

Form 2

**NOTICE OF AN APPLICATION FOR PLANNING PERMIT**

<b>The land affected by the application is located at:</b>	<b>10 The Habitat METUNG 3904 Lot: 141 PS: 600889</b>
<b>The application is for a permit to:</b>	<b>Variation of Restrictive Covenant AK214895A to delete Clause (b)</b>
<b>The applicant for the permit is:</b>	<b>Beveridge Williams &amp; Co Pty Ltd</b>
<b>The application reference number is:</b>	<b>5.2024.119.1</b>

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

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

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

**An objection must**

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

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

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

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

Our Reference: 2400755

8 April 2024

Robert Pringle  
Statutory Planning Coordinator  
East Gippsland Shire Council  
273 Main Street  
BAIRNSDALE VIC 3875

Dear Robert,

**RE: PLANNING PERMIT APPLICATION  
VARIATION TO A RESTRICTIVE COVENANT  
10 THE HABITAT, METUNG  
LOT 141 ON PLAN OF SUBDIVISION NO. 600889B (VOLUME: 11124; FOLIO: 482)**

I refer to the above matter and advise that Beveridge Williams & Co. Pty. Ltd. acts on behalf of Csilla Muszi of Csibor Pty. Ltd., which is the joint owner of the above property along with Hector Galvez.

Csibor Pty. Ltd. purchased 10 The Habitat, Metung with the intent of building a house thereon. However, the land has had Covenant AK214895A registered upon it as a Title restriction.

This Covenant includes the following statement:

*"The Transferee with the intent that the benefit of this covenant shall run until the 31<sup>st</sup> December 2027, be attached to and run at law and in equity with the whole of the land in Plan of Subdivision Number PS600889B (for stage 1) (other than the land hereby transferred) and that the burden therefore shall be annexed to and run at law and in equity with the land 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 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:*

...

*(b) Construct or externally alter or allow to be constructed or externally altered on the land hereby transferred any building or structure (including fences and landscape structures) other than in accordance with the plans and specifications previously submitted to and approved in writing by the Transferor, Kings Cove Metung Pty Ltd, or its nominee;*

..."

Subsequent to the registration of this instrument on the title to the subject land, Kings Cove Metung Pty Ltd has ceased to exist and is not represented by any nominee.

Hence, it is not feasible for Csibor Pty. Ltd. to have their house designs approved by Kings Cove Metung Pty Ltd.

In light of this, Csibor Pty Ltd needs to have Covenant AK214895A varied so they don't need to have their designs approved by Kings Cove Metung Pty Ltd or its nominees before they can commence construction.

In order to achieve this, they have instructed Beveridge Williams & Co. Pty. Ltd. to apply for a planning permit that will allow a variation to Covenant AK214895A that will have the effect of deleting Clause (b), as it pertains to Lot 141 on PS600889B.

It is noted that Lot 141 on PS600889B also had a Section 173 Agreement registered upon it that made similar stipulations in relation to design approval, i.e. Title Instrument AF246024X. However, Council amended that Section 173 Agreement through the registration of Agreement AU697150T on 16/8/2021. This Amended version of the Agreement served to remove the need for approval of house designs by the Transferor prior to construction commencing.

As such, the proposed variation to Covenant AK214895A naturally follows on from the amendment that Council has already made to Section 173 AF246024X.

Along with Covenant AK214895A, a copy of the Section 173 Agreements registered under Title Instruments AF246024X and AU697150T is provided with this correspondence for context.

A review of the East Gippsland Planning Scheme reveals that:

- **Clause 52.02** is relevant to this proposal and triggers the need for a planning permit to vary a restriction under *Section 23(1)* of the *Subdivision Act 1988*; and,
- The Decision Guidelines of **Clause 52.02** provide that:

*“Before deciding on an application, in addition to the decision guidelines in clause 65, the responsible authority must consider the interests of affected people.”*

As stated above, all properties within Plan of Subdivision 600889B (apart from Lot 141) are benefitted by covenants (a), (b) and (c), as made in Covenant AK214895A.

Plan of Subdivision No. 600889B is reproduced at **Figure 1** with a recent aerial photograph added behind it to demonstrate:

- how many lots there are within it;
- what development has occurred on the lots within the plan; and,
- how they relate to Lot 141.

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Figure 1: Extract from Plan of Subdivision 600889B with a recent aerial photograph behind it

The lot numbers & street addresses of these benefitted properties are listed in Table 1.

Lot on Plan of Subdivision 600889B	Street Address
138	2 The Habitat, Metung
139	4 The Habitat, Metung
140	6 The Habitat, Metung
142	12 The Habitat, Metung
143	14 The Habitat, Metung
144	11 The Habitat, Metung
145	9 The Habitat, Metung
146	5 The Habitat, Metung
147	78 Storth Ryes Avenue, Metung
148	82 Storth Ryes Avenue, Metung
149	123 Kings Cove Boulevardde, Metung
150	121 Kings Cove Boulevardde, Metung
151	119 Kings Cove Boulevardde, Metung

Table 1: List of Properties Benefitted by Covenant AK214895A

The list at **Table 1** is provided to assist Council in preparing a list of properties required to be notified of the proposed variation to Covenant AK214895A.

The following documents have been included with this correspondence to assist Council in registering this permit application and making a decision in relation to it:

- A Title search statement and title plan for the subject site;
- A copy of Covenant AK214895A;
- A copy of Section 173 Agreement AF246042X;
- A copy of Amended Section 173 Agreement AU697150T;
- A Planning Property report for the subject site, which demonstrates the applicable zoning and overlay controls; and,
- A Plan of Variation of Restriction for endorsement under any planning permit granted.

It is understood that Council has agreed to waive the application fee that would normally be required under Class 21 of the Regulations on the basis that an almost identical application is being made for land at 6 The Habitat Metung.

If you require any further information prior to making a decision on this application, please do not hesitate to call me on 03 5144 3877.

Yours faithfully,



**CHRIS CURNOW**

Principal Planner

BEVERIDGE WILLIAMS & CO PTY LTD



**REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958** Page 1 of 3

VOLUME 11124 FOLIO 482

Security no : 124113866410R  
Produced 03/04/2024 10:44 AM

**LAND DESCRIPTION**

Lot 141 on Plan of Subdivision 600889B.  
PARENT TITLE Volume 11029 Folio 844  
Created by instrument PS600889B 19/03/2009

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Joint Proprietors  
CSIBOR PTY LTD  
HECTOR MAURICIO MUNOZ GALVEZ  
AU296095K 30/04/2021

**ENCUMBRANCES, CAVEATS AND NOTICES**

COVENANT AK214895A 28/02/2013

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  
AF246024X 02/08/2007  
AMENDMENT OF AGREEMENT AU697150T 16/08/2021

**DIAGRAM LOCATION**

SEE PS600889B FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

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

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

Street Address: 10 THE HABITAT METUNG VIC 3904

**ADMINISTRATIVE NOTICES**

NIL

DOCUMENT END

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PS600889B

**PLAN OF SUBDIVISION**

STAGE No. 1 TO USE ONLY

**EDITION 1**

**LOCATION OF LAND**

PARISH: BUMBERRAH  
 TOWNSHIP: \_\_\_\_\_  
 SECTION: \_\_\_\_\_  
 CROWN ALLOTMENT: 81<sup>A</sup> (PART)  
 CROWN PORTION: \_\_\_\_\_

TITLE REFERENCES: VOL. 11029 FOL. 844

LAST PLAN REFERENCE: LOT A ON PS 548109V

POSTAL ADDRESS: STORTH RYES AVENUE,  
 (At time of subdivision) METUNG, 3904

MGA 94 CO-ORDINATES: E 573 270  
 (Of approx. centre of land in plan) N5806 790 **ZONE: 55**

**COUNCIL CERTIFICATION AND ENDORSEMENT**

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 89/2006/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 16 / 08 / 2007
- ~~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: / /

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

Council Delegate *Richard Healy*  
 Council seal

Date 25 / 09 / 2008

**VESTING OF ROADS AND/OR RESERVES**

IDENTIFIER	COUNCIL/BODY/PERSON
RI ROAD	EAST GIPPSLAND SHIRE COUNCIL

**NOTATIONS**

**STAGING** This is / is not a staged subdivision  
 Planning Permit No

**DEPTH LIMITATION** 15.24 METRES BELOW THE SURFACE

LOTS 1 TO 137 HAVE BEEN OMITTED FROM THIS PLAN

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, E-3	SEWERAGE	3	PS548109V	EAST GIPPSLAND REGION WATER AUTHORITY
E-2, E-3	DRAINAGE & SEWERAGE	3	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL AND EAST GIPPSLAND REGION WATER AUTHORITY
E-4	DRAINAGE	2	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL
E-5	SEWERAGE	SEE DIAG.	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY

**LR USE ONLY**

STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT

RECEIVED



DATE 13 / 03 / 09

**LR USE ONLY**

PLAN REGISTERED

TIME 8:24

DATE 19 / 3 / 09

**Randall McDonald**  
 Assistant Registrar of Titles

SHEET 1 OF 2 SHEETS

**Crowthier & Sadler Pty. Ltd.**  
 LICENSED SURVEYORS & TOWN PLANNERS  
 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875  
 TELEPHONE (03) 6162 6011

LICENSED SURVEYOR MICHAEL JOSEPH SADLER

SIGNATURE *Michael Joseph Sadler* DATE 25 / 9 / 2008.

REF 12092 VERSION 2

*Richard Healy*

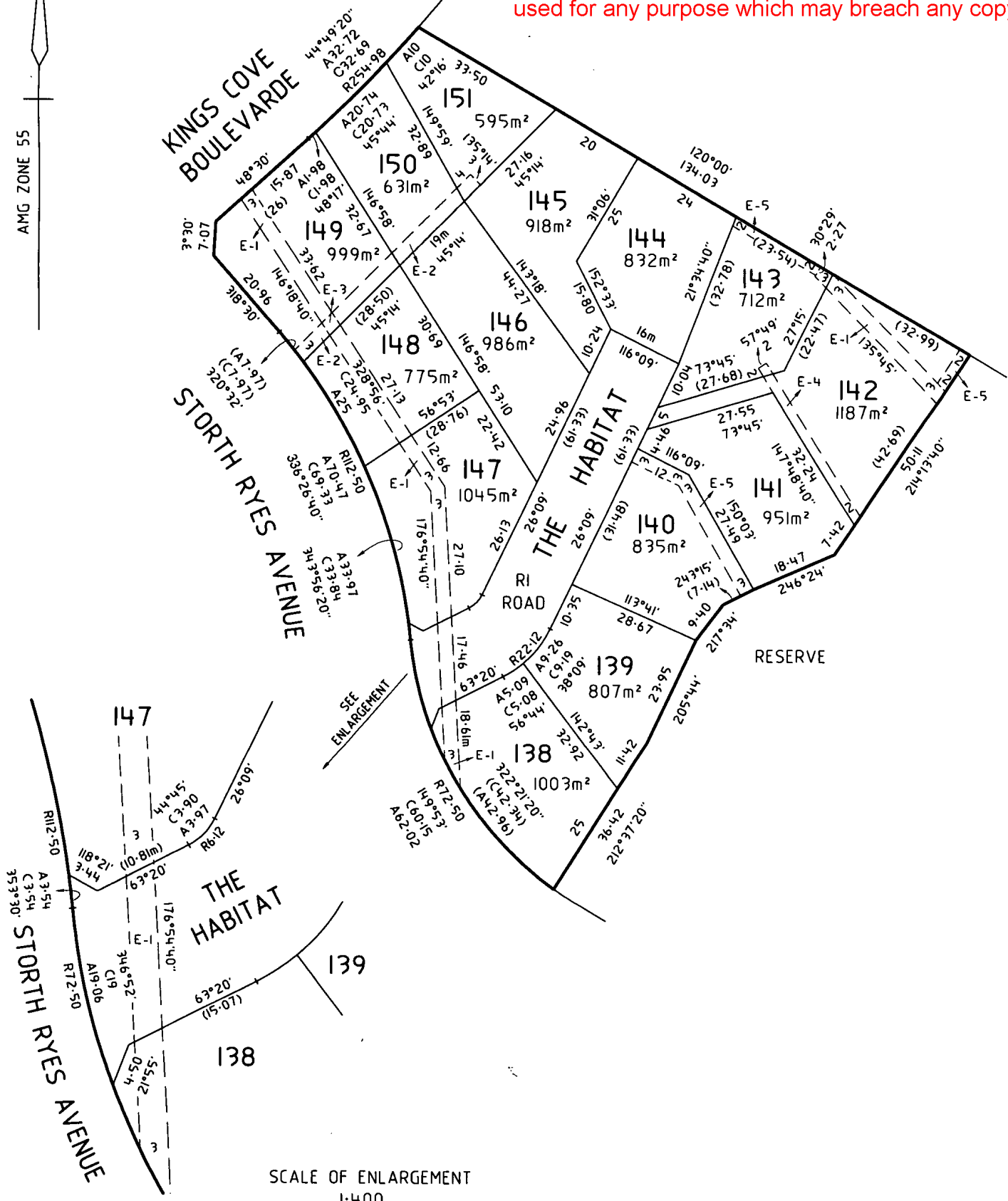
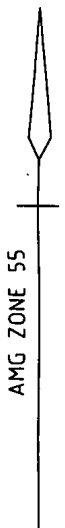
DATE 25 / 09 / 2008

COUNCIL REPRESENTATIVE

ORIGINAL SIZE

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# PLAN OF SUBDIVISION



SCALE OF ENLARGEMENT  
1:400

**Crowther & Sadler** Pty. Ltd.  
LICENSED SURVEYORS & TOWN PLANNERS  
162 MACLEOD STREET, BAIRNSDALE, VIC., 3875  
TELEPHONE (03) 8162 6011

ORIGINAL SHEET SIZE A3	SCALE 1:800	SCALE 8 0 8 16 24 32 LENGTHS ARE IN METRES
---------------------------	----------------	--

LICENSED SURVEYOR  
SIGNATURE: *Michael Joseph Sadler*  
REF: 12092

MICHAEL JOSEPH SADLER  
DATE: 25/9/2008  
VERSION: 2

SHEET 2 OF 2 SHEETS

DATE: 25/9/2008  
COUNCIL DEPUTY SIGNATURE

Printed 17/04/2024  
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**AK214895A**

# TRANSFER OF LAND

## Section 45 Transfer of Land Act 1958

**Lodged by:**

Name:

Phone:

Address:

Ref:

Customer Code:

Commonwealth Bank of Australia  
 ABN 48 123 123 124  
 385 Bourke Street Melbourne  
 Phone: 1300 137 762  
 Name  
 Reference **767262305**  
 Customer Code 205

**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.

**MADE AVAILABLE/CHANGE CONTROL**  
 Office Use Only

The transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed-

- together with any easements created by this transfer;
- subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and
- subject to any easements reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land: *(volume and folio reference)*

Volume 11124 Folio 482

Estate and Interest: *(e.g. "all my estate in fee simple")*

All its estate in fee simple

Consideration:

\$74,000.00

Transferor: *(full name)*

KINGS COVE METUNG PTY LTD ACN 006 383 179

Transferee: *(full name and address including postcode)*

KIM MICHELLE CULPIN of 12 Wild Sage Court Lyndhurst 3975

Directing Party: *(full name)*

nil

Creation and/or Reservation of easement and/or Covenant

The Transferee with the intent that the benefit of this covenant shall until the 31st December 2027, be attached to and run at law and in equity with the whole of the land comprised in Plan of Subdivision Number 600889B (for stage 1) (other than the land hereby transferred) and that the burden therefore shall be annexed to and run at law and in equity with the land 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 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:

*[Handwritten signature]*  
*[Handwritten signature]* Kim CULPIN

Approval No. 2056112A

**ORDER TO REGISTER**  
 Please register and issue title to

**T2**

Page 1 of 2

Signed

Cust. Code



SAI Global Property Division Pty Ltd

**THE BACK OF THIS FORM MUST NOT BE COPIED**  
 Land Registry, 570 Bourke Street, Melbourne 3000. Phone 03 8636 2010

**STAMP DUTY USE ONLY**

Commonwealth Bank of Australia	
This stamp is SRO Property.	ABN 48 123 123 124 Victorian Duty \$ <b>1526.00</b> AP 184 Consideration / Advance \$ <b>74000.00</b>
NOT TO BE COPIED	Victorian Assets % ..... Section ..... Original / Counterpart / Collateral / Upstamp Transaction No: <b>3109/2013</b> Date: <b>8/2/13</b> Phone: 03 8636 2010
	No 18



- (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 or cages for cats, dogs or birds, or the keeping of poultry, or for the grazing of horses, or for the parking, garaging or servicing of any motor vehicle in excess of five tonnes gross vehicle mass 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 boat, caravan or similar vehicle of any gross vehicle mass and is screened from view from the roadways and adjoining properties;
- (b) construct or externally alter or allow to be constructed or externally altered on the land hereby transferred any building or structure (including fences and landscape structures) other than in accordance with plans and specifications previously submitted to and approved in writing by the Transferor, Kings Cove Metung Pty Ltd, or its nominee;
- (c) 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 location of airconditioning systems, or similar uses unless such areas are reasonably screened from public view."

Dated: 20/2/13

Executed by KINGS COVE METUNG PTY LTD ACN 006 383 179  
by being signed by those persons who are authorised to sign for the company

.....  
 Director ..... *HOWARD JAMES STEPHANSEN* .....  
 of ..... *10 ARCADES PLACE, FOXWOOD* .....

.....  
 Director ..... *TIMOTHY RICHARD WRIGHT* .....  
 of ..... *LEVEL 1, 61 THE ESPERANDEE, PAINESVILLE* .....

Signed by the said Transferee )  
 in the presence of: ) ..... *K. Culpin* .....

..... *LISA FRAWLEY* ..... witness  
*LISA FRAWLEY*

Approval No. 2056112A

**T2**

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SAI Global Property Division Pty Ltd

**THE BACK OF THIS FORM MUST NOT BE USED**  
Land Registry, 570 Bourke Street, Melbourne 3000. Phone 03 8636 2010





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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**  
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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:

*Aaron Hollow*

Name of Officer:

**AARON HOLLOW, MANAGER DEVELOPMENT**  
(full name)

Date:

*18th June, 2007*



**EAST GIPPSLAND SHIRE 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 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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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.



- 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.



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

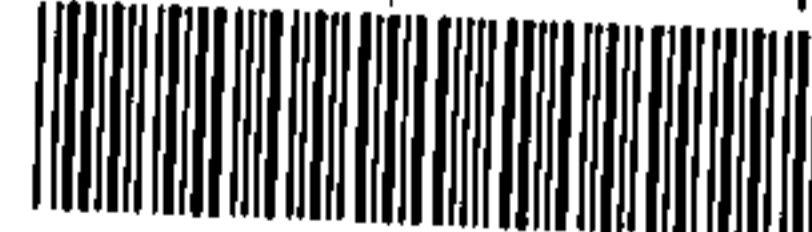
Landscaping works around private residences will be designed, approved and developed in accordance with the Document and will also have regard to the landscape plans which form part of the Endorsed Plans for Stages 1 & 2 of the Subject Land.

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 .

**AF246024X**

02/08/2007 \$97 173



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

**AF246024X**





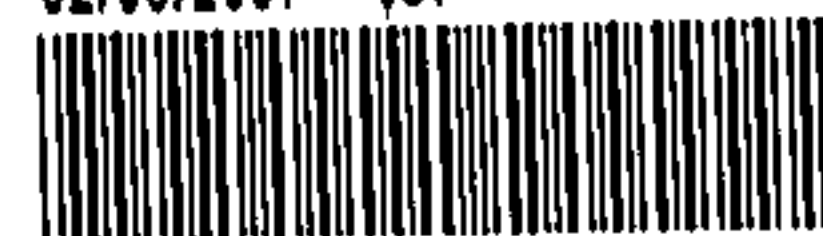
Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

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;

5. AGREEMENT UNDER SECTION 173 OF THE ACT

**AF246024X**

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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:

**AF246024X**

02/08/2007 \$97 173



AF246024X

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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.

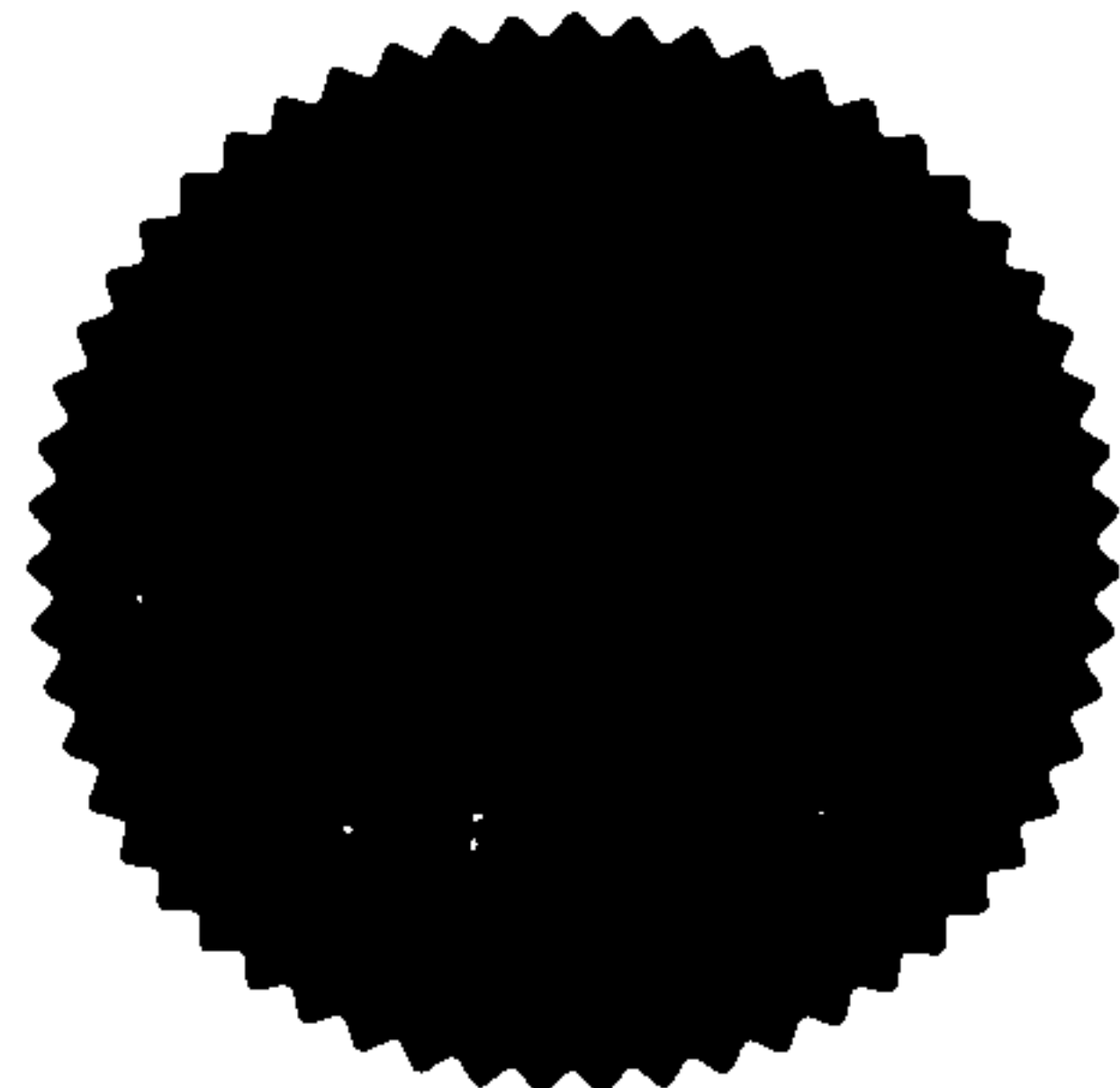


10. ENDING OF AGREEMENT

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)



.....  
*[Handwritten signature]*  
.....  
*[Handwritten signature]*  
.....

**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:-



*[Handwritten Signature]*  
.....  
Signature

*[Handwritten Signature]*  
.....  
Signature

*Timothy Richard Wright*  
.....  
Full Name

*Margaret Gae Supplitt*  
.....  
Full Name

*Level 1, 61 The Esplanade Payreville*  
.....  
Usual Address

*Level 1, 63 Esplanade Payreville*  
.....  
Usual Address

*Director*  
.....  
Office Held

*Company Secretary*  
.....  
Office Held



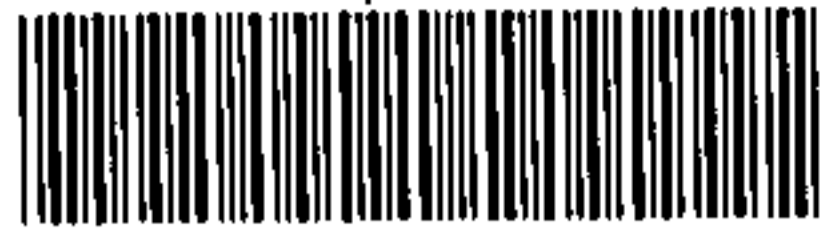
**Mortgagee's Consent**

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.

*[Handwritten Signature]*  
.....  
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



AU697150T

**Notification by responsible authority of amendment of an agreement**

**Section 183 Planning and Environment Act 1987**

**Privacy Collection Statement**

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Lodged by

Name: *SBS CONSULTANCY SERVICES*

Phone:

Address:

Reference: MN3581

Customer code: *20126M*

The responsible authority notifies that the agreement has been amended and requires that the recording in the Register be altered accordingly.

Land: (volume and folio)

VOLUME 11029 FOLIO 846  
VOLUME 11029 FOLIO 847  
VOLUME 11029 FOLIO 848  
VOLUME 11029 FOLIO 852  
VOLUME 11029 FOLIO 853  
VOLUME 11029 FOLIO 854  
VOLUME 11029 FOLIO 855  
VOLUME 11029 FOLIO 856  
VOLUME 11029 FOLIO 857  
VOLUME 11029 FOLIO 860  
VOLUME 11029 FOLIO 861  
VOLUME 11029 FOLIO 862  
VOLUME 11029 FOLIO 863  
VOLUME 11029 FOLIO 864  
VOLUME 11029 FOLIO 865  
VOLUME 11029 FOLIO 866  
VOLUME 11029 FOLIO 867  
VOLUME 11029 FOLIO 868  
VOLUME 11029 FOLIO 869  
VOLUME 11029 FOLIO 870  
VOLUME 11488 FOLIO 225  
VOLUME 11178 FOLIO 198  
VOLUME 12032 FOLIO 798  
VOLUME 11124 FOLIO 488  
VOLUME 11124 FOLIO 489  
VOLUME 11245 FOLIO 289  
VOLUME 11245 FOLIO 290  
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Land Use Victoria contact details: [www.delwp.vic.gov.au/property](http://www.delwp.vic.gov.au/property)>Contact us

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# AU697150T

## Notification by responsible authority of amendment of an agreement

### Section 183 Planning and Environment Act 1987

#### Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

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- VOLUME 11274 FOLIO 575
- VOLUME 11274 FOLIO 576
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- VOLUME 11274 FOLIO 580
- VOLUME 11274 FOLIO 581
- VOLUME 11274 FOLIO 582
- VOLUME 11274 FOLIO 583
- VOLUME 11245 FOLIO 301
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- VOLUME 11274 FOLIO 564
- VOLUME 11274 FOLIO 565
- VOLUME 11274 FOLIO 571
- VOLUME 11274 FOLIO 572

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**Notification by responsible authority of amendment of an agreement**

**Section 183 Planning and Environment Act 1987**

**Privacy Collection Statement**

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- VOLUME 11274 FOLIO 573
- VOLUME 11274 FOLIO 574
- VOLUME 11274 FOLIO 566
- VOLUME 11274 FOLIO 567
- VOLUME 11274 FOLIO 568
- VOLUME 11274 FOLIO 569
- VOLUME 11274 FOLIO 570

Responsible authority: (full name and address, including postcode)

EAST GIPPSLAND SHIRE COUNCIL, 273 MAIN STREET, BAIRNSDALE VIC 3875

Agreement no.:

AF246024X

The agreement has been amended in accordance with the terms of the Deed of Amendment to an agreement, or a provision in a Statement of Compliance relative to a Plan of Subdivision, or pursuant to an Order of the Victorian Civil and Administrative Tribunal, a copy of which is attached together with a copy of the amended agreement.

Signing:

35271702A

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AU697150T

**Notification by responsible authority of amendment of an agreement**  
**Section 183 Planning and Environment Act 1987**

**Privacy Collection Statement**  
The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

**Certifications**

1. The Certifier has taken reasonable steps to verify the identity of the applicant.
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 legislation and any Prescribed Requirement.

Executed on behalf of EAST GIPPSLAND SHIRE COUNCIL  
 Signer Name DARREN WONG  
 Signer Organisation PLANOLOGY PTY LTD  
 Signer Role AUSTRALIAN LEGAL PRACTITIONER

Signature 

Execution Date 29-7-2021

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V2

**AU697150T**

**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**

---

<b>Subject Land</b>	Stage 1 ("The Sanctuary" – PS 548109V Lots 115-137) Stage 2 ("The Habitat" – PS 600889B Lots 138-151) Storth Ryes Avenue METUNG VIC 3904
<b>Parent Title</b>	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 21st day of July 2021

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.
- J. The parties enter into this Agreement:
- to give effect to the requirements of the Schedule;
  - 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.
- 1.4 “*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.
- 1.6 “*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.

- 1.7 *“Planning Scheme”* means the East Gippsland Planning Scheme and any other planning scheme that applies to the Subject Land.
- 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.
- 1.9 *“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.
- 1.11 *“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.



AU697150T

9. COMMENCEMENT OF AGREEMENT

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

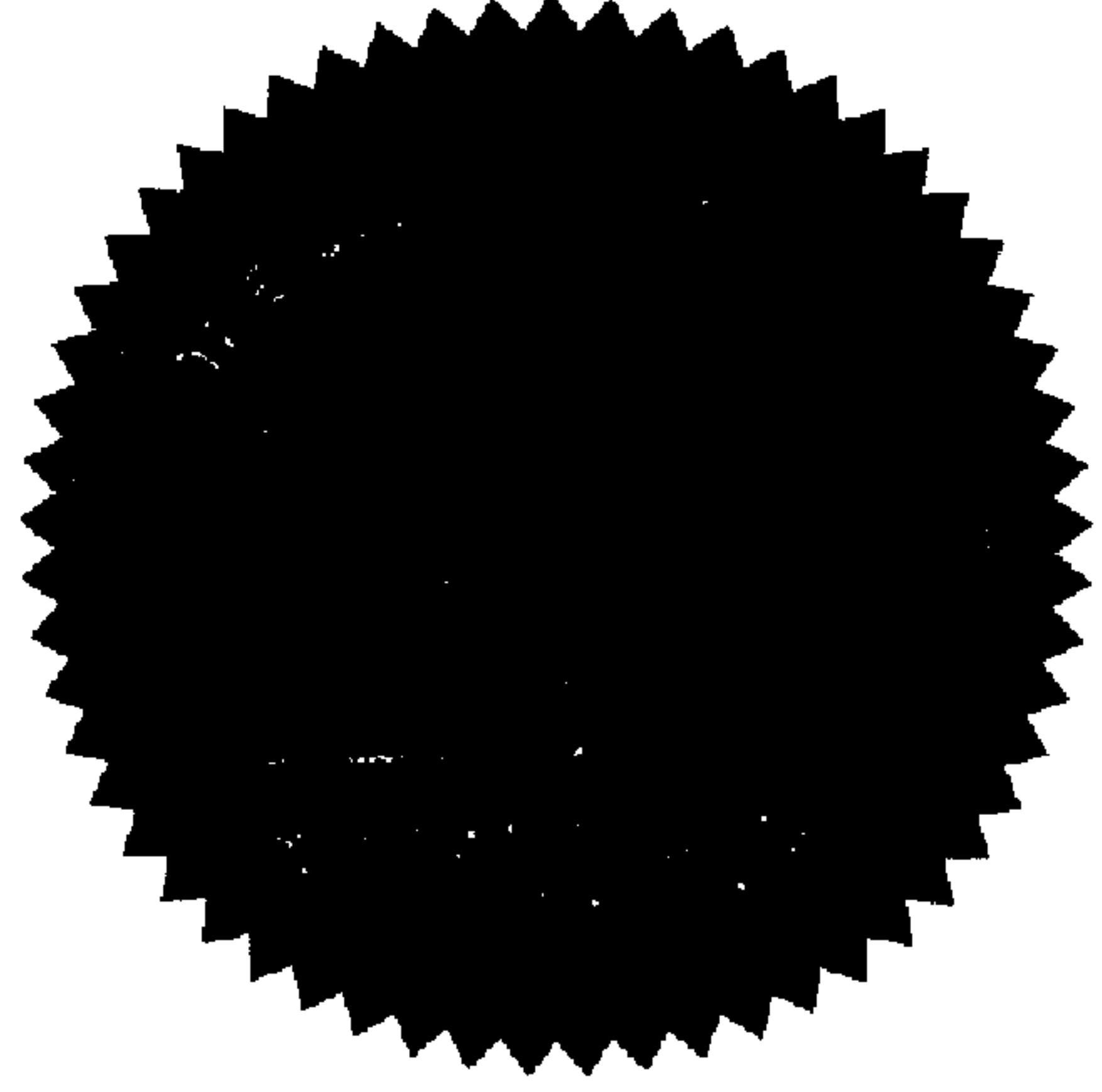
10. ENDING OF AGREEMENT

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

AU697150T

**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 21<sup>st</sup> day of July 21, in the presence of:



*John McConnell*  
.....

A/ Chief Executive

*[Signature]*  
.....

Witness

# PLANNING PROPERTY REPORT

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From [www.planning.vic.gov.au](http://www.planning.vic.gov.au) at 08 April 2024 03:43 PM

## PROPERTY DETAILS

Address: **10 THE HABITAT METUNG 3904**  
 Lot and Plan Number: **Lot 141 PS600889**  
 Standard Parcel Identifier (SPI): **141\PS600889**  
 Local Government Area (Council): **EAST GIPPSLAND**  
 Council Property Number: **93225**  
 Planning Scheme: **East Gippsland**  
 Directory Reference: **Vicroads 84 F8**

[www.eastgippsland.vic.gov.au](http://www.eastgippsland.vic.gov.au)

[Planning Scheme - East Gippsland](#)

## UTILITIES

Rural Water Corporation: **Southern Rural Water**  
 Urban Water Corporation: **East Gippsland Water**  
 Melbourne Water: **Outside drainage boundary**  
 Power Distributor: **AUSNET**

## STATE ELECTORATES

Legislative Council: **EASTERN VICTORIA**  
 Legislative Assembly: **GIPPSLAND EAST**

## OTHER

Registered Aboriginal Party: **Gunaikurnai Land and Waters Aboriginal Corporation**

[View location in VicPlan](#)

## Planning Zones

[LOW DENSITY RESIDENTIAL ZONE \(LDRZ\)](#)  
[SCHEDULE TO THE LOW DENSITY RESIDENTIAL ZONE \(LDRZ\)](#)



Note: labels for zones may appear outside the actual zone - please compare the labels with the legend.

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Notwithstanding this disclaimer, a vendor may rely on the information in this report for the purpose of a statement that land is in a bushfire prone area as required by section 32C (b) of the Sale of Land 1962 (Vic).



# PLANNING PROPERTY REPORT

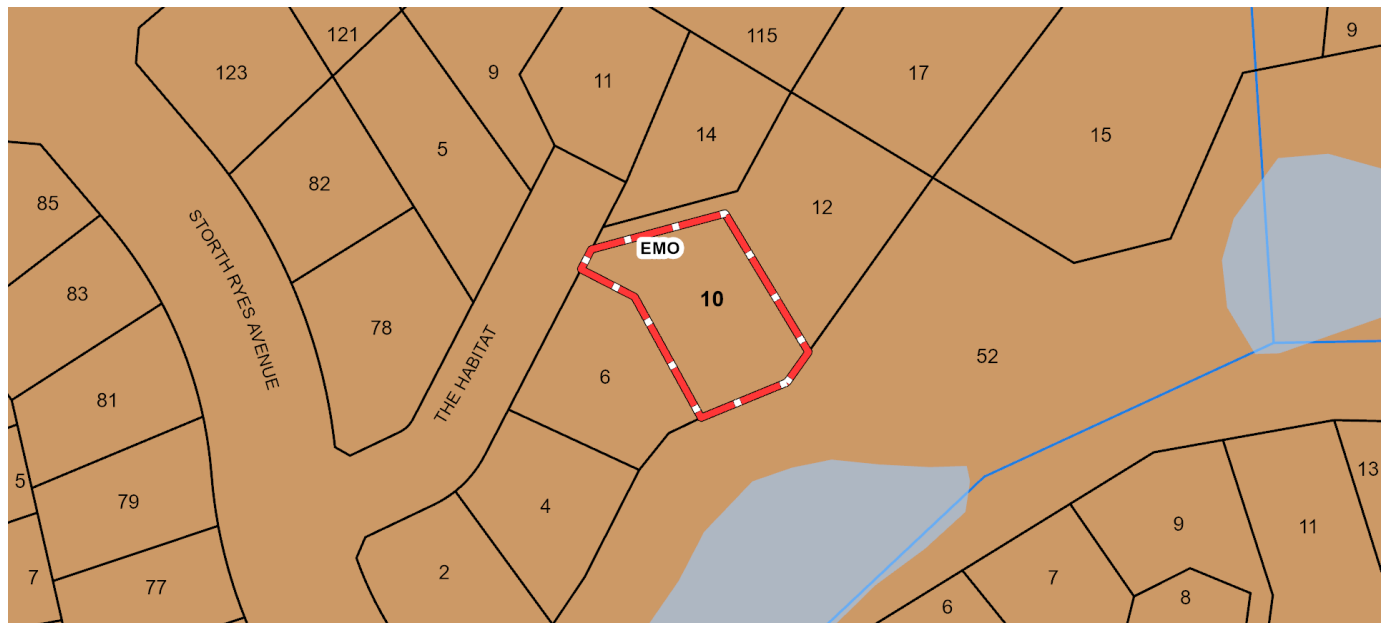
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## Planning Overlays

EROSION MANAGEMENT OVERLAY (EMO)

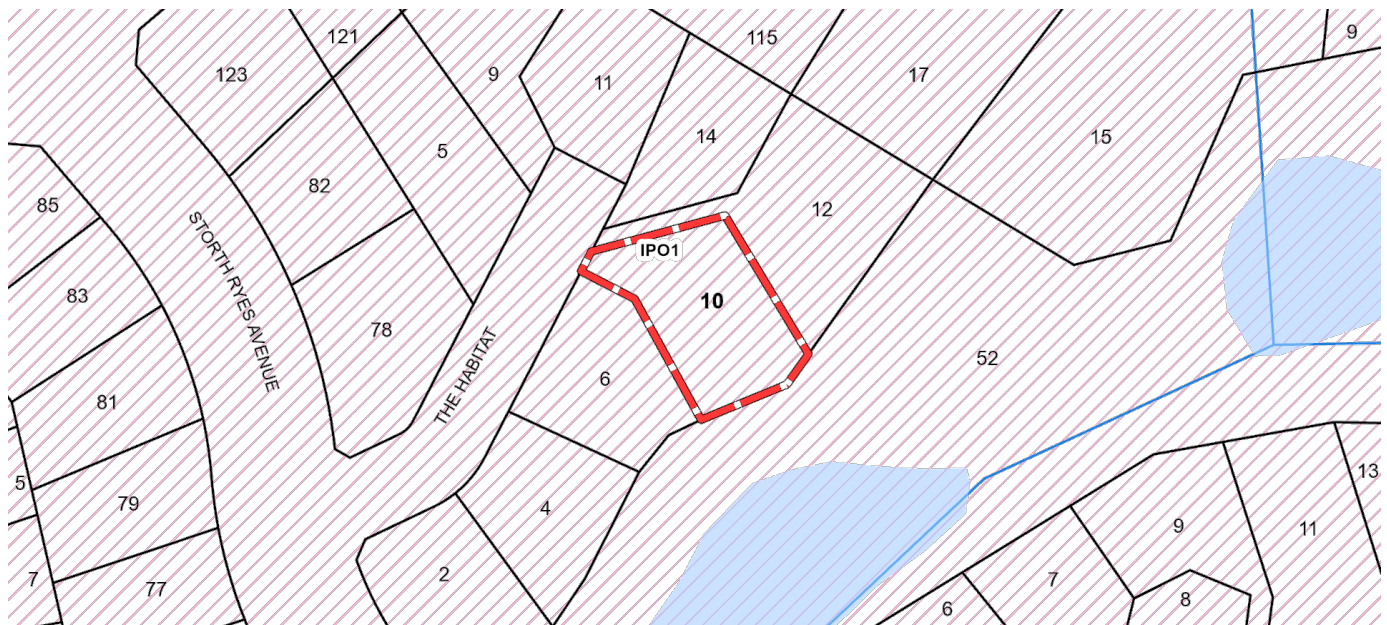
EROSION MANAGEMENT OVERLAY SCHEDULE (EMO)



Note: due to overlaps, some overlays may not be visible, and some colours may not match those in the legend

INCORPORATED PLAN OVERLAY (IPO)

INCORPORATED PLAN OVERLAY - SCHEDULE 1 (IPO1)



Note: due to overlaps, some overlays may not be visible, and some colours may not match those in the legend

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# PLANNING PROPERTY REPORT

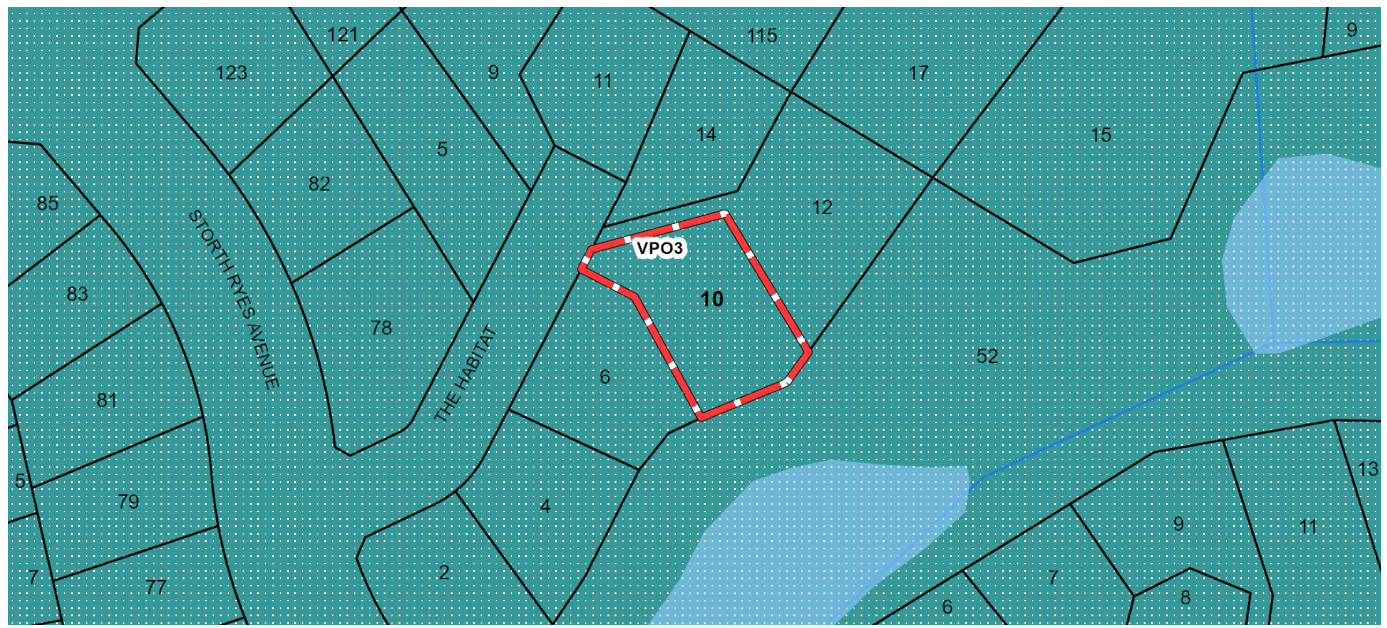
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## Planning Overlays

[VEGETATION PROTECTION OVERLAY \(VPO\)](#)

[VEGETATION PROTECTION OVERLAY - SCHEDULE 3 \(VPO3\)](#)



Note: due to overlaps, some overlays may not be visible, and some colours may not match those in the legend

## Further Planning Information

Planning scheme data last updated on 7 December 2023.

A **planning scheme** sets out policies and requirements for the use, development and protection of land. This report provides information about the zone and overlay provisions that apply to the selected land. Information about the State and local policy, particular, general and operational provisions of the local planning scheme that may affect the use of this land can be obtained by contacting the local council or by visiting <https://www.planning.vic.gov.au>

This report is NOT a **Planning Certificate** issued pursuant to Section 199 of the **Planning and Environment Act 1987**. It does not include information about exhibited planning scheme amendments, or zonings that may affect the land. To obtain a Planning Certificate go to Titles and Property Certificates at Landata - <https://www.landata.vic.gov.au>

For details of surrounding properties, use this service to get the Reports for properties of interest.

To view planning zones, overlay and heritage information in an interactive format visit <https://mapshare.maps.vic.gov.au/vicplan>

For other information about planning in Victoria visit <https://www.planning.vic.gov.au>



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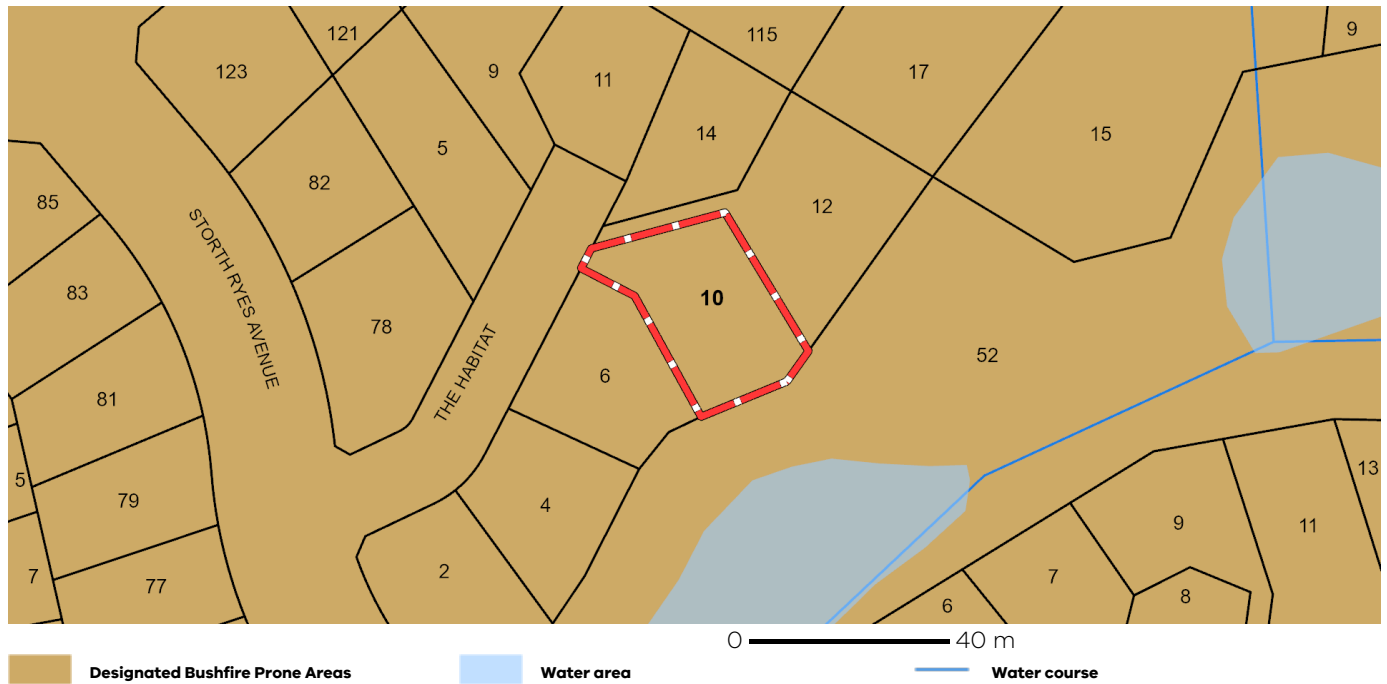


## Designated Bushfire Prone Areas

**This property is in a designated bushfire prone area. Special bushfire construction requirements apply to the part of the property mapped as a designated bushfire prone area (BPA). Planning provisions may apply.**

Where part of the property is mapped as BPA, if no part of the building envelope or footprint falls within the BPA area, the BPA construction requirements do not apply.

Note: the relevant building surveyor determines the need for compliance with the bushfire construction requirements.



Designated BPA are determined by the Minister for Planning following a detailed review process. The Building Regulations 2018, through adoption of the Building Code of Australia, apply bushfire protection standards for building works in designated BPA.

Designated BPA maps can be viewed on VicPlan at <https://mapshare.vic.gov.au/vicplan/> or at the relevant local council.

Create a BPA definition plan in [VicPlan](#) to measure the BPA.

Information for lot owners building in the BPA is available at <https://www.planning.vic.gov.au>.

Further information about the building control system and building in bushfire prone areas can be found on the Victorian Building Authority website <https://www.vba.vic.gov.au>. Copies of the Building Act and Building Regulations are available from <http://www.legislation.vic.gov.au>. For Planning Scheme Provisions in bushfire areas visit <https://www.planning.vic.gov.au>.

## Native Vegetation

Native plants that are indigenous to the region and important for biodiversity might be present on this property. This could include trees, shrubs, herbs, grasses or aquatic plants. There are a range of regulations that may apply including need to obtain a planning permit under Clause 52.17 of the local planning scheme. For more information see [Native Vegetation \(Clause 52.17\)](#) with local variations in [Native Vegetation \(Clause 52.17\) Schedule](#)

To help identify native vegetation on this property and the application of Clause 52.17 please visit the Native Vegetation Information Management system <https://nvim.delwp.vic.gov.au/> and [Native vegetation \(environment.vic.gov.au\)](http://nativevegetation.environment.vic.gov.au) or please contact your relevant council.

You can find out more about the natural values on your property through NatureKit [NatureKit \(environment.vic.gov.au\)](http://naturekit.environment.vic.gov.au)

Section 23 of the Subdivision Act 1988

**PLAN OF VARIATION OF RESTRICTION**

Upon registration of this plan the following restriction is to be varied.  
 This variation is regulated or authorised by East Gippsland Shire Council.  
 Planning Permit Number

Land over which the restriction is to be varied:  
 Lot 141 on PS 600889B - Certificate of Title Vol. 11124 Fol. 482

Identity of restriction: The covenant contained in Instrument of Transfer AK 214895A

Variation: Part (b) of the covenant is to be deleted

1. This plan is certified under Section 6 of the Subdivision Act 1988.
2. This is a Statement of Compliance issued under Section 21 of the Subdivision Act 1988.

.....  
 DATE / /  
 COUNCIL DELEGATE SIGNATURE