of Title	Volume 10844 Folio 072 Lot B PS 524602Y

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

and

RIVIERA PROPERTIES PROJECTS LIMITED (ABN 86 061 677 218) of Level 1, 63 The Esplanade, Paynesville in the said State ("the Owner")

RECITALS

- A. The Owner is the registered proprietor of all that piece of land being the whole of the land described in Certificate of Title Volume 10844 Folio 072.
- B. On the 13th of December 2005 Council issued Planning Permit No. 309/2005/P) ("the **Planning Permit**") allowing the land to be subdivided into "20 lots including building envelopes, development of six dwellings and outbuildings, jetties and landings, and removal of one tree in accordance with the Endorsed Plan". Condition 5 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.
- C. The Owner has prepared *Riviera Harbours Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures of Riviera Harbours November, 2006 The Point* ("the **Guidelines**").
- D. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.

~~E. As at the date of this Agreement, the land is encumbered by Mortgage No. AB 181450X in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the land.~~

~~F.E. On 4 September 2007, the Council and Riviera Properties Project Limited ("the **Former Owner**") entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the land in dealing number AF357298N on 24 September 2007.~~

F. In accordance with:

(a) clause 3 of the Agreement, the land is required to be developed in accordance with the Endorsed Plans, the definition of which includes the Guidelines; and

(b) clause 6 of the Agreement, the parties acknowledge and agree that the Guidelines bind the land.

G. Under the Guidelines, the Former Owner is entitled to appoint the Architectural Review Panel (ARP). The consent of the ARP must be obtained before the land is developed.

H. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARP under the Guidelines.

I. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the references to the Guidelines and to include certain obligations under the Guidelines in the Agreement.

G-J. The parties enter into this Agreement:

(a) To give effect to the requirements of the Planning Permit; and

(b) To achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;

(c) To remove the references to the Guidelines; and

(b)(d) To include certain obligations under the Guidelines in the Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. The parties confirm the recitals to this Agreement.
2. This Agreement is made pursuant to Section 173 of the Act.
3. The Owner covenants and agrees that the land shall only be developed in accordance with the Planning Permit, the Endorsed Plans, or any subsequent amendment to the Planning Permit approved by Council.
4. The Owner covenants that:
 - (a) pursuant to condition 5(b) of the Planning Permit, no jetty or landing or extension to a jetty or landing will be constructed other than in accordance with the Endorsed Plans.
 - (b) the Owner must not build, construct, erect or carry out or cause or permit to be built, constructed, erected or carried out any Building on the land outside of a Building Envelope, without the prior written consent of Council.
 - (c) the Owner must maintain and repair the Revetment Walls within that Owner's lot to the satisfaction of Council.

- (d) the Owner must maintain and replenish Bleaching adjacent to any Revetment Wall within that Owner's lot to the satisfaction of Council.
 - (e) the Owner of each respective lot is responsible for the maintenance and repair of any jetty associated with that lot to the satisfaction of Council.
5. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.
6. The parties acknowledge and agree that ~~the Guidelines and~~ the covenants and agreements entered into by the Owner in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, its successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof provided that if the land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is responsible for those covenants and obligations which relate to that owner's lot.

7. Obligations from the Guidelines – General

the Owner covenants and agrees that, unless with the prior written consent of Council:

7.1 no more than one dwelling may be developed on a lot;

7.2 any dwelling erected on the land must:

7.2.1 have a minimum floor level of 2.5 metres Australian Height Datum;

7.2.2 have a floor area of not less than 150 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah; and

7.2.3 be built only of new materials;

7.3 all buildings visible from the street or canal must be designed, constructed and maintained to be similar to the main building on that lot;

7.4 any areas used for the purpose of drying, storage tanks or refuse storage must not be visible from the street or canal;

7.5 vehicle driveways and other paved areas visible from the street or canal must be constructed of clay brick, masonry pavers, stone sheeted bitumen, hot mix, patterned and coloured concrete or exposed aggregate concrete;

7.6 the Owner must develop the land in accordance with the Soil and Water Management Plan;

7.7 no Trees may be planted within 3 metres of the Revetment Wall;

7.8 all service areas on a Canal Lot must be screened from public view from both the street and canal;

7.9 the Owner must not erect, or permit to be erected any fence on a Canal Lot:

7.9.1 exceeding 1.8 metres in height;

7.9.2 along the canal boundary or the Revetment Wall; or

7.9.3 within 5 metres of the canal boundary; and

7.10 the Owner must not erect, or permit to be erected any fence on any boundary of a lot adjoining a road reserve.

8. Obligations from the Guidelines – Revetment Wall

the Owner covenants and agrees that:

8.1 the Owner must not alter, demolish or attach any shackles, cables or fixing eyes to any part of the Revetment Wall unless with Council's prior written consent;

8.2 the Revetment Wall structure, footings and footing foundations adjoining the Owner's lot will be inspected every five years, and after any flood event, by an independent and appropriately qualified professional to the satisfaction of Council in order:

8.2.1 to check the structural stability and integrity of the wall; and

8.2.2 to recommend any necessary works and actions, which must be carried out. A copy of the inspection assessment and recommendations must be lodged with Council within one month of the inspection and assessment having been carried out;

at the full cost of the Owner to the satisfaction of Council; and

8.3 the Owner must ensure that no operations, actions or practices are carried out on the land which result in contamination or pollution of the canals system.

7.9. 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.

Beaching means sand and stone mounding abutting the Revetment Wall intended to protect the Revetment Wall and prevent water vehicles from running aground.

Building has the same meaning as in the Act and includes dwellings, swimming pools, carports, tennis courts and outbuildings.

Building Envelope means any area delineated and identified on the Endorsed Plan as a "building envelope" or the like.

Canal Lot means a lot that adjoins a canal.

Endorsed Plan means the plan ~~(including the Guidelines)~~ 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.

land means part of the land situated at 1-7 Government Road, Paynesville being part of the land referred to in Certificate of Title Volume 10844 Folio 072 and more particularly being lots 1-7 (inclusive) and lots 14-20 (inclusive) on Plan of Subdivision No. 548098X and any reference to the land in this Agreement includes any lot created by the subdivision of the land or any part of it.

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 or Titles as Mortgagee of the [Subject-L](#)and 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-L](#)and 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 land.

Revetment Wall means the canal wall.

[Soil and Water Management Plan](#) means the [“Soil and Water Management Plan – Riviera Harbours Allotment Development”](#), as amended from time to time. A copy of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

[Tree](#) means a tree capable of reaching a height of 5 metres or more.

[8.10.](#) In this Agreement unless the context admits otherwise:

- (a) The singular includes the plural and vice versa.
- (b) A reference to a gender includes a reference to each other gender.
- (c) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- (d) If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- (e) 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.

- (f) 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.
- (g) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

9.11. The Owner further covenants and agrees that:

- (a) the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;
- (b) the Owner will do all things reasonably necessary to give effect to this Agreement;
- (c) the Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register in accordance with Section 181 of the Act on the land and will do all things necessary to enable 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.

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

11.13. 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 land which may be affected by this Agreement.

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

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

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

14.16. 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.

15.17. 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 land or relating to any use or development of the land.

~~16.18.~~ Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

..... Chief Executive

..... Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 13/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AF499542K
Riviera Harbours, Paynesville

Section 173 agreement AF499542K (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Riviera Properties Projects Limited (**Riviera Properties**) commenced developing land in Paynesville for an integrated residential and commercial development known as Riviera Harbours.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, Riviera Properties entered into a section 173 agreement with Council.
3. Council and Riviera Properties entered into the Agreement, which was recorded on title in dealing number AF499542K on 28 November 2007. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours' (**Guidelines**).
5. Under the Guidelines:
 - a. Riviera Properties is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. Riviera Properties was formally wound up and deregistered on 18 April 2017.

7. As Riviera Properties no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

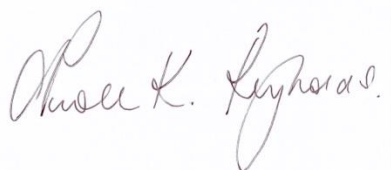
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AF499542K
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10662/009	1 Heaths View, Paynesville
2.	10662/010	2 Heaths View, Paynesville
3.	10662/011	3 Heaths View, Paynesville
4.	10662/012	4 Heaths View, Paynesville
5.	10662/013	5 Heaths View, Paynesville
6.	10662/014	6 Heaths View, Paynesville
7.	10662/015	7 Heaths View, Paynesville
8.	10662/016	8 Heaths View, Paynesville
9.	10662/017	9 Heaths View, Paynesville
10.	10662/018	10 Heaths View, Paynesville
11.	10662/019	11 Heaths View, Paynesville
12.	10662/020	12 Heaths View, Paynesville
13.	10662/021	13 Heaths View, Paynesville
14.	10662/022	14 Heaths View, Paynesville
15.	10662/023	15 Heaths View, Paynesville
16.	10662/024	16 Heaths View, Paynesville
17.	10662/025	17 Heaths View, Paynesville
18.	10662/027	1 North Quay Place, Paynesville
19.	10662/028	3 North Quay Place, Paynesville
20.	10662/029	5 North Quay Place, Paynesville
21.	10662/030	7 North Quay Place, Paynesville
22.	10662/031	9 North Quay Place, Paynesville
23.	10662/032	11 North Quay Place, Paynesville
24.	10662/033	13 North Quay Place, Paynesville
25.	10662/034	15 North Quay Place, Paynesville
26.	10662/037	23 North Quay Place, Paynesville

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10662 Folios 009-025 (inclusive), Folios 027-034 (inclusive) and Folio 037

DESCRIPTION OF THE PROPOSAL:

To amend the section 173 agreement recorded on title in dealing number AF499542K on 28 November 2007

APPLICATION REFERENCE NUMBER:

13/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AF499542K

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AF499542K
Number of Pages (excluding this cover sheet)	36
Document Assembled	30/01/2020 12:05

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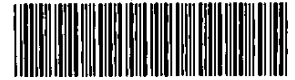
AF499542K

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Section 181

**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING
OF A RECORDING OF AN AGREEMENT**



Planning & Environment Act 1987

Privacy Collection Statement

The information from this form is collected under statutory authority and is used for the purpose of maintaining publicly searchable registers and indexes in the Victorian Land Registry.

Lodged by:

Name: WARREN GRAHAM & MURPHY
Phone: (03) 5152-2661
Address: 119 Main Street, Bairnsdale
Ref: ACT;act0952/02
Customer Code: 1716W

(29)

The Authority having made an agreement referred to in Section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land:	Lot 1 PS 501030Y	Volume 10662 Folio 009
	Lot 2 PS 501030Y	Volume 10662 Folio 010
	Lot 3 PS 501030Y	Volume 10662 Folio 011
	Lot 4 PS 501030Y	Volume 10662 Folio 012
	Lot 5 PS 501030Y	Volume 10662 Folio 013
	Lot 6 PS 501030Y	Volume 10662 Folio 014
	Lot 7 PS 501030Y	Volume 10662 Folio 015
	Lot 8 PS 501030Y	Volume 10662 Folio 016
	Lot 9 PS 501030Y	Volume 10662 Folio 017
	Lot 10 PS 501030Y	Volume 10662 Folio 018
	Lot 11 PS 501030Y	Volume 10662 Folio 019
	Lot 12 PS 501030Y	Volume 10662 Folio 020
	Lot 13 PS 501030Y	Volume 10662 Folio 021
	Lot 14 PS 501030Y	Volume 10662 Folio 022
	Lot 15 PS 501030Y	Volume 10662 Folio 023
	Lot 16 PS 501030Y	Volume 10662 Folio 024
	Lot 17 PS 501030Y	Volume 10662 Folio 025
	Lot 19 PS 501030Y	Volume 10662 Folio 027
	Lot 20 PS 501030Y	Volume 10662 Folio 028
	Lot 21 PS 501030Y	Volume 10662 Folio 029
	Lot 22 PS 501030Y	Volume 10662 Folio 030
	Lot 23 PS 501030Y	Volume 10662 Folio 031
	Lot 24 PS 501030Y	Volume 10662 Folio 032
	Lot 25 PS 501030Y	Volume 10662 Folio 033
	Lot 26 PS 501030Y	Volume 10662 Folio 034
	Lot 27 PS 501030Y	Volume 10662 Folio 035 - c
	Lot 28 PS 501030Y	Volume 10662 Folio 036 - c
	Lot 29 PS 501030Y	Volume 10662 Folio 037
	Roads on PS 501030Y	Volume 10662 Folio 039

*Amended
Vide
Plan
2010
29/11/07
MS.*

Authority: East Gippsland Shire Council, Corporate Centre, 273 Main Street, Bairnsdale, 3875

Section and Act under which agreement made: Section 173 of the Planning & Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority: Aaron Hollow

Name of Officer: AARON HOLLOW, MANAGER DEVELOPMENT

(full name)

Date: 10/10/2007

AF499542K

28/11/2007 \$337

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EAST GIPPSLAND SHIRE COUNCIL

Council

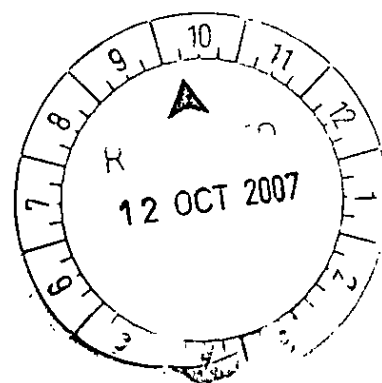
- and -

RIVIERA PROPERTIES PROJECTS LIMITED (FORMERLY HODDLE SECURITIES LIMITED)
(A.B.N. 86 061 677 218)

the Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: 28 Windermere Terrace, PAYNESVILLE VIC 3880
Certificate of Title Volume 10562 Folio 626 - Lot 3 LP 441059E
Heaths View & North Quay Place, Paynesville
PLAN OF SUBDIVISION NO. 501030Y



AF499542K

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

AF499542K

28/11/2007 \$337

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THIS AGREEMENT is made the 17 day of Nov 2007

BETWEEN:

EAST GIPPSLAND SHIRE COUNCIL,
Of 273 Main Street, Bairnsdale, ("**Council**")

- and -

RIVIERA PROPERTIES PROJECTS LIMITED (formerly HODDLE SECURITIES LIMITED) (ABN 86 061 677 218)

Of Level 1, 63 The Esplanade, Paynesville, Victoria ("**the Owner**")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The Council has issued Planning Permit Number 01/00348/DS (Amended) ("the Planning Permit") allowing:
- the land to be subdivided into 29 Lots;
 - Development of Dwellings on the new lots; and
 - Development of Jetties and Landings in the waterways.
- in accordance with the Endorsed Plan.

