

Form 2

NOTICE OF AN APPLICATION FOR PLANNING PERMIT

The land affected by the application is located at:	27 Storth Ryes Avenue METUNG 3904 Lot: 106 PS: 517830
The application is for a permit to:	Variation of Restrictive Covenant AE406118H
The applicant for the permit is:	Crowther & Sadler Pty Ltd
The application reference number is:	5.2024.47.1

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

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

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

An objection must

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

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

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

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

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

VOLUME 10941 FOLIO 488

Security no : 124112665082H
Produced 15/02/2024 08:43 AM

LAND DESCRIPTION

Lot 106 on Plan of Subdivision 517830A.
PARENT TITLE Volume 10838 Folio 730
Created by instrument PS517830A 10/05/2006

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
TANIA VERONICA DA SILVA
AS740076J 25/11/2019

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT AE406118H 09/06/2006
Expiry Date 31/12/2025

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
AE324337A 01/05/2006
AMENDMENT OF AGREEMENT AU647777D 03/08/2021

DIAGRAM LOCATION

SEE PS517830A 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: 27 STORTH RYES AVENUE METUNG VIC 3904

ADMINISTRATIVE NOTICES

NIL

DOCUMENT END

This copied document is made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for a purpose that infringes any copyright.

<h1>PLAN OF SUBDIVISION</h1>	STAGE No. LTO USE ONLY	PLAN NUMBER PS 517830A
------------------------------	--------------------------------------	----------------------------------

LOCATION OF LAND

PARISH: BUMBERRAH
 TOWNSHIP: _____
 SECTION: _____
 CROWN ALLOTMENT: 81A, & 81E (PARTS)
 CROWN PORTION: _____

TITLE REFERENCES: VOLUME 10838 FOLIO 130

LAST PLAN REFERENCE: LOT G ON P5517828L

POSTAL ADDRESS: (At time of subdivision) KINGS COVE BOULEVARDE, METUNG, 3904

MGA84 CO-ORDINATES: E 573 590
 (Of approx. centre of land in plan) N 5807 040 **ZONE: 55**

COUNCIL CERTIFICATION AND ENDORSEMENT

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 196/2003/CRT

- This plan is certified under Section 6 of the Subdivision Act 1988.
- ~~This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 ___/___/___~~
- ~~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 06 / 05 / 2005
~~Re-certified under Section 11(7) of the Subdivision Act 1988~~
 Council Delegate _____
 Council seal _____
 Date ___ / ___ / ___

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER	COUNCIL/BODY/PERSON
RI	EAST GIPPSLAND SHIRE COUNCIL
RESERVE No. 1	EAST GIPPSLAND SHIRE COUNCIL
RESERVE No. 2	SPI ELECTRICITY PTY LTD

NOTATIONS

STAGING This ~~is~~ / is not a staged subdivision
 Planning Permit No 03/00934/DS

DEPTH LIMITATION DOES NOT APPLY

LOTS 1 TO 101 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	SEE DIAG.	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY
E-2, E-3	DRAINAGE	SEE DIAG.	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL

LTO USE ONLY

STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT

RECEIVED

DATE 01 / 05 / 2006.

