

Our ref: 19265

30 October 2023

Robert Pringle
Statutory Planning Coordinator
East Gippsland Shire Council
Via email: planning@egipps.vic.gov.au

Dear Robert,

**Re: Council Consent to Construct a Proposed Outbuilding
Outside a Building and Waste Disposal Envelope
40 Koraleigh View, Nicholson**

On behalf of our client, we are seeking Council's consent to construct a proposed shed outside the building envelope and waste disposal envelope at 40 Koraleigh View, Nicholson.



Aerial image of the subject land and surrounds (Source: Google Earth)

On the 20 April 2023 Council formally advised that the proposal to end legal agreement AL961631J as it relates to 40 Koraleigh View, Nicholson was approved. Council also advised that in accordance with Section 178E(4) of the *Planning and Environment Act 1987*, that acting on behalf of the landowner, we should proceed to end the agreement.



FS 520900



In accordance with the proposal to end legal agreement AL961631J as it relates to 40 Koraleigh View, Nicholson, a new legal agreement has been prepared. The new agreement changes the definition of the subject land and alters the Owners Specific Obligations at 6.5, allowing Council to consider on merit, the construction of an outbuilding on the subject land outside the building envelope.

It is acknowledged that the new Agreement is currently with Council for execution, prior to the ending of legal agreement AL961631J as applying to 40 Koraleigh View, Nicholson.

Given the process to end legal agreement AL961631J and enter the new agreement has been submitted for execution by Council we are now submitting the formal request for Council consent to construct a shed. We understand the consent cannot be granted until such time as the new Agreement has been registered.

Proposal

It is proposed to construct an shed (outbuilding) in the north-west corner of the subject land.

The shed is not located within the building envelope and has been sited to avoid the area on the lot which is not to be subject to significant ground disturbance as defined within the *Aboriginal Heritage Regulations 2007*.



Site plan of the proposed shed (which is not within the building envelope)

The proposed shed will have a length of 21 metres and a width of 14 metres, equating to an overall floor area of 294 square metres.

The proposed outbuilding will have a wall height of 5.0 metres and an overall height of 7.55 metres at the roof apex. The outbuilding will be constructed of Colorbond materials.

Purpose of the Building Envelopes

An approved Cultural Heritage Management Plan, CHMP11323 applies to the properties within the Riverbend Estate.

During the subdivision approval process for the estate the project designer prepared a building envelope plan, to reflect the requirements of the approved CHMP.

Unfortunately, the building envelope plan that was drafted did not include any reference to areas in allotments where permissible activities could take place, identified within the CHMP as Zone 2 Services Envelope.

Legal agreement AL961631J was subsequently entered into with the then landowner and Council, which in part, required all buildings to be contained within the building envelopes on each lot. In some cases, this prevented the construction of sheds and other buildings on some allotments.

Merits of the Proposal

Riverbend Estate has developed over a number of years, consistent with the underlying Low Density Residential Zone, with allotments developed with dwellings, outbuildings, swimming pools, etc.

It is considered that the proposed shed located to the rear of the subject land will reflect the established pattern of development within the estate. As the estate has developed sheds have become a common feature. The size and siting of sheds varies with no obvious pattern.

It is important to note there are no specific controls that apply to the siting, height length size or materials and finishes for sheds in this location. The construction of a shed does not require planning approval when ancillary to an existing dwelling. Furthermore, there are no controls, requirements or limitations on outbuildings under the restrictive covenant (Covenant AN035608C) other than requiring buildings to be constructed from new materials, save for second hand bricks. Landowners therefore have the flexibility and right to construct an outbuilding without any need for consideration of any other landowner.

The proposed shed will have length and width dimensions and an overall floor area comparable to other outbuildings within the estate. The wall and overall shed height are similar to other outbuildings seen within the area and will be constructed of materials commonly used in shedding constructed on other properties in the estate.

Importantly, the outbuilding has been positioned on the property to avoid the area of cultural heritage sensitivity on the lot, ensuring that development complies with the approved CHMP.