A copy of the Planning Permit is attached to this Agreement and marked "A".

- D. It is a condition of the Planning Permit that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plan and the conditions of the Planning Permit
- E. As at the date of this Agreement the Subject Land is encumbered by Mortgage No. AB 181450X in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.
- F. The parties enter into this Agreement:

- (a) to give effect to the requirements of the Planning Permit; and

- (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

IT IS AGREED:

1. DEFINITIONS

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

- 1.1. **"the Act"** means the Planning and Environment Act 1987.
- 1.2. **"this Agreement"** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3. **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "C".
- 1.4. **"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.
- 1.5. **"Planning Permit"** means the Planning Permit referred to in recital C. of this Agreement.
- 1.6. **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.
- 1.7. **"Subject Land"** means the land situated at 28 Windermere Terrance, Paynesville being the land referred to in Certificate of Title Volume 10562 Folio 626 and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.
- 1.8. **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as Mortgagee of the Subject Land or any part of it.



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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 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.
- 2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7. 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 covenants and agrees that:

3.1. Development in accordance with Development Permit

The Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Council's Costs to be Paid

The Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.

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3.3. Ongoing Requirements

- Each lot will be developed and used for the purposes of a Single Dwelling, associated outbuildings, and jetties, landings and decks in accordance with the document "*Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours Stage 8*" dated approved (or as amended).
- Subject to the approval of a further planning permit by the Responsible Authority, Lots 18,27 and 28 may be developed as multi dwelling sites in accordance with the relevant requirements of the East Gippsland Planning Scheme.
- Any amendment to "the Document" will be to the satisfaction of the Responsible Authority.
- The Revetment Wall, Footings and Footing Foundations will be inspected and maintained in accordance with the requirements of the planning permit.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1. Notice and Registration

The Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2. Further actions

- 4.2.1. The Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.2. The Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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;

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4.3. Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

6. OWNER'S WARRANTIES

Without limiting the operation or effect that 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 effected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect that this Agreement has, the Owner must ensure that successors in title shall be required to give effect to and do all acts and sign all documents which will require those successors in title to give effect to this Agreement.

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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 hand delivery or prepaid post.

8.2. 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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.

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8.5. No Fettering of the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.

10. ENDING OF AGREEMENT

This Agreement may be ended by agreement between Council and the Owner.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The **COMMON SEAL** of **EAST GIPPSLAND**)

SHIRE COUNCIL was affixed on behalf of)

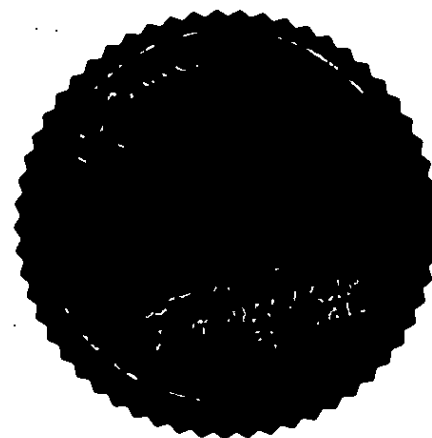
Council by authority of the Chief Executive)

Officer on the *9th* day of *October*)

; *2007* in exercise of the power delegated)

under Administrative Procedures (Use of)

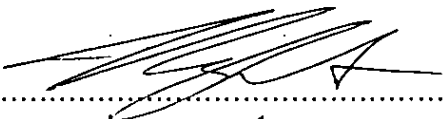
Common Seal) Local Law in the presence of)



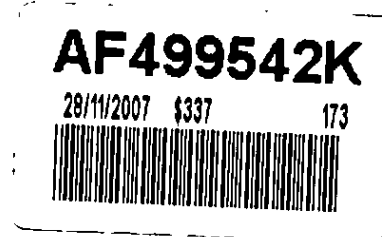
[Signature]

[Signature]

The **COMMON SEAL** of **RIVIERA PROPERTIES**)
PROJECTS LIMITED (ACN ~~86~~ 061 677 218))
was hereunto affixed in accordance with its)
Constitution in the presence of :-)


..... Director



..... Director/Secretary



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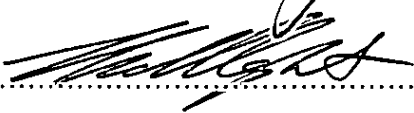
28/11/2007 \$337 173




The **COMMON SEAL** of **HODDLE**)
SECURITIES LIMITED (ACN 061 677 218))
was hereunto affixed in accordance with its)
Constitution in the presence of :-)

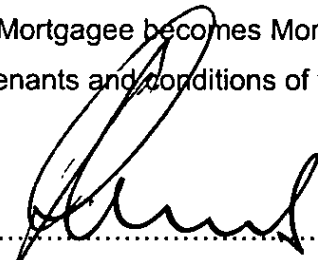



..... Director


..... Director/Secretary

Mortgagee's Consent

ANZ BANKING GROUP LIMITED as Mortgagee of Registered Mortgage No.
AB181450X consents to the Owner entering into this Agreement and in the event that
the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the
covenants and conditions of this Agreement.

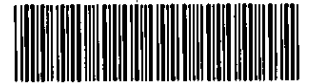

.....
For and on behalf of the Mortgagee.
Trevor J. Stevens

" A "

Contact: John Traa
Our Ref: BC/ 01/00348/DS
Phone (03) 51539500

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30 October, 2001

Crowther & Sadler Pty Ltd
PO Box 722
BAIRNSDALE VIC 3875

Dear Sir or Madam,

Re: Planning Permit No. 01/00348/DS AMENDED
For: 29 Lot Subdivision, Development of
Dwellings on the new lots and development
of jetties and landings in the waterways.
Location: 28 Windermere Terrace, PAYNESVILLE 3880



I wish to advise that your application for Planning Permit No. 01/00348/DS, for a 29 Lot Subdivision, Development of Dwellings on the new lots and development of jetties and landings in the waterways has been considered under authority delegated by the Council, and a decision has been made to grant a permit subject to certain conditions.

Please find enclosed, your copy of Planning Permit No. 01/00348/DS and approved plan. You must comply with the conditions as part of the commencement of the use and/or development approved.

Often a Planning Permit is only one of the approvals that will need to be obtained when undertaking a new development or use. Where possible consultation has taken place with other affected Council Sections, and servicing authorities, as part of the processing of your application. However, you may still need to obtain further approvals or consent. Where possible these situations have been highlighted by the conditions of the permit.

Where you will be undertaking building works, you must obtain Building Approval prior to commencing and development.

Where the permit requires that conditions must be met to the satisfaction of East Gippsland Water, TXU Electricity Pty Ltd, Telstra or any other authority, you should contact them to determine their specific requirements.

Important information about your permit has also been enclosed. Please take time to read this information so that you understand under what circumstances the permit has been issued, how long the approval lasts, and under what circumstances you may appeal against conditions contained in the permit.

If you have any questions about your permit or its requirements, please do not hesitate to contact me.

Yours faithfully

JOHN TRAA
Statutory Planner

Bairnsdale Head Office
PO Box 1618
Bairnsdale
Victoria 3875

Telephone (03) 5153 9500

1300 555 886
East Gippsland
Residents Information Line

Facsimile (03) 5153 9576

Bairnsdale Library
Telephone (03) 5152 4225

Website:
www.egipps.vic.gov.au
Email:
feedback@egipps.vic.gov.au

PLANNING PERMIT

Permit No: 01/00348/DS AMENDED
Planning Scheme: EAST GIPPSLAND
Responsible Authority: East Gippsland Shire

Form 4.4

ADDRESS OF THE LAND

28 Windermere Terrace, PAYNESVILLE VIC 3880
(CT10562 626 Lot 3 LP 441059)

BN: 79547

THE PERMIT ALLOWS

The land to be Subdivided into 29 Lots, Development of Dwellings on the new lots and development of Jetties and Landings in the waterways in accordance with the endorsed plans.

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THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

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Layout Not Altered

1. The subdivision and associated works, as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.

Engineering requirements

2. The applicant shall construct, to the satisfaction of Council, all necessary infrastructure including roads, drainage and services to service all the proposed allotments.
3. The applicant shall engage a suitably qualified Engineer to prepare design and documentation for the construction of infrastructure and meeting the following requirements. All drawings and documentation shall be submitted to and approved by Council prior to works commencing.
 - (a) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of design shall be provided.

Roads and Pavement

- (b) Pavement design shall be undertaken in accordance with accepted engineering practice. Supporting calculations for pavement design shall be provided.
- (c) On cul de sac roads, road pavement shall provide for minimum 6.8 metre wide sealed surface with kerb and channel on both sides. (Pram ramp / pedestrian crossings with tactile surface indicators shall be required where appropriate).
- (d) The cul-de-sac or turning head of the proposed new roads shall be constructed to provide sufficient space for the manoeuvring of service vehicles.

Intersection Treatments

- (e) An acceptable intersection treatment for the proposed road to the east of the proposed future canal shall be designed and submitted to Council for approval. The design shall address all existing and projected traffic movements, make provision for traffic control devices, regulatory signs and pavement marking and be accompanied by an overlay showing all obstructions and sight distances conforming with requirements.

Signage and Traffic Control

- (f) The design shall address and include all applicable and statutory signage and traffic control requirements. Provision of the necessary signage and pavement marking shall be undertaken by the developer.

Constructed Waterway

- (g) All maintenance and repairs associated with revetment walls, beaching and jetties where approved shall be the responsibility of the allotment owner. Any necessary works undertaken shall be with the approval of and to the satisfaction of the Responsible Authority.
- (h) Maintenance and replenishment of beaching shall be the responsibility of abutting allotment owners.

Drainage and Easements

- (i) The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection of all stormwater runoff, resulting from a storm having an ARI of 1 in 10 Years, and concentrated by buildings, pavements, and/or siteworks to avoid damage or inundation to any property. All allotments shall be provided with a connection to Council's drainage system. Connections to Council's drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.
- (j) Disposal of stormwater runoff from future development on allotments shall be to the satisfaction of Council.
- (k) Owners of allotments shall ensure that no operation, action or practice on the allotment results in contamination or pollution of the waterway.
- (l) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, detention basins or tanks, Gross Pollutant Traps and drainage pits incorporating litter baskets.
- (m) Provision shall be made for suitable devices or structures to prevent litter, debris and sediment from entering the stormwater drainage system. Details of the device/structure must be provided to and approved by Council prior to construction.
- (n) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.

Earthworks

- (o) Roadside verges shall have a batter slope no greater than 8 degrees horizontal to 1 degree vertical.
- (p) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.



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- (q) Temporary debris and sediment control measures shall be installed to prevent debris and sediment from entering Council's drainage system during all construction stages of both the land division and future development on the proposed allotments. Pollution prevention measures, shall be in accordance with the Environmental Protection Authority's Publication Number 275 "Construction Techniques for Sediment Pollution Control".

Landscaping and Footpaths

- (r) A landscaping plan for roads and reserves shall be submitted to and approved by Council. Street trees to be planted on the verge shall be of a species approved by Council. The applicant shall be required to maintain street trees and plantings with watering as necessary during the defects liability period following the issue of a Certificate of Practical Completion of the works.
- (s) Provision shall be made for the construction of footpaths both on and off the subject site. The applicant shall provide for footpath to be constructed on at least one side of all new roads and on one side of that portion of Fort King Road abutting the development.

