

17 July 2022

Form 18

NOTICE OF AN APPLICATION TO END AN AGREEMENT

Description of the land affected by the agreement:	52 Country Club Drive LAKES ENTRANCE Lot B PS 831208
Description of the proposal:	Request to End Legal Agreement AF072419Q
Who initiated the proposal:	Crowther & Sadler Pty Ltd
The application reference number is:	2/2022/AGR
You may look at the application and any documents that support the application at the website of the responsible authority.	COVID-19 Omnibus (Emergency Measures) Bill 2020 now modifies the requirement of Form 2 so that <i>Planning documents previously required to be physically available to view at local government offices are now only required to be available for online inspection.</i>

This can be done anytime by visiting the following website:
<https://www.eastgippsland.vic.gov.au/building-and-development/advertised-planning-permit-applications>

The proposal was initiated by Crowther & Sadler Pty Ltd, who applied to the responsible authority for agreement to the proposal under section 178A of the **Planning and Environment Act 1987**.

In accordance with section 178A(3) of the **Planning and Environment Act 1987**, the responsible authority has notified the applicant that it agrees in principle to the proposal.

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

The responsible authority will not make a decision on the proposal under section 178E of the Planning and Environment Act 1987 before:	Subject to applicant carrying out notice
---	---

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

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

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

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

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

VOLUME 12185 FOLIO 389

Security no : 124098052827T
Produced 02/06/2022 02:14 PM

LAND DESCRIPTION

Lot B on Plan of Subdivision 831208Q.
PARENT TITLE Volume 12158 Folio 636
Created by instrument PS831208Q 06/02/2020

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
LAKES HEIGHTS PTY LTD of 100 SPRING STREET NORTH PORT MELBOURNE VIC 3207
AV055845E 25/11/2021

ENCUMBRANCES, CAVEATS AND NOTICES

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

AGREEMENT Section 173 Planning and Environment Act 1987
AF072419Q 17/05/2007

AGREEMENT Section 173 Planning and Environment Act 1987
AS444568M 16/08/2019

DIAGRAM LOCATION

SEE PS831208Q 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: 52 COUNTRY CLUB DRIVE LAKES ENTRANCE VIC 3909

ADMINISTRATIVE NOTICES

NIL

eCT Control 22692Q EASTCOAST CONVEYANCING
Effective from 25/11/2021

DOCUMENT END

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

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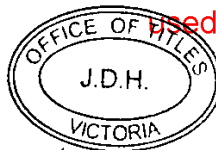
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Section 181



**APPLICATION BY A RESPONSIBLE AUTHORITY FOR THE MAKING
OF A RECORDING OF AN AGREEMENT**

Planning & Environment Act 1987

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Lodged by:

Warren Graham & Murphy
5155 1286
383 Esplanade, Lakes Entrance
GRW: ab.
1715W

Name:

Phone:

Address:

Ref:

Customer Code:

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 10799 Folio 852

Authority: East Gippsland Shire Council, Corporate Centre, 273 Main Street, Bairnsdale, 3875

Section and Act under which agreement made: Section 173 of the Planning & Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:

Name of Officer:

AARON HOLLOW, MANAGER DEVELOPMENT
(full name)

Date:

10-05-2007

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THIS AGREEMENT is made the 15th day of May 2007
BETWEEN EAST GIPPSLAND SHIRE COUNCIL of Corporate Centre, 273 Main
 Street, Bairnsdale ("the Council") of the first part and DONALD WAYNE DICKSON,
DIANNE ROBYN DICKSON, ROSS MURRAY NICHOLS and GLENYS PEARL
NICHOLS all of 189 Palmers Road, Lakes Entrance ("the Owners") of the second
 part.

AF072419Q



WHEREAS:

- A. Subject Land means the land situated at Palmers Road, Lakes Entrance, being the land referred to in Certificate of Title Volume 10799 Folio 852 (**Subject Land**) and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.
- B. The Owners are the registered proprietors of the Subject Land and have made application to the Council as the responsible authority under the East Gippsland Planning Scheme ("the scheme") for a Permit for Subdivision for the Subject Land into forty four lots.
- C. The Council has granted Planning Permit Number 306/2004/P dated the 15th September 2005 ("the Permit") for the Subject Land for Subdivision of the Subject Land into forty four lots in accordance with the Endorsed Plan. A copy of the Permit is available for inspection at the Council offices during normal business hours upon giving the Council reasonable notice.
- D. Condition forty four of the Permit requires the Owners to enter into an Agreement with the Council in accordance with Section 173 of the Planning & Environment Act 1987 before the issue of a Statement of Compliance.
- E. The Council and the Owners have agreed that without restricting or limiting their respective powers to enter into this Agreement and insofar as it can be so treated this Agreement shall be treated as being an Agreement under Section 173(1) of the Planning & Environment Act 1987.
- F. As at the date of this Agreement, the Subject Land is encumbered by Mortgage No. AE328733U in favour of the Mortgagee. The Mortgagee has

consented to the Owner entering into this Agreement with respect to the Subject Land.

G. The parties enter into this Agreement:

- (i) to give effect to the requirements of the Permit; and
- (ii) to achieve and advance the objectives of planning in Victoria and the objectives of the scheme in respect of the "Subject Land".

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement unless inconsistent with the context or subject matter:

"Act" means the Planning and Environment Act 1987.

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

"Endorsed Plan" means the plan endorsed with the stamp of the Council from time to time as the plan which forms part of the Permit. A copy of the Endorsed Plan is attached to this Agreement and marked "A".

"Lot" means a lot on the Endorsed Plan.

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

"Native Vegetation" means locally indigenous species.

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

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17/05/2007 \$94.60 173



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"Party" or "Parties" means the Owners and the Council under this Agreement as appropriate.

"Statement of Compliance" means the Statement of Compliance under the Subdivision Act 1988.

"Vegetation to be Retained" means any Native Vegetation on the Subject Land which is identified on the Endorsed Plan as 'Plains Grassy Forest' or the like.