The proposed outbuilding is to be setback 1.9 metres to the west and 4.2 metres to the north, allowing the shed to meet building setback requirements prescribed by r79 of the Building Regulations 2018.

Conclusion

For these reasons we respectfully request that Council consider the merits of the proposal favourably and resolve to issue Council consent to build outside the building envelope.

Regards,



RICHARD HOXLEY
Principal Planner

Encl. Site Plan (Version 3)
Outbuilding Elevations
Statutory fee

Robert Pringle

From: Richard Hoxley - Crowther & Sadler <richard@crowthersadler.com.au>
Sent: Wednesday, 7 February 2024 1:42 PM
To: Robert Pringle
Cc: Planning Unit Administration
Subject: FW: 40 Koraleigh View, Nicholson
Attachments: 19265 Site Plan V4.pdf

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.

Hi Robert,

Further to our discussion please find attached a revised Site Plan with an indicative alignment for a driveway to the proposed shed.

Client client gas advised the driveway will be established essentially at grade (scrape off grass) with crushed rock. And later may be upgraded to concrete.

I trust the additional information has provided adequate clarification.

Regards

Richard Hoxley
Principal Planner

Crowther & Sadler Pty Ltd
LICENSED SURVEYORS & TOWN PLANNERS

152 Macleod Street, Bairnsdale
PO Box 722, Bairnsdale, Vic, 3875
P: 5152 5011 F: 5152 5705

From: Amie Ingwersen - Crowther & Sadler <amp@crowthersadler.com.au>
Sent: Thursday, February 1, 2024 5:09 PM
To: Richard Hoxley - Crowther & Sadler <richard@crowthersadler.com.au>
Subject: FW: 40 Koraleigh View, Nicholson

