

REQUEST FOR VARIATION CONSENT UNDER A SECTION 173 AGREEMENT

The land affected by the request is located at:	60 Ligar Street BAIRNSDALE 3875 Lot: 1 LP: 31789
Request details:	Consent to vary ground floor area under Agreement AU930951L
The applicant's name:	Ben Marchbank Town Planning
Council's reference number is:	506.2023.6.1

You may look at the consent 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.

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

VOLUME 12427 FOLIO 895

Security no : 124113846202G
Produced 02/04/2024 02:55 PM

LAND DESCRIPTION

Lot 14 on Plan of Subdivision 847904E.
PARENT TITLE Volume 11943 Folio 589
Created by instrument PS847904E 06/10/2022

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors
ELAINE JANET GOVER
DAVID CHARLES GOVER
AW749182B 20/04/2023

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
AU930951L 20/10/2021

AGREEMENT Section 173 Planning and Environment Act 1987
AV904185R 28/07/2022

DIAGRAM LOCATION

SEE PS847904E 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: 14 PENROSE PLACE NEWLANDS ARM VIC 3875

ADMINISTRATIVE NOTICES

NIL

DOCUMENT END

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EDITION 1 PS 847904E

<h1>PLAN OF SUBDIVISION</h1>	
<p>LOCATION OF LAND</p> <p>PARISH: BAIRNSDALE</p> <p>TOWNSHIP: _____</p> <p>SECTION: _____</p> <p>CROWN ALLOTMENT: 154 A (PART)</p> <p>CROWN PORTION: _____</p> <p>TITLE REFERENCE: VOL 11943 FOL 589</p> <p>LAST PLAN REFERENCE: LOT 1 - PS814887M</p> <p>POSTAL ADDRESS: 5 PENROSE PLACE, (at time of subdivision) NEWLANDS ARM 3875</p> <p>MGA CO-ORDINATES: E: 562 495 ZONE: 55 (of approx centre of land in plan) N: 5801 955 GDA 94</p>	<p>Council Name: East Gippsland Shire Council Council Reference Number: PS847904E Planning Permit Reference: 423/2017/P SPEAR Reference Number: S173685V</p> <p>Certification</p> <p>This plan is certified under section 6 of the Subdivision Act 1988</p> <p>Public Open Space</p> <p>A requirement for public open space under section 18 or 18A of the Subdivision Act 1988 has been made and the requirement has been satisfied</p> <p>Digitally signed by: Robert Pringle for East Gippsland Shire Council on 15/08/2022</p> <p>Statement of Compliance issued: 12/09/2022</p>

VESTING OF ROADS AND/OR RESERVES	NOTATIONS				
<table border="1" style="width:100%; border-collapse: collapse;"> <tr> <th style="width:20%;">IDENTIFIER</th> <th>COUNCIL/BODY/PERSON</th> </tr> <tr> <td style="text-align: center;">RI ROAD</td> <td style="text-align: center;">EAST GIPPSLAND SHIRE COUNCIL</td> </tr> </table>	IDENTIFIER	COUNCIL/BODY/PERSON	RI ROAD	EAST GIPPSLAND SHIRE COUNCIL	<p>WARNING: The restrictive covenant(s)/restriction(s) in this plan may have been varied or removed. For current information, please refer to the relevant folio(s) of the Register, noting section 88(3) of the Transfer of Land Act 1958</p>
IDENTIFIER	COUNCIL/BODY/PERSON				
RI ROAD	EAST GIPPSLAND SHIRE COUNCIL				
NOTATIONS					
<p>DEPTH LIMITATION 15.24 METRES BELOW THE SURFACE</p> <p>SURVEY: This plan is based on survey.</p> <p>STAGING: This is not a staged subdivision. Planning Permit No. 423/2017/P</p> <p>This survey has been connected to permanent marks No(s). 462</p> <p>In Proclaimed Survey Area No. NIL</p>					

EASEMENT INFORMATION

LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)

Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	DRAINAGE & SEWERAGE	1.83	LP83799	LAND IN LP83799
E-2	DRAINAGE	2	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL
E-3	SEWERAGE	SEE DIAG.	THIS PLAN	EAST GIPPSLAND REGION WATER CORPORATION

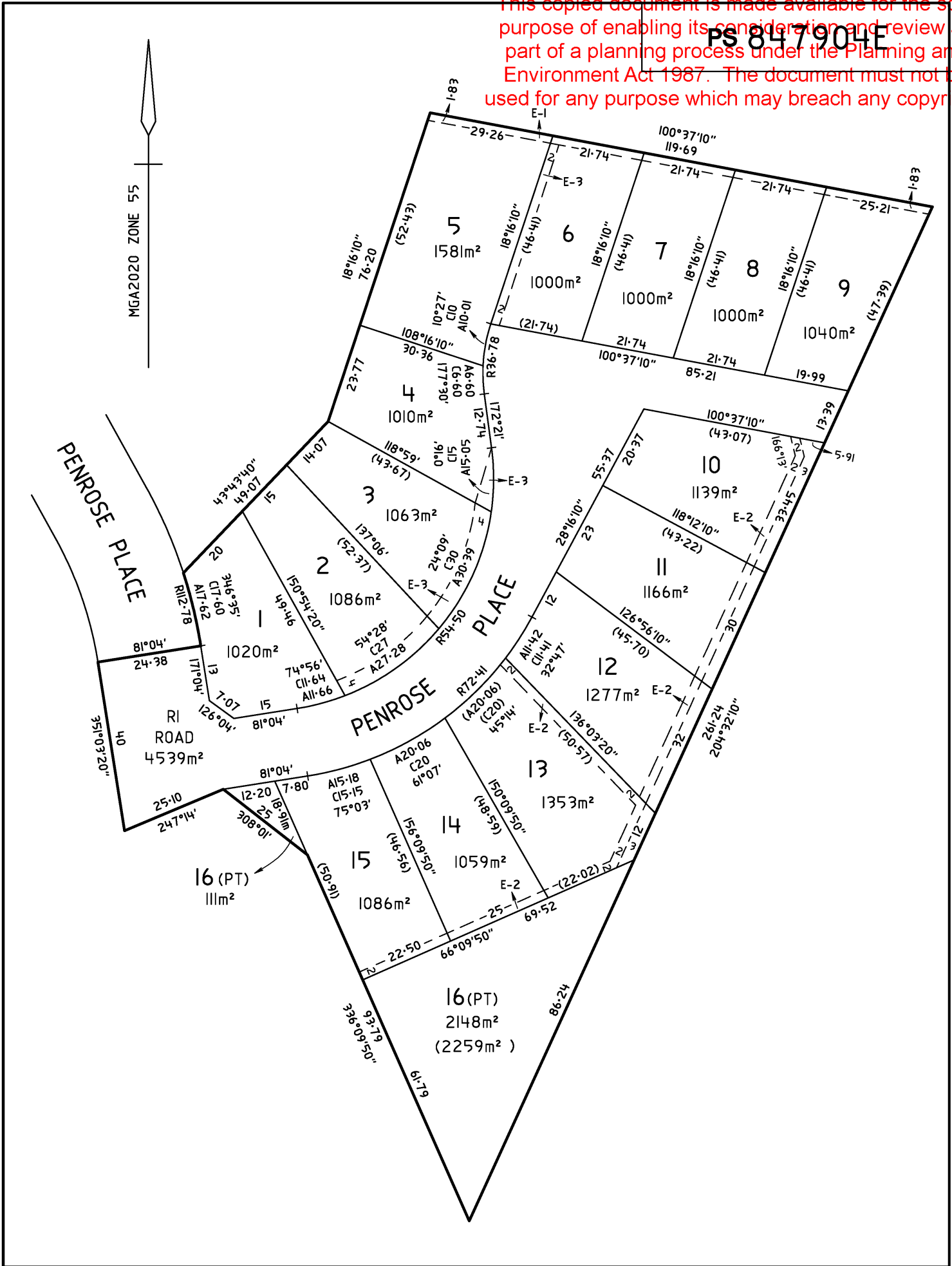
<p>Crowthier & Sadler Pty. Ltd.</p> <p>LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875 P. (03) 6162 6011 E. contact@crowthiersadler.com.au</p>	<p>SURVEYORS FILE REF: 17527</p>	<p>ORIGINAL SHEET SIZE: A3</p>	<p>SHEET 1 OF 3 SHEETS</p>
	<p>Digitally signed by: Paul Anthony Dwyer, Licensed Surveyor, Surveyor's Plan Version (4), 15/09/2021, SPEAR Ref: S173685V</p>		<p>PLAN REGISTERED TIME: 11:48AM DATE: 6/10/2022 Assistant Registrar of Titles</p>

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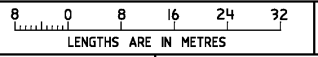
PS 847904E



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 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875
 P. (03) 6162 6011 E. contact@crowthersadler.com.au

SURVEYORS REF
17527

SCALE
1:800



ORIGINAL SHEET
SIZE: A3

SHEET 2

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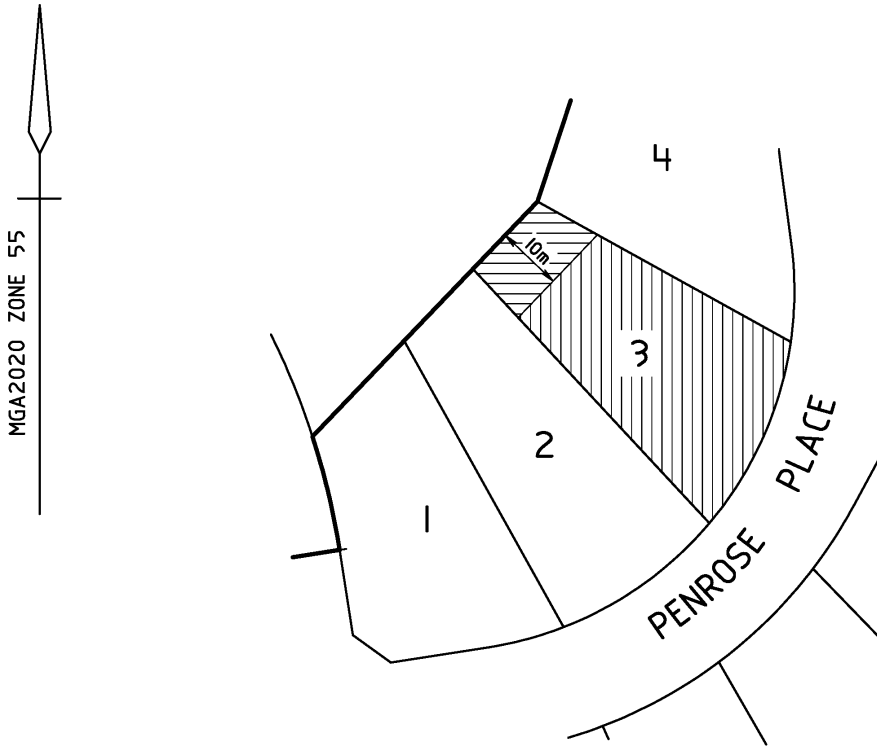
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 15/08/2022,
 SPEAR Ref: S173685V

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PS 847904E



CREATION OF RESTRICTION

UPON REGISTRATION OF THIS PLAN THE FOLLOWING RESTRICTIONS ARE TO BE CREATED.