2. The Owners covenant and agree that no Native Vegetation in areas identified as Vegetation to be Retained will be removed, destroyed, felled, lopped, trimmed, ringbarked or uprooted or otherwise damaged without the prior written consent of the Council.
3. In this Agreement unless the context admits otherwise:
 - (a) The singular includes the plural and vice versa.
 - (b) A reference to a gender includes a reference to each other gender.
 - (c) A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.
 - (d) If a party consists of more than one person this Agreement binds them jointly and each of them severally.
 - (e) A term used in this Agreement has its ordinary meaning unless that term is defined in this Agreement. If a term is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.
 - (f) A reference to an Act, Regulation or the scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or scheme.
4. The Owners further covenant and agree that:



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- (a) the Owners will do all things necessary to give effect to this Agreement;
 - (b) the Owners will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to enable the Council to do so including signing any further agreement, acknowledgement or document or procuring the consent to this Agreement or any mortgagee or caveator to enable the recording to be made in the Register under that section.
- 5. The Owners further covenant and agree that the Owners will immediately pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, review, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to the Council by the Owners.
- 6. The Council and the Owners agree that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owners under this Agreement are obligations to be performed by the Owners as conditions subject to which the Subject Land may be used and developed pursuant to the Permit.
- 7. Without limiting the operation or effect which this Agreement has, the Owners warrant that apart from the Owners and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.
- 8. Without limiting the operation or effect that this Agreement has, the Owners must ensure that, until such time as a memorandum of this Agreement is registered on the title the Subject Land, successors in title shall be required to:

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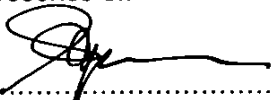
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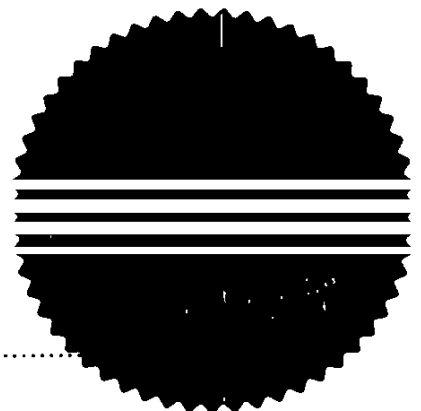
- (a) give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
 - (b) execute a deed agreeing to be bound by the terms of this Agreement.
9. Any time or other indulgence granted by the Council to the Owners or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owners will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.
 10. 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.
 11. It is acknowledged and agreed that this Agreement does not fetter or restrict the power of discretion of the Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land and or relating to any use or development of the Subject Land.
 12. Unless otherwise provided in this Agreement, this Agreement commences from the date of this Agreement.

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

THE COMMON SEAL of EAST
GIPPSLAND SHIRE COUNCIL
 was hereunto affixed on the
 day of 24th April 2007
 in the presence of:


 Chief Executive


 Witness



AF072419Q

17/05/2007 \$94.60 173



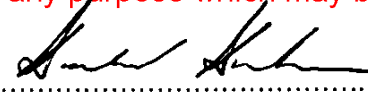
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SIGNED SEALED and DELIVERED
by the said DONALD WAYNE DICKSON
in the presence of:

DWD
X 

witness
Y  (witness)

SIGNED SEALED and DELIVERED
by the said DIANNE ROBYN DICKSON
in the presence of:

DRD
X 

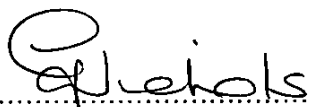
witness
X  (witness)

SIGNED SEALED and DELIVERED
by the said ROSS MURRAY NICHOLS
in the presence of:

RMN
X 

witness
X  (witness)

SIGNED SEALED and DELIVERED
by the said GLENYS PEARL NICHOLS
in the presence of:

GPN
X 

witness
X  (witness)

Westpac Banking Corporation as Mortgagee of registered mortgage No. AE328733U consents to the Owners 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



AF072419Q

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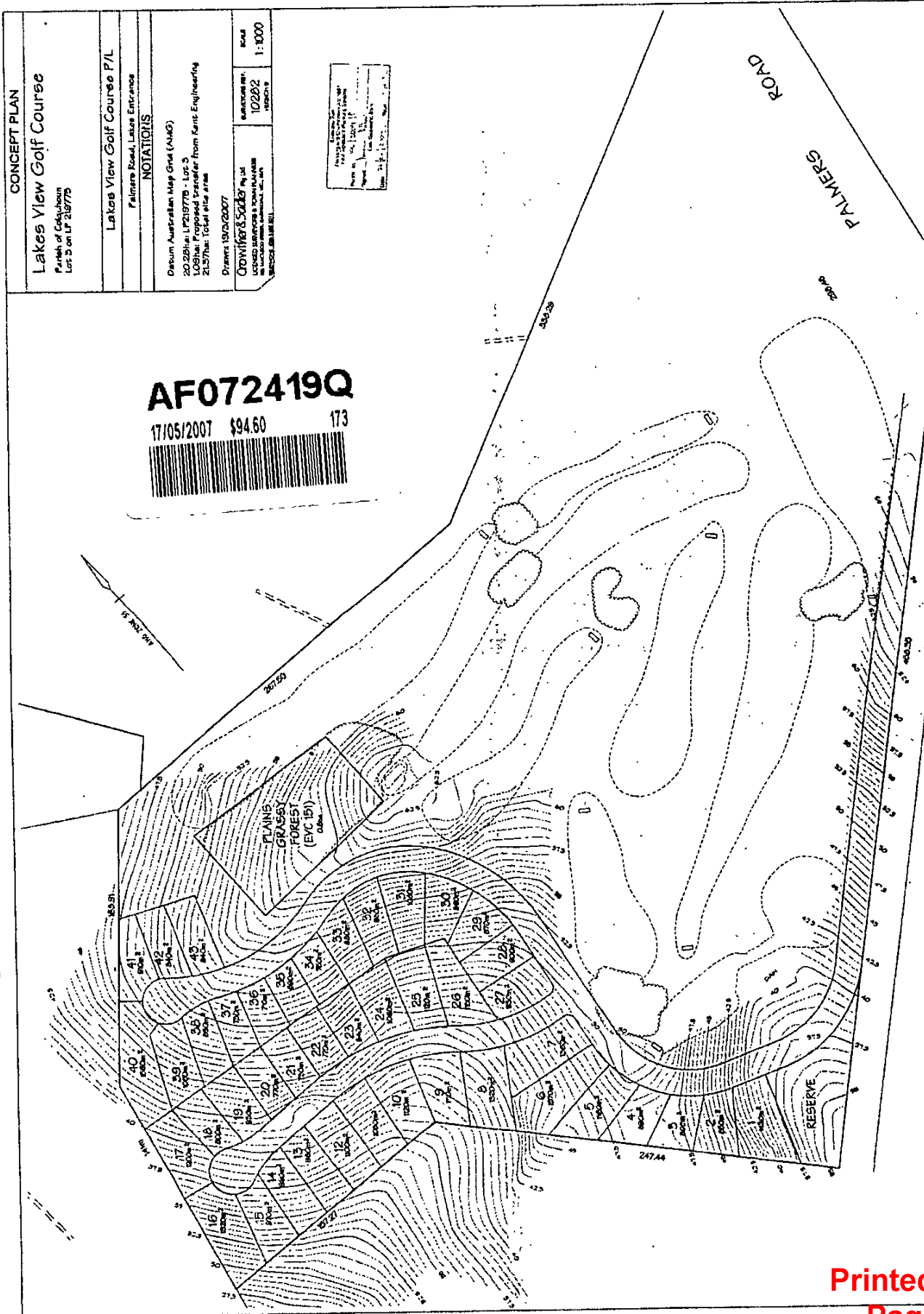
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Department of Environment, Land, Water & Planning