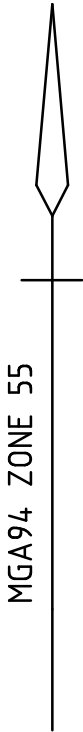
Yours faithfully,

Amie Ingwersen
Natural Resource Planner

Crowther & Sadler Pty Ltd
LICENSED SURVEYORS & TOWN PLANNERS

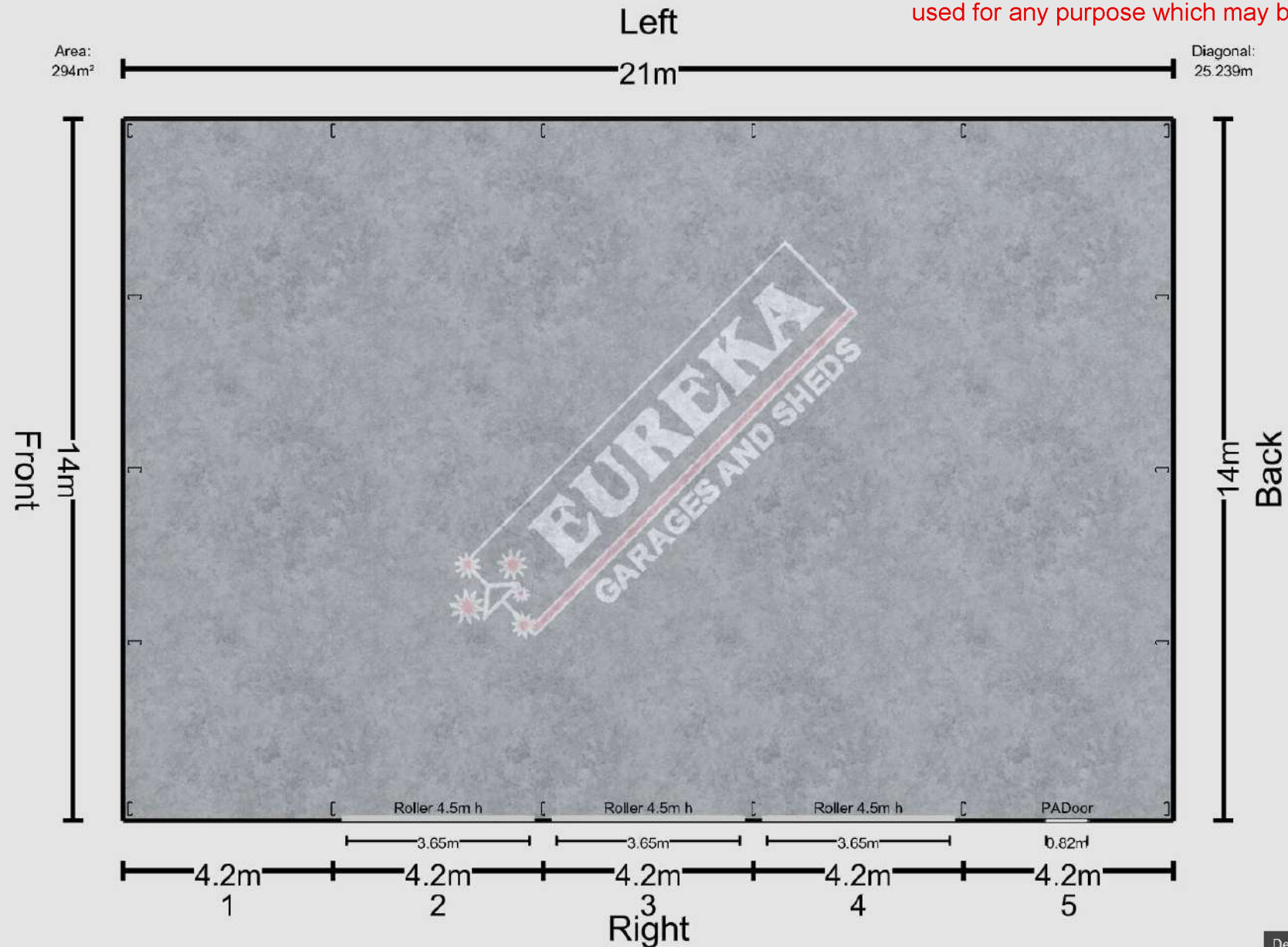
152 Macleod Street, Bairnsdale
PO Box 722, Bairnsdale, Vic, 3875
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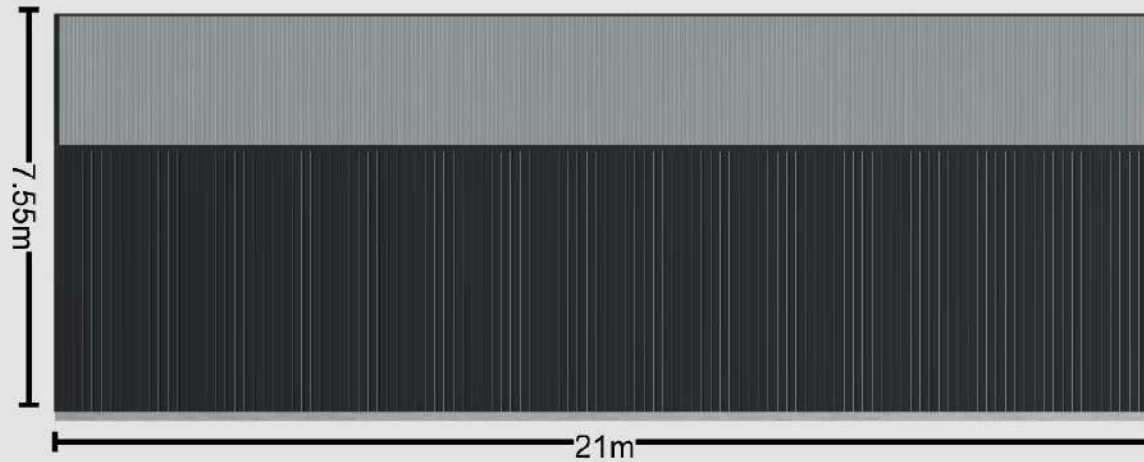
From: Robert Pringle <RobertP@egipps.vic.gov.au>
Sent: Thursday, February 1, 2024 4:50 PM
To: Amie Ingwersen - Crowther & Sadler <amp@crowthersadler.com.au>