Documentation and Certification

- (t) Documentation for construction of the works shall include adequate provision for Council to be notified for inspection of the works at major stages of construction.
- (u) Documentation shall address all statutory and environmental requirements which shall include, but not be limited to, hours of work, nuisance from dust and noise, traffic management and control, sediment and pollution control at all stages of construction, maintenance of haul roads, vegetation removal and disposal of waste and spoil.
- (v) An appropriately qualified and registered Engineer shall supervise all stages of the works to be constructed on the site and shall provide certification that all works have been constructed in accordance with approved plans and specifications. Documentation of inspections and actions arising therefrom shall be provided.
- (w) Documentation shall also provide for an extended defects liability period of five (5) years providing for all maintenance and repair to revetment walls, footings and footing foundations and dredging of the constructed waterway
4. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.
5. Prior to the issue of a Statement of Compliance, the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations 1989.

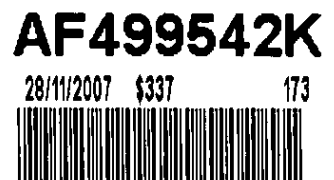
Hours of Work

6. Construction works on the subject land shall be limited to the following hours:

Monday to Friday	7.30am to 6.00pm	All works
Saturday	7.30am to 12.30pm	Maintenance works only
	(i.e. no movement of heavy machinery)	

No works at any other times.

[Handwritten signature]



Dust Control

7. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the Responsible Authority.

Disposal of Spoil

8. Spoil must be removed from the site via an approved cartage route to the satisfaction of the Responsible Authority and must be placed in accordance with the requirements of the 1984 agreement on the "Placement of Fill and Landscaping on Crown Land" between the Department of Natural Resources and Environment and East Gippsland Properties Proprietary Limited or in accordance with the soil and water management plan on freehold areas of the project.

Vegetation Removal

9. The clearing of existing vegetation on the subject site must be limited to the minimum extent required to allow the development to proceed, and to ensure that there is no risk of personal injury or damage to property and future building development to the satisfaction of the Responsible Authority.

Water and Sewerage Supply

10. The following requirements must be met to the satisfaction of East Gippsland Water (the Authority):
 - The applicant shall enter into an agreement under the Water Act for the provision of water supply works.
 - The applicant shall meet the cost of the necessary water mains extension.
 - The applicant shall pay a headworks and distribution charge at a level to be determined by the Authority at the time of payment. As a guide, the level applicable on 23 August, 2001 is \$29,000 for the extra 29 lots created by the subdivision
 - The applicant shall enter into an agreement under the Water Act for the provision of sewerage works.
 - The applicant shall meet the cost of the necessary sewer main extension.
 - The applicant shall pay an outfall and disposal charge at a level determined by the Authority at the time of payment. As a guide the level applicable on 23 August, 2001 is \$24,650 for the extra 29 lots created by the subdivision
 - The applicant shall provide easements in favour of East Gippsland Water as necessary.
 - The applicant shall connect development to Authority's water and sewerage services to the satisfaction of the Authority.

Telecommunications

11. The applicant must enter into an agreement with Telstra or other licensed telecommunications carrier for the satisfactory provision of telephone cable reticulation one (1) metre into each allotment created.
12. The applicant must set aside on the plan of subdivision, reserve/s satisfactory to Telstra, for Telecommunications substation/s if required.

Electricity Supply

13. The applicant shall enter into an agreement with TXU for supply of electricity to each lot on the endorsed plan.
14. The applicant shall enter into an agreement with TXU for the rearrangement of the existing electricity supply system.



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15. The applicant shall enter into an agreement with TXU Electricity Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.
16. The applicant shall provide easements satisfactory to TXU for the purpose of power lines in favour of "electricity corporation" pursuant to Section 44 and schedule 2 of the Electricity Industry Act, 1993 where easements have not been otherwise provided, for all existing TXU electric power lines and or any new power lines required to service the lots on the endorsed plans an/or abutting land.
17. The applicant shall obtain for the use of TXU any other easement required to service the lots.
18. The applicant shall adjust the position of any existing TXU easement to accord with the position of the electricity line(s) as determined by survey.
19. Set aside on the plan of subdivision for the use of TXU, reserves satisfactory to TXU where any electric substation (other than a pole mounted type) is required to service the subdivision.
20. Provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

Certification of Plan of Subdivision

21. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.

Revetment Wall, Footings and Footing Foundations

22. All maintenance and repair works associated with the revetment wall structure including the footings and footing foundations are the responsibility of each lot owner. The revetment wall structure, footings and footing foundations must be inspected every five (5) years, or after any flood event, by an independent and appropriately qualified professional to the satisfaction of the Responsible Authority, to check structural stability and integrity of the wall. All necessary works and actions recommended by the inspection assessment must be carried out at the expense of the lot owners at no cost to Council to the satisfaction of Council. A copy of the inspection assessment and recommendations must be lodged with Council within 1 month of the inspection and assessment having been carried out.

Building Envelopes

23. Building envelope plans shall be amended to include notations restricting overall building height and height of walls on boundaries in accordance with the provisions of ResCode. All buildings must be constructed wholly within the approved building envelopes. ✓

Lot Drainage

24. To ensure that the risk of sediment and nutrient movement off the subject land is minimised, stormwater discharge must be disposed of to the satisfaction of the Responsible Authority.



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Jetties, Landings and Decks

25. The location, design and structure of any proposed jetty, landing or deck which is proposed must be designed as part of the overall dwelling development on the lot and must be to the satisfaction of the Responsible Authority. Such structures must comply with the East Gippsland Shire Jetty Construction Policy.
26. Maintenance and repair of these structures is the responsibility of the lot owner. Any maintenance and repair works deemed necessary by the Responsible Authority must be carried out by the lot owner at no cost to Council.
27. Any lighting installed on jetties, landings and decks must be designed, baffled and located to the satisfaction of the Responsible Authority to prevent any adverse impact on adjoining land or the waterway.

Pollution of Canals

28. Lot owners must ensure that no operations, actions or practices are undertaken from land and water forming part of the approved subdivision which will result in contamination or pollution which is deleterious to the water quality of the canals system.

Section 173 Agreement – Subdivision Development

29. The applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority to provide for the following:
 - That the construction works associated with the subdivision to prepare the site for building construction, including all civil works, will be carried out in accordance with plans and specifications prepared in accordance with the requirements of this permit.
 - That the document "Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours Stage 8" date approved (or as amended) "the Document" will be registered on each created title by way of covenant prior to the sale of any lot.
 - That any amendment to "the Document" will be to the satisfaction of the Responsible Authority.
 - That a copy of this permit will be attached to and will form part of the contract of sale for every lot.

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avg!
Nov 2001.

AT./WGM.

Section 173 Agreement – Ongoing Requirements

30. Prior to the granting of any approvals for building works the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the Responsible Authority to provide for the following:
 - Each lot will be developed and used for the purposes of a Single Dwelling, associated outbuildings, and jetties, landings and decks in accordance with the document "Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours stage 8" dated (or as amended).
 - That subject to the approval of a further planning permit by the Responsible Authority, Lots 18, 27 and 28 may be developed as multi dwelling sites in accordance with the relevant requirements of the East Gippsland Planning Scheme.
 - That any amendment to "the Document" will be to the satisfaction of the Responsible Authority.

- P/P
- Approved plans
- Dev't Guidelines.



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- That the Revetment Wall, Footings and Footing Foundations will be inspected and maintained in accordance with the requirements of this permit.

The agreement will bind the applicant as the owner and shall run with the land so that all successors in title are also bound by the agreement. This agreement will be prepared at the applicant's 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.

Time for Starting and Completion

31. This permit will expire if one of the following circumstances applies:

- The Subdivision Development is not started within two years of the date of this permit.
- The Subdivision Development is not completed with four years of the date of this permit.
- The development of each lot created by this permit is not commenced within 15 years of the date of this permit.
- The development of each lot created by this permit is not completed with 17 years of the date of this permit.

The Responsible Authority may extend the periods referred to if a request is made in writing before the permit expires or within three months afterwards.

Notes:

TXU Ltd

- Arrangements for the supply will be subject to obtaining the agreement of other Authorities and any land owners affected by routes of the electric power lines required to supply the lots and for any tree clearing.
- Prospective purchasers of lots on this plan should contact the Bairnsdale Office of TXU to determine the availability of a supply of electricity. Financial contributions may be required.

Others:

Building Note

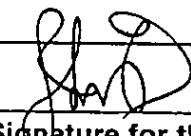
- All buildings erected on this site must comply with the requirements of the Victorian Building Act and Regulations, the Buildings Code of Australia and the relevant Council Local Laws

AMENDED 30/10/2001: Amended to alter time of operation in Condition 6

Date Amended: 30/10/2001

Date Issued: 30/10/2001

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Signature for the
Responsible Authority

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IMPORTANT INFORMATION ABOUT THIS NOTICE

WHAT HAS BEEN DECIDED?

- ♦ The responsible authority has issued a permit.

WHEN DOES A PERMIT BEGIN?

A permit operates:

- ♦ From the date specified in the permit, or
- ♦ If no date is specified from:
 1. The date of the decision of the Victorian Civil and Administrative Tribunal, if the permit was issued at the direction of the Tribunal, or
 2. The date on which it was issued, in any other case.

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WHEN DOES A PERMIT EXPIRE?

1. A permit for the development of land expires if:
 - ♦ The development of any stage of it does not start within the time specified in the permit, or the development requires the certification of a plan of subdivision or consolidation under the Subdivision Act 1988 and the plan is not certified within two years of the issue of the permit, unless the permit contains a different provision, or
 - ♦ If the development or any stage is not completed within the time specified in the permit, or if no time is specified, within two years after the issue of the permit, or in the case of a subdivision or consolidation within 5 years of the certification of the plan of subdivision or consolidation under the Subdivision Act 1988.
2. A permit for the use of land expires if:
 - ♦ The use does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit, or
 - ♦ The use is discontinued for a period of two years.
3. A permit for the development and use of the land expires if:
 - ♦ The development or any stage of it does not start within the time specified in the permit, or
 - ♦ The development or any stage of it does not start within the time specified in the permit, or if no time is specified, within two years after the issue of the permit.
 - ♦ The use does not start within the time specified in the permit, or if no time is specified, within two years after the completion of the development, or
 - ♦ The use is discontinued for a period of two years.
4. If a permit for the use of land or the development and use of land or relating to any of the circumstances mentioned in Section 6A(2) of the Planning and Environment Act 1987, or to any combination of use, development or any of those circumstances requires the certification of a plan under the Subdivision Act 1988, unless the permit contains a different provision -
 - ♦ The use or development of any stage is to be taken to have started when the plan is certified; and
 - ♦ The permit expires if the plan is not certified within two years of the issue of the permit.
5. The expiry of a permit does not affect the validity of anything done under that permit before the expiry date.

WHAT ABOUT APPEALS?

- ♦ The person who applied for the permit may appeal against any condition in the permit unless it was granted at the direction of the Victorian Civil and Administrative Tribunal where, in such case, no right of appeal exists.
- ♦ An appeal must be lodged within 60 days after the permit was issued, unless a Notice of Decision to Grant a Permit has been issued previously, in which case the appeal must be lodged within 60 days after the giving of that notice.
- ♦ An appeal is lodged with the Victorian Civil and Administrative Tribunal.
- ♦ An appeal must be made on a Notice of Appeal form, which can be obtained from the Victorian Civil and Administrative Tribunal, and be accompanied by the prescribed fee. An appeal must state the grounds on which it is based.
- ♦ An appeal must also be served on the responsible authority.
- ♦ Details about appeals and the fees payable can be obtained from the Victorian Civil and Administrative Tribunal

"RIVIERA HARBOURS"

GUIDELINES FOR CONSTRUCTION, SITING OF, EXTERNAL ALTERATIONS AND ADDITIONS TO BUILDINGS AND STRUCTURES ON RIVIERA HARBOURS

NOVEMBER 2001

STAGE 8C 'RIVIERA HARBOURS'

AF499542K

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Project Aim and Objectives

The subject land forms part of a prestigious residential and commercial real estate development - Riviera Harbours.

The aim of the development is to establish a residential precinct that provides excellence in waterfront living for Paynesville.

The vision is to provide for a residential living environment synonymous with high quality and well designed built form.

The objectives guiding the development of the built form and residential environment include the following;

- Enjoyment and optimization of views and waterfront experiences for all properties.
- The integration of the 'water element' into the living experience.
- The encouragement of the integration of indoor and outdoor living.
- Positive use of solar and passive energy sources.
- Well designed and site responsive built form consistent with the amenity of the area.
- Incorporation of nautical and maritime visual and aesthetic qualities in the development.
- To provide for a diverse range of living experiences to accommodate a variety of household types and forms.
- Use of a variation of mediums, materials and colours to reinforce the waterfront living experience.
- The inclusion of extensive landscaping and pavement treatments to enhance the built form.
- To encourage the use of native species and designed garden environments.
- To encourage the use of multi-leveled transitional landings and decks to enhance the 'living adjoining water' experience.
- To achieve high amenity and aesthetic values associated with the project to the benefit of Paynesville.