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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.

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Status	Registered	Dealing Number	AS444568M
Date and Time Lodged	16/08/2019 08:56:44 AM		

Lodger Details

Lodger Code	17223H
Name	MADDOCKS
Address	
Lodger Box	
Phone	
Email	
Reference	MYM:S173LC 7827274

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction	VICTORIA
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Estate and/or Interest

FEE SIMPLE

Land Title Reference

11014/436

Instrument and/or legislation

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

Applicant(s)

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

Additional Details



Department of Environment, Land, Water & Planning

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Electronic Instrument Statement

Refer Image Instrument

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

Execution

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

Executed on behalf of	EAST GIPPSLAND SHIRE COUNCIL
Signer Name	THY NGUYEN
Signer Organisation	PARTNERS OF MADDOCKS
Signer Role	AUSTRALIAN LEGAL PRACTITIONER
Execution Date	13 AUGUST 2019

File Notes:

NIL

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

Statement End.

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Agreement under section 173 of the *Planning and Environment Act (1987)*

Donald Wayne Dickson, Dianne Robyn Dickson and Ross Murray Nichols
Owner

East Gippsland Shire Council
Council

Land: 189 Palmers Road, Lakes Entrance

The Clayton Utz contact for this document is
Sharene Hambur on +61 3 9286 6000921

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Our reference 14826/80163151.012

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This Agreement made on 9 August 2019

Parties

Donald Wayne Dickson, Dianne Robyn Dickson and Ross Murray Nichols of
189 Palmers Road, Lakes Entrance

("Owner")

East Gippsland Shire Council of 273 Main Street, Bairnsdale

("Council")

Background

- A. The Owner is registered as the proprietor of the Land.
- B. The Council is the responsible authority under the Act for the administration and enforcement of the Scheme which applies to the Land.
- C. The Council has issued the Planning Permit.
- D. The Planning Permit, amongst other things, requires the Owner to enter into this Agreement to provide for the matters set out in condition 17 of the Planning Permit.
- E. The Council and the Owner have agreed to enter into this Agreement to give effect to the requirements of condition 17 of the Planning Permit.
- F. The Land is encumbered by two registered caveats in favour of SPI Electricity Pty Ltd (number AK104043U) and LDC Infrastructure Holding Company Pty Ltd (number AM895179H) respectively. The caveators have consented to the Owner entering into this Agreement.
- G. The Council and the Owner have agreed that without limiting or restricting their respective powers to enter into this Agreement, and in so far as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

Operative provisions

1. Definitions and interpretations

1.1 Definitions

In this Agreement unless expressed or implied to the contrary:

"Act" means the Planning and Environment Act 1987.

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

"Business Day" means any day other than a Saturday, Sunday or bank or public holiday in Melbourne.

"Commencement Date" means the date on which this Agreement is executed by the Owner and the Council.

"Easement" means the carriageway easement marked E-2 ad E-4 on the Proposed Plan of Subdivision.

"Enwave" means Enwave Regional Energy (Victoria) Pty Ltd ACN 163 232 166 or its successors in law or title.

"GST Act" means A New Tax System (Goods and Services Tax) Act 1999 (Cth).

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"Land" means the land described in certificate of title volume 1014 folio 436.

"Lot 1" means lot 1 on the Proposed Plan of Subdivision;

"Lot 2" means lot 2 on the Proposed Plan of Subdivision;

"Owner" means the person or persons from time to time registered or entitled to be registered as the proprietor of an estate in fee simple in the Land or any part of it.

"Planning Permit" means planning permit number 412/2017/P issued by the Council on 31 May 2018.

"Proposed Plan of Subdivision" means proposed plan of subdivision no. PS804052Y a copy of which is attached to this Agreement as Annexure 1;

"Scheme" means the East Gippsland Planning Scheme.

"Termination Date" means the date upon which this Agreement ends in whole or in part in accordance with Section 177 of the Act, namely on the date on which the Owner has complied with its obligations specified in this Agreement.

"Utility Installation" means the proposed utility station for the storage of compressed natural gas cylinders that will be installed by Enwave on Lot 2 of the Proposed Plan of Subdivision in accordance with the agreement between the Owner and Enwave and the Planning Permit.

1.2 Interpretation

In this Agreement, unless expressed or implied to the contrary:

- (a) undefined terms or words have the meanings given to them in the Act or the Scheme;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes the other gender;
- (d) a reference to a person includes a reference to a firm, corporation or other corporate body;
- (e) if a party consists of more than one person this Agreement binds them jointly and each of them severally;
- (f) a reference to a 'planning scheme' or 'the Scheme' includes any amendment, consolidation, or replacement of such scheme and any document incorporated by reference into such scheme;
- (g) a reference to a statute includes any statutes amending, consolidating or replacing those statutes and any regulations made under the statutes;
- (h) where, in this Agreement, the Council may exercise any power, duty or function, that power may be exercised on behalf of the Council by an authorised or delegated officer;
- (i) all headings are for ease of reference only and do not affect the interpretation of this Agreement;
- (j) the recitals to this Agreement form part of this Agreement;
- (k) no word, words or provision shall operate to limit or in any way prejudice the effect of any other word, words or provision unless it is expressly provided otherwise;