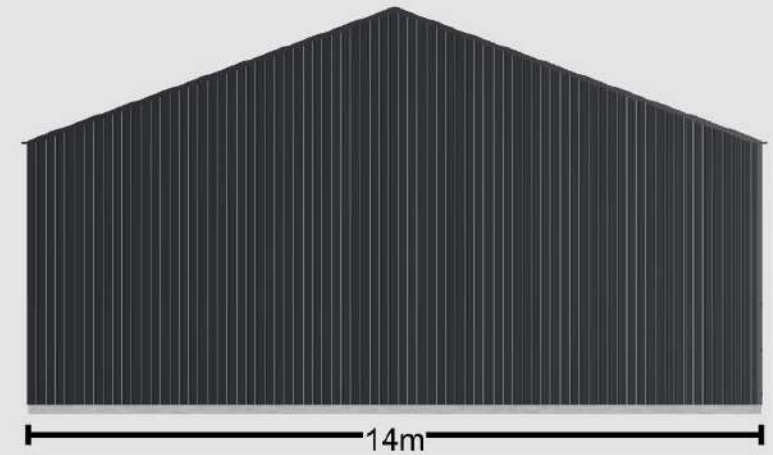
JOHN HOLZER 40 KORALEIGH VIEW, NICHOLSON	NOTATIONS		SITE PLAN
	AREAS ARE APPROXIMATE ONLY DIMENSIONS ARE SUBJECT TO SURVEY		
Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 152 MACLEOD STREET, BAIRNSDALE, VIC., 3875 P. (03) 5152 5011 E. contact@crowthersadler.com.au	SCALE (SHEET SIZE A3)	SURVEYORS REF.	PARISH OF SARSFIELD SECTION 2 CROWN ALLOTMENT 4A1 (PART) LOT 15 ON PS722623L
	1 : 500	19265 VERSION 4 - DRAWN 07/02/2024	
FILENAME: Y:\19000-19999\19200-19299\19265 Holzer\19265 Site Plan V4.pro			Printed 23/02/2024

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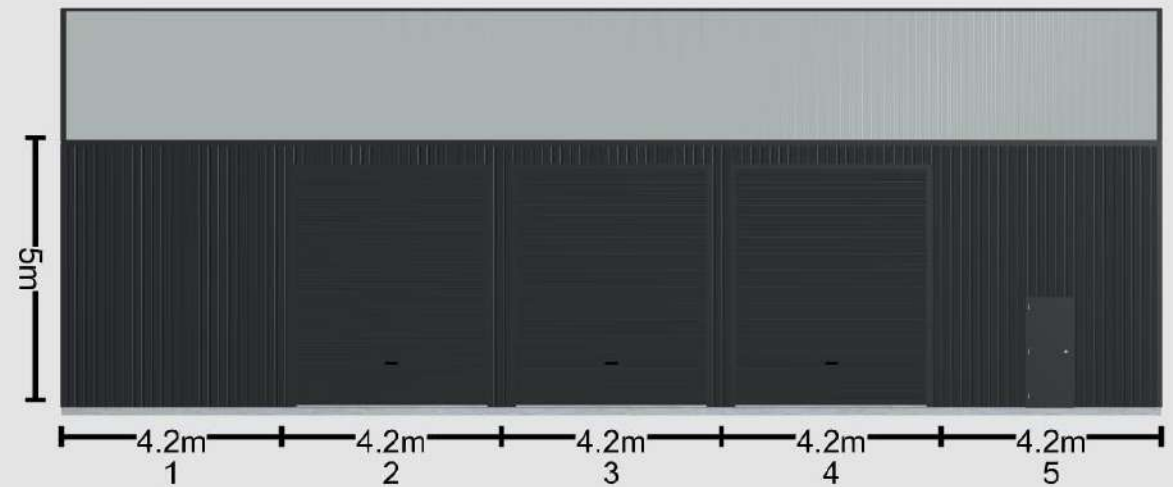
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Front



Back



Right

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

Page 1 of 3

VOLUME 11582 FOLIO 864

Security no : 124112871766C
Produced 22/02/2024 02:25 PM

LAND DESCRIPTION

Lot 15 on Plan of Subdivision 722623L.
PARENT TITLE Volume 11582 Folio 828
Created by instrument PS722623L 09/07/2015