LAND TO BENEFIT:



LOTS 1 - 16 INCLUSIVE ON THIS PLAN

LAND TO BE BURDENED:

LOT 3 ON THIS PLAN

DESCRIPTION OF RESTRICTION

THE REGISTERED PROPRIETOR OR PROPRIETORS FOR THE TIME BEING OF LOT 3 ON THIS PLAN SHALL NOT:

- AS TO THE LAND SHOWN THIS  HAVE BUILT, CONSTRUCTED OR ERECTED ANY BUILDING WITH GRAVITY SEWER THAT HAS A FLOOR LEVEL LESS THAN 10.3m AHD
- AS TO THE LAND SHOWN THIS  HAVE BUILT, CONSTRUCTED OR ERECTED ANY BUILDING WITH GRAVITY SEWER THAT HAS A FLOOR LEVEL LESS THAN 10.5m AHD

Crowther & Sadler Pty. Ltd.

LICENSED SURVEYORS & TOWN PLANNERS
162 MACLEOD STREET, BAIRNSDALE, VIC., 3875
P. (03) 5162 5011 E. contact@crowthersadler.com.au

SURVEYORS REF
17527

Digitally signed by: Paul Anthony Dwyer, Licensed Surveyor,
Surveyor's Plan Version (4),
15/09/2021, SPEAR Ref: S173685V

ORIGINAL SHEET
SIZE: A3

SHEET 3

Digitally signed by:
East Gippsland Shire Council,
15/08/2022,
SPEAR Ref: S173685V

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Produced 02/02/2023 09:01:01 AM

Status	Registered	Dealing Number	AU930951L
Date and Time Lodged	20/10/2021 09:55:01 AM		

Lodger Details

Lodger Code	20126M
Name	STEFANIE DONNA SUMMERS
Address	
Lodger Box	
Phone	
Email	
Reference	PLANOLOGY - 5 PENROS

APPLICATION TO RECORD 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

FEE SIMPLE

Land Title Reference

11943/589
11943/590

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



Department of Environment, Land, Water & Planning

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Electronic Instrument Statement

Additional Details

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	ERIC JAMES CABUANG
Signer Organisation	STEFANIE DONNA SUMMERS
Signer Role	CONVEYANCING PRACTICE
Execution Date	20 OCTOBER 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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Number of Pages (excluding this cover sheet)	14
Document Assembled	

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Agreement under section 173 of the Planning and Environment Act 1987

5 Penrose Place, Newlands Arm

Planology Pty Ltd
ACN 616 641 199

PO Box 394
Ivanhoe VIC 3079
T: 0430 452 372

Printed 8/04/2024
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Information Table

Date of Agreement: 5/10/2021

Parties

Name	East Gippsland Shire Council
Short form name	Council
Notice details	273 Main Street, Bairnsdale, Victoria
Name	Penrose Place Developments Pty Ltd
Short form name	Penrose Place
Notice details	74 Main Street, Bairnsdale, Victoria
Name	Olinca Planner
Short form name	Planner
Notice details	74B Middleton Street, Highett, Victoria

Background

- A. Council is the responsible authority pursuant to the Act for the Planning Scheme.
- B. The EGCMMA is the catchment management authority for the area in which the Subject Land is located.
- C. The Subject Land is subject to the Planning Scheme.
- D. The Owner is the registered proprietor of the Subject Land.
- E. By order dated 8 January 2021, the Tribunal directed that the Planning Permit be granted subject to conditions.
- F. Council has issued the Planning Permit authorising the subdivision of the Subject Land. This Agreement is to give effect to conditions 3, 37 and 39 of the Planning Permit.
- G. The parties enter into this Agreement to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

Agreed Terms

1. Defined Terms

In this Agreement:

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.

Building has the same meaning as in the Act and includes a Dwelling.

Building Height has the same meaning as in the Planning Scheme.

Bushfire Buffer means the area shown on Map 5 of the Bushfire Development Report as 'BAL-12.5 Managed buffer'.

Bushfire Development Report means the bushfire development report prepared by Terramatrix dated March 2019, Version 1.1 (27 March 2019). A copy of the Bushfire Development Report is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

Certificate of Occupancy means a certificate of occupancy under the *Building Act 1993*.

Consolidated Lot means Lot 2 and Lot 16.

Consolidated Lot 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 Consolidated Lot or any part of the Consolidated Lot and includes any Mortgagee-in-possession.

Council Reserve means the land vested in Council adjoining the northern boundary of the Subject Land.

Crown Reserve means the crown reserve adjoining the eastern boundary of the Subject Land

Crown Reserve Lot means that part of the Subject Land shown as Lots 9-13 inclusive on the Endorsed Plan or any Lot that has a common boundary with the Crown Reserve.

Current Address for Service

for Council means the address shown on page 2 of this Agreement, or any other address listed on Council's website;

for the Owner means the address shown on page 2 of this Agreement or any other address provided by the Owner to Council for any purpose relating to the Subject Land.

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Current Email Address for Service

for Council means feedback@egipps.vic.gov.au, or any other principal office email address listed on Council's website;

for the Owner means any email address provided by the Owner to Council for the express purpose of electronic communication regarding this Agreement or any other email address provided by the Owner to Council for any purpose relating to the Subject Land.

DDO11 means the Design and Development Overlay – Schedule 11 in the Planning Scheme, as amended from time to time.

Defendable Space Requirements means that:

- grass must be short cropped and maintained during the declared fire danger period;
- all leaves and vegetation debris must be removed at regular intervals during the declared fire danger period;
- within 10 metres of a Building, flammable objects must not be located close to the vulnerable parts of the Building.
- plants greater than 10 centimetres in height must not be placed within 3 metres of a window or glass feature of the Building.
- shrubs must not be located under the canopy of trees;
- individual and clumps of shrubs must not exceed 5 square metres in area and must be separated by at least 5 metres;
- trees must not overhang or touch any elements of a Building;
- all canopy of trees must be separated by at least 5 metres; and
- there must be a clearance of at least 2 metres between the lowest tree branches and ground level.

Design and Development Overlay means a design and development overlay under the Planning Scheme.

Design Response means a design response that meets the requirements of clause 54.01-2 of the Planning Scheme as if that clause applied.

Dwelling has the same meaning as in the Planning Scheme.

EGCMA means the East Gippsland Catchment Management Authority as established under the *Catchment and Land Protection Act 1994* and *Water Act 1989*.

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

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inspection at Council offices during normal business hours upon giving the Council reasonable notice.

Indexation means an annual adjustment to the Satisfaction Fee carried out in accordance with CPI.

Lot means the land contained in a proposed lot on the Endorsed Plan.

Lot 2 means the being the land contained in certificate of title volume 11943 folio 590 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of Lot 2 or any part of it.

Lot 16 means the land contained in lot 16 on the Endorsed Plan and includes that part of the Consolidated Lot that is derived from Lot 16.

Maintenance Period means a period of 2 years commencing from the date that Council issues the Statement of Compliance.

Native Tree means a tree that reaches a mature height of at least 5 metres and is indigenous to Victoria.

Neighbourhood and Site Description means a neighbourhood and site description that meets the requirements of clause 54.01-1 of the Planning Scheme as if that clause applied.

Notice means any notice, demand, consent, approval or communication under this agreement.

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 the Subject Land and includes any Mortgagee-in-possession, and includes the Consolidated Lot Owner.

Party or parties means the Owner and Council but does not include a person who has transferred or otherwise disposed of all of their interests in the Subject Land.

Planning Permit means planning permit no. 423/2017/P, issued by Council on 25 January 2021, as amended from time to time. A copy of the Planning Permit is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

Planning Scheme means the East Gippsland Planning Scheme.

Road Reserve means land shown as 'Penrose Place', 'R1 Road' or the like on the Endorsed Plan.

Reserve Lot means Lots 6-9 inclusive as shown on the Endorsed Plan or any lot that has a common boundary with the Council Reserve.

Satisfaction Fee means a fee payable by the Owner to Council for determining whether any one of the Owner's obligations has been undertaken to Council's satisfaction, or for deciding whether to give consent for anything this Agreement provides must not be done without Council's consent, and which is payable at the rate of:

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- (a) \$325.80 if paid within 12 months from the date that this Agreement commences; and
- (b) plus the Indexation if paid at any time after 12 months from the date that this Agreement commences.

Statement of Compliance means a statement of compliance issued by Council under the *Subdivision Act 1988*.

Streetscape Landscape Plan means the streetscape landscape plan approved under condition 9 of the Planning Permit.