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- (l) a reference to "writing" or "written" and any words of similar import include printing, typing, lithography and any other means of reproducing characters in tangible and visible form, including any communication effected through any electronic medium if such communication is subsequently capable of reproduction in tangible or visible form;
- (m) if the day or last day for doing anything or on which an entitlement is due to arise is not a Business Day, the day or last day for doing the thing or date on which the entitlement arises shall for the purposes of this Deed be the next Business Day;
- (n) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (o) a reference to an agreement or a document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time except to the extent prohibited by this Agreement;
- (p) a reference to any thing includes the whole and each part of it;
- (q) "include" (in any form) when introducing a list of items does not limit the meaning of the words to which the list relates to those items or to items of a similar kind;
- (r) a reference to "\$" or "dollar" is to Australian currency;
- (s) where a party covenants, promises, undertakes or agrees to:
 - (i) perform; or
 - (ii) refrain from doing or carrying out, some act or thing, that party must;
 - (iii) procure that their respective contractors, employees and agents perform such act or thing; or
 - (iv) refrain from so doing or carrying out such act or thing;
- (t) a provision must not be interpreted to the disadvantage of a party because that party (or its representative) drafted that provision.
- (u) if a reference is made to any person, body or Authority and that person, body or Authority has ceased to exist, then the reference is deemed to be a reference to the person, body or Authority that then serves substantially the same objects as the person, body or Authority that has ceased to exist; and
- (v) a reference to the President of a person, body or Authority shall, in the absence of a President, be read as a reference to the senior officer for the time being of the person, body or Authority or such other person fulfilling the duties of President.

2. Purposes of Agreement

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

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

3. Reasons for Agreement

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

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

4. Agreement required

The Parties agree that this Agreement:

- 4.1 will continue to be required unless Council confirms in writing that it is no longer required; and
- 4.2 is made pursuant to Section 173 of the Act.

5. Commencing and effect of Agreement

5.1 Commencing of Agreement

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

5.2 Covenants

The Owner's obligations under this Agreement will take effect as separate and several covenants which will be annexed to and run at law and equity with the Land.

6. Owner's specific obligations

6.1 Easement

The Owner must ensure that, at all times, unencumbered access to the Easement is available equally for both Lot 1 and Lot 2.

6.2 Maintenance of the Easement

The Owner must enter into an agreement with Enwave which provides for the obligations of the owner of Lot 1 and the Owner of Lot 2 to proportionally contribute to the future capital improvement and maintenance of the Easement.

6.3 Access to Lot 2

The Owner must not access or egress Lot 2 from or to Palmers Road and all access or egress from or to Palmers Road for Lot 2 must be via the Easement.

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7. Owner's Warranties

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

8. Registration

8.1 Registration

The Owner:

- (a) consents to the Council making application to the Registrar of Titles to make a recording of this Agreement in the Register on the folio of the Register which relates to the Land in accordance with Section 181 of the Act; and
- (b) will do all things necessary to enable the 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.

8.2 Notice

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

9. Non-compliance

If the Owner has not complied with this Agreement within 20 Business Days after service of a notice by the Council specifying any non-compliance, the Owner covenants:

- (a) to allow the Council, its officers, employees, contractors or agents to enter the Land and rectify the non-compliance; and
- (b) to pay to the Council on demand, the Council's reasonable costs and expenses incurred as a result of the non-compliance.

10. General

10.1 Further acts

Each party must promptly sign any documents and do anything else reasonably necessary to give effect to this Agreement.

10.2 Successors in title

Without limiting the operation or effect of this Agreement, the Owner must ensure that, until this Agreement is recorded on the folio of the register which relates to the Land, the Owner's successors in title will be required to:

- (a) give effect to, do all acts and sign all documents requiring those successors to give effect to this Agreement; and
- (b) execute a deed agreeing to be bound by this Agreement.

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10.3 Council's costs to be paid

The Owner covenants to pay to the Council's reasonable costs and expenses (including legal expenses) incidental to the preparation, drafting, finalising, recording, amending and ending of this Agreement, within 14 days after a written request for payment.

10.4 Governing law

This Agreement is governed by and must be construed according to the law applying in Victoria.

10.5 No fettering of Council's powers

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

10.6 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of Victoria, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this Agreement; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum.

10.7 Amendments

This Agreement may only be varied by a document signed by or on behalf of each party.

10.8 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (a) must be in writing, be in English and dated;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time):

Council

Name: East Gippsland Shire Council
Address: 273 Main Street, Bairnsdale, VIC 3875

Fax: (03) 5153 9576
For the attention of:

Owner

Name: Donald Wayne Dickson, Dianne Roby Dickson and Ross Murray Nichols
Address:

Fax: (03)
For the attention of: ;

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- (c) must be signed by the party making it or on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 10.8(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,
 but if the communication is taken to be received on a day that is not a Business Day or after 5.00 pm, it is taken to be received at 9.00 am on the next Business Day.

11. Ending of Agreement

The Parties intend that this Agreement will continue to remain registered on the Land in perpetuity unless terminated by agreement of the parties.

12. GST

12.1 Interpretation

Expressions used in this clause and in the GST Act have the same meanings as when used in the GST Act.

12.2 GST exclusive amount

Except where this Agreement states otherwise, each amount payable by a Recipient under this Agreement in respect of a taxable supply by a Supplier is expressed as a GST exclusive amount and the Recipient must, in addition to that amount and at the same time, pay to the Supplier the GST payable in respect of the supply.

12.3 Creditable acquisition

If a party is entitled to be reimbursed under this Agreement, the amount to be reimbursed does not include any amount for GST for which the party is entitled to an input tax credit.

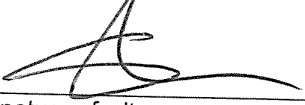
12.4 Tax invoice

A party is not obliged to pay the GST on a taxable supply to it under this Agreement until given a valid tax invoice for the supply.

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Signed as an agreement

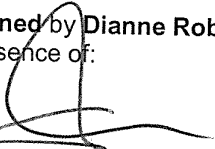
Signed by **Donald Wayne Dickson** in the presence of:


Signature of witness


Sarah Cloygh
Full name of witness


Signature


Signed by **Dianne Robyn Dickson** in the presence of:


Signature of witness

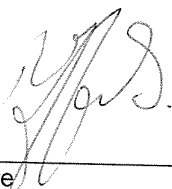
Sarah Cloygh
Full name of witness


Signature

Signed by **Ross Murray Nichols** in the presence of:


Signature of witness

CAROL McDONALD
Full name of witness


Signature

ADVERTISED

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Signed sealed and delivered by the Chief Executive Officer on behalf of the **East Gippsland Shire Council** pursuant to the power delegated to that person by an Instrument of Delegation in the presence of:

Colleen Smith

Witness

Colleen Smith

Print name



AS444568

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Caveators's consent

SPI Electricity Pty Ltd as Caveator under Caveat No. AK104043U consents to the Owner entering into this Agreement.