LTO USE ONLY

PLAN REGISTERED

TIME 12:48 pm

DATE 10 / 05 / 2006

Smalley
 Assistant Registrar of Titles

SHEET 1 OF 4 SHEETS

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

LICENSED SURVEYOR PAUL ANTHONY DWYER

SIGNATURE _____ DATE 11 / 03 / 2005

REF 10509 VERSION 3

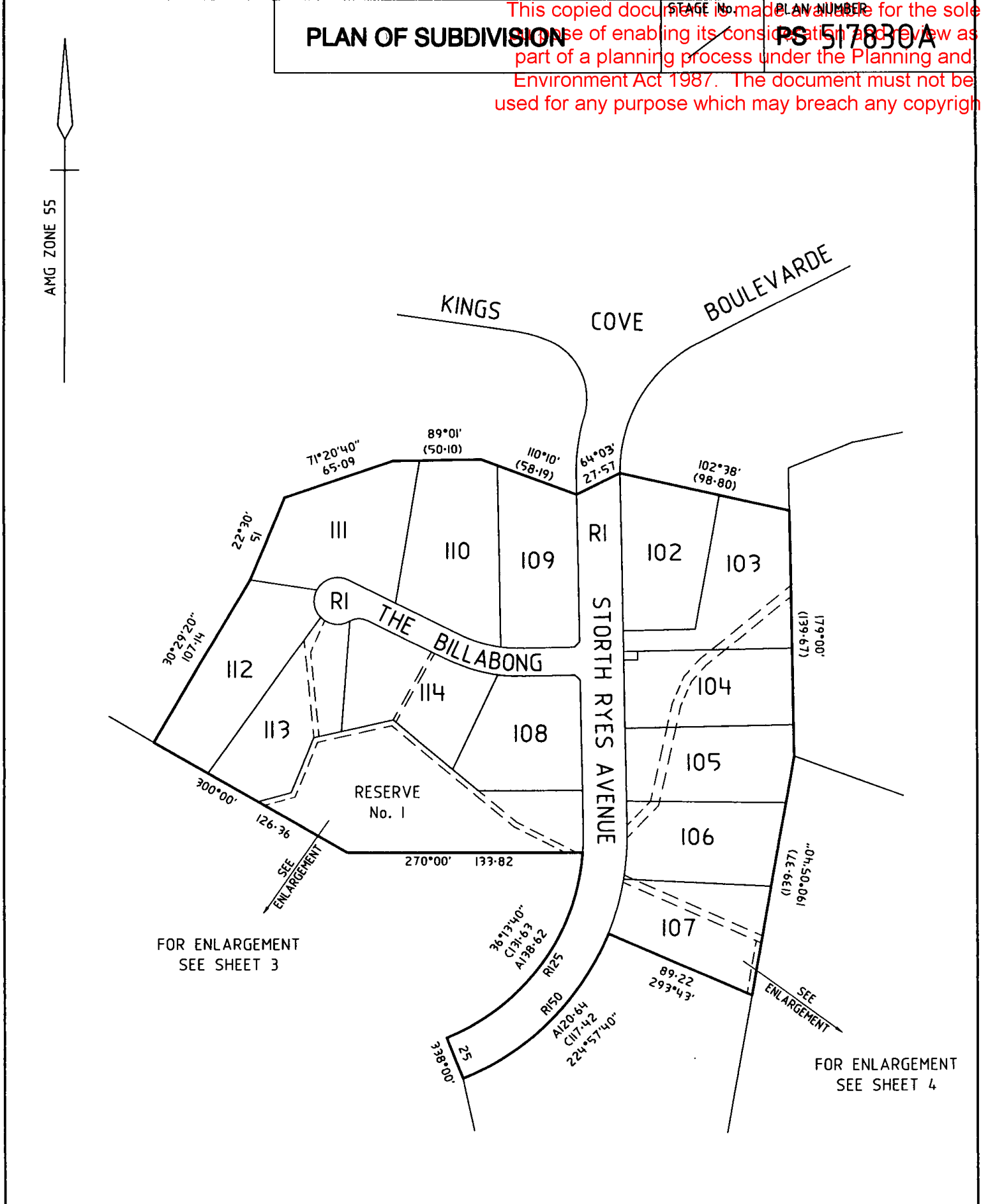
DATE 06 / 05 / 2005

COUNCIL DELEGATE SIGNATURE _____

ORIGINAL SHEET SIZE A3

PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER
		PS 517830A

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FOR ENLARGEMENT SEE SHEET 3

FOR ENLARGEMENT SEE SHEET 4

Crowthier & Sadler Pty. Ltd.
 LICENSED SURVEYORS & TOWN PLANNERS
 162 MACLEOD STREET, BAIRNSDALE, VIC., 3876
 TELEPHONE (03) 5162 5011