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT AN035608C 22/08/2016

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AX370478E 20/10/2023

DIAGRAM LOCATION

SEE PS722623L FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NUMBER		STATUS	DATE
AX370478E (E)	AGREEMENT	Registered	26/10/2023
AX492827Y (E)	REMOVAL OF AGREEMENT	Registered	01/12/2023

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

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

Street Address: 40 KORALEIGH VIEW NICHOLSON VIC 3882

ADMINISTRATIVE NOTICES

NIL

DOCUMENT END



Department of Environment, Land, Water & Planning

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Status	Registered	Dealing Number	AX492827Y
Date and Time Lodged	28/11/2023 09:11:26 AM		

Lodger Details

Lodger Code	20126M
Name	STEFANIE DONNA SUMMERS
Address	
Lodger Box	
Phone	
Email	
Reference	Section 183 Applicat

APPLICATION TO REMOVE AN INSTRUMENT

Jurisdiction	VICTORIA
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Estate and/or Interest

AGREEMENT AL961631J

Land Title Reference

11582/864

Instrument and/or legislation

REMOVE - AGREEMENT - SECTION 173
Planning & Environment Act - section 177

Applicant(s)

Name	EAST GIPPSLAND SHIRE COUNCIL
Address	
Street Number	273
Street Name	MAIN
Street Type	STREET
Locality	BAIRNSDALE
State	VIC
Postcode	3875

Additional Details



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Electronic Instrument Statement

None

The applicant/relinquishing party/receiving party requests the removal of this Instrument from the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.

Executed on behalf of	EAST GIPPSLAND SHIRE COUNCIL
Signer Name	STEFANIE SUMMERS
Signer Organisation	STEFANIE DONNA SUMMERS
Signer Role	CONVEYANCING PRACTICE
Execution Date	28 NOVEMBER 2023

File Notes:

Data updated

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Statement End.



Department of Environment, Land, Water & Planning

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Status	Registered	Dealing Number	AX370478E
Date and Time Lodged	20/10/2023 08:37:50 AM		

Lodger Details

Lodger Code	20126M
Name	STEFANIE DONNA SUMMERS
Address	
Lodger Box	
Phone	
Email	
Reference	Section 173 Agreement

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction	VICTORIA
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Estate and/or Interest

FEE SIMPLE

Land Title Reference

11582/864

Instrument and/or legislation

RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	EAST GIPPSLAND SHIRE COUNCIL
Address	
Street Number	273
Street Name	MAIN
Street Type	STREET
Locality	BAIRNSDALE
State	VIC
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Additional Details



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Electronic Instrument Statement

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant law and any Prescribed Requirement.

Executed on behalf of	EAST GIPPSLAND SHIRE COUNCIL
Signer Name	STEFANIE SUMMERS
Signer Organisation	STEFANIE DONNA SUMMERS
Signer Role	CONVEYANCING PRACTICE
Execution Date	20 OCTOBER 2023

File Notes:

NIL

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Statement End.



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Date 10 / 10 / 2023

**Agreement under section 173
of the Planning and Environment Act 1987**
Subject Land: 40 Koraleigh View, Nicholson

East Gippsland Shire Council
and

John Andrew Holzer

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Contents

1.	Definitions	1
2.	Interpretation	3
3.	Purposes of Agreement	3
4.	Reasons for Agreement	3
5.	Agreement required	4
6.	Owner's specific obligations	4
	6.1 Rainwater Tanks	4
	6.2 Fences	4
	6.3 Access	4
	6.4 Maintenance contribution for offsets	4
	6.5 Building envelopes	5
	6.6 Waste disposal envelope	5
	6.7 Septic Tanks	5
7.	Owner's further obligations	5
	7.1 Notice and registration	5
	7.2 Further actions	5
	7.3 Council's costs to be paid	5
	7.4 Time for determining satisfaction	6
	7.5 Interest for overdue money	6
	7.6 Notification of compliance with Owner's obligations	6
8.	Agreement under section 173 of the Act	6
9.	Owner's warranties	6
10.	Successors in title	6
11.	General matters	6
	11.1 Notices	6
	11.2 No waiver	7
	11.3 Severability	7
	11.4 No fettering of Council's powers	7
	11.5 Inspection of documents	7
	11.6 Governing law	7
12.	Commencement of Agreement	7