Subject Land means the land situated at 5 Penrose Place, Newlands Arm being the land contained in certificates of title volume 11943 folio 589 and volume 11943 folio 590 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.

Total Building Footprint means the total area of a Lot covered by Buildings (existing and proposed), measured from the outside of external walls or the centre of party walls, and includes all roofed areas and uncovered areas such as decks, pergolas and the like. For the avoidance of doubt, any part of an upper floor of a Building that overhangs the ground floor will be included as part of the Total Building Footprint.

Tribunal means the Victorian Civil and Administrative Tribunal, and any tribunal or other person or body which supersedes it.

Waterway Management Plan means the waterway management plan approved under condition 38 of the Planning Permit. A copy of the Waterway Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

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 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 or the Planning Scheme it has the meaning as defined in the Act or the Planning Scheme.

- 2.6 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.
- 2.7 The introductory clauses to this Agreement form part of this Agreement.
- 2.8 The Owner's obligations take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land.
- 2.9 Any reference to a clause, page, condition, attachment or term is a reference to a clause, page, conditions, attachment or term of this Agreement.

3. Section 173 Agreement

3.1 Purposes

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

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

3.2 Reasons for agreement

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

- 3.2.1 the EGCMA would not have consented to the grant of the Planning Permit without the conditions requiring this Agreement; and
- 3.2.2 Council would not have approved the Planning Permit without the condition requiring this Agreement;
- 3.2.3 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 will continue to be required unless Council confirms in writing that it is no longer required.

5. Owner's Specific Obligations

The Owner covenants and agrees that:

5.1 Building Controls

The Owner covenants and agrees that without the prior written consent of Council:

- 5.1.1 the Total Building Footprint of all Buildings on a Lot must not exceed 300 square metres; and
- 5.1.2 any Building constructed on a Lot must not have a Building Height that exceeds 5 metres.

5.2 Council Consent

The Owner covenants and agrees that:

- 5.2.1 any request to obtain Council's written consent under clause 5.1 must be accompanied by a Neighbourhood and Site Description and a Design Response and information that describes how the proposal achieves the design objectives set out in DDO11 as if DDO11 applied to the Lot; and
- 5.2.2 when considering a requests for written consent under clause 5.1, Council must be satisfied that the Building meets the design objectives and decision guidelines in DDO11 as if DDO11 applied to the Lot.

5.3 Other Building Controls

The Owner covenants and agrees that:

- 5.3.1 each Lot must not be developed with more than one Dwelling and the usual outbuildings;
- 5.3.2 any Building on a Crown Reserve Lot must not be constructed within 6 metres of the eastern boundary of that Lot;
- 5.3.3 any Building on a Reserve Lot must not be constructed within 6 metres of the northern boundary of that Lot;
- 5.3.4 the Dwelling on a Lot must be setback a minimum of 3 metres from one side boundary;
- 5.3.5 all external colours, materials and finishes of a Building must be in muted tones and non-reflective;
- 5.3.6 within 3 months of a Certificate of Occupancy being issued for a Dwelling on a Reserve Lot, a Native Tree must be planted and then maintained to the satisfaction of Council in the rear of that Lot;
- 5.3.7 the Reserve Lots must not obtain any vehicle access between a Lot and the Council Reserve;
- 5.3.8 a Building must not erected, constructed, relocated, placed or the like on Lot 16;
- 5.3.9 the landscaping within the Road Reserve must be maintained in accordance with the Streetscape Landscape Plan by the Consolidated Lot Owner for the Maintenance Period to the satisfaction of Council, which

includes replacing any vegetation that is dead, diseased or in poor health;

- 5.3.10 all Buildings constructed on a Lot must be constructed to a minimum Bushfire Attack Level of 12.5 to the satisfaction of Council; and
- 5.3.11 the Bushfire Buffer must be created and maintained in perpetuity and in accordance with the Defendable Space Requirements by the Consolidated Lot Owner to the satisfaction of Council.

5.4 EGCMA Conditions

The Owner further covenants and agrees that:

- 5.4.1 any Dwelling on a Lot must include a rainwater tank with a minimum storage capacity of 5000 litres;
- 5.4.2 the rainwater tank must collect runoff from the roof of the Dwelling;
- 5.4.3 the rainwater tank must be used as the primary water source for flushing toilets, laundry fixtures and must also include an external tap for garden irrigation;
- 5.4.4 the overflow of the rainwater tank must be discharged to a raingarden with a minimum area of 4 square metres on the same Lot; and
- 5.4.5 the raingarden must be maintained to the satisfaction of Council;

5.5 EGCMA Waterway Management Plan

The Owner covenants and agrees that:

- 5.5.1 the Water Management Plan applies to the Consolidated Lot;
- 5.5.2 the Consolidated Lot Owner must comply with all requirements of the Water Management Plan at all times to the satisfaction of the EGCMA and Council; and
- 5.5.3 within 6 months of Council issuing a Statement of Compliance for the subdivision shown on the Endorsed Plan, Lot 16 and Lot 2 must be consolidated to the satisfaction of the EGCMA and Council.

6. Further Obligations of the Owner

6.1 Notice and Registration

The Owner further covenants and agrees that the Owner will bring this Agreement to the attention of all prospective purchasers, lessees, mortgagees, chargees, transferees and assigns.

6.2 Further actions

The Owner:

- 6.2.1 must do all things necessary to give effect to this Agreement;
- 6.2.2 consents to Council applying to the Registrar of Titles to record the Agreement on the Certificate of Title to the Subject Land in accordance with section 181 of the Act; and
- 6.2.3 agrees to do all things necessary to enable Council to do so, including:
 - (a) signing any further agreement, acknowledgement or document; and
 - (b) obtaining all necessary consents to enable the recording to be made.

6.3 Council's Costs to be Paid

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

- 6.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 6.3.2 preparing, drafting, finalising and recording any amendment to this Agreement; and
- 6.3.3 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

6.4 Interest for overdue money

- 6.4.1 The Owner must pay to Council interest in accordance with section 120 of the *Local Government Act 2020* on any amount due under this Agreement that is not paid by the due date.
- 6.4.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

7. Agreement under section 173 of the Act

Without limiting or restricting the respective powers to enter into this Agreement, and insofar as it can be so treated, this Agreement is made as a deed in accordance with section 173 of the Act.

8. 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.

9. 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:

- 9.1 give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement; and
- 9.2 execute a deed agreeing to be bound by the terms of this Agreement.

10. General

10.1 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:

- 10.1.1 personally on the other Party;
- 10.1.2 by leaving it at the Party's Current Address for Service;
- 10.1.3 by posting it by prepaid post addressed to that Party at the Party's Current Address for Service;
- 10.1.4 by facsimile to the Party's Current Number for Service; or
- 10.1.5 by email to the Party's Current Email Address for Service.

10.2 Service of Notice

A notice or other communication is deemed served:

- 10.2.1 if delivered, on the next following business day;
- 10.2.2 if posted, on the expiration of 7 business days after the date of posting;
- 10.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day; or
- 10.2.4 if sent by email, the day on which it is sent.

10.3 No Waiver

Any time or other indulgence granted by Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

10.4 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.

10.5 No fettering of Council's powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

10.6 Inspection of documents

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

10.7 Governing law

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

11. Commencement of Agreement

This Agreement commences on the date specified on page one or if no date is specified on page one, the date the Planning Permit was issued.

12. Ending of Agreement in Part

Clauses 5.1 and 5.2 will end if Design and Development Overlay is applied to the whole of the Subject Land.

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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 12th day of October in the presence of:

2021
[Signature]
.....

Chief Executive

[Signature]
.....

Witness



Executed by Penrose Place Developments Pty Ltd ACN 649 142 987 in accordance with s127(1) of the Corporations Act 2001:

[Signature]
.....

Director/Secretary

Print Name: Robert Planner

Signed Sealed and Delivered by Olinca Planner)
in the presence of:)

[Signature]
Olinca Planner

[Signature]
.....
Witness



Department of Environment, Land, Water & Planning

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Status	Registered	Dealing Number	AV904185R
Date and Time Lodged	28/07/2022 05:12:12 PM		

Lodger Details

Lodger Code	20126M
Name	STEFANIE DONNA SUMMERS
Address	
Lodger Box	
Phone	
Email	
Reference	Planology - Section

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction VICTORIA

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Estate and/or Interest

FEE SIMPLE

Land Title Reference

11943/589

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 law and any Prescribed Requirement.

Executed on behalf of	EAST GIPPSLAND SHIRE COUNCIL
Signer Name	STEFANIE SUMMERS
Signer Organisation	STEFANIE DONNA SUMMERS
Signer Role	CONVEYANCING PRACTICE
Execution Date	28 JULY 2022

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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Template approved for use by AusNet
Electricity Services for issue to the customer
to seek Council endorsement

Agreement under section 173 of the Planning and Environment Act 1987

5 Penrose Place, Newlands Arm

Information table

Date of Agreement: 20 July 2022

Parties:

Name East Gippsland Shire Council
Short form name Responsible Authority
Notice details 273 Main Street, Bairnsdale Vic 3875

Name Penrose Place Developments Pty Ltd
Short form name Owner
Notice details 11 Bridge Street, Hampton Vic 3188

Name AusNet Electricity Services Pty Ltd
Short form name AusNet Services
Notice details Level 31, 2 Southbank Boulevard, Southbank, Vic, 3006

Background:

- A The Responsible Authority is the responsible authority for the administration and enforcement of the Planning Scheme pursuant to the Act.
- B The Land is subject to the Permit.
- C The Owner is the registered proprietor of the Land.
- D On 25 January 2021, the Responsible Authority issued the Permit, which allows subdivision of the Land into two lots in accordance with the Endorsed Plans. On 29 November 2021, the Responsible Authority issued an amended form of the Permit which corrected a typographical error in the form of the Permit issued on 25 January 2021.
- E AusNet Services is a referral authority for the purposes of the Permit.
- F Conditions 22 to 30 of the Permit provides as follows:
22. The Applicant must enter in an agreement with AusNet Electricity Services Pty Ltd for supply of electricity to each lot on the endorsed plan.
 23. The applicant must enter into an agreement with AusNet Electricity Services Pty Ltd for rearrangement of the existing electricity supply system.
 24. The applicant must enter into an agreement with AusNet Electricity Services Pty Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by subdivision or by such means as may be agreed by AusNet Electricity Services Pty Ltd.
 25. The applicant must obtain for the use of AusNet Electricity Services Pty Ltd any other easement required to service the lots.
 26. The applicant must adjust the position of any existing AusNet Electricity Services Pty Ltd easement to accord with the position of the electricity line(s) as determined by survey.