For the purchaser's interest it is desirable that certain controls be implemented in relation to the nature and type of construction, the preservation of the environment, the aesthetic appearance and the general amenity of the development. Design of buildings, landscaping, fencing, paving,

and all the elements of a high quality living environment, should be guided to establish visual continuity and compatibility throughout the development.

These guidelines are not intended to be restrictive but to protect the interest of all owners of property in the development, and to provide certainty that a quality living environment may be enjoyed by all future residents.

1.0 – INTRODUCTION

“*Riviera Harbours*” is a waterfront canal development owned by Hoddle Securities Limited and managed by Riviera Properties Limited (RPL) who will appoint an Architectural Review Panel (ARP) to administer these guidelines and covenants applicable to the land. This panel shall consist of up to three persons including a registered architect nominated by RPL.

Canals when created are vested in the East Gippsland Shire as reserve for recreation, way and drainage and the Council will administer controls and maintenance in relation to the canals. The Council will have the option to strike a special rate or levy charged on abutting properties to assist with maintenance costs and insurance liability should this be considered necessary.

2.0 – DESIGN CONFORMITY

Written Application for approval to the design, external finish and siting of and external alterations and additions to all buildings to be erected, constructed, externally altered or added to at “*Riviera Harbours*” must be made by the allotment owner to the Architectural Review Panel nominated by RPL prior to work being commenced or undertaken.

These guidelines are intended to provide the criteria for assessment of the application.

Criteria of Assessment shall be inclusive of the following elements:

- Dwelling Plans and Elevation details which shall comprise building structures nominating form and height and include foundation details.
- Where any buildings exceed 5.0 metres above the natural ground surface of any allotment a solar shading plan shall accompany the application.
- Landscaping plans showing species types and locations, retaining walls & garden structures, paved areas, driveways and fences including material types and colours.
- Site Plan indicating compliance with nominated envelopes.
- Assessment addressing the Soil & Water Management Plan principles.
- A statement nominating building materials and colours. This statement should indicate the feature of the design which incorporate the ‘Maritime’ theme.
- Elevations of presentation to constructed waterways.
- Plans illustrating incorporation of principles for creation of ‘private living’ environments.
- A statement addressing the elements and aspects of the design that embrace principles of maximization of energy efficiency.
- Details of proposed landings and jetties. Plans must show conformity with the East Gippsland Shire Jetty Policy Document.

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2.1 – APPROVAL PROCEDURE

The initial step required is for each owner/architect to provide to the ARP plans showing contours of the site and proposed siting of the building or structures together with a schematic presentation of the structure, including floor plan, elevations, materials and colors proposed.

Two copies of the plans must be lodged one of which will be retained by the ARP.

Once general agreement is reached and prior to lodgment of an application for a building permit, the documents required for such application shall be lodged for a final conformity assessment to the ARP.

Representation to the ARP in support or explanation of the proposed construction may be made by the applicant, personally or through representatives.

Costs of the ARP are payable by RPL.

The documents, together with a written assessment of conformity and approval, conditional approval or refusal of the proposal, shall be forwarded or given to the applicant within 14 (fourteen) days of lodgment.

Where buildings exceed 5.0 metres above the natural ground surface of any allotment a solar shading plan should accompany the application. In addition a landscape plan should be lodged at this time.

3.0 – BUILDING GUIDELINES

3.1 – Nominated Building Envelope

Nominated building envelopes form part of the guidelines.

The envelopes are both horizontal and vertical in nature and form part of Planning Permit (01/00348/DS). Any variation to the approved building envelope plans are subject to further written approval from RPL and East Gippsland Shire Council. Consent to lodge an application with Council for variation must first be considered by the ARP.

Designs which aim; to maximize views; to create useable outdoor living; present a varied form when viewed from or across the canals; and where buildings are sited within the "envelope" shown in the diagrams will be preferred.

All buildings must be constructed wholly within the approved building envelopes (including shade sails and the like). Unroofed decking, landings and jetties may be constructed outside the nominated building envelope subject to meeting all other relevant requirements of the original planning permit.

A vertical building envelope element is included on the waterfront allotments that encourages buildings to setback with the slope of the batter.

3.2 – Setbacks

The minimum setback from the canal and street frontage is determined by the Responsible Authority. The building envelopes are specified to meet these requirements. A continuous row of uniformly setback buildings is considered undesirable.

3.3 – Buildings Permitted and Multi Dwelling Development

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Only one single or multi storey detached dwelling is permitted on each lot.

Exceptions apply to Lots (18, 27 & 28) upon which multi dwelling development may be permitted subject to Responsible Authority and ARP approval.

3.4 – Building Form and Height

Minimum floor levels are nominated at 2.5 AHD.

Persons wishing to erect multi storey buildings must demonstrate at design stage that upper storey windows or balconies will not unduly prejudice neighbours' rights to privacy. The effects of overshadowing of adjoining property must be taken into account and plans showing this effect shall accompany the application. **All building siting and design must comply with Rescode as well as these guidelines.**

Any dwellings or multi dwelling development erected on the site shall have a total floor area of not less than one hundred and fifty square metres within the outer wall thereof calculated by excluding the area of any carport, garage, deck, terrace, pergola or verandah and must be built only of new materials and not have the external wall area (exclusive of window area) constructed of any material other than: bricks, concrete or masonry that are bagged, and painted or finished with an approved permanent render-like coating; exceptions may apply to clay brickwork where it can be demonstrated that partial use of an untreated finish will not prejudice the overall design; painted weatherboards; with coverage no greater than 180mm; timber cladding; or natural stone or approved look alike masonry products in natural colors; flat sheet harditex materials finished with "flo-coat" style approved permanent render-like coating.

The use of a single material type on all external walls will be discouraged.

All buildings exposed to public view from street or canal shall be designed, constructed and maintained in all ways similar to the principal building on the lot.

Garages/carports shall preferably be incorporated within the main roof structure. Where detached garages/carports are permitted they shall be of the same material as the dwelling and be part of an overall integrated design.

Sun protection of walls, openings and terraces shall preferably be achieved by roof overhangs, verandahs, pergolas or other structurally integral elements.

Roofs shall be of color-bonded metal; glass-or polygal, zincalume or similar products reflecting the colors of the maritime environment.

Look alike tile products are not permitted. The roof is an integral part of the design and excessive roof mass without variation in the plane of roof should be avoided.

RPL acknowledges that new products designed as substitutes for the above materials will be developed and marketed from time to time and, provided these materials are not inconsistent with the aim of these guidelines, they will be considered.

3.5 – External Finishes & Colors

The objective is to provide a level of finish and colours which are compatible with the 'maritime' theme and environment of "Riviera Harbours".

The following list of suitable finishes and colours are considered desirable but not definitive.

3.6.1 Walls

3.6.1.1

Masonry, Brick and Concrete walls – must be bagged and painted, or finished with an approved permanent render-like coating. Colours must emphasize the maritime environment and the use of accent colours will be considered.

3.6.1.2

Timber finishes must be painted or treated in similar colours to those above.

3.6.1.3

Glass – clear, green grey or smoked (non-reflective) Increased external reflectivity of glass should be avoided.

3.6.1.4

Stone – natural or approved look alike masonry products in natural colours.

3.6.1.5

Clay brick – limited partial use of natural finish brick may be permitted where it can be demonstrated to the satisfaction of the ARP, that the use will not prejudice the overall design.

3.6.1.6

Harditex flat sheet finished with “flo-coat” style approved permanent render-like coating is able to be used.

3.6.2 Roof

Shall reflect the colours of the maritime environment.

3.6.3 Deck Jetties & Landings

In materials and finishes acceptable to the ARP.

3.7 – Clothes Drying Areas

Areas used for the purpose of drying clothes shall be screened from public view from street or canal.

3.8 – Storage Tanks

Shall be mounted at ground level and concealed from public view from street or canal.

3.9 – Vehicle Driveways and Paved Areas

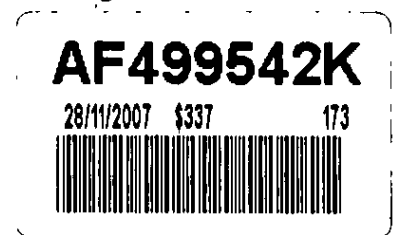
Vehicle driveways and other paved areas exposed to the public view preferably shall be constructed of clay brick, masonry pavers, stone sheeted bitumen, hot mix, patterned and coloured concrete or exposed-aggregate concrete.

3.11 Energy Efficiency Principles

The design should incorporate energy efficiency principles into the built form and site layout to achieve reduced energy costs and maximization of residential amenity.

The orientation, layout and landscaping of allotments shall be designed to maximize use of natural ventilation, daylight and solar energy.

Design should be site responsive and take account of prevailing winds and climatic conditions.



The provision of suitable vegetation for shading and allowing winter sunlight on to windows will be encouraged

3.12 Soil & Water Management Principles

Any proposed development must accord with the principles contained in the attachment "*Soil & Water Management Plan - Riviera Harbours Allotment Development*".

Any proposed development must be consistent with the protection of erosion, landslip or other land degradation processes. Development shall aim to minimize land disturbance and alteration of the natural ground surface.

In addition to the Management Plan provision of landscaping and terracing works should be included.

3.13 Presentation to Constructed Waterways

Design of built form and site layout of external decks, landings and jetties shall have due regard for the retention of the amenity of the waterway (Public Open Space). Design should aim to protect and enhance the visual amenity of the public areas within the constructed waterways.

Designs which incorporate multi-leveled landings and decks will be strongly encouraged to result in a gradual progression from water level to floor level.

4.0 – STRUCTURAL ALTERATIONS OR ADDITIONS AND CHANGES TO EXTERNAL SURFACES.

The guidelines shall apply to all external structural alterations and additions and changes to external surfaces of buildings and structures on the development including the same application and approval procedures as apply to initial construction.

4.1 – Site Works

The ground levels over any lot shall not be substantially changed from those existing on the day of settlement without the permission of the Responsible Authority and the ARP. Any alterations proposed shall be submitted simultaneously with plans for any buildings.

4.2 – Landscaping

4.2.1 Allotment Maintenance

Any vacant allotment must be maintained to ensure a maximum grass height of 200mm and in general keeping with the overall maintenance of the Estate.

The buyer hereby covenants with the developer that they will accept responsibility for costs of this maintenance if it is required to be carried out by RPL.

The waterways adjacent to the land should be maintained to remove floating debris – dead and floating weed or other unsightly material.

4.2.2 Landscape Plan & Bond

To enhance the amenity of "Riviera Harbours" and to improve the aesthetic environment, owners of lots shall be required to landscape their properties within 6 months of entering into occupation and obtaining a certificate of occupancy. The plans for such landscaping shall be submitted to

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RPL or its nominee for a conformity assessment at the same time as plans are presented for the buildings. Lot owners will lodge a Landscape Bond in the form of a Bank Guarantee or cash bond for the sum of \$2,000 with RPL or its nominee to ensure satisfactory performance. The guarantee will be released when the agreed landscaping has been completed.

4.2.3 Trees

The use of some native species of trees and shrubs is favored; however, other varieties will be permitted. It is desired that a number of indigenous trees shall be planted on each site particularly on the building setbacks from street and canals. Landscape plans need incorporate schematic layouts only with main species listed and larger trees shown on the plan. To achieve an horizon of trees rather than roofs it is desirable that a number of canopy type trees are planted on each lot but not within 3m of the revetment wall.

Trees which exist on the site either naturally or as part of a landscaping plan of the developers, cannot be removed without the permission of the Responsible Authority.

4.3 – Batter Slopes

4.3.1 Maintenance and landscaping of all ground slopes is the responsibility of the lot owners.

4.3.2 Treatment of the ground slopes down to the canal revetment wall incorporating terracing and or retaining walls, including proposed landscaping shall be approved by the ARP.

5.0 – SWIMMING POOLS

Where a retaining structure is required to support a swimming pool or to form a terrace, located between a canal and a dwelling, such structure shall preferably include sloping landscaped or stone pitched banks as a means of level transition.

Where a swimming pool is constructed, safety fences shall be at least 1.2m from adjoining neighbours boundaries, or otherwise positioned to avoid any effect on adjoining neighbours property.

6.0 – FENCES

In principle it is considered that a parklike appearance is appropriate and fences be kept to a minimum subject to the requirements of screening service areas, pools, patios and other outdoor living areas etc. The use of screen planting to define boundaries is most desirable with the emphasis on fence panels for courtyard & outdoor living area screening rather than on defining the full length of property boundaries.