Executed by Caveator:


Brian Scott
Property Manager.
Aurion Services.

LDC Infrastructure Holding Company Pty Ltd as Caveator under Caveat No. AM895179H consents to the Owner entering into this Agreement.

Executed by Caveator:

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Caveator's consent

SPI Electricity Pty Ltd as Caveator under Caveat No. AK104043U consents to the Owner entering into this Agreement.

Executed by Caveator:

LDC Infrastructure Holding Company Pty Ltd as Caveator under Caveat No. AM895179H consents to the Owner entering into this Agreement.

Executed by Caveator:

SIGNED SEALED and DELIVERED by)
NATALIE BRYANT as attorney)
for **LDC Infrastructure Holding**)
Company Pty Ltd under a power of)
attorney dated **14 November 2018** in
the presence of

Russfeldt
Signature of witness

N Bryant
Signature of Attorney

HUGH RUSSELD
Name of witness (print)

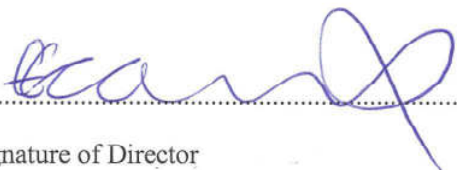
8-12 CHIFLEY SQUARE, SYDNEY NSW 2000
Address of witness

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Purchasers' Consent

Enwave Regional Energy (Victoria) Pty Ltd as purchasers of the proposed part of the land, more particularly Lot 2 on the proposed plan of subdivision no. PS804052Y, consents to the Owner entering into this Agreement.

Executed by **Enwave Regional Energy (Victoria)**)
Pty Ltd ACN 163 232 166 in accordance with)
s 127(1) of the *Corporations Act 2001*:)


.....
Signature of Director

Cameron Evans
.....
Print full name


.....
Signature of Director/Company Secretary


Kathryn Howe
.....
Print full name

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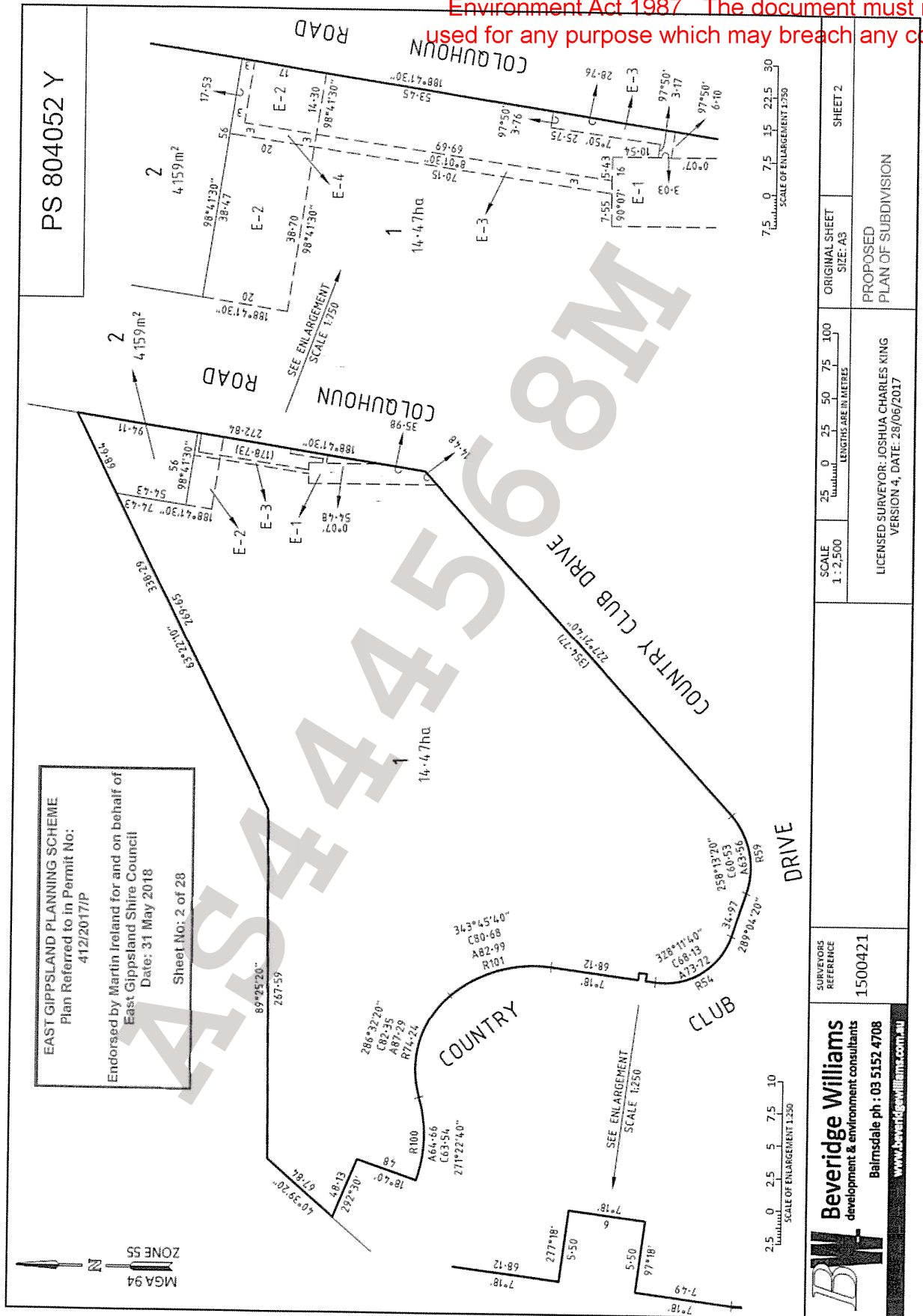
Annexure 1
Proposed Plan of Subdivision