27. The owner must set aside on the plan of subdivision Reserves for the use of AusNet Electricity Services Pty Ltd for electric substations.
28. The applicant must provide to AusNet Electricity Services Pty Ltd a copy of the plan of subdivision submitted for certification that shows any amendments that have been required.
29. The applicant must agree to provide alternative electricity supply to lot owners and/or each lot until such time as permanent supply is available to the development by AusNet Electricity Services Pty Ltd. Individual generators must be provided at each supply point. The generator for temporary supply must be installed in such a manner as to comply with the *Electricity Safety Act, 1998*.
30. The applicant must ensure that all necessary auditing is completed to the satisfaction of AusNet Electricity Services Pty Ltd to allow the new network assets to be safely connected to the distribution network.
- G The Responsible Authority, AusNet Services and the Owner have agreed that, without restricting or limiting their respective power to enter into this Agreement, and insofar as it can be treated, this Agreement is an agreement entered into pursuant to section 173 of the Act for the purpose of satisfying Conditions 22-30 of the Permit.
- H The Responsible Authority, AusNet Services and the Owner have entered into this Agreement in order to achieve or advance the objectives of planning in Victoria or the objectives of the Planning Scheme.

Agreed terms

1. Defined terms and interpretation

1.1 Defined terms

In this Agreement:

“**Act**” means the *Planning and Environment Act 1987 (Vic)*.

“**Agreement**” means this Agreement and any agreement executed by the parties varying or expressed to be supplemental to this Agreement.

“**AusNet Services**” means AusNet Electricity Services Pty Ltd and each of its agents, officers, employees, servants, workers, contractors and related bodies corporate.

“**Connection Agreement**” means agreement number 75076301 entered into between AusNet Services and the Owner dated 21 January 2022.

“**Endorsed Plans**” means the plan or plans approved by the Responsible Authority pursuant to the Permit, as amended from time to time.

“**Land**” means the land situated at 5 Penrose Place, Newlands Arm being the land comprised in Certificate of Title Vol 11943_Fol 589 and which is also known as Lot 1 on Plan of Subdivision Number PS814887M and any reference to the Land in this

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

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

“Notice” means any notice, demand, consent, approval or communication under this Agreement.

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

“Party” or **“Parties”** means the Owner, AusNet Services and the Responsible Authority.

“Permit” means planning permit number 423/2017/P, as amended from time to time, issued to the Owner on 25 January 2021, amended and re-issued to the Owner on 29 November 2021 by the Responsible Authority.

“Planning Scheme” means the East Gippsland Shire Planning Scheme.

“Responsible Authority” means the East Gippsland Shire Council as the Responsible Authority for the Planning Scheme and any subsequent person or body which is the Responsible Authority for the Planning Scheme.

“Tribunal” means the Victorian Civil and Administrative Tribunal, and any Tribunal or other person or body which supersedes it.

1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- (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 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.
- (f) A reference to an information table, a clause, paragraph, schedule or annexure is to the information table, a clause or paragraph of, or schedule or annexure to, this Agreement, and a reference to this Agreement includes the information table and any schedule or annexure.
- (g) A reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time.

- (h) A rule of construction does not apply to the disadvantage of a Party because the Party was responsible for the preparation of this Agreement or any part of it.
- (i) 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 same meaning as defined in the Act.

1.3 Headings

Headings are for ease of reference only and do not affect interpretation.

2. Section 173 Agreement

2.1 Purpose

This Agreement is made under section 173 of the Act. In entering into the Agreement, the parties intend to give effect to the Permit and achieve or advance the objectives of planning in Victoria and the objectives of the Planning Scheme.

2.2 Burden of covenants

The parties to this Agreement intend that the burden of the Owner's covenants run with the Land.

2.3 Reasons for Agreement

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

- (a) AusNet Services would not have consented to the issue of Statement of Compliance without requiring this Agreement; and
- (b) the Owner has elected to enter into this Agreement in order to take the benefit of the Permit.

3. Commencement

This Agreement comes into force on the date of this Agreement.

4. Owner's Covenants

4.1 Obligations

The Owner covenants with AusNet Services and the Responsible Authority that prior to any sale of the Land or any part of the Land, it will advise any prospective purchaser/s in writing:

- (a) that there is currently no electricity supply to the Land; and
- (b) the Owner has negotiated for AusNet Services to connect a permanent electricity supply to each lot within Plan of Subdivision 847904E (the **Subdivision**) in accordance with the terms of the Connection Agreement. Due to existing electrical network constraints, a permanent electricity supply to the Subdivision will not be available until the network constraints have been addressed by AusNet Services, which is anticipated to occur by about late November 2022. However, the Owner acknowledges that AusNet Services cannot give any form of representation, guarantee or other assurance that the

network constraints will be resolved by this time. Once the network constraints have been resolved, the Owner will need to energise the estate to the network in a timely manner and in accordance with the terms of the Connection Agreement.

4.2 Further Obligations

The Owner further covenants that:

- (a) The Owner will 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.
- (b) The Owner will do all that is necessary to enable the Responsible Authority to make an application to the Registrar of Titles to make a recording of this Agreement on the title to the Land in accordance with Section 181 of the Act, including the signing of any further agreement, acknowledgement or other document.
- (c) The Owner shall immediately on demand pay the reasonable legal costs and fees incurred and incidental to the preparation and execution of this Agreement and the registration of this Agreement pursuant to Section 181 of the Act, together with all costs of enforcing this Agreement if deemed necessary by the Responsible Authority or AusNet Services, as the case may be. The Owner agrees that any such costs are and remain a charge on the Land until paid, and consents to the Responsible Authority or AusNet Services, as the case may be, registering a caveat on the title to the Land in respect of any such costs and acknowledges that any such costs shall be capable of being recovered by the Responsible Authority or AusNet Services, as the case may be, in any court of competent jurisdiction as a civil debt recoverable.
- (d) That until such time as this Agreement is registered on the title to the Land, the Owner shall ensure that successors in title will give effect to this Agreement, and do all acts and sign all documents which will require those successors to give effect to this Agreement, including executing a deed agreeing to be bound by the terms of this Agreement.
- (e) The Owner agrees to indemnify and keep indemnified the Responsible Authority and AusNet Services from and against all costs, expenses, losses or damages that they may sustain, incur, suffer or become liable for or in respect of any suit, action, proceeding, judgement or claim brought by any person arising from or referable to this Agreement and/or any non-compliance with this Agreement.
- (f) The Owner agrees to allow the Responsible Authority and AusNet Services to enter the Land at any reasonable time to assess compliance with this Agreement.

4.3 Owner's Warranties and Acknowledgements

The Owner warrants that:

- (a) it is the registered proprietor (or entitled to be so) of the Land;
- (b) there are no mortgages, liens, charges or other encumbrances affecting the Land which are not disclosed by the usual searches; and

- (c) if the Land is affected by a mortgage, the Mortgagee of the Land consents to the Owner entering into this Agreement and the Agreement being registered on the title to the Land.

The Owner acknowledges that any obligations imposed on the Owner under this Agreement take effect as separate and several covenants which are annexed to the Land and run at law and in equity with the Land and every part thereof and bind the Owner, its successors, assigns and transferees, and the registered proprietor for the time being of the whole or any part of the Land.

4.4 Further assurance

The Parties to this Agreement must do or cause to be done all things that are reasonably necessary to give effect to this Agreement.

5. General

5.1 Default

If the Owner defaults or fails to perform any of its obligations under this Agreement the Responsible Authority or AusNet Services may, as the case may be, without prejudice to any other remedies, rectify and remedy such default and the costs of doing so shall be borne by the Owner. The Owner hereby consents to the Responsible Authority or AusNet Services registering a caveat on the title to the Land in respect of any such costs, and acknowledges that any such costs shall be capable of being recovered by the Responsible Authority or AusNet Services in any court of competent jurisdiction as a civil debt recoverable.

5.2 No waiver

Any time or other indulgence granted by the Responsible Authority or AusNet Services to the Owner or any variation of the terms and conditions of this Agreement or any judgement or order obtained by the Responsible Authority or AusNet Services against the Owner will not in any way amount to a waiver of any of the rights or remedies of the Responsible Authority or AusNet Services in relation to the terms of the Agreement.

5.3 No Fettering of Powers of Responsible Authority or AusNet Services

The Owner expressly acknowledges and agrees that nothing in this Agreement nor the performance by the Owner or any of its obligations under this Agreement does or will restrain, limit, or otherwise fetter the exercise by the Responsible Authority or AusNet Services of the powers, duties and discretions that the Responsible Authority or AusNet Services has or may have (as planning authority, responsible authority or otherwise) under the Act or under the Planning Scheme to consider, approve, amend or to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification relating to any use or development, or in relation to the commencement or initiation of any enforcement action or proceeding whatsoever.

5.4 Entire Agreement

The Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all previous agreements or understandings between the Parties in connection with its subject matter.

5.5 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 shall be severed and the other provisions of this Agreement shall remain operative and be of full force and effect.