6.1 – Street Boundary

6.1.1 Canal Lots – All service areas shall be screened from both canal and street view. Fences may not exceed 1.8 metres in height above ground level. Front fences cannot be built within the minimum building setback without the permission of the ARP.

6.1.2 Where fences are constructed on the setback the area between the fence-line and the street boundary shall be landscaped with appropriate vegetation.

6.1.3 Non-canal Lots - It is preferred that no front fences are built within 4.5 metres of the front street boundary and in any case no fences shall be built without permission of the ARP.

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6.2 – Side Boundaries

Side fences shall not exceed 1.8 metres in height above ground level. Within the front building setback from the street boundary, any fences are subject to approval of the ARP.

6.4 – Rear Boundaries

Canal Lots – Fencing along the canal boundary and/or the revetment wall will not be permitted, and no side boundary fence within 5 metres of the canal boundary will be permitted with the except specific approval of the ARP for a special purpose.

Non-Canal Lots – Fences shall not exceed 1.8 metres in height above ground level.

6.5 – Materials for Fencing and Screening

Preferred materials will be: Timber Pickets in OBHW, KDHW or treated pine, approximately 75mm x 20mm with 20 mm or similar spacing with wooden or concrete posts; brush fence with wooden; masonry; or bagged bricks of colors compatible with the external walls of the dwelling; or a combination of such materials. In the case of OBHW and KDHW picket fences being used on street boundaries, these shall be painted in colors compatible with the external finishes of the main building.

Conventional paling fencing will not be permitted on street boundaries.

Where allotments adjoin properties, other than roads, outside the control of the "Riviera Harbours Guidelines" fences on those boundaries will not be subject to control.

7.0 – REFUSE STORAGE

Refuse storage areas shall be totally screened from view.

8.0 – CANAL WATERWAYS

8.1 – General Rules and Regulations

All Gippsland Ports Authority rules and regulations applicable to the Gippsland Lakes shall apply to all vessels within the canal waterway.

8.2 – Revetment Walls, Footings and Footing Foundations

8.2.1 The canal walling is constructed inside the lot boundary, and all necessary repair and maintenance shall be the responsibility of the lot owners. Design of the revetment walling does not allow for any structural loading. No finish shall be applied to the wall.

8.2.2 No shackles, cables and fixing eyes shall be attached to the revetment wall without written approval of the Responsible Authority.

8.3 – Beaching

8.3.1 Cleaning and general maintenance of the canal beaching on the frontage of each allotment will be the responsibility of the lot owners.

8.3.2 Sand replenishment, if required, shall be the responsibility of the lot owners, but shall be carried out to the Responsible Authority's direction.

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8.3.3 No excavation of the beach or canal bank profile (submerged) shall be allowed without written permission of the Responsible Authority.

8.4 – Pollution of Canals

Lot owners must ensure that no operations, actions or practices are undertaken from the land forming part of this development which will result in contamination or pollution which is deleterious to the water quality of the canals system.

8.5 – Boat Ramps and Similar Structures

8.5.1 Prior to removal of any part of the revetment wall for the purpose of constructing a boat ramp or similar structure and prior to any construction of a boat ramp or similar structure, written approval must be obtained from the Responsible Authority and the ARP.

8.5.2 The revetment wall may only be removed in designated panels for the purpose of construction of a boat ramp or similar structure.

8.5.3 Where an approved structure is constructed on a lot, repair and maintenance shall be the responsibility of the lot owner. It shall be the responsibility of the owner to refrain from any operation, action or practice which would result in the emanation from the structure of any material deleterious to the water quality of the canals.

8.5.4 Any lighting installed on the jetties, landings and decks must be designed, baffled and located to the satisfaction of the ARP, RPL and the Responsible Authority to prevent any adverse impact on adjoining land or the waterway.

9.0 – JETTIES AND LANDINGS

9.1 – General

All jetty, landings or mooring structures must be approved by the ARP. Allotments owners must make application to the Responsible Authority for a jetty outside their title boundary, subject to the approval of the ARP. Annual licenses for jetties will be issued by the Responsible Authority.

The location, form and structure of any proposed jetty, or landing must be designed as part of the overall dwelling development on the lots and must be to the satisfaction of the ARP & Responsible Authority. Such structures must comply with the East Gippsland Shire Jetty Construction Policy.

9.2 – Number of Boats Moored

A maximum number of two vessels per lot owner may be permanently moored at any one time within the canal waters; except in the case of multi-unit developments when specific approval to construct more substantial or numerically greater moorings will need to be obtained from the Responsible Authority and ARP. Small boats less than 4.0 metres long not used for commercial purposes are excluded from this provision.

9.3 – Commercial Vessels

No approval shall be issued by the ARP or RPL for commercial boating operations within the residential areas.

9.4 – Boatsheds

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A boatshed can be constructed on the canal frontage or waterway, provided it is built within an approved building envelope and conforms, to other requirements within these guidelines.

10.0 – LIABILITY

Riviera Properties Limited and its successors and associated companies, Hoddle Securities Limited & its successors, and the Responsible Authority, shall be free from any liabilities and claims for damages and/or suits of any kind as a result of or arising out of the enforcement or implementation of all or any of these guidelines or any matters associated with the same or any application for approval hereunder or the decision made. The ARP is constituted as an expert panel and no appeal will be accepted.

11.0 - BUILDING ENVELOPES AND BUILDING SETBACKS FROM THE CANAL

The East Gippsland Shire has issued a Planning Permit for the construction of buildings within the whole of the building envelopes, subject to approval of the ARP. (Copy of building envelopes attached).

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The following restrictive covenant shall be inserted into the Transfer of Land:

The Transferee with the intent that the benefit of this covenant shall until the 31st December 2020 be attached to and run at law and in equity with the whole of the land comprised in Plan of Subdivision Number 501030Y (other than the land hereby transferred and any balance land due for further development) and that the burden thereof shall be annexed to and run at law and in equity with the said lot hereby transferred and each and every part thereof and that the same shall be noted and appear on every Certificate of Title for the said lot and every part thereof as an encumbrance affecting the same DOTH HEREBY COVENANT with the Transferor and other the registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the Transferee will not:

- (a) Permit the land hereby transferred or any part thereof to be used for the purpose of commercial breeding or boarding of, or training kennels for, cats or dogs or for the purpose of keeping poultry or pigeons thereon or for parking garaging or servicing of any motor vehicle in excess of five tonnes gross vehicle mass (GVM) except for the purpose of loading or unloading of goods unless the vehicle is a construction vehicle engaged on construction works thereon or unless the vehicle is a caravan or similar vehicle and does not exceed 2.5 metres in height and is screened from view from the roadways and canals.
- (b) Permit the land hereby transferred or any part thereof to be used for parking garaging or servicing of any boat (on a trailer or hardstand), caravan, campervan, or similar vehicle unless it is screened from view from the roadways and canals.
- (c) Erect, place, permit or cause or suffer to be erected placed added to or externally altered on the land hereby transferred any building or structure (including fences) other than in accordance with plans and specifications previously submitted to and approved in writing by the Transferor or its nominee which plans and specifications fall within the Guidelines for Construction, Riviera Harbours Stage 8C (including siting within an approved building envelope) additions to and external alterations of buildings and structures prescribed for the land hereby transferred by the Transferor or its nominee and signed for or on behalf of the Transferor and the Transferee for the purpose of identification at the time of executing the Contract of Sale of the land hereby transferred and a copy of which is filed for inspection and reference with the Transferor's solicitors and the Transferor's agents or which building or structure erection alteration or addition is otherwise previously approved in writing by the Transferor or its nominee.
- (d) Permit or authorize any part of the land hereby transferred to be used for the purpose of the drying of clothes, storage of garbage, or housing of gas, fuel or water tanks, or similar uses unless such areas are screened from public view from adjoining roadways and canals.
- (d) With the exception of lots (18, 27 & 28) on the said plan no allotment shall be further subdivided so as to create an additional Lot or Lots.

Annexed to the Statement prescribed by Section 32 of the Sale of Land Act are the guidelines, aims and objectives to be adopted by the Transferor or its nominee.



PLAN OF SUBDIVISION		STAGE No. <div style="text-align: right;">11</div>	LTO USE ONLY EDITION	PLAN NUMBER PS 501030Y
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LOCATION OF LAND

PARISH: BAIRNSDALE

TOWNSHIP: —

SECTION: —

CROWN ALLOTMENT: 146 (PART) & 146^G

CROWN PORTION: —

LTO BASE RECORD:
TITLE REFERENCES: VOL 10562 FOL 626

LAST PLAN REFERENCE/S: PS 441059E LOT 3

POSTAL ADDRESS: FORT KING ROAD,
(At time of subdivision) PAYNESVILLE, 3880

AMG Co-ordinates
(of approx centre of land in plan) E 563 400 N 5804 400 ZONE 55

COUNCIL CERTIFICATION AND ENDORSEMENT

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 01/00138/SD

1. This plan is certified under Section 6 of the Subdivision Act 1988.

2. This plan is certified under Section 11(7) of the Subdivision Act 1988.
Date of original certification under Section 6: / /

3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.

OPEN SPACE

(i) A requirement for public open space under Section 18 of the Subdivision Act 1988 has/had not been made.

(ii) The requirement has been satisfied.

(iii) The requirement is to be satisfied in Stage

Council Delegate *[Signature]*
Council Seal
Date 22/02/2002

Re-certified under Section 11(7) of the Subdivision Act 1988.
Council Delegate
Council Seal
Date / /

VESTING OF ROADS AND/OR RESERVES	
IDENTIFIER	COUNCIL/BODY/PERSON
RI RESERVE No 1	EAST GIPPSLAND SHIRE COUNCIL EAST GIPPSLAND SHIRE COUNCIL


NOTATIONS

STAGING This is not a staged subdivision.
Planning permit No. 01/00348/DS

DEPTH LIMITATION 15 METRES BELOW THE SURFACE
APPLIES TO CROWN ALLOTMENT 146^G ONLY

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LOT A IS BY DEDUCTION FROM TITLE

SURVEY THIS PLAN IS/IS NOT BASED ON SURVEY
THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s)
IN PROCLAIMED SURVEY AREA No.

EASEMENT INFORMATION					LTO USE ONLY
LEGEND A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)					STATEMENT OF COMPLIANCE/ EXEMPTION STATEMENT
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	RECEIVED <input type="checkbox"/> DATE / /
E - 1	DRAINAGE	2	PS 309055D	LAND IN PS 309055D	
E - 1	SEWERAGE	2	PS 441059E	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN PS 441059E	
E - 2	DRAINAGE & SEWERAGE	1	PS 441059E	EAST GIPPSLAND SHIRE COUNCIL, EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN PS 441059E	
E - 3	CARRIAGEWAY	SEE DIAG.	THIS PLAN	LAND IN THIS PLAN	
					LTO USE ONLY PLAN REGISTERED TIME DATE / /
					Assistant Registrar of Titles SHEET 1 OF 4 SHEETS

Crowthier & Sadler Pty Ltd

LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, 3875
TELEPHONE (03) 5152 5011

LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER

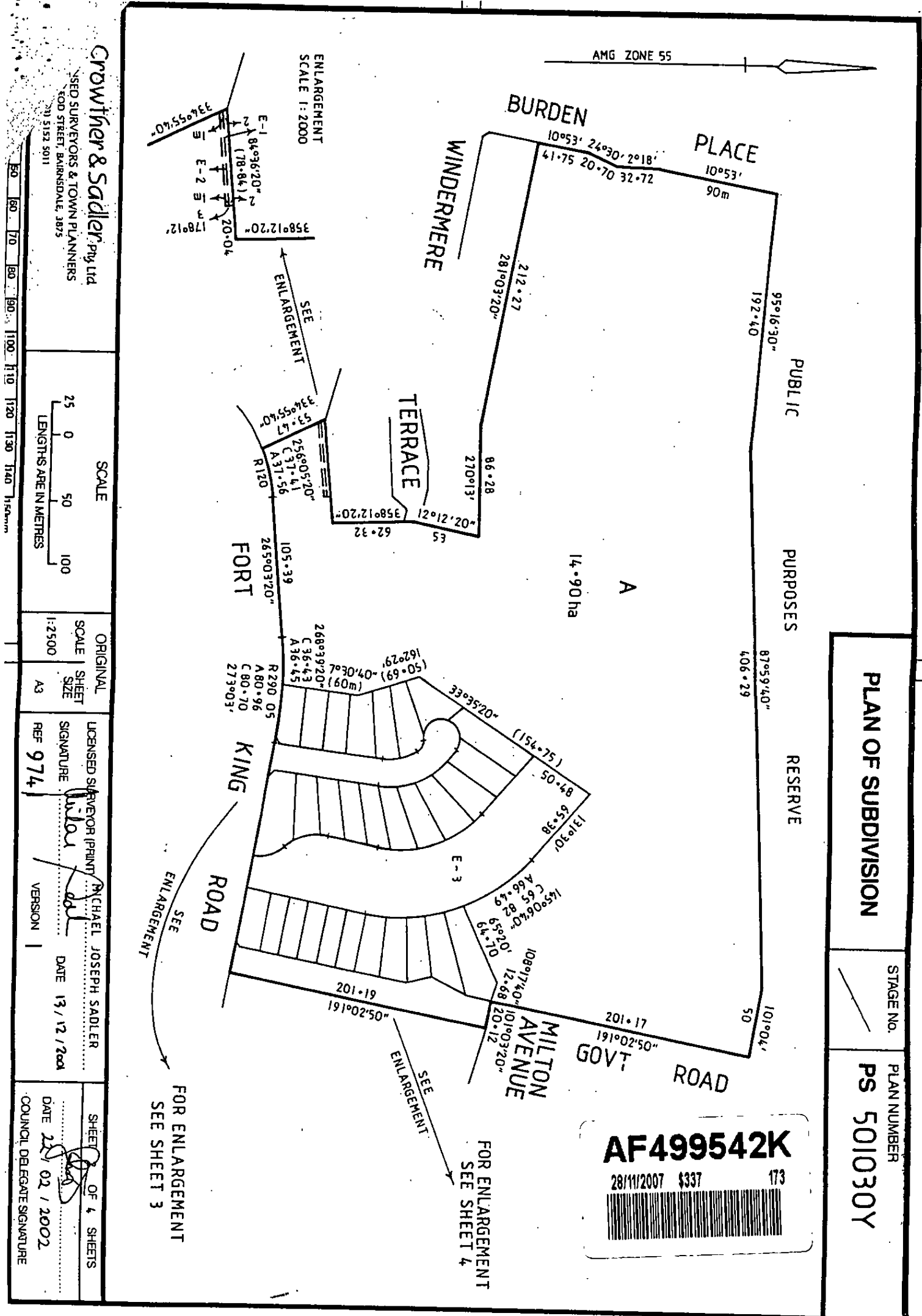
SIGNATURE *[Signature]* DATE 13/12/2001

REF 9741 VERSION 1

DATE 22/02/2002

COUNCIL DELEGATE SIGNATURE

ORIGINAL SHEET SIZE A3



PLAN OF SUBDIVISION

STAGE NO.

PLAN NUMBER

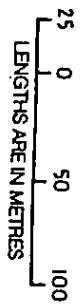
PS 501030Y

AF499542K



Crowther & Sadler Pty Ltd
 SEED SURVEYORS & TOWN PLANNERS
 300 STREET, BAIRNSDALE, 3875
 08 5132 5011

SCALE



ORIGINAL SCALE

1:2500

LICENSED SURVEYOR (PRINT)
 MICHAEL JOSEPH SADLER
 SIGNATURE
 DATE 13/12/2001

REF 974

VERSION 1

SHEET 3 OF 4 SHEETS

DATE 28/02/2002
 COUNCIL DELEGATE SIGNATURE

FOR ENLARGEMENT
 SEE SHEET 3

FOR ENLARGEMENT
 SEE SHEET 4

PLAN OF SUBDIVISION

STAGE No.

PLAN NUMBER

PS 501030Y

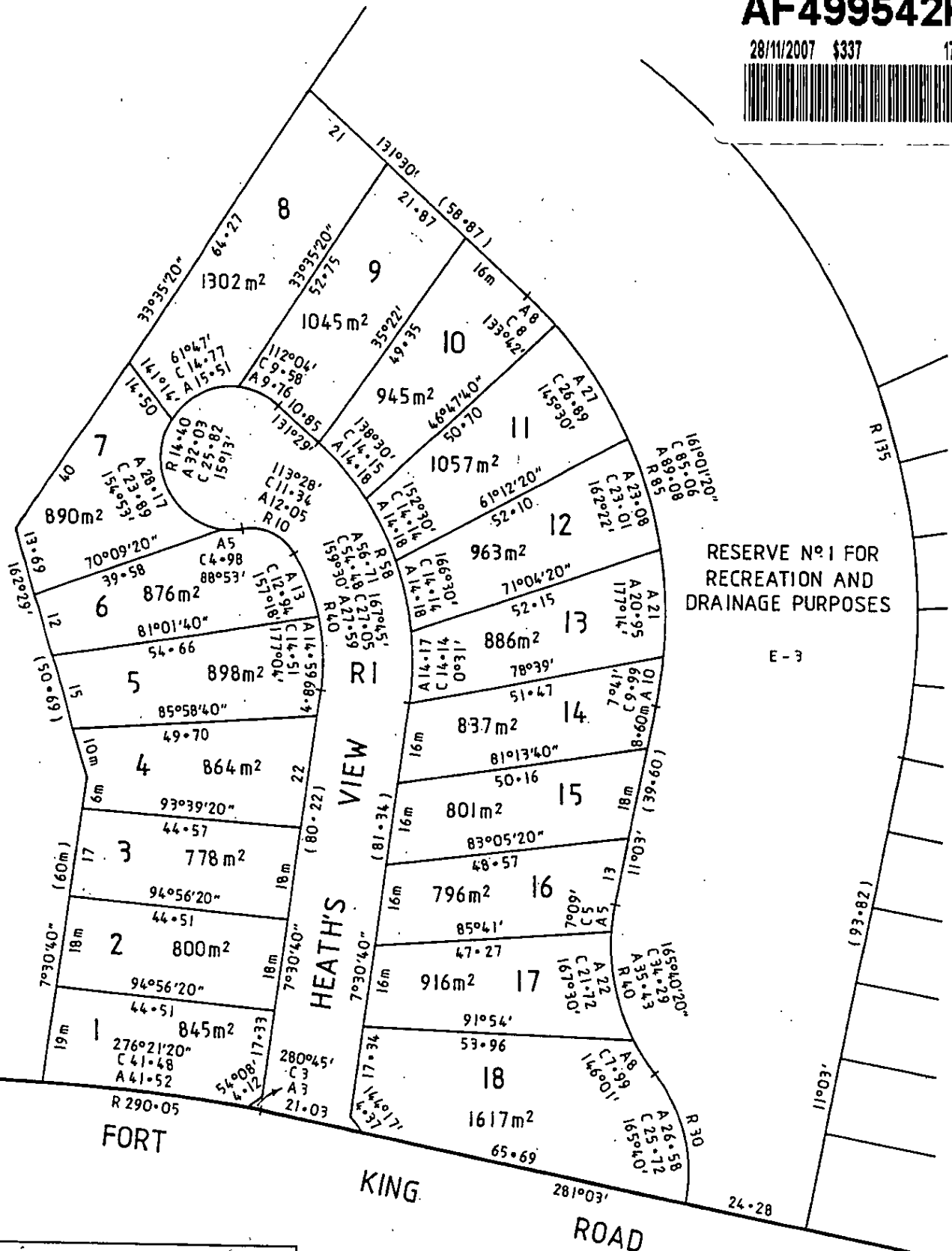
AF499542K

28/11/2007 \$337

173



AMG ZONE 55



Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE 3875
TELEPHONE (03) 5152 5011

0 20 40
LENGTHS ARE IN METRES

ORIGINAL
SCALE SHEET
1:800 SIZE
A3

LICENSED SURVEYOR (PRINT) MICHAEL JOSEPH SADLER
SIGNATURE *Michael Joseph Sadler* DATE 13/12/2001
REF 974 VERSION 1

SHEET 3 OF 4 SHEETS

DATE 22/02/2002
COUNCIL DELEGATE SIGNATURE

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

**RIVIERA PROPERTIES PROJECTS LIMITED (FORMERLY HODDLE SECURITIES
LIMITED) (ABN 86 061 677 218)**

The Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land

Windermere Terrace, PAYNESVILLE VIC 3880
Certificate of Title Volume 10562 Folio 626 – Lot 3 LP 441059E
Heaths View & North Quay Place, Paynesville
PLAN OF SUBDIVISION NO. 501030Y

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

and

RIVIERA PROPERTIES PROJECTS LIMITED (ABN 86 061 677 218) of Level 1, 63 The Esplanade, Paynesville in the said State ("the Owner")

INTRODUCTION

- A. The Council is the Responsible Authority for the Planning Scheme under the Act.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The Council has issued Planning Permit Number 01/00348/DS (Amended) ("the Planning Permit") allowing:
- the land to be subdivided into 29 Lots;
 - Development of Dwellings on the new lots; and
 - Development of Jetties and Landings in the waterways
- in accordance with the Endorsed Plan.
- A copy of the Planning Permit is attached to this Agreement and marked "A".
- D. It is a condition of the Planning Permit that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plan and the conditions of the Planning Permit.
- E. As at the date of this Agreement the Subject Land is encumbered by Mortgage No. AB 181450X in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.
- F. [On 10 October 2007, the Council and Riviera Properties Project Limited \("the Former Owner"\) entered into this Agreement in accordance with the Planning Permit. The Agreement was](#)

recorded on the certificate of title to the Subject Land in dealing number AF499542K on 28 November 2007.

- G. Under clause 3.3 of the Agreement, the Subject Land is required to be used and developed in accordance with the “Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours Stage 8” (“the Guidelines”).
- H. Under the Guidelines, the Former Owner is entitled to appoint the Architectural Review Panel (ARP). The consent of the ARP must be obtained before the Subject Land is developed.
- I. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARP under the Guidelines.
- J. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the reference to the Guidelines and to include certain obligations under the Guidelines in the Agreement.

G.K. The parties enter into this Agreement:

- a) to give effect to the requirements of the Planning Permit; ~~and~~
- b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
- c) to remove the reference to the Guidelines; and
- d) to include certain obligations under the Guidelines in the Agreement

IT IS AGREED:

1. DEFINITIONS

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

- 1.1 **“the Act”** means the Planning and Environment Act 1987.
- 1.2 **“this Agreement”** means this agreement and any agreement executed by the parties expressed to be supplemental to this agreement.
- 1.3 **“Beaching”** means sand and stone mounding abutting the revetment wall intended to protect the revetment wall and prevent water vehicles from running aground.
- 1.4 **“the Building Envelope”** means a building envelope shown on the Endorsed Plan.
- 1.5 **“Canal Lot”** means a Lot that adjoins a canal.

1.6 **“the Endorsed Plan”** means the plan, endorsed with the stamp of Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter “C”.

1.7 **“Lot”** means a lot on the Endorsed Plan.

1.21.8 **“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.

1.31.9 **“Planning Permit”** means the Planning Permit referred to in recital C. of this Agreement.

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

1.11 **“Soil and Water Management Plan”** means the “Soil and Water Management Plan – Riviera Harbours Allotment Development”, as amended from time to time. A copy of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

1.12 **“Subject Land”** means the land situated at 28 Windermere Terrace, Paynesville being the land referred to in Certificate of Title Volume 10562 Folio 626 and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

1.13 **“Tree”** means a tree capable of reaching a height of 5 metres or more.

1.51.14 **“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.

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 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.

- 2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.7 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 covenants and agrees that:

3.1 **Development in accordance with Development-Planning Permit**

The Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2 **Council's Costs to be Paid**

The Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

3.3 [Clause 3.3 deleted]

3.4 **Obligations from the Guidelines – General**

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.4.1 the Owner must not construct, or permit to be constructed, a building (excluding unroofed decking, landings and jetties) outside the Building Envelope on the Subject Land;

3.4.2 no more than one dwelling may be developed on a Lot;

3.4.3 any dwelling erected on the Subject Land must:

(a) have a minimum floor level of 2.5 metres Australian Height Datum;

(b) have a floor area of not less than 150 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah; and

(c) be built only of new materials;

- 3.4.4 all buildings visible from the street or canal must be designed, constructed and maintained to be similar to the main building on that lot;
- 3.4.5 any areas used for the purpose of drying, storage tanks or refuse storage must not be visible from the street or canal;
- 3.4.6 vehicle driveways and other paved areas visible from the street or canal must be constructed of clay brick, masonry pavers, stone sheeted bitumen, hot mix, patterned and coloured concrete or exposed aggregate concrete;
- 3.4.7 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;
- 3.4.8 no Trees may be planted within 3 metres of the revetment wall;
- 3.4.9 any service areas on a Canal Lot must not be visible from the street or canal;
- 3.4.10 the Owner must not erect, or permit to be erected any fence on a Canal Lot:
- (a) exceeding 1.8 metres in height;
 - (b) along the canal boundary or the revetment wall; or
 - (c) within 5 metres of the canal boundary; and
- 3.4.11 the Owner must not erect, or permit to be erected any fence on any boundary of a Lot adjoining a road reserve.