SHEET 2 OF 4 SHEETS

ORIGINAL SCALE 1:2000
 SHEET SIZE A3
 LENGTHS ARE IN METRES

LICENSED SURVEYOR PAUL ANTHONY DWYER
 SIGNATURE DATE 11 / 03 / 2005
 REF 10509 VERSION 3

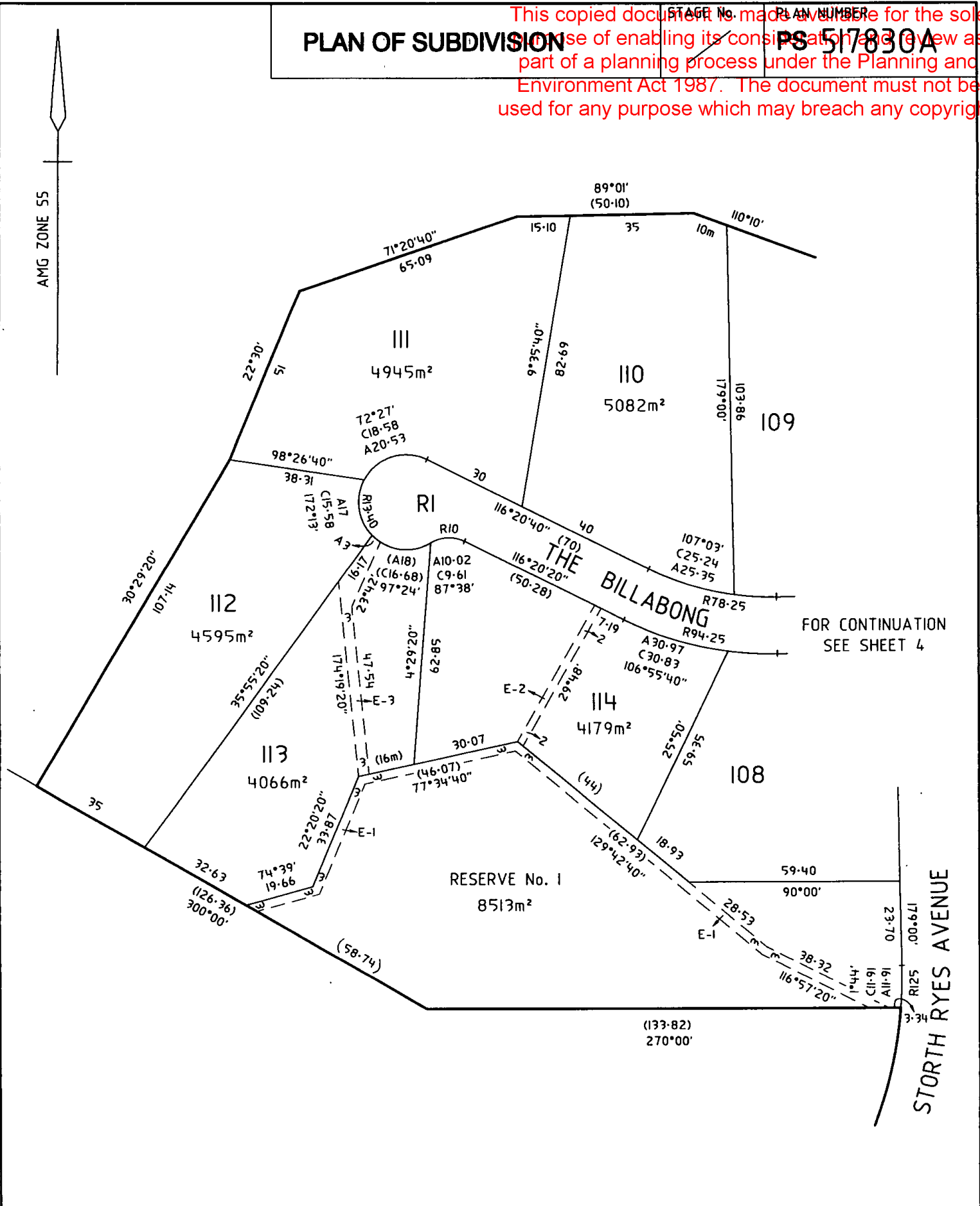
DATE 01 / 05 / 2005
 COUNCIL DELEGATE SIGNATURE

PLAN OF SUBDIVISION

STAGE No. PLAN NUMBER

PS 517830A

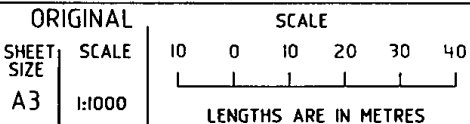
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FOR CONTINUATION
SEE SHEET 4

Crowther & Sadler Pty. Ltd.
 LICENSED SURVEYORS & TOWN PLANNERS
 162 MACLEOD STREET, BAIRNSDALE, VIC., 3876
 TELEPHONE (03) 5182 5011