5.6 Disputes

- (a) If there is a dispute between the parties concerning the interpretation or implementation of this Agreement, that dispute must be referred to the Tribunal for resolution to the extent permitted by the Act.
- (b) If there is a dispute concerning any matter which is not referable to the Tribunal under the Act, that dispute must be referred for arbitration by an Arbitrator agreed upon in writing by the parties, or, in the absence of such agreement the Chair of the Victorian Chapter of the Institute of Arbitrators Australia or his or her nominee, for arbitration.
- (c) The parties shall each be entitled to legal representation for the purposes of any proceedings or arbitration referred to clause 5.6(a) or 5.6(b) of this Agreement unless the Tribunal or arbitrator otherwise directs, and each Party must bear its own costs.

5.7 End of Agreement

The Responsible Authority and AusNet Services shall consent to this Agreement ending and to the removal of the recording of the Agreement on the title to the Land provided for in clause 4.2(b) of this Agreement upon connection of electricity supply to the Land to the satisfaction of AusNet Services and the Responsible Authority.

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EXECUTED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the parties

For the Responsible Authority:

The Common Seal of the East Gippsland Shire Council was hereunto affixed on the 20. day of July 2022 in the presence of:



[Handwritten Signature]

Chief Executive

[Handwritten Signature]

Witness

Date:

For the Owner – if a company:

Executed as a deed by)
PENROSE PLACE DEVELOPMENTS PTY LTD)
ABN 49 649 142 987)
in accordance with Section 127(1) of the)
Corporations Act 2001 (Cth):

[Handwritten Signature]

Director/Company Secretary

.....

Director

Robert Planner

Name of Director/Company Secretary (Print)

.....

Name of Director (Print)

Date: 24/5/22


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For AusNet Services:

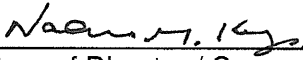
SIGNED, SEALED and DELIVERED by)

AUSNET ELECTRICITY SERVICES PTY LTD)

by:



Signature of Director



Signature of Director / Company Secretary

Mark Ellul

Name of Director

NAOMI KELLY

Name of Director / Company Secretary

23/6/2022

Date

24/6/2022

Date

58174067A

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Town Planning Report

Section 173 Agreement AU930951L
Request for written consent

14 Penrose Place Newlands Arm 3875

April 2024

East Gippsland Shire



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1. Planning Summery

Address	14 Penrose Place Newlands Arm 3875
Title	Lot 14 PS847904E Section 173 Agreement – AU930951L - 20 October 2021 Section 173 Agreement AV904185R – 28 July 2022 Easement E2 - Drainage
Land size	1059m ²
Zoning	General Residential Zone
Overlays	Erosion Management Overlay
Cultural Heritage	Aboriginal Cultural Heritage Sensitivity is mapped to the land. A mandatory Cultural Heritage Management Plan is not required for construction of a single dwelling.

2. Introduction

Ben Marchbank Town Planning has been engaged by David Glover to prepare and lodge a request to East Gippsland Shire Council consistent with Section 173 Agreement AU930951L (“the agreement”). The objective of the request is to obtain written consent from the Responsible Authority to build a dwelling larger than that stipulated by the agreement. Ultimately this will facilitate the construction of a single storey dwelling with integral double garage at 14 Penrose Place Newlands Arm 3875. In addition, in the interests of completeness, this report will address (in brief) Section 173 Agreement AV904185R that also appears on title and the planning controls, notwithstanding a planning permit is not required for the proposed dwelling.

Section 173 Agreement AU930951L was entered into as a requirement of permit condition 3 of Planning Permit 423/2017/P issued 25 January 2021 for subdivision of land and removal of native vegetation. Permit Condition 3 stipulated requirements relating to a range of matters that were subsequently included in ‘Owner Specific Obligations’ at Clause 5 of the agreement. These matters are addressed in detail in this submission. A full copy of title containing the agreements is provided.

Application documentation:

- ✓ Planning permit application form
- ✓ Full copy of title and Section 173 Agreements
- ✓ Dwelling plan set prepared by GJ Gardner March 2024
- ✓ Neighbourhood Built form Character Plan

The primary area of assessment will address:

- Neighbourhood and site description that meets the requirements of Clause 54.01-1 of the East Gippsland Planning Scheme

- Design Response that meets the requirements of Clause 54.01-2 of the East Gippsland Planning Scheme
- Demonstrate how the proposal achieves the design objectives contained in Design and Development Overlay Schedule 11 of the East Gippsland Planning Scheme

3. Preliminary Matters

In the interests of completeness, the following commentary is provided in relation to the applicable planning controls and additional section 173 legal agreement on title in relation to the subject site.

Planning controls

The land is zoned General Residential Zone with one overlay being the Erosion Management Overlay. The zone does not require a planning permit for a single dwelling on a lot larger than 300m², as is the case for the subject site. The overlay does not require a planning permit for a single dwelling on a lot or for earthworks not exceeding one metre height or depth, as is the case for the subject site.

Section 173 Agreement AV904185R

This agreement relates to a range of matters of compliance with AusNet Services requirements for electricity supply to each lot of the original subdivision. The agreement has no bearing on the development of lot 14 with a dwelling.

4. Proposal

It is proposed to obtain written consent from the Responsible Authority to build a dwelling larger than that stipulated by the agreement consistent with Clause 5.1 and 5.2 of the agreement. The agreement requires written consent to be obtained in circumstances where:

- The total building footprint of all buildings on a lot exceeds 300 square metres
- Any building on a lot exceeds a building height of 5 metres

The proposed single storey dwelling has a total building footprint of 354.75 m². This includes garage, porch, alfresco and deck (by others). The ground floor deck by others constitutes 47.75m² of the total building footprint. Consistent with the definition of 'Total Building Footprint' contained in the agreement.

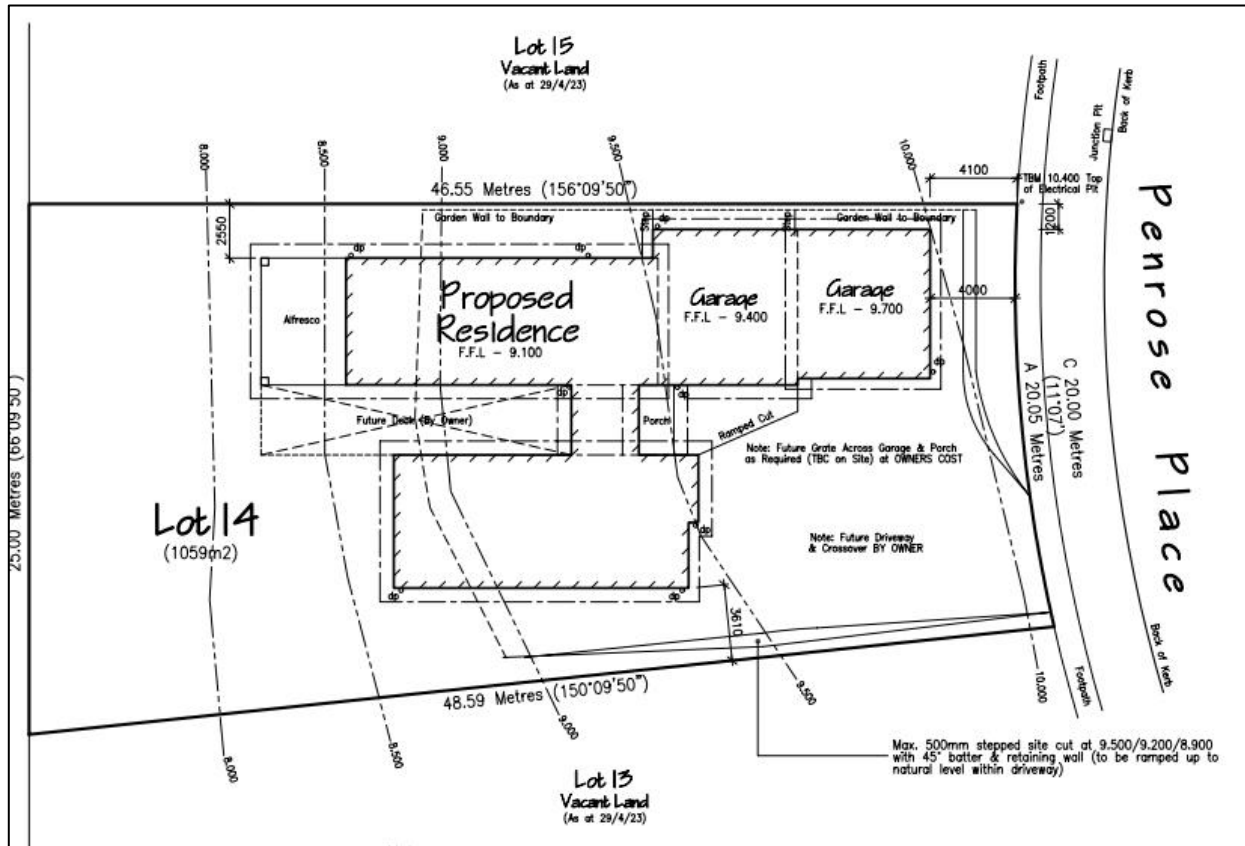
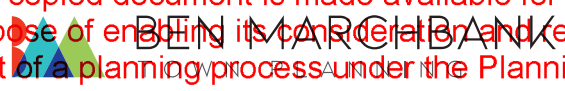
The overall maximum building height is 5.3m.

Therefore, written consent is required because the footprint exceeds 300 m² by 54.75m² and overall maximum height of 5m by 300mm.