AS444568M

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LOCATION OF LAND PARISH: COLQUHOUN TOWNSHIP: — SECTION: — CROWN ALLOTMENT: 124 & 31 (PARTS) CROWN PORTION: — TITLE REFERENCE: VOL. 11014 FOL. 436 LAST PLAN REFERENCE: PS 538571E (LOT Z) POSTAL ADDRESS: 189 PALMERS ROAD (at time of subdivision) LAKES ENTRANCE, VIC, 3909 MGA CO-ORDINATES: E: 588 200 ZONE: 55 (of approx centre of land N: 5 809 020 GDA 94 in plan)		COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL <div style="border: 1px solid black; padding: 5px; text-align: center;"> EAST GIPPSLAND PLANNING SCHEME Plan Referred to in Permit No: 412/2017/P Endorsed by Robert Pringle for and on behalf of East Gippsland Shire Council Date: 31 May 2018 Sheet No: 1 of 28 </div>					
VESTING OF ROADS AND/OR RESERVES <table border="1"> <tr> <th>IDENTIFIER</th> <th>COUNCIL/BODY/PERSON</th> </tr> <tr> <td>NIL</td> <td>NIL</td> </tr> </table>		IDENTIFIER	COUNCIL/BODY/PERSON	NIL	NIL	NOTATIONS ONLY LOT ONE IS SUBJECT TO SURVEY. THE AREA OF LOT ONE HAS BEEN CALCULATED VIA DEDUCTION FROM TITLE.	
IDENTIFIER	COUNCIL/BODY/PERSON						
NIL	NIL						
NOTATIONS DEPTH LIMITATION: DOES NOT APPLY SURVEY: This plan is based on survey. STAGING: This is/is not a staged subdivision. Planning Permit No. To Be Approved This survey has been connected to permanent marks No(s). To Be Surveyed In Proclaimed Survey Area No. —		THIS IS A SPEAR PLAN					
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	POWERLINE	16	PS 538571 E	SPI ELECTRICITY PTY. LTD.			
E-2, E-4	CARRIAGEWAY	20	PS 804052Y - THIS PLAN	LOT 2 ON PS 804052Y			
E-3, E-4	POWERLINE	SEE PLAN	PS 804052Y - THIS PLAN SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	SPI ELECTRICITY PTY. LTD.			
PROPOSED PLAN ONLY: PLEASE NOTE THAT EASEMENTS E-2, E-3 & E-4 DO NOT YET EXIST ON TITLE AND WILL ONLY BE CREATED ONCE THE PLANS ARE REGISTERED AT THE LAND TITLES OFFICE							
 Beveridge Williams development & environment consultants Bairnsdale ph : 03 5152 4708 www.beveridgewilliams.com.au		SURVEYORS FILE REF: 1500421 1500421-PS(V3).dwg		ORIGINAL SHEET SIZE: A3			
		LICENSED SURVEYOR: JOSHUA CHARLES KING VERSION 4, DATE: 28/06/2017		SHEET 1 OF 2			

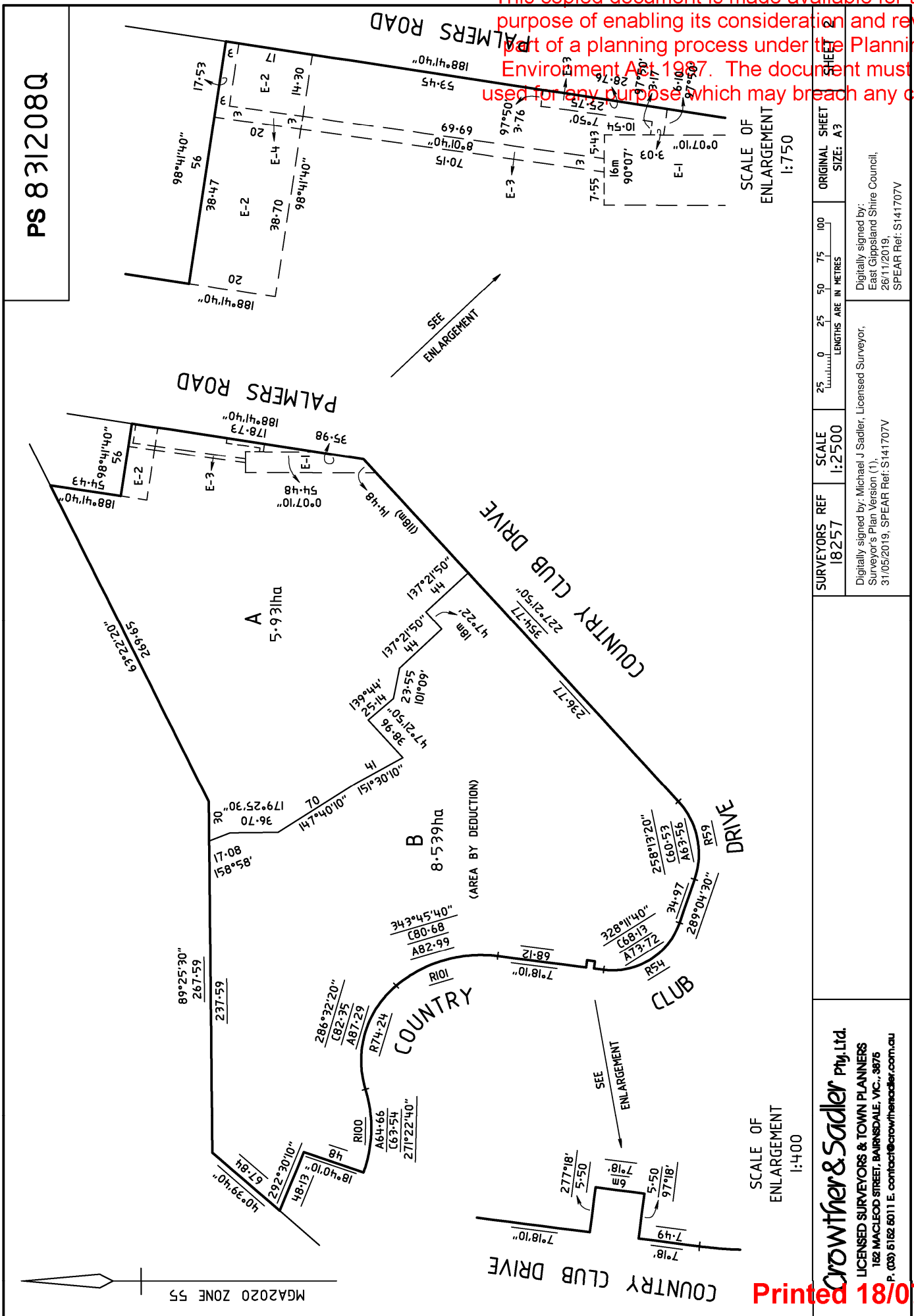
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PLAN OF SUBDIVISION				EDITION 1 PS 831208Q	
LOCATION OF LAND PARISH: COLQUHOUN TOWNSHIP: _____ SECTION: _____ CROWN ALLOTMENT: 124 (PART) CROWN PORTION: _____ TITLE REFERENCE: VOL FOL LAST PLAN REFERENCE: LOT 1 - PS804052Y POSTAL ADDRESS: 189 PALMERS ROAD, (at time of subdivision) LAKES ENTRANCE, 3909 MGA94 CO-ORDINATES: E: 588 200 ZONE: 55 (of approx centre of land in plan) N: 5809 030				Council Name: East Gippsland Shire Council Council Reference Number: PS831208Q Planning Permit Reference: 13/2019/P SPEAR Reference Number: S141707V Certification This plan is certified under section 6 of the Subdivision Act 1988 Public Open Space A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made Digitally signed by: Aaron David Hollow for East Gippsland Shire Council on 26/11/2019 Statement of Compliance issued: 17/01/2020	
VESTING OF ROADS AND/OR RESERVES				NOTATIONS	
IDENTIFIER	COUNCIL/BODY/PERSON			THIS IS A PARTIAL SURVEY DIMENSIONS SHOWN UNDERLINED ARE NOT THE RESULT OF THIS SURVEY. THE AREA OF LOT B IS BY DEDUCTION FROM TITLE.	
NIL	NIL				
NOTATIONS					
DEPTH LIMITATION	DOES NOT APPLY				
SURVEY: This plan is based on survey. STAGING: This is not a staged subdivision. Planning Permit No. 13/2019/P This survey has been connected to permanent marks No(s). 173 & 174 In Proclaimed Survey Area No. _____					
EASEMENT INFORMATION					
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)					
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of	
E-1	POWERLINE	16	PS538571E - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	SPI ELECTRICITY PTY LTD	
E-2 & E-4	WAY	20	PS804052Y	LOT 2 ON PS804052Y	
E-3 & E-4	POWERLINE	SEE DIAG.	PS804052Y - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	AUSNET ELECTRICITY SERVICES PTY LTD	
Crowthier & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 182 MACLEOD STREET, BAIRNSDALE, VIC., 3875 P. (03) 6162 6011 E. contact@crowthiersadler.com.au			SURVEYORS FILE REF: 18257		ORIGINAL SHEET SIZE: A3
Digitally signed by: Michael J Sadler, Licensed Surveyor, Surveyor's Plan Version (1), 31/05/2019, SPEAR Ref: S141707V			SHEET 1 OF 2 SHEETS PLAN REGISTERED TIME: 10:02AM DATE: 6/02/2020 R.D'Rodriguez Assistant Registrar of Titles		