3.5 **Obligations from the Guidelines – Revetment wall**

the Owner covenants and agrees that:

- 3.5.1 the Owner must maintain and repair all works associated with:
- (a) the revetment wall structure adjoining the Owner's Lot, including the footings and footing foundations, the canal walling and associated grid cabling system;
 - (b) the canal Beaching adjoining the Owner's Lot; and
 - (c) boat ramps, jetties, landings and decks adjoining the Owner's Lot;
- at the full cost of the Owner to the satisfaction of Council;
- 3.5.2 the Owner must not alter, demolish or attach any shackles, cables or fixing eyes to any part of the revetment wall unless with Council's prior written consent;

3.5.3 the revetment wall structure, footings and footing foundations adjoining the Owner's Lot will be inspected every five years, and after any flood event, by an independent and appropriately qualified professional to the satisfaction of Council in order:

(a) to check the structural stability and integrity of the wall; and

(b) to recommend any necessary works and actions, which must be carried out. A copy of the inspection assessment and recommendations must be lodged with Council within one month of the inspection and assessment having been carried out;

at the full cost of the Owner to the satisfaction of Council;

3.5.4 the Owner must ensure that no operations, actions or practices are carried out on the Subject Land which result in contamination or pollution of the canals system; and

3.5.5 the Owner must not construct, or permit to be constructed, any jetty, landing or mooring structure unless with the prior written consent of Council.

4. FURTHER OBLIGATIONS OF THE OWNER

The Owner further covenants and agrees that:

4.1 Notice and Registration

The Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

4.2 Further actions

4.2.1 The Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

4.2.2 The Owner will consent to the Council making 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 enable the Council to do so including signing any further agreement, acknowledgement 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 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

6. OWNER'S WARRANTIES

Without limiting the operation or effect that 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 effected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect that this Agreement has, the Owner must ensure that successors in title shall be required to give effect to and do all acts and sign all documents which will require those successors in title to give effect to 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 hand delivery or prepaid post.

8.2 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 two 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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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.

10. ENDING OF AGREEMENT

This Agreement may be ended by agreement between Council and the Owner.

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
Email: feedback@egipps.vic.gov.au
Ref: 14/2020/AGR

11 December 2020

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AG568558C
Riviera Harbours, Paynesville

Section 173 agreement AF499542K (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Riviera Properties Projects Limited (**Riviera Properties**) commenced developing land in Paynesville for an integrated residential and commercial development known as Riviera Harbours.
2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, Riviera Properties entered into a section 173 agreement with Council.
3. Council and Riviera Properties entered into the Agreement, which was recorded on title in dealing number AG568558C on 17 June 2009. A copy of the Agreement is included at Attachment 2.
4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Riviera Harbours – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours' (**Guidelines**).
5. Under the Guidelines:
 - a. Riviera Properties is entitled to appoint an Architectural Review Committee (**ARC**); and
 - b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.
6. Riviera Properties was formally wound up and deregistered on 18 April 2017.

7. As Riviera Properties no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and
2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A

The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?

The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and
2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and
2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B

The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?

The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.

As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the Act, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

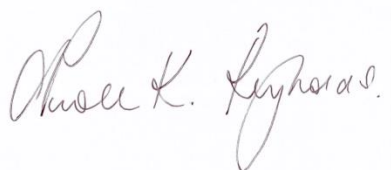
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AG568558C
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	11168/200	6/12 The Point, Paynesville
2.	11168/201	5/12 The Point, Paynesville
3.	11168/202	4/12 The Point, Paynesville
4.	11168/203	3/12 The Point, Paynesville
5.	11168/204	2/12 The Point, Paynesville
6.	11168/205	1/12 The Point, Paynesville

ATTACHMENT 1 – Prescribed Form (Form 18)

FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 11168 Folios 200-205 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend the section 173 agreement recorded on title in dealing number AG568558C on 17 June 2009

APPLICATION REFERENCE NUMBER:

14/2020/AGR

WHO INITIATED THE PROPOSAL?

The proposal was initiated by the responsible authority under section 178A(5) of the **Planning and Environment Act 1987**.

You may look at the proposal and any documents that support the proposal at the website of the responsible authority, www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

Any person who is given notice of the proposal, or who ought to have been given notice of the proposal under section 178C of the **Planning and Environment Act 1987**, may object to, or make any other submission in relation to, the proposal.

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2021**

If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

In most cases, the responsible authority will give notice of its decision to any person who made a submission.

If the responsible authority proposes to amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

ATTACHMENT 2 – Agreement AG568558C

Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	AG568558C
Number of Pages (excluding this cover sheet)	12
Document Assembled	05/02/2020 11:19

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Section 181

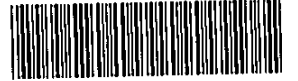


**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING
OF A RECORDING OF AN AGREEMENT**

Planning & Environment Act 1987

AG568558C

17/06/2009 \$99.90 173



Privacy Collection Statement

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Lodged by:

Name: WARREN GRAHAM & MURPHY
Phone: (03) 5152-2661
Address: 119 Main Street, Bairnsdale
Ref: PJC:sk 132508
Customer Code: 1716W

The Authority having made an agreement referred to in Section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: The land comprised in Lot A on Plan of Subdivision PS548098X being land currently in Certificate of Title volume 11019 Folio 496.

Authority: East Gippsland Shire Council, Corporate Centre, 273 Main Street, Bairnsdale, 3875

Section and Act under which agreement made: Section 173 of the Planning & Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:

Name of Officer:

AARON HOLLOWAY - MANAGER DEVELOPMENT
(full name)

Date:

26 MAY 2009

AG568558C

17/06/2009 \$99.90 173



EAST GIPPSLAND SHIRE COUNCIL

- and -

RIVIERA PROPERTIES PROJECTS
LIMITED

**AGREEMENT UNDER SECTION 173
OF THE PLANNING AND
ENVIRONMENT
ACT 1987**

Warren Graham & Murphy Pty Ltd
Lawyers,
119 Main Street,
BAIRNSDALE VIC 3875

REF: PJC:sk:1325/08 (Stage 12)
Lots 8-13 (inclusive)

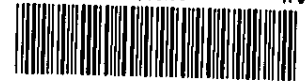
TEL: (03) 5152 2661

D.X: 82201, Bairnsdale

AG568558C

17/06/2009 \$99.90

173



EAST GIPPSLAND SHIRE COUNCIL

Council

- and -

RIVIERA PROPERTIES PROJECTS LIMITED (A.B.N. 86 061 677 218)

The Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land: 12 The Point PAYNESVILLE VIC 3880
Plan of Subdivision No. 620129N
Lots 8-13 (inclusive)
Riviera Harbours Stage 12

**Parent Certificate
of Title Volume** Volume 11019 Folio 496
Lot A PS 548098X

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PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the 09 day of JUNE. 2009

BETWEEN

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

- and -

RIVIERA PROPERTIES PROJECTS LIMITED (A.B.N. 86 061 677 218) of Level 1, 61 The Esplanade, Paynesville in the said State ("The Owner")

RECITALS

- A. The Owner is the registered proprietor of all that piece of land being the whole of the land described in Certificate of Title Volume 11019 Folio 496.
- B. On the 13th of December, 2005 Council issued Planning Permit No. 309/2005/P, which was amended by Planning Permit No. 309/2005/P/A issued on 16 November 2006 ("the **Planning Permit**") allowing the land to be subdivided into *"20 lots including building envelopes, development of six dwellings and outbuildings, jetties and landings, and removal of one tree in accordance with the Endorsed Plan"*. Condition 5 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.
- C. The Owner has prepared *Riviera Harbours Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours November, 2006 The Point* ("the **Guidelines**").

D. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.

E. As at the date of this Agreement, the land is encumbered by Mortgage No. AB 181450X in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the land.

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F. The parties enter into this Agreement:

- (i) To give effect to the requirements of the Planning Permit; and
- (ii) To achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the land.

NOW THIS AGREEMENT WITNESSETH:

1. The parties confirm the recitals to this Agreement.
2. This Agreement is made pursuant to Section 173 of the Act.
3. The Owner covenants and agrees that the land shall only be developed in accordance with the Planning Permit, the Endorsed Plans, or any subsequent amendment to the Planning Permit approved by Council.
4. The Owner covenants that:
 - (a) pursuant to condition 5 (b) of the Planning Permit, no jetty or landing or extension to a jetty or landing will be constructed other than in accordance with the Endorsed Plans.

- (b) the Owner will develop the land in accordance with the Endorsed Plans.
 - (c) the Owner must maintain and repair the Revetment Walls within that Owner's lot to the satisfaction of Council.
 - (d) the Owner must maintain and replenish Beaching adjacent to any Revetment Wall within that Owner's lot to the satisfaction of Council.
 - (e) the Owner of each respective lot is responsible for the maintenance and repair of any jetty associated with that lot to the satisfaction of Council.
5. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.
6. The parties acknowledge and agree that *the Guidelines* and the covenants and agreements entered into by the Owner in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, its successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof provided that if the land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is responsible for those covenants and obligations which relate to that owner's lot.
7. 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.

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

Beaching means sand and stone mounding abutting the Revetment Wall intended to protect the Revetment Wall and prevent water vehicles from running aground.

Building has the same meaning as in the Act and includes dwellings, swimming pools, carports, tennis courts and outbuildings.

Endorsed Plan means the plan (including the Guidelines) 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.

land means part of the land situated at 12 The Point, Paynesville being part of the land referred to in Certificate of Title Volume 11019 Folio 496 and more particularly being lots 8-13 (inclusive) on Plan of Subdivision No. 620129N and any reference to the land in this Agreement includes any lot created by the subdivision of the land or any part of it.

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 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 or an estate in fee simple of the 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.

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

Revetment Wall means the canal wall.

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8. In this Agreement unless the context admits otherwise:
- (a) The singular includes the plural and vice versa.
 - (b) A reference to a gender includes a reference to each other gender.
 - (c) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
 - (d) If a party consists of more than one person this Agreement binds them jointly and each of them severally.
 - (e) 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.
 - (f) 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.
 - (g) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

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9. The Owner further covenants and agrees that:

- (a) the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns
- (b) the Owner will do all things reasonably necessary to give effect to this Agreement;
- (c) the Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register in accordance with Section 181 of the Act on the Land and will do all things necessary to enable this to be done including signing any further agreement, acknowledgement 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.

10. 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, review, finalization, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.

11. 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 land which may be affected by this Agreement.

12. 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 land, successors in title shall be required to:

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- (a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
 - (b) execute a deed agreeing to be bound by the terms of this Agreement.
- 13. 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.
- 14. 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.
- 15. 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 land or relating to any use or development of the land.
- 16. Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

AG568558C

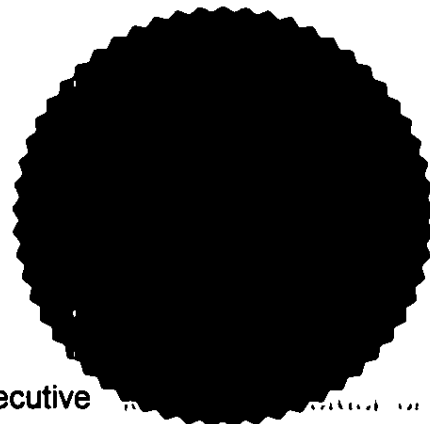
17/06/2009 \$99.90

173



EXECUTED 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 *9th* day of *June*)
in the presence of: *2009*)



[Signature]
.....
Jan Philp
.....

Chief Executive

Witness

Executed by **RIVIERA PROPERTIES**)
PROJECTS LIMITED by being signed by those)
persons who are authorised to sign for the company)

Director: *[Signature]*
.....

Full name: *TIMOTHY RICHARD WEDGE*
.....

Usual Address: *LEVEL 1, 61 THE ESPLANADE, PLYMOUTH, VIC.*
.....

Director: *[Signature]*
.....
COMPANY SECRETARY

Full name: *MARGARET GAE SUPPLITT*
.....

Usual Address: *159 BAY ROAD, EAGLE POINT.*
.....

ATTACHMENT 3 – Proposed amended Agreement

EAST GIPPSLAND SHIRE COUNCIL

Council

AND

RIVIERA PROPERTIES PROJECTS LIMITED (ABN 86 061 677 218)

The Owner

**Agreement under Section 173 of the Planning and
Environment Act 1987**

Subject Land 12 The Point, PAYNESVILLE VIC 3880
PLAN OF SUBDIVISION NO. 620129N
Lots 8-13 (inclusive)
Riviera Harbours Stage 12

Parent Certificate
Of Title Volume Volume 11019 Folio 496
Lot A PS 548098X

PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

and

RIVIERA PROPERTIES PROJECTS LIMITED (ABN 86 061 677 218) of Level 1, 61 The Esplanade, Paynesville in the said State ("the Owner")

RECITALS

- A. The Owner is the registered proprietor of all that piece of land being the whole of the land described in Certificate of Title Volume 11019 Folio 496.
- B. On the 13th of December 2005 Council issued Planning Permit No. 309/2005/P, which was amended by Planning Permit No. 309/2005/P/A issued on 16 November 2006 ("the **Planning Permit**") allowing the land to be subdivided into "*20 lots including building envelopes, development of six dwellings and outbuildings, jetties and landings, and removal of one tree in accordance with the Endorsed Plan*". Condition 5 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.
- C. The Owner has prepared *Riviera Harbours Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Riviera Harbours November, 2006 The Point* ("the **Guidelines**").
- D. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- ~~E. As at the date of this Agreement, the land is encumbered by Mortgage No. AB 181450X in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the land.~~
- ~~F. E. On 9 June 2009, the Council and Riviera Properties Project Limited ("the **Former Owner**") entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the land in dealing number AG568558C on 17 June 2009.~~

F. In accordance with:

- (a) clause 3 of the Agreement, the land is required to be developed in accordance with the Endorsed Plans, the definition of which includes the Guidelines; and
- (b) clause 6 of the Agreement, the parties acknowledge and agree that the Guidelines bind the land.