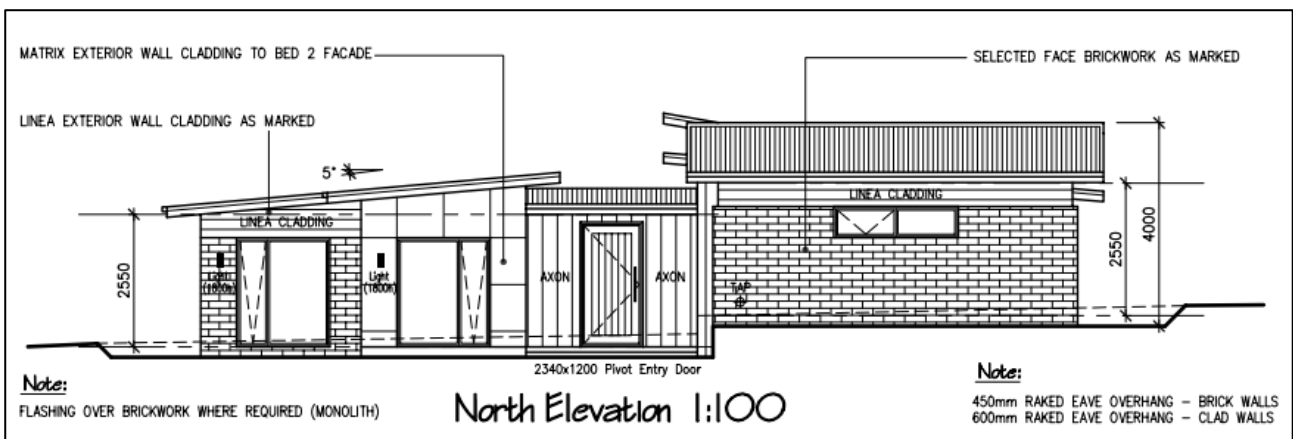
Total Building Footprint means the total area of a Lot covered by Buildings (existing and proposed), measured from the outside of external walls or the centre of party walls, and includes all roofed areas and uncovered areas such as decks, pergolas and the like. For the avoidance of doubt, any part of an upper floor of a Building that overhangs the ground floor will be included as part of the Total Building Footprint.

Excerpt from the section 173 agreement AU930951 – Total Building Footprint' definition

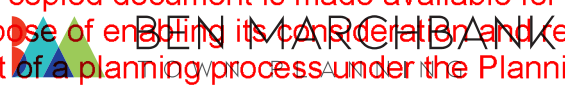
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Proposed dwelling site plan




Proposed dwelling elevation example



	<p>ROOF</p> <p>Corrugated metal</p> <p>Colour: Monolith</p>
---	---

	<p>WALLS</p> <p>Overland Pristine</p> <p>Colour: Freycinet</p>
---	--

	<p>WALLS</p> <p>Axon/Linea Cladding</p> <p>Colour: 'Grey Ridge'</p>
---	---

Proposed external materials and colour schedule

5. Subject site

The site is located in an evolving residential subdivision, Penrose Place, adjoining the eastern side of the established Newlands Arm Estate. It is formally known as lot 14 on plan of subdivision 84790, rectangular in shape with an area of 1059 square metres. The site is vacant of buildings and devoid of vegetation. The site fronts a fully constructed municipal sealed road with roll over kerbs, nature strip, a concrete footpath and underground drainage and utility services. The front portion of the site, adjacent to the road, is relatively flat which graduates into a gentle slope to the rear. Vacant residential land adjoins the subject site. Long range views are possible of the subject land from the surrounding lake system but due to distances, topography and reserve vegetation these views are considerably diminished.

The newly subdivided section of Penrose Place contains three dwellings that have recently been constructed. Dwellings are single storey with shallow pitched hipped roofs and corrugated metal roofs and face brick walls.

Contemporary cladding also features. Roofs are dark in colour; brick is of natural dark tones and lighter tone finishes have been applied to features and veranda structures. Dwelling footprints are approximately between 380 – 430m². Dwellings interfacing Penrose Place (Colony Club Circuit) are varied in form and include traditional style and contemporary. Dominant front boundary treatment is open style in that generally front fences are not used. Front setbacks vary between approximately 4-12m, with some greater. Vegetation exists in the public realm and is present in private lots to a lesser extent. This vegetation contributes to the overall character of the area.



Subject site



Subject site – Looking south



Subject site – Looking west



Subject site – Looking south (standing on site)



Subject site – Looking north

6. Section 173 Assessment

6.1 Section 173 Agreement Clause 5.2 Council Consent

The Owner covenants and agrees that:	
5.2.1	any request to obtain Council’s written consent under clause 5.1 must be accompanied by a Neighbourhood and Site Description and a Design Response and information that describes how the proposal achieves the design objectives set out in DDO11 as if DDO11 applied to the Lot; and
5.2.2	when considering a requests for written consent under clause 5.1, Council must be satisfied that the Building meets the design objectives and decision guidelines in DDO11 as if DDO11 applied to the Lot.

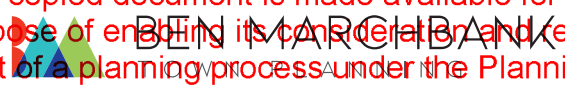
This submission demonstrates how the modest additional total building footprint and height increase is appropriate for the site and will not result in material detriment when considering visual amenity, neighbourhood character or landscape setting.

6.2 Neighbourhood and site description that meets the requirements of Clause 54.01-1 of the East Gippsland Planning Scheme

Planning Scheme Clause 54.10-1 Neighbourhood and Site description

	Element	Response
<p>In relation to the neighbourhood</p>	<p>Built form, scale and character of surrounding development including front fencing</p>	<p>The varied built form and scale informs the character surrounding the site (and across the Newlands Arm Estate). Single storey dwelling on spacious lots can be observed with generous setbacks and plantings around dwellings. Outbuildings often accompany dwellings in proximity to the site. Generally dwelling footprints are in the range of 350-450m² but there are examples of larger footprints up to 650m² and conversely smaller footprints at 185m² adjacent to the site. Dwelling heights are estimated to not generally exceed 6m, albeit some architectural features appear to extend higher on some occasions.</p> <p>Given these factors and due to spacious lot sizes built form does not appear to dominate lots.</p> <p>Front and side boundary treatments are often left unfenced and delineated by landscaped gardens, hedges and shrubs. in instances where fencing exists its often visually permeable and of limited height.</p>
	<p>Architectural styles and roof styles</p>	<p>There is a range of architectural styles surrounding the site. Earlier constructed dwellings favour a more traditional ‘farmstead style’ with long frontages addressing the street, low pitched hipped roofs. External materials are generally corrugated metal to roofs and face brick to walls. There are examples of modest earlier dwellings of timber cladding to walls. Although some more recently constructed dwellings reflect the traditional type identified, many have opted for unique personalised stylings. These include more angular lines, non-symmetrical features, elevated roof sections (to gain views) and wall ‘punch out’ features. Roof styles include skillion, opposing sloping, pitched, hipped and gable style. Materials include corrugated metal, smooth composite cladding, tiles and brick. Colours are generally natural tones from a pale palette, albeit some brighter features exist with inclusion of red.</p>
	<p>Other notable features or characteristics of the neighbourhood</p>	<p>Notable characteristics is the open landscape setting bordered by water, and vegetation within private and public areas. This allows for long range views (often filtered) and vegetation protection.</p>

In relation to the site	Site shape, size, orientation, and easements	The site is rectangular in shape, 1059m ² and has a 2 metre wide drainage easement parallel with the rear boundary. This is reflective of other lots in Penrose Place and generally the broader area.
	Site levels and surrounding site levels	The site has fairly flat area at the front of the site with a gentle slope to the south/east. This is the case for adjoining and neighbouring lots in Penrose Place. Lots (5-9) along the large public reserve interface are flatter. In his regard there are no dramatic level changes that would impact on the site or surrounding land.
	Existing buildings on site and surrounding, including walls on boundaries	The site is vacant as are the lots adjoining the site. The Penrose Place subdivision is slowly evolving with just three houses virtually complete/occupied opposite and to the east fronting the large public reserve. Dwelling walls on boundary consideration is not relevant given the context.
	Use of surrounding buildings	All surrounding buildings are used for residential purposes.
	Location of SPOS and habitable room windows of surrounding properties with outlook to the site within 9m	There are no buildings within 9 metres of the site.
	Solar access to the site and surrounding properties	Due to the generous lot sizes and restriction to one dwellings per lot of limited height it is not anticipated that there would be any issues in relation to solar access.
	Location of significant trees on the site	The site is devoid of vegetation.
	Any contaminated soils and filled areas	There are no known areas of contamination on this newly created subdivision.
	Views to and from the site	A mixture of long range filtered views through reserve vegetation are possible from the water. Un-restricted views from the newly constructed Penrose Place will be possible.
	Street frontage features such as poles, street trees and kerb crossovers	Reticulated electricity and telecommunication is underground. Street trees are located in front of lots along the nature strip. Vehicle crossovers are incrementally being constructed in concrete at the time of dwelling construction. Kerbs are 'roll over'.
Other notable features or characteristics of the site	Exotic and native vegetation along the water frontage.	