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Our ref: 19572

31 May 2022

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

Attention: Mr. Robert Pringle

Dear Robert,

**Re: Request to end Legal Agreement AF072419Q
Lot B on PS831208
52 Country Club Drive, Lakes Entrance**

We refer to our Multi-lot Subdivision, Works (roadworks) and Removal of Native Vegetation planning application (502/2021/P) on the abovementioned land which was lodged with Council and respectfully request Council's consent to the ending of Legal Agreement AF072419Q as currently registered on title.

Purpose for Removal and Background

A combined planning scheme amendment seeking for the parent property to be rezoned to Residential 1 (now General Residential) and a 44 lot subdivision was submitted and approved by the Minister for Planning.

The purpose of the agreement was to address condition 44 of planning permit 306/2004/P issued by East Gippsland Shire Council on 15 September 2005.

Condition 44 states:

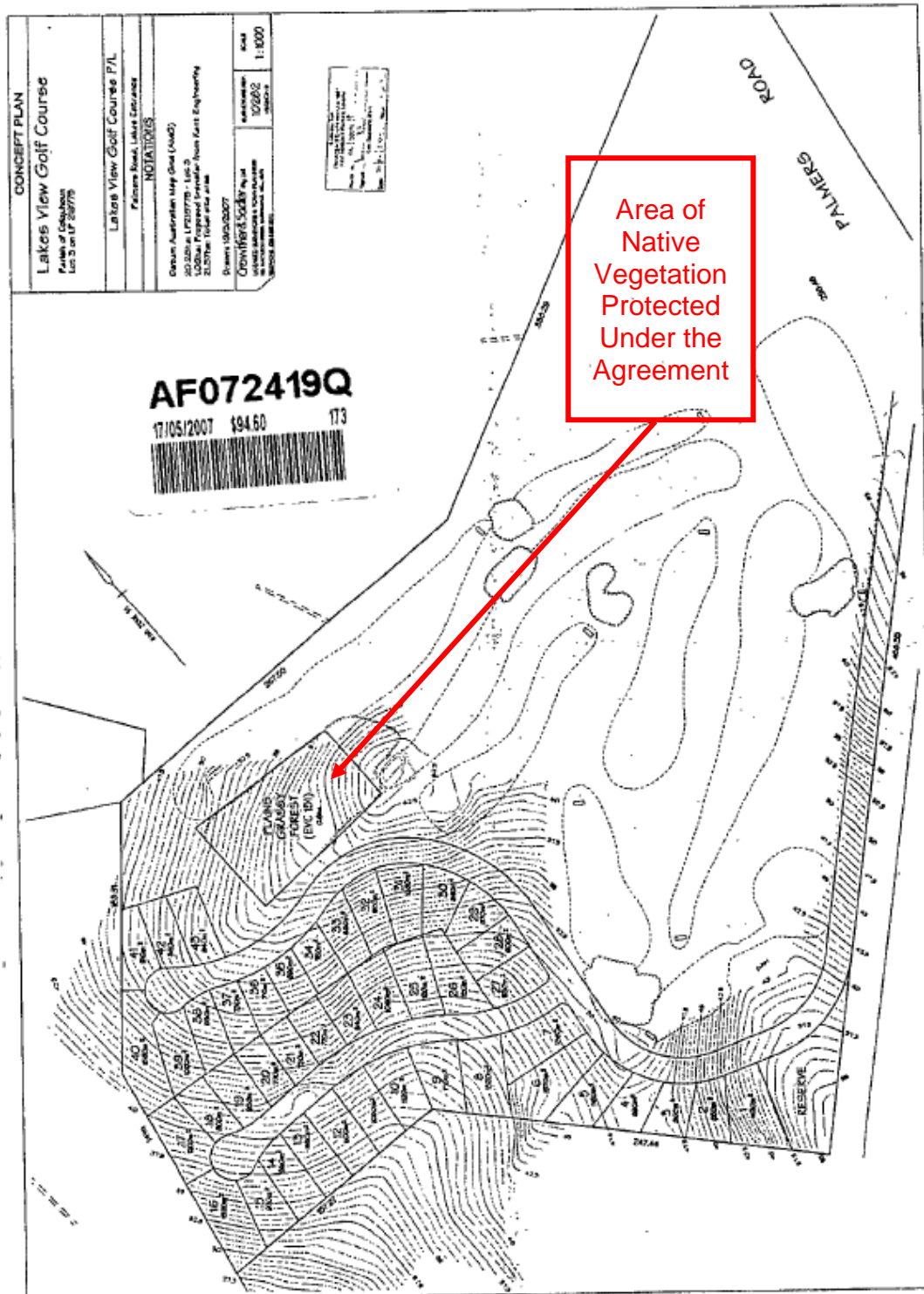
Before the issue of a statement of compliance for the approved subdivision, the owner must enter into an agreement with the Responsible Authority made pursuant to section 173 of the Planning and Environment Act 1987, and make application to the Registrar of Titles to have the agreement registered on the title to the residual lot (as shown on the endorsed plan of subdivision) under section 181 of the Act, which provides:

"that the Native Vegetation located within the north-west corner of the residual lot (as shown on the endorsed plan of subdivision) totalling 0.6 ha and identified as Plains Grassy Forest (EVC 151) of high conservation status, shall be permanently protected".



The owner must pay the reasonable costs of preparation, execution and registration of the agreement.

The purpose of the condition and subsequent agreement was to offset the native vegetation loss as a result of the subdivision under the then native vegetation framework regulations.



Copy of the Endorsed Plan of Subdivision and Plan Attached to the Agreement

It is understood that planning permit application 502/2021/P for a Multi-lot Subdivision, Works (roadworks) and Removal of Native Vegetation is currently being processed and a planning permit will issue shortly.

The Department of Environment, Land, Water & Planning referral response includes a condition requiring section 173 agreement AF072419Q to be ended.

Planning application 502/2021/P provides for further residential lots to be created within the Lakes Entrance Northern Growth Area and offsets the previous offset in accordance with today's requirements which, represents a sound environmental and planning outcome.

The ending of section 173 agreement AF072419Q is required to facilitate planning permit application 502/2021/P.

The Proposal

Our proposal to end the Agreement as it applies to the subject land has been made pursuant to Section 178A(1)(b) of the *Planning & Environment Act 1987*.

Section 178A(2)(b) requires the application to be “*accompanied by the information required by the regulations*”. In accordance with the requirements of Regulation 55 of the *Planning & Environment Regulations 2015* we provide the following requisite information:

Regulation 55(a) - we confirm the applicant for the request to end the Agreement is Lakes Heights, C/- Crowther & Sadler Pty. Ltd of 152 Macleod Street, Bairnsdale, Victoria, 3875. Phone number for the Applicant is 5152 5011.

Regulation 55(b) – the Agreement AF072419Q is to be ended as it applies to 52 Country Club Drive, Lakes Entrance, formally described as Lot B on PS831208.

Regulation 55(c) - not applicable as the proposal does not seek to amend the Agreement.

Regulation 55(d)(i) – not applicable to the proposal does not seek to end the Agreement in part.

Regulation 55(d)(ii) – the proposal seeks to end the Agreement as applying to part of the land. The Agreement is to be ended as it applies to 52 Country Club Drive, Lakes Entrance, formally described as Lot B on PS831208.

Regulation 55(d)(iii) – the Agreement is an unnecessary restriction on the land and does not reflect current state and local planning policy and will be at conflict with our Client's desire to undertake subdivision of the subject land in accordance with the provisions of the East Gippsland Planning Scheme and current environmental legislation.

To assist with Council's consideration of our request in accordance with Section 178(B)(2) of the Act, we are pleased to provide the following information.

Purpose of the Agreement

The purpose of the Agreement was to ensure the then provisions of the Native Vegetation Framework requirements were met when planning permit application 306/2004/P issued by East Gippsland Shire Council on 15 September 2005.

Why the Agreement is no longer required

The agreement is no longer required as a subsequent application (Planning application 502/2021/P) on the land and will offset the previous offset required by planning permit 306/2004/P.

Current native vegetation guidelines contained in the planning scheme requires offsets to be secured in appropriate areas. This is a far better environmental outcome than an isolated patch within a residential growth area.

The agreement is required to be ended in accordance with planning permit conditions required by the Department of Environment, Land, Water and Planning.

Whether the ending of the agreement would disadvantage any person, whether or not a party to the agreement

The ending of the Agreement will not give rise to any form of disadvantage to any other person.

The ending of the Agreement will simply enable future subdivision to occur on the subject land consistent with the provisions of the General Residential Zone as currently applying to the land. Subdivision of the whole precinct is an expected outcome as identified in the Lakes Entrance Northern Growth Area.

The reasons why the responsible authority entered into the agreement

The Agreement was appropriately entered into by Council at the time in accordance with conditions on Planning Permit 306/2004/P.

Any relevant permit or other requirements the land is subject to under the Subdivision Act 1988

None applicable.

Any other prescribed matter

We are not aware of any other prescribed matter which is relevant to the request to end the Agreement as it applies to the subject land.

Section 178A(2)(c) of the Act requires an application of this type to be accompanied by the requisite fee as prescribed by the *Planning & Environment (Fees) Regulations 2016*.

East Gippsland Shire Council

Payment to the *East Gippsland Shire Council* in the amount of \$668.84 (Regulation 16) has been made to facilitate the processing of this request.

We trust this information provides sufficient detail to facilitate Council's commencement of the process associated with the ending of the Agreement as it applies to the subject land. We respectfully await Council's timely advice regarding the scheduling of this matter on the next available Ordinary Council Meeting agenda.

Regards,



RICHARD HOXLEY
Principal Planner

*Encl. Copy of Title (Lot B on PS831208)
S173LA AF072419Q
Required fee of \$668.84
List of Beneficiaries (See Report Page 6)*