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Agreement under section 173 of the Planning and Environment Act 1987

Dated 10 / 10 / 2023

Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council
Name	John Andrew Holzer
Address	40 Koraleigh View, Nicholson, Victoria
Short name	Owner

Background

- A. Council is the responsible authority for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. Council issued the Planning Permit requiring the Owner to enter into this Agreement providing for the matters set out in conditions 5 and 38 of the Planning Permit.
- D. As at the date of this Agreement, the Subject Land is encumbered by a mortgage in favour of the Mortgagee. The Mortgagee consents to the Owner entering into this Agreement.

The Parties agree

1. Definitions

In this Agreement unless the context admits otherwise:

Act means the Planning and Environment Act 1987.

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

Building and Waste Disposal Envelope means the area which is identified on the Endorsed Plan as a 'Building Envelope' or the like.

Current Address means:

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

Current Email means:

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

Dwelling has the same meaning as in the Planning Scheme.

Endorsed Plan means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit.

Fence Design Plans means the fence design plans approved by Council from time to time.

Lot means a lot created by the subdivision of the Subject Land whether in accordance with the Planning Permit or otherwise.

Mortgagee means the person registered or entitled from time to time to be registered as mortgagee of the Subject Land or any part of it.

Offset Maintenance Contribution means the amount agreed between the parties or, failing agreement after reasonable attempts by the parties, an amount determined by Council for the maintenance of the native vegetation offsets provided in the Reserve pursuant to clauses 14 and 41 of the Planning Permit.

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

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

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

Planning Permit means planning permit No. 299/2011/P, as amended from time to time, issued on 20 March 2013, authorising the subdivision of the Subject Land and removal of vegetation in accordance with the Endorsed Plan.

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

Proposed Lot means a lot shown on the Endorsed Plan.

Rainwater Tank means the rainwater tank to be installed on a Lot.

Reserve means an area identified on the Endorsed Plan as any of 'Res 1', 'Res 2', 'Res 3', 'Res4' or 'Public Purposes Reserve' or the like.

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Subject Land means the land situated at 40 Koraleigh View, Nicholson being the land referred to in certificate of title volume 11582 folio 864 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

2. Interpretation

In this Agreement unless the context admits otherwise:

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

3. Purposes of Agreement

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

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

4. Reasons for Agreement

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

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

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5.

Agreement required

The Parties agree that this Agreement will continue to be required until the Owner has complied with all of the Owner's Obligations.

6.

Owner's specific obligations

The Owner covenants and agrees that:

6.1

Rainwater Tanks

in the event that the development of a Lot includes the construction of a Dwelling:

6.1.1 the Owner must, at the Owner's full cost, install and maintain a Rainwater Tank on the Lot with a capacity of at least 10,000 litres to collect rainwater runoff from the roof of the Dwelling on the Lot

6.1.2 the Rainwater Tank must:

- a) be used as the primary water source for:
 - (i) toilet flushing; and
 - (ii) laundry services; and
- b) contain an external tap for garden irrigation purposes.

6.2

Fences

where a boundary fence on the Subject Land abuts a Reserve, the Owner must:

6.2.1 submit Fence Design Plans showing fences to a maximum height of 1.5 metres to Council for its written approval prior to construction of the fence;

6.2.2 construct the boundary fence in accordance with the approved Fence Design Plans;

6.2.3 thereafter maintain the boundary fence to ensure the fence remains of a similar height and style to the other boundary fences on the Subject Land abutting a Reserve; and

6.2.4 not construct or allow to be constructed, any gate in the boundary fence other than a pedestrian gate not exceeding 1.0 metre in width.

6.3

Access

the Owner must not create, or cause or permit the creation of, vehicle access to or from Proposed Lots 1, 2, 3, 8, 49 or 53 inclusive from the Nicholson-Sarsfield Road.