6.3 Design Response that meets the requirements of Clause 54.01-2 of the East Gippsland Planning Scheme

Planning Scheme Clause 54.01-2 Design Response

	Element	Response
<p>How does the proposed design respond</p>	<p>Derives from and responds to the neighbourhood site description</p>	<p>The proposed dwelling has sought to reflect the varied traditional/modern built form in the area as well as the scale and external materials. It utilises low pitch skillion roof form incorporating eave overhangs. Staggered facades provide for a ‘broken up’ built form that reduces visual impact. The overall footprint and height is comparable to surrounding properties in Penrose Place and in the broader residential precinct. The dwelling does not include unusual architectural features.</p> <p>External materials are a mixture of face brick, cladding and corrugated roofing. See materials and colour schedule included in this submission.</p> <p>A substantial area of the lot will remain open garden area and open space adjacent to the road is provided.</p>
	<p>Meets the objectives of Clause 54</p>	<p>Clause 54 is typically triggered when a single dwelling is proposed on a lot less than 300m². The subject site being 1059m². However, the agreement has sought for a design response to address Clause 54. Neighbourhood character features have been identified and the compatibility of the proposed dwelling with this character has been demonstrated. A response to relevant Clause 54 matters is provided.</p> <p>Site layout and building massing</p> <p>Street setback methodology requires a 4m minimum front setback. This is achieved with the proposed dwelling having a 4.1m setback. Building height of 5.4m is significantly less than the maximum allowable of 9m. Proposed site coverage of approximately 30% is significantly lower than the 60% target. Acceptable energy efficiency is achieved given the context and allows sun to be received into key parts of the dwelling and provides for solar energy production opportunities.</p> <p>Amenity impacts</p> <p>As per the proposed plans side a rear setback easily meet the relevant standard. The side wall of the proposed dwelling to the closest to a side boundary is at least 1.2m</p>

		<p>set off the boundary. Habitable room windows are at least 2.5m from the closest boundary.</p> <p>On-site amenity and facilities</p> <p>Given the title boundary setbacks daylight to new windows can easily be achieved. Approximately 70% of the site will be available as garden area or private open space, being significantly more than the minimum requirements of 40m². Due to generous land size and site conditions extensive solar access to open space will be achieved.</p> <p>Detailed design</p> <p>This overall report provides information that demonstrates compatibility of the proposed design and therefore meets the design detail.</p>
	<p>Responds to neighbourhood character features in a local planning policy or neighbourhood Character Overlay</p>	<p>Clause 15.01-1L01 – Urban Design General</p> <p>This local policy is not specific to Newlands Arm, rather general to built form within the municipality.</p> <p>The policy seeks to encourage high standards of design in lakeside and areas of high landscape quality including next to parks and reserves.</p> <p>The proposal provides for a contemporary building design within an evolving residential precinct adjacent to an established residential estate. The design is proportional to the site and landscape setting. Built form has been split up resulting articulated facades that are finished in a selection of traditional and modern materials. This combination of elements gives texture and visual interest while reminding subservient to the natural setting and complimentary to other buildings in locality.</p>

6.4 Demonstrate how the proposal achieves the design objectives contained in Design and Development Overlay Schedule 11 of the East Gippsland Planning Scheme

Design Objective	Response
Protect township character	The proposal is consistent with township character in that conforms to one dwelling per lot, provides for spacious areas around the dwelling for landscaping opportunities, address the street and has minimal site disturbance.
<p>Ensure height and visual bulk is compatible with coastal neighbourhood setting</p> <p>Designed to minimise visual impacts on natural landscape</p> <p>Visually and physically integrated with site and surrounding landscape</p> <p>Designed to be visually unobtrusive through and above tree canopy when viewed from nearby or distant viewpoints</p>	<p>The dwelling height, footprint, scale and bulk is comparable to many of the dwellings close by and in the broader Newlands Arm residential area. It is an expected outcome for development in a residential subdivision and has sought to retain the single storey theme. A mixture of traditional brick and more light weight material of muted tones makes for a balanced visual outcome that can assimilate with the natural landscape.</p> <p>Generous rear setbacks are achieved from the lakeside which reduces visual impact when viewed from the water. This view is further alleviated by the effect of filtered view through existing vegetation and landform. This is the only discernible distant view that could be observed of the proposed dwelling. This position is supported by observation of other dwellings that have been recently constructed in Penrose Place.</p>
Protect vegetated character of landscape	The site is devoid of vegetation. Existing native and exotic vegetation is located in the reserve adjacent the rear of the site, foreshore. Given the extent of the proposal setbacks and context there will be no impact on this vegetation. The same is true for the street tree.
Ensure existing scale and character of development on Newlands Arm Lake frontage is preserved and new development be consistent with form and height to retain character and view corridors.	This objective is known to specifically apply to land along the lake edge to the west of Dawson Cove where existing development is particularly visible from the water due to low gradual rising land forms. Notwithstanding, the characterisation of the proposed dwelling above in terms of height, form, scale, bulk in comparison to other residential development that has lake frontage is considered to achieve consistency and retain viewing corridors.

6.5 Section 173 Clause 5.3 Other building controls

5173 Clause	Requirement	Response
5.3.1	Each lot must not be developed with more than one dwelling and the usual outbuildings	The proposal is for one dwelling.
5.3.2	Any building on a crown reserve lot must not be constructed within 6 metres of the eastern boundary of that lot	The subject site is not a crown reserve lot and does not have a common boundary with the council reserve.
5.3.3	Any building on reserve lot must not be constructed within 6 metres of the northern boundary of that lot	Not relevant.
5.3.4	The dwelling on the lot must be setback a minimum of 3 metres from one side boundary	The proposed dwelling is setback 3.6m from one side boundary.
5.3.5	All external colours, materials and finishes of a building must be in muted tones and non-reflective	All materials are muted tones and non-reflective. See materials and colour schedule.
5.3.6	Within 3 months of a certificate of occupancy permit issued for a dwelling on a reserve lot, a native tree must be planted and then maintained to the satisfaction of council in the rear of that lot	Not relevant.
5.3.7	The reserve lots must not obtain any vehicle access between a lot and the council reserve	Not relevant.
5.3.8	A building must not be erected, constructed, relocated, placed or the like on lot 16	Not relevant.
5.3.9	The landscaping within the road reserve must be maintained in accordance with the streetscape landscape plan by the consolidated lot owner for the maintenance period to the satisfaction of council	Not relevant.

5.3.10	All buildings constructed on a lot must be constructed to a minimum Bushfire Attack level of 12.5 to the satisfaction of council	The proposed dwelling will be constructed to BAL 12.05 as per the plans.
5.3.11	The bushfire buffer must be created and maintained in perpetuity and in accordance with the defendable space requirements by the consolidated lot owner to the satisfaction of council	Not relevant.

Reserve Lot means Lots 6-9 inclusive as shown on the Endorsed Plan or any lot that has a common boundary with the Council Reserve.

Crown Reserve Lot means that part of the Subject Land shown as Lots 9-13 inclusive on the Endorsed Plan or any Lot that has a common boundary with the Crown Reserve.

7. Section 173 Agreement Clause 5.4 EGCMA conditions

S173 Clause 5.41-5.4.5

A 5000 litre rainwater tank is incorporated on the proposed dwelling drawings and will meet matters stipulated in the EGCMA requirements relating to rainwater collection, rainwater be primarily used for toilets and laundry services and include an external tap and overflow discharged to a rainwater garden.

7.1 Section 173 Agreement Clause 5.5 EGCMA Waterway Management Plan

The requirements stipulated relate to the consolidated lot and are therefore not relevant to construction of a dwelling on lot 14.

8. Conclusion

The proposed dwelling is considered to meet the requirements set out in Clause 5 'Owners Specific Obligation's Section 173 Agreement AU930951. Specifically, the information provided in this submission is considered to satisfy the Clause 5.2.1 and 5.2.2 in demonstrating how additional footprint and height beyond the extent specified in Clause 5.1 is justifiable and an appropriate urban design, landscape and character outcome. The proposal is concluded to be consistent with all relevant matters contained in the agreement.

Please make contact should you wish to discuss any matters relating to this submission.

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14 Penrose Place Newlands Arm 3875

Neighbourhood Built Form Character Plan



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14 Penrose Place Newlands Arm 3875

Neighbourhood Built Form Character Plan—Photos



BEN MARCHBANK
TOWN PLANNING

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BAL-12.5 - Bushfire Attack Level Requirements
 Must comply with AS 3959-2018 - Sections 3 & 5

Sub-Floor Supports:

No special construction requirements.

Floors:

No special construction requirements.

External Walls:

External Walls - Parts less than 400mm above ground or decks etc to be of non-combustible material, 6mm fibre cement clad or bushfire resistant/naturally fire resistant timber.

External Windows:

Protected by bushfire shutters or completely screened with steel, bronze or aluminium mesh, or 4mm Grade A safety glass or glass blocks within 400mm of ground, deck etc. Openable portion metal screened with frame of metal or metal reinforced PVC-U or bushfire resisting timber. Fitted tight and provided with a seal at the head and stiles and draught excluders at the sill.

External Doors:

Protected by bushfire shutters or screened with steel, bronze or aluminium mesh or glazed with 5mm toughened glass, non-combustible or 35mm solid timber for 400mm above threshold, metal or bushfire resisting timber framed for 400mm above ground, decking etc, tight-fitting with weather strips at base. Door framing can be naturally fire resistant (high density) timber.

Water & Gas Pipes

Water and gas pipes are required to be metal above ground and the metal pipe must extend 400mm into the wall and 100mm underground.

Joints

All joints in the external surface material of walls shall be covered, sealed, overlapped, backed or butt-jointed to prevent gaps greater than 3mm. Alternatively, sarking-type material can be applied over the frame prior to fixing any external cladding.

Vents & Weepholes

All vents, weepholes & gaps in the external walls shall be screened except for weepholes in the sills of windows and doors.