G. Under the Guidelines, the Former Owner is entitled to appoint the Architectural Review Panel (ARP). The consent of the ARP must be obtained before the land is developed.

H. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARP under the Guidelines.

I. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the references to the Guidelines and to include certain obligations under the Guidelines in the Agreement.

G-J. The parties enter into this Agreement:

- (a) To give effect to the requirements of the Planning Permit;
- (b) To achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the ~~Subject Land~~;
- (c) To remove the references to the Guidelines; and
- ~~(c)(d)~~ To include certain obligations under the Guidelines in the Agreement.

NOW THIS AGREEMENT WITNESSETH:

1. The parties confirm the recitals to this Agreement.
2. This Agreement is made pursuant to Section 173 of the Act.
3. The Owner covenants and agrees that the land shall only be developed in accordance with the Planning Permit, the Endorsed Plans, or any subsequent amendment to the Planning Permit approved by Council.
4. The Owner covenants that:
 - (a) pursuant to condition 5(b) of the Planning Permit, no jetty or landing or extension to a jetty or landing will be constructed other than in accordance with the Endorsed Plans.
 - (b) the Owner will develop the land in accordance with the Endorsed Plans.
 - (c) the Owner must maintain and repair the Revetment Walls within that Owner's lot to the satisfaction of Council.

- (d) the Owner must maintain and replenish Beaching adjacent to any Revetment Wall within that Owner's lot to the satisfaction of Council.
 - (e) the Owner of each respective lot is responsible for the maintenance and repair of any jetty associated with that lot to the satisfaction of Council.
5. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.
6. The parties acknowledge and agree that ~~the Guidelines and~~ the covenants and agreements entered into by the Owner in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, its successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof provided that if the land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is responsible for those covenants and obligations which relate to that owner's lot.

7. Obligations from the Guidelines – General

the Owner covenants and agrees that, unless with the prior written consent of Council:

7.1 no more than one dwelling may be developed on a lot;

7.2 any dwelling erected on the land must:

7.2.1 have a minimum floor level of 2.5 metres Australian Height Datum;

7.2.2 have a floor area of not less than 150 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah; and

7.2.3 be built only of new materials;

7.3 all buildings visible from the street or canal must be designed, constructed and maintained to be similar to the main building on that lot;

7.4 any areas used for the purpose of drying, storage tanks or refuse storage must not be visible from the street or canal;

7.5 vehicle driveways and other paved areas visible from the street or canal must be constructed of clay brick, masonry pavers, stone sheeted bitumen, hot mix, patterned and coloured concrete or exposed aggregate concrete;

7.6 the Owner must develop the land in accordance with the Soil and Water Management Plan;

7.7 no Trees may be planted within 3 metres of the Revetment Wall;

7.8 any service areas on a Canal Lot must not be visible from the street or canal;

7.9 the Owner must not erect, or permit to be erected any fence on a Canal Lot;

7.9.1 exceeding 1.8 metres in height;

7.9.2 along the canal boundary or the Revetment Wall; or

7.9.3 within 5 metres of the canal boundary; and

7.10 the Owner must not erect, or permit to be erected any fence on any boundary of a lot adjoining a road reserve.

8. Obligations from the Guidelines – Revetment Wall

the Owner covenants and agrees that:

8.1 the Owner must not alter, demolish or attach any shackles, cables or fixing eyes to any part of the Revetment Wall unless with Council's prior written consent;

8.2 the Revetment Wall structure, footings and footing foundations adjoining the Owner's lot will be inspected every five years, and after any flood event, by an independent and appropriately qualified professional to the satisfaction of Council in order:

8.2.1 to check the structural stability and integrity of the wall; and

8.2.2 to recommend any necessary works and actions, which must be carried out. A copy of the inspection assessment and recommendations must be lodged with Council within one month of the inspection and assessment having been carried out;

at the full cost of the Owner to the satisfaction of Council; and

8.3 the Owner must ensure that no operations, actions or practices are carried out on the land which result in contamination or pollution of the canals system.

7.9. 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.

Beaching means sand and stone mounding abutting the Revetment Wall intended to protect the Revetment Wall and prevent water vehicles from running aground.

Building has the same meaning as in the Act and includes dwellings, swimming pools, carports, tennis courts and outbuildings.

Canal Lot means a lot that adjoins a canal.

Endorsed Plan means the plan ~~(including the Guidelines)~~ 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.

land means part of the land situated at 12 The Point, Paynesville being part of the land referred to in Certificate of Title Volume 11019 Folio 496 and more particularly being lots 8-13 (inclusive)"on Plan of Subdivision No. 620129N and any reference to the land in this Agreement includes any lot created by the subdivision of the land or any part of it.

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 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 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 land.

Revetment Wall means the canal wall.

[Soil and Water Management Plan means the "Soil and Water Management Plan – Riviera Harbours Allotment Development", as amended from time to time. A copy of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.](#)

[Tree means a tree capable of reaching a height of 5 metres or more.](#)

[8.10.](#) In this Agreement unless the context admits otherwise:

- (a) The singular includes the plural and vice versa.
- (b) A reference to a gender includes a reference to each other gender.
- (c) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
- (d) If a party consists of more than one person this Agreement binds them jointly and each of them severally.
- (e) 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.
- (f) 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.

- (g) The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

9.11. The Owner further covenants and agrees that:

- (a) the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;
- (b) the Owner will do all things reasonably necessary to give effect to this Agreement;
- (c) the Owner will consent to Council making application to the Registrar of Titles to make a recording of this Agreement in the Register in accordance with Section 181 of the Act on the land and will do all things necessary to enable this to be done including signing any further agreement, acknowledgement 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;

10.12. 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, review, finalization, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.

11.13. 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 land which may be affected by this Agreement.

12.14. 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 land, successors in title shall be required to:

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

13.15. 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.

14.16. 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.

15.17. 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 land or relating to any use or development of the land.

~~16.18.~~ Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

.....

Chief Executive

.....

Witness

ATTACHMENT 4 – Frequently Asked Questions

Frequently Asked Questions

1. What is a section 173 agreement?

A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987 (PE Act)*. It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. How do I know if a section 173 agreement burdens my land?

If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. What do the section 173 agreements require of landowners?

The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

In 2017, both companies were wound up and deregistered.

4. How does the winding up of the original owners affect the operation of the section 173 agreements?

The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. Why has Council decided to take action?

Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. Why is Council proposing to amend some agreements and end other agreements?

Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. Is Council proposing any changes to the restrictive covenants?

No. Owners should seek their own advice if they have concerns about a restrictive covenant.

8. How long will the process for amending and ending the section 173 agreements take?

This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (VCAT).

If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?

Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

Officers will continue to work with landowners in response to their individual applications and circumstances.

10. Who is responsible for the costs of amending and ending the section 173 agreements?

Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. Why have I received multiple letters relating to different section 173 agreements?

You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?

Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. Why is the ending clause proposed to be amended in some section 173 agreements?

Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

From: Dixon
Sent: Monday, 18 January 2021 12:02:40 PM
To: Feedback Address For Web Page
CC: Roger Dixon
Subject: Notice under 178C(2).....,Letter dated 11 December 2020, Nicole...

EXTERNAL EMAIL: This email has originated from outside of the East Gippsland Shire Council network. Do not click links or open attachments unless you recognise the sender and know the content is safe. Contact ICT ServiceDesk if you are unsure.

Notice under 178C(2).....,Letter dated 11 December 2020, Nicole Reynolds

- We object to the proposal to amend and end in part legal Agreements relative to Metung.
- The changes proposed do not represent our best interests.
- The amendments translate aspects of the Guidelines into the amended Agreements as specific obligations.
- A planning permit cannot be approved if it is contrary to a restrictive covenant on the title.
- Under the proposal to amend legal Agreements Council would have basis to vary a covenant by deleting this obligation if an owner applied for a planning permit to vary their covenant. For example Application 61/2020/P 2 lot subdivision and variation of a restrictive covenant, applicant Crowther & Sadler Pty Ltd. The application was made 27 February 2020. To date Council has not informed us of any decision. There are a significant number of objections to this application.
- The Guidelines in the current Agreement are not intended to be restrictive.
- Under the Proposal to Amend Legal Agreements aspects of the Guidelines are amended as specific obligations, for example 3.3.9 and 3.3.10. fences.
- The Kings Cove Hot Springs Resort, up to 250 room hotel, will generate a significant increase in vehicular and pedestrian traffic on Kings Cove, a potential for 150,000 visitors per annum.
- We feel there is an increasing need to improve security at our front boundary and wish to fence. Fencing exists on Kings Cove development.
- In conclusion the proposal to amend legal Agreements is not in our best interests. The guidelines are amended as specific obligations. Council have basis to vary a restrictive covenant which will provide a pathway for owners/developers to sub divide.

Roger & Susan Dixon

Please acknowledge receipt.

East Gippsland Shire Council

273 Main Street (PO Box 1618)
Bairnsdale Vic 3875
Website www.eastgippsland.vic.gov.au
Email feedback@egipps.vic.gov.au
Follow us on Twitter @egsc



Telephone: (03) 5153 9500
Fax: (03) 5153 9576
National Relay Service: 133 677
Residents' Information Line: 1300 555 886
ABN: 81 957 967 765

Objection to Planning Permit Application

Planning and Environment Act 1987

There are some hard words in this form. The hard words are in **blue**. You can read what they mean on page 3.

Your Details:

Name: F M Carroll-Whip & R J McNamara				
Postal address:				
Metung			Postcode	3 9 0 4
Phone number: Home:		Work:	Mobile	
Email address f.mcarroll@egipps.vic.gov.au			Fax:	

Permit Details:

Planning permit number: 005/2020/AGR & 008/2020/AGR
What has been proposed? <u>Ending and Amending s173 Agreements in Kings Cove Metung</u>
What is the address to be used or developed? <u>Kings Cove, Metung</u>
Who has applied for the permit? <u>East Gippsland Shire Council</u>

Objection Details:

What are the reasons for your objection ? <u>1st Grounds: Procedural Fairness and Full Disclosure - East Gippsland Shire Council has issued us with two (2) notices regarding alterations and ending of s173 Agreements on our property No 004 Metung. We note from the Council's website that there are in fact seven (7) applications that may affect our property. The numbering system runs from 004 through to 011 with 009 referring to Paynesville, and so 009 is not considered in this objection.</u>
<u>We believe that it has not been fully disclosed to us in EGSC's written notices that all other allotments in Kings Cove will be treated equally in the processes of altering the existing s173 Agreements. In fact, on examination of the EGSC website we noted that 194 allotments will receive an amended S173 and 198</u>

Privacy Statement

The East Gippsland Shire Council asks for details about you to collect rates, approve permits and licences, and run a range of community services. The information you give to us on this form is used only for the reasons set out in the form and is not given to anybody else. Sometimes we may supply details about you to someone else, but only if we are allowed by law, or to protect someone or property. When information is given out, Council will always try to make sure your privacy is protected in line with the *Privacy and Data Protection Act 2014*. You may ask for more information about Council's Privacy Policy by contacting our Information Privacy Officer on 03 5153 9500 or e-mail feedback@egipps.vic.gov.au

East Gippsland Shire Council

273 Main Street (PO Box 1618)
Bairnsdale Vic 3875
Website www.eastgippsland.vic.gov.au
Email feedback@egipps.vic.gov.au
Follow us on Twitter @egsc



Telephone: (03) 5153 9500
Fax: (03) 5153 9576
National Relay Service: 133 677
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How would you be affected by the granting of this permit? _____
allotments will have a s173 Agreement ended. What is happening to the other 4 allotments and
what are their addresses. We raise this point to ensure that the same "rules" will govern all lots in Kings
Cove Metung as those that currently exist so that no lot receives an unfair advantage/disadvantage
in the amending process.

2nd Grounds: Omission of Information

Specifically in 008/2020/AGR, Table A, there is no mention of the Road Reserve (being Kings
Cove Boulevard) being amended, and we would expect this to be included to be consistent with the
similar amendments set out in Table A in 005/2020/AGR.

If you need more space for any part of this form please attach another sheet.

Signature: _____

Name: R J McNamara

Date: 23 / 12 / 2020

Office Use Only:

Objection Received by: _____ Date Received: ____/____/____

Planning officer responsible: _____ Date Received: ____/____/____

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