6.4

Maintenance contribution for offsets

the Owner must pay the Offset Maintenance Contribution to Council upon the vesting of the Reserve in Council.

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6.5

Building envelopes

Unless with Council's prior written consent, the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

6.6

Waste disposal envelope

Unless with Council's prior written consent, the Owner must not dispose of, or cause or permit the disposal of, effluent on the Subject Land other than within a Building and Waste Disposal Envelope.

6.7

Septic Tanks

the Owner must ensure that any septic tank system on the Subject Land includes:

6.7.1 secondary treatment of wastewater; and

6.7.2 disposal of treated wastewater by subsurface irrigation.

7.

Owner's further obligations

7.1

Notice and registration

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

7.2

Further actions

The Owner:

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

7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and

7.2.3 agree to do all things necessary to enable Council to do so, including:

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

7.3

Council's costs to be paid

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

7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;

7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;

7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and

7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

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7.4	Time for determining satisfaction If Council makes a request for payment of any costs or expenses under Clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.
7.5	Interest for overdue money 7.5.1 The Owner must pay to Council interest in accordance with s 227A of the <i>Local Government Act 1989</i> on any amount due under this Agreement that is not paid by the due date. 7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.
7.6	Notification of compliance with Owner's obligations The Owner must notify Council of its compliance with all of the Owner's obligations.
8.	Agreement under section 173 of the Act Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with s 173 of the Act.
9.	Owner's warranties The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.
10.	Successors in title Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to: 10.1 give effect to this Agreement; and 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.
11.	General matters
11.1	Notices A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served: 11.1.1 personally on the other Party; 11.1.2 by leaving it at the other Party's Current Address;

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11.1.3 by posting it by prepaid post addressed to the other Party at the other Party's Current Address; or

11.1.4 by email to the other Party's Current Email.

11.2 No waiver

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

11.3 Severability

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

11.4 No fettering of Council's powers

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

11.5 Inspection of documents

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

11.6 Governing law

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

12. Commencement of Agreement

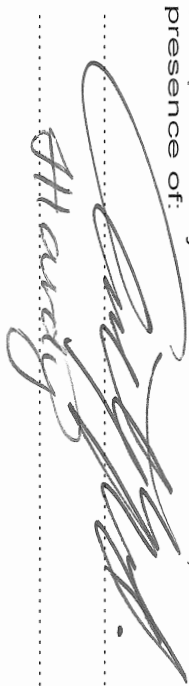
This Agreement commences on the date specified on page one or if no date is specified on page one, the date Council executes this Agreement.

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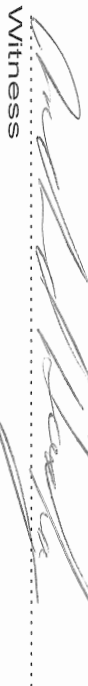
Signing Page

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

The Common Seal of the **East Gippsland Shire Council** was hereunto affixed on the 10th day of October, in the presence of:


.....
.....

Signed Sealed and Delivered by **John Andrew Holzer** in the presence of:


.....
.....

Witness

Chief Executive

Witness

)

.....



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"ANNEXURE"


MORTGAGEE'S CONSENT

Perpetual Trustee Company Limited as Mortgagee under Instrument of Mortgage No. AT578226K 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 terms and conditions of this agreement.

Dated 10/08/2023

Signed by MSA National Pty Ltd ACN 604 605 156)
As Attorney for Perpetual Trustee Company)
Limited ABN 42 000 001 007)
consenting to registration for Application for)
Registration of Section 173 Agreement in the)
presence of:)

Signature of Attorney



MSA National - Level 5, 4 Drake Avenue
Macquarie Park NSW 2113

Solicitor

Signature of Witness - *Paralegal*


MSA National - Level 5, 4 Drake Avenue
Macquarie Park NSW 2113

Signature of Attorney


MSA National - Level 5, 4 Drake Avenue
Macquarie Park NSW 2113

Solicitor

Signature of Witness - *Paralegal*


MSA National - Level 5, 4 Drake Avenue
Macquarie Park NSW 2113