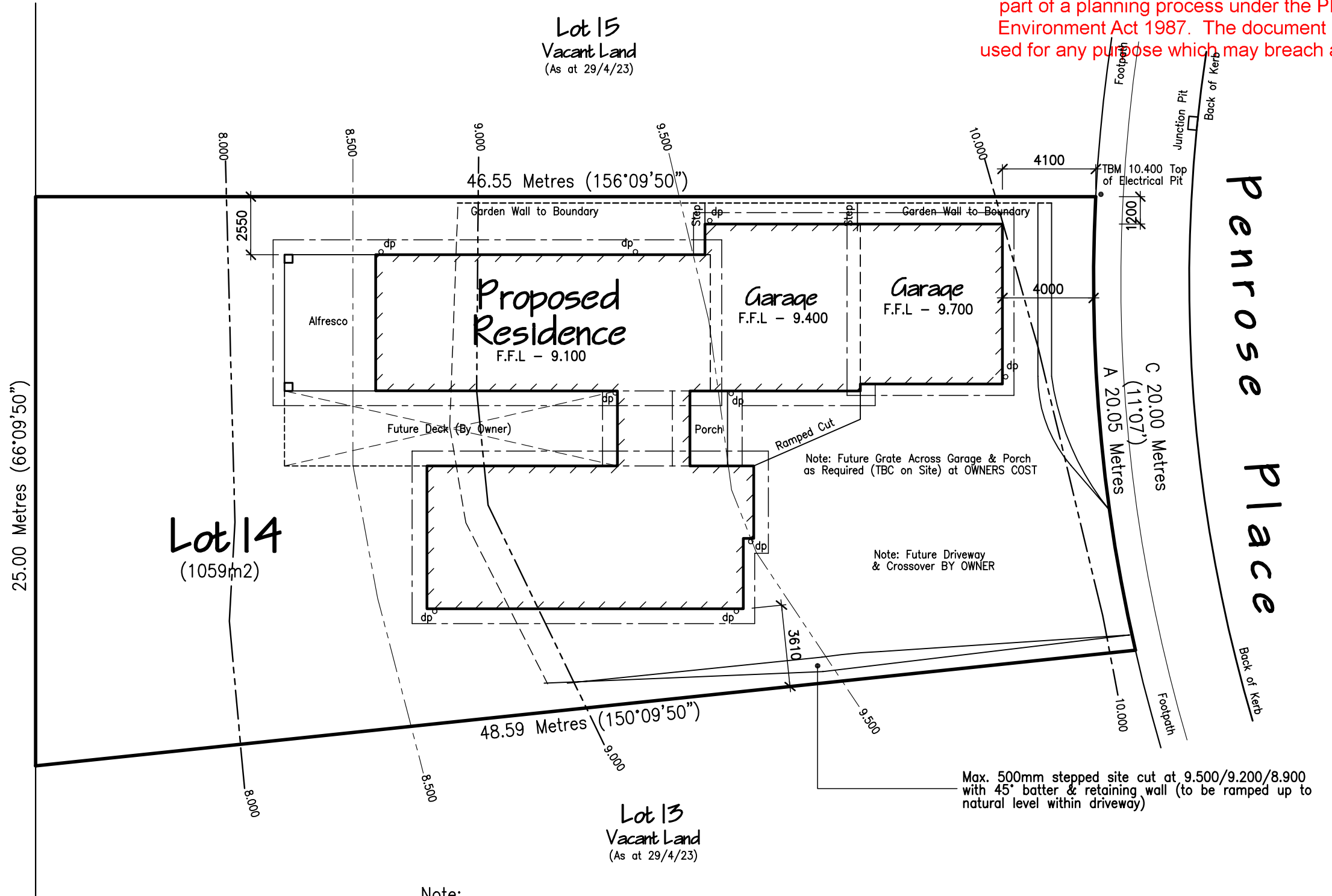
Roofing:

Non-combustible covering. Roof/wall junction to be sealed. Roofs to be fully sarked. Roof penetrations, including roof lights, roof ventilators, roof mounted evaporative cooling units, aerials, vent pipes & supports for solar collectors, shall be adequately sealed at the roof to prevent gaps greater than 3mm. The material used to seal the penetration shall be non-combustible.

Verandahs/ Decks:

Enclosed sub-floor space - no special requirements for materials except within 400mm of ground. No special requirements for supports or framing. Decking to be non-combustible or bushfire resistant within 300mm horizontally and 400mm vertically from glazed element.

Verandah posts must be either timber fixed on a galvanised shoe or stirrup 75mm above the adjacent finished surface or where less than 400mm from the surface of the deck be non-combustible or bushfire resistant timber.



Note:

Final location of all downpipes to be verified on site

Site Area Calculations:

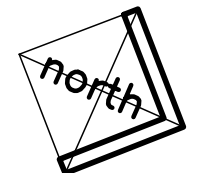
Total Site:	1059m ²	Paving:	0m ² (0%)
Proposed Buildings:	307m ² (29%)	Garden Area:	752m ² (71%)

Proposed Site Layout Plan 1:200

Note:

Stormwater to discharge to kerb and channel to front of site (LPOD) to local authority approval

Sewerage to be connected to property connection point to local authority approval



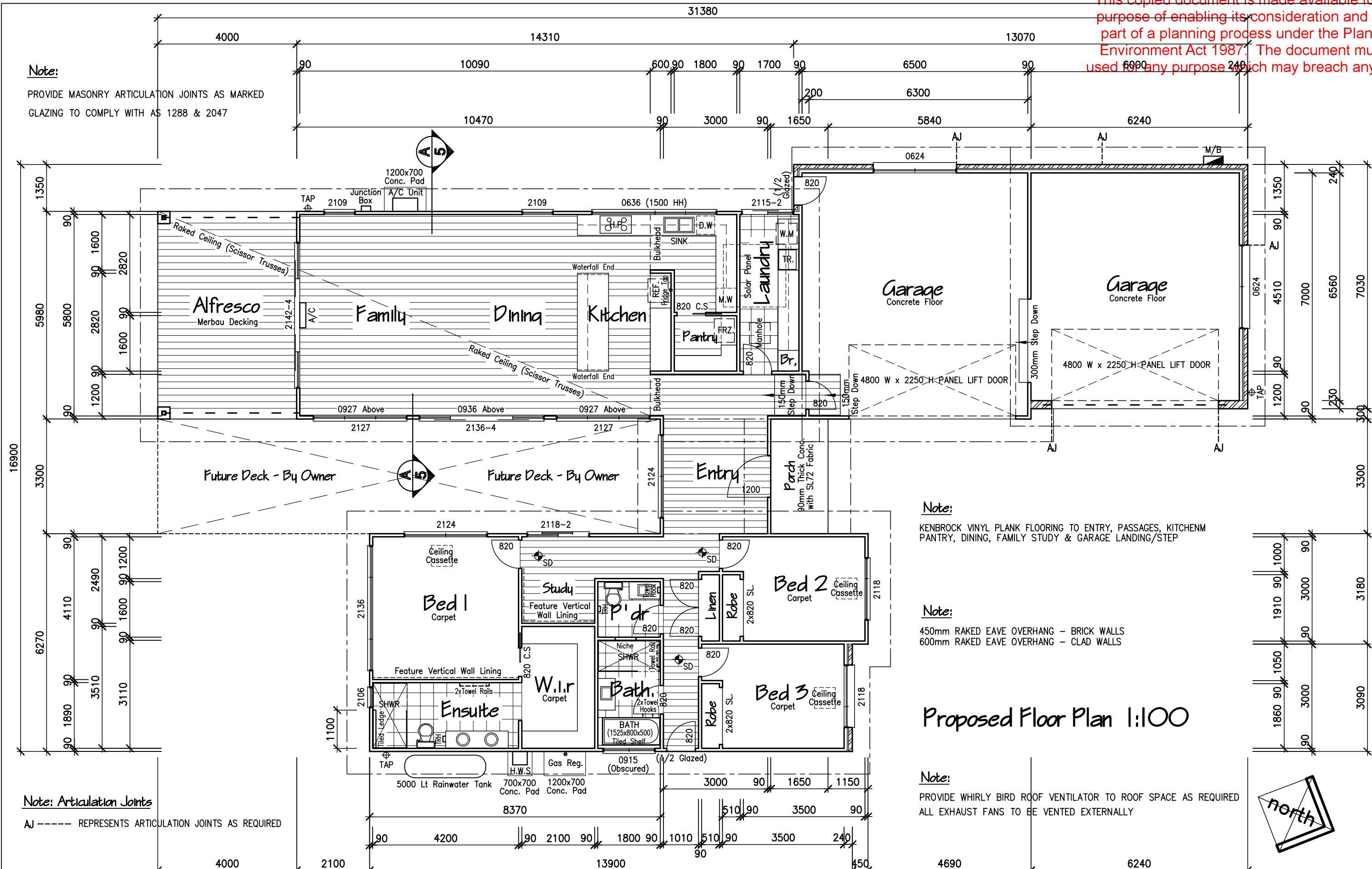
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G.J Gardner. HOMES 103 Main Street, Bairnsdale VIC 3875 Office: (03) 5153 1330 CDB-U 53249 www.gjgardner.com.au	Custom Design © Copyright Exclusive To G.J Gardner Homes	Craig Wight Design & Drafting Registered Building Practitioner DP AD 36750	CLIENT:	PROJECT: PROPOSED NEW RESIDENCE	PAGES:	SHEET SIZE:	FLOOR AREAS:		REV.	DETAILS:	DATE:
			D & E Gover	Lot 14	9 OF 9	A3	INTERNAL:	186.09m ²	A	PRELIMINARY DRAWINGS	8/8/23
			DRAWING TITLE:	Penrose Place,	JOB NO: 230502		GARAGE:	92.49m ²	B	WORKING DRAWINGS	30/10/23
			SITE PLAN - SCALE 1:200	Newlands Arm	DRAWN: CRAIG WIGHT		PORCH:	4.50m ²	C	ALTERED DRAWINGS	13/3/24
							ALFRESCO:	23.92m ²			
							TOTAL:	307.00m ²			

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Note:

PROVIDE MASONRY ARTICULATION JOINTS AS MARKED
GLAZING TO COMPLY WITH AS 1288 & 2047



Note:

KENBROCK VINYL PLANK FLOORING TO ENTRY, PASSAGES, KITCHEN PANTRY, DINING, FAMILY STUDY & GARAGE LANDING/STEP

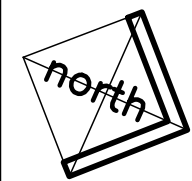
Note:

450mm RAKED EAVE OVERHANG - BRICK WALLS
600mm RAKED EAVE OVERHANG - CLAD WALLS

Note:

PROVIDE WHIRLY BIRD ROOF VENTILATOR TO ROOF SPACE AS REQUIRED
ALL EXHAUST FANS TO BE VENTED EXTERNALLY

Proposed Floor Plan 1:100



Note: Articulation Joints

AJ ----- REPRESENTS ARTICULATION JOINTS AS REQUIRED

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