SHEET 3 OF 4 SHEETS



LICENSED SURVEYOR PAUL ANTHONY DWYER

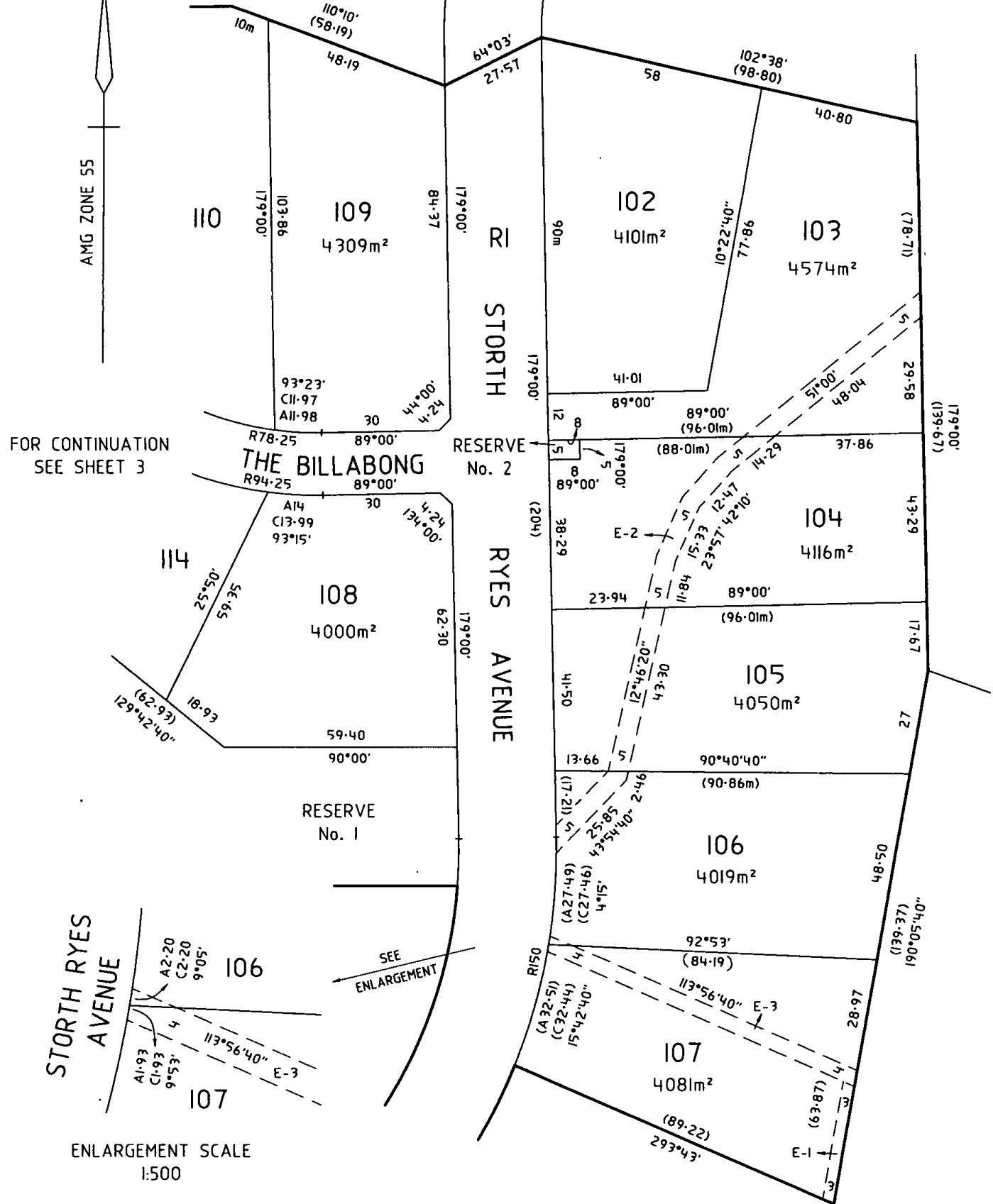
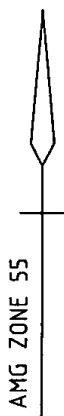
SIGNATURE DATE 11 / 03 / 2005

REF 10509 VERSION 3

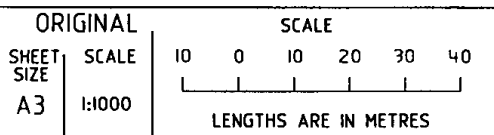
DATE 06 / 05 / 2005
 COUNCIL DELEGATE SIGNATURE

PLAN OF SUBDIVISION

PS 517830A



Crowthor & Sadler Pty. Ltd.
 LICENSED SURVEYORS & TOWN PLANNERS
 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875
 TELEPHONE (03) 5162 6011



LICENSED SURVEYOR PAUL ANTHONY DWYER

SIGNATURE _____ DATE 11/03/2005

REF 10509 VERSION 3

SHEET 4 OF 4 SHEETS

DATE 11/03/2005

COUNCIL DELEGATE SIGNATURE _____

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AE324337A
01/05/2006 19230

LODGED BY Warren, Graham & Murphy,
CODE 1716W VICTORIA



Titles Office Use Only

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

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

LAND CERTIFICATE OF TITLE VOLUME 10838 FOLIO 730

ADDRESS OF LAND 48 KINGS COVE BOULEVARD, METUNG 3904

RESPONSIBLE AUTHORITY EAST GIPPSLAND SHIRE COUNCIL

PLANNING SCHEME EAST GIPPSLAND PLANNING SCHEME

AGREEMENT DATE THE ~~10~~ 7 DAY OF March, 2006
AGREEMENT WITH KINGS COVE METUNG PTY LTD

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority Aaron Hollow

Name of Officer AARON HOLLOW, MANAGER DEVELOPMENT

Date 07 March 2006

1 MAY 2006

ADVERTISED

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EAST GIPPSLAND SHIRE COUNCIL

Council

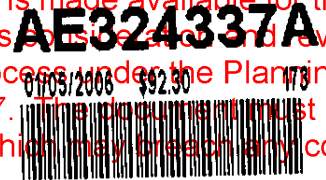
- and -

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

Owner

Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land: 48 Kings Cove Boulevard, METUNG VIC 3904
Certificate of Title Volume 10838 Folio 730
Lot G on PS 517828L
"Storth Ryes Avenue" & "The Billabong", Kings Cove
PLAN OF SUBDIVISION NO. 517830A
(Stage 5 - Lots 102 - 114)



PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the 7 day of March 2006

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL of 273 Main Street, Bairnsdale in the State of Victoria ("Council")

- and -

KINGS COVE METUNG PTY LTD (A.C.N. 006 383 179) of Level 1, 63 The Esplanade, Paynesville, in the said State ("the Owner")

BACKGROUND PROVISIONS:

- A. The Owner is the registered proprietor of all that piece of land being the whole of the land described in Certificate of Title **Volume 10838 Folio 730**.
- B. The Owner has made application to the Council for a Planning Permit.
- C. The Council has issued Planning Permit Number **334/2003/P** subject to certain conditions, one of which is that the parties enter into an agreement pursuant to Section 173 of the Planning and Environment Act.

OPERATIVE PROVISIONS:

- 1. The parties confirm the Background Provisions to this agreement.
- 2. This agreement is made pursuant to Section 173 of the Planning & Environment Act.

AE324337A

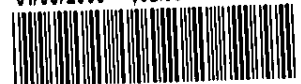


3. The Owner covenants, pursuant to Clause 11 of the Planning Permit, that:-
- (a) The development of each lot approved by the Planning Permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
 - (b) Each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "*Kings Cove - Metung- Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone*", dated December, 2001 (or as amended) (The Document).
 - (c) Any amendment to The Document will be to the satisfaction of the Responsible Authority.
 - (d) The Provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the Responsible Authority.
 - (e) A copy of the Planning Permit will be attached to and will form part of the Contract of Sale for every lot.
 - (f) Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.

- (g) This Agreement may be ended wholly or in part or as to any of the land by the Responsible Authority with the approval of the responsible authority with the approval of the Minister or by agreement between the Responsible Authority and all persons who are bound by the Agreement.
 - (h) This Agreement will bind the Owner(s) and will run with the land so that all successors in the title are bound by the agreement.
 - (i) This Agreement will be prepared at the Owner's cost and to the satisfaction of the Responsible Authority and must be registered on title in accordance with Section 181 of the Planning and Environment Act 1987.
4. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.
5. The parties acknowledge and agree that the covenants and agreements entered into by the Owner in this agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, his successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof.

AE324337A

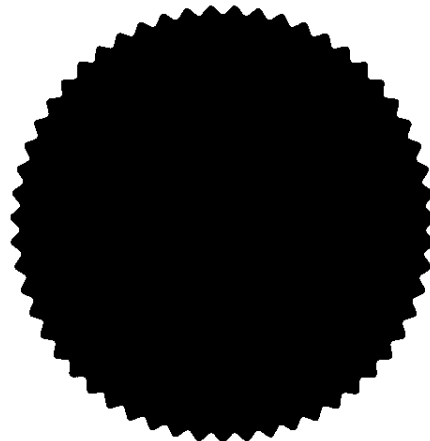
01/05/2006 \$92.30 173

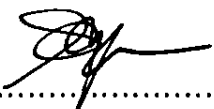


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EXECUTED by the parties on the date set out at the commencement of this Agreement.

The COMMON SEAL of EAST GIPPSLAND
SHIRE COUNCIL was affixed on behalf of)
Council by authority of the Chief Executive)
Officer on the 21st day of February)
, 200⁶ in exercise of the power delegated)
under Administrative Procedures (Use of)
Common Seal) Local Law in the presence of)

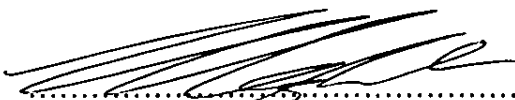




.....

..... P. Wiseman

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

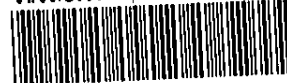



..... Director


..... Director/Secretary

AE324337A

01/05/2006 \$92.30 173



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Mortgagee's Consent

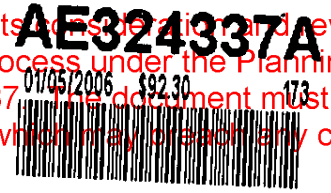
GIPPSLAND SECURED INVESTMENTS LIMITED as Mortgagee of Registered Mortgage No. **X256305M** consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes Mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

A large, handwritten signature in black ink, written over a dotted line.

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

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EAST GIPPSLAND SHIRE COUNCIL

- and -

KINGS COVE METUNG PTY LTD

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND
ENVIRONMENT
ACT 1987

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

REF: ACT;act4020/05
PS 517830A (Stage 5)

TEL: (03) 51522 661

D.X.: 82201, Bairnsdale

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TRANSFER OF LAND

Section 45 Transfer of Land Act 1958

Lodged by: \$4,030

Name: LUSCOMBE COLAHAN

Phone: 03 5672 3433

Address: P.O. Box 506, WONTHAGGI 3995

Ref: 060024

Customer Code: 2746G



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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)

Certificate of Title Volume 10941

Folio 488

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

All Its Estate In Fee Simple

Consideration:

\$139,500.00

Transferor: (full name)

KINGS COVE METUNG PTY LTD ACN 006 383 179

Transferee: (full name and address including postcode)

TREVOR WILLIAM BOWLER & SUSAN LEE BOWLER
of 9 Henry Street East, Wonthaggi, 3995 as Joint Proprietors

Directing Party: (full name)

NIL

Creation and/or Reservation and/or Covenant

The Transferee with the intent that the benefit of this covenant shall until the 31st December 2025, be attached to and run at law and in equity with the whole of the land comprised in Plan of Subdivision Number 517830A (other than the land hereby transferred) and that the burden thereof 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 **DOETH HEREBY COVENANT** with the Transferor and other the registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the Transferee will not:

Approval No. 18755042A

ORDER TO REGISTER

T2

Please register and issue title to

Page 1 of 2

Signed

Cust. Code:



Anstat Pty Ltd

THE BACK OF THIS FORM MUST NOT BE USED

Land Registry, 570 Bourke Street, Melbourne 3000. Phone 03 8636 8010

Star Pty Ltd trading as Quayles	
STAMP DUTY USE ONLY	AP 185
Vic Duty	\$4,030.00
Consideration	\$139,500.00
Trans No.	600/2008
Endorse Date	29/05/2008
Section	Original
JAYLES Signature	

12/6/08

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(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 tones gross vehicle mass (GVM) except for the purpose of loading or unloading of goods unless the vehicle is a construction vehicle engaged on construction works thereon or unless the vehicle is a boat caravan or similar vehicle 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) 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 authorize any part of the land hereby transferred to be used for the purposes of the drying of clothes, storage or garbage, or housing of gas, fuel or water tanks, or similar uses unless such areas are reasonably screened from public view.

Dated: 24.5.06
Execution and attestation

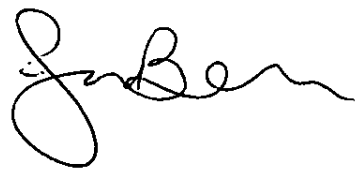
The Common Seal of KINGS COVE METUNG PTY LTD (ACN 006 383 179) was affixed in the presence of authorised persons:

Director - 
Full Name *Timothy Richard Lambert*
Usual Address *Level 1, 63 The Esplanade, Pigeonville.*

Secretary - 
Full Name *DANINE MARGARET PEARSON*
Usual Address *8 DEAKIN AVE, BARKNIDALE*



Signed by the Transferees in the presence of:







Approval No. 18755042A

T2

Page 2 of 2



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

AE406118H

09/06/2006 \$435 45





Department of Environment, Land, Water & Planning

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

Produced 15/02/2024 09:04:02 AM

Status	Registered	Dealing Number	AU647777D
Date and Time Lodged	03/08/2021 08:55:17 AM		

Lodger Details

Lodger Code	20126M
Name	STEFANIE DONNA SUMMERS
Address	
Lodger Box	
Phone	
Email	
Reference	PLANOLOGY - AE324337

APPLICATION TO RECORD VARIATION OF AN INSTRUMENT

Jurisdiction VICTORIA

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.

Estate and/or Interest

AGREEMENT AE324337A

Land Title Reference

10941/484
 10941/485
 10941/486
 10941/487
 10941/488
 10941/489
 10941/490
 10941/491
 10941/492
 10941/493
 10941/494
 10941/495
 10941/496

Instrument and/or legislation

VARY - AGREEMENT - SECTION 173
 Planning & Environment Act - section 178





Department of Environment, Land, Water & Planning

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Electronic Instrument Statement

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

Refer Image Instrument

The applicant/relinquishing party/receiving party requests the recording of this variation of 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 legislation and any Prescribed Requirement.

Executed on behalf of	EAST GIPPSLAND SHIRE COUNCIL
Signer Name	ERIC JAMES CABUANG
Signer Organisation	STEFANIE DONNA SUMMERS
Signer Role	CONVEYANCING PRACTICE
Execution Date	03 AUGUST 2021

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.



Imaged Document Cover Sheet

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Document Type	Instrument
Document Identification	AU647777D
Number of Pages (excluding this cover sheet)	6
Document Assembled	

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

EAST GIPPSLAND SHIRE COUNCIL**Council****AND****KINGS COVE METUNG PTY LTD (ACN 006 383 179)****Owner**

Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land

48 Kings Cove Boulevard, METUNG VIC 3904
Certificate of Title Volume 10838 Folio 730
Lot G on PS 517828L
"Storth Ryes Avenues"& "The Billabong", Kings Cove
PLAN OF SUBDIVISION NO. 517830A
(Stage 5 – Lots 102-114)

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 (ACN 006 383 179) of Level 1, 63 The Esplanade, Paynesville, in the said State ("the Owner")

BACKGROUND PROVISIONS:

- A. The Owner is the registered proprietor of all that price of land being the whole of the land described in Certificate of Title **Volume 10838 Folio 730**.
- B. The Owner has made application to the Council for a Planning Permit.
- C. The Council has issued Planning Permit Number **334/2003/P** subject to certain conditions, one of which is that the parties enter into an agreement pursuant to Section 173 of the Planning and Environment Act.
- D. On 7 March 2006, Council and Kings Cove Metung Pty Ltd (**the Former Owner**) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AE3224337A on 1 May 2006.
- E. Under clause 3 of the Agreement, the Subject Land is required to be used and developed in accordance with the "Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone" dated December 2001 (**the Guidelines**).
- F. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (**ARC**). The consent of the ARC must be obtained before the Subject Land is developed.
- G. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.

- H. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.
- I. The Parties enter into this Agreement:
- (a) to give effect to the requirements of the Planning Permit;
 - (b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;
 - (c) to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and
 - (d) to include certain obligations under the Guidelines in the Agreement.

OPERATIVE PROVISIONS:

1. The parties confirm the Background Provisions to this agreement.
2. This agreement is made pursuant to Section 173 of the Planning & Environment Act.
3. [Clause 3 deleted]
4. **Definitions**

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

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

"the Endorsed Plan" means the plan, endorsed with the stamp of the Council, that forms part of the Planning Permit.

"Lot" means a lot on the Endorsed Plan.

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

"Planning Permit" means the Planning Permit referred to in recital C of this Agreement.

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

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

“Solid Fence” means a fence that is less than 50% transparent.

“Subject Land” means the land situated at 48 Kings Cove Boulevard, Metung being the land referred to in Certificate of Title Volume 10838 Folio 730 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of the Subject Land or any part of it.

5. **Obligations from the Guidelines**

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

- (a) the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;
- (b) the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;
- (c) no more than one dwelling may be developed on a Lot;
- (d) any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;
- (e) all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;
- (f) if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;
- (g) any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;
- (h) vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;
- (i) the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and
- (j) the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

6. The Owner must not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the land or any part of it without first disclosing to its successors the existence and nature of this agreement.

7. The parties acknowledge and agree that the covenants and agreements entered into by the Owner in this agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the land and which shall bind the Owner, his successors, assignees and transferees, the registered proprietors for the time being of the land and every part thereof.

LANDATA

This copied document is made available for the sole purpose of enabling its consideration and review as part of a planning process under the Planning and Environment Act 1987. The document must not be used for any purpose which may breach any copyright.

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 21st day of July 2024, in the presence of:



John McConnell
.....

A/ Chief Executive

[Signature]
.....

Witness

20240320

Our ref: 20779

15 February 2024

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

Dear Robert,

**Re: Planning Permit Application
Proposed Variation of Restrictive Covenant AE 406118H
27 Storth Ryes Avenue, Metung**

Please find enclosed an Application for a Planning Permit associated with the proposed variation of the above mentioned Restrictive Covenant.

In its current form, Clause (b) of the Covenant prevents development being undertaken on the subject land, given the inability to obtain approval from the Transferor, being Kings Cove Metung Pty Ltd, or their nominee. With this organisation now a liquidated company, the requirement to obtain written approval is impossible to achieve. The subject Application seeks approval to delete Clause (b) in its entirety.

The Covenant includes a requirement to develop in accordance with Development Guidelines, which is considered to duplicate a control already provided for by Legal Agreement AU647777D, as registered on the allotment.

The Development requirements form part of the Agreement. Council is a party to the Agreement, which is considered an appropriate mechanism for the development control that is sought to be assured.

The request to vary the Covenant as proposed is considered a logical and orderly outcome, which Council has supported for numerous other properties within the Kings Cove Estate over recent years.

In the Report tabled at the Ordinary Council Meeting of 15 September 2020, Council Officers acknowledged that Council:

"would have a reasonable basis to vary a Covenant by deleting this obligation if an owner applied for a planning permit to vary their Covenant" (p.19).

The Application is considered to be entirely consistent with the expectation foreshadowed by the Council Report.

East Gippsland Shire Council

We have prepared a summary of beneficiaries to the Covenant proposed to be varied. We understand a process of public notification will be required, which will include the placement of appropriate public notices in the local Newspaper (Lakes Post) to the satisfaction of the Responsible Authority. We look forward to receiving Council's instructions on this matter in due course.

As always, please do not hesitate to contact our office should you require any further information to assist with your consideration of this matter.

Regards,



KATE YOUNG

*Encl: Application Form (via Portal)
Copy of Title
List of Beneficiaries*

Note: Applicable Application fee is \$1,415.10

Our ref: 20779

Application for Planning Permit Variation of a Restrictive Covenant

Address	27 Storth Ryes Avenue, Metung
Formal description	Lot 106 on PS517830A
Existing conditions	Residential allotment containing a single dwelling
Encumbrances	<p>Restrictive Covenant AE406118H: Registered on 9 June 2006. This Covenant will expire on 31 December 2025.</p> <p>Legal Agreement AU647777D: Executed on 3 August 2021. Provides for the orderly development of land in accordance with obligations from the guidelines of the initial agreement. The Agreement does not require approval by an Architectural Review Panel.</p>
Permit trigger	Clause 52.02 relating to <i>Easements, Restrictions and Reserves</i> to vary a restriction, to be facilitated under Section 23 of the <i>Subdivision Act 1988</i> .
Proposed variation to AE406118H	<p>Deletion of Clause (b) in its entirety that states:</p> <p><i>“Construct or externally alter or allow to be constructed or externally altered on the land hereby transferred any building or structure (including fences) other than in accordance with plans and specifications previously submitted to and approved in writing by the Transferor, Kings Cove Metung Pty Ltd or its nominee”</i></p>
Beneficiaries	<p>Lot 102 PS517830A: 11 Storth Ryes Avenue, Metung.</p> <p>Lot 103 PS517830A: 17 Storth Ryes Avenue, Metung</p> <p>Reserve 2 PS517830A: 17A Storth Ryes Avenue, Metung</p> <p>Lot 104 PS517830A: 19 Storth Ryes Avenue, Metung</p> <p>Lot 105 PS517830A: 23 Storth Ryes Avenue, Metung</p> <p>Lot 107 PS517830A: 31 Storth Ryes Avenue, Metung</p> <p>Lot 108 PS517830A: 1 The Billabong, Metung</p> <p>Lot 109 PS517830A: 2 The Billabong, Metung</p> <p>Lot 110 PS517830A: 8 The Billabong, Metung</p> <p>Lot 111 PS517830A: 14 The Billabong, Metung</p> <p>Lot 112 PS517830A: 17 The Billabong, Metung</p>



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	Lot 113 PS517830A: 15 The Billabong, Metung
	Lot 114 PS517830A: 9 The Billabong, Metung
	Reserve 1 PS517830A: 52 Storth Ryes Avenue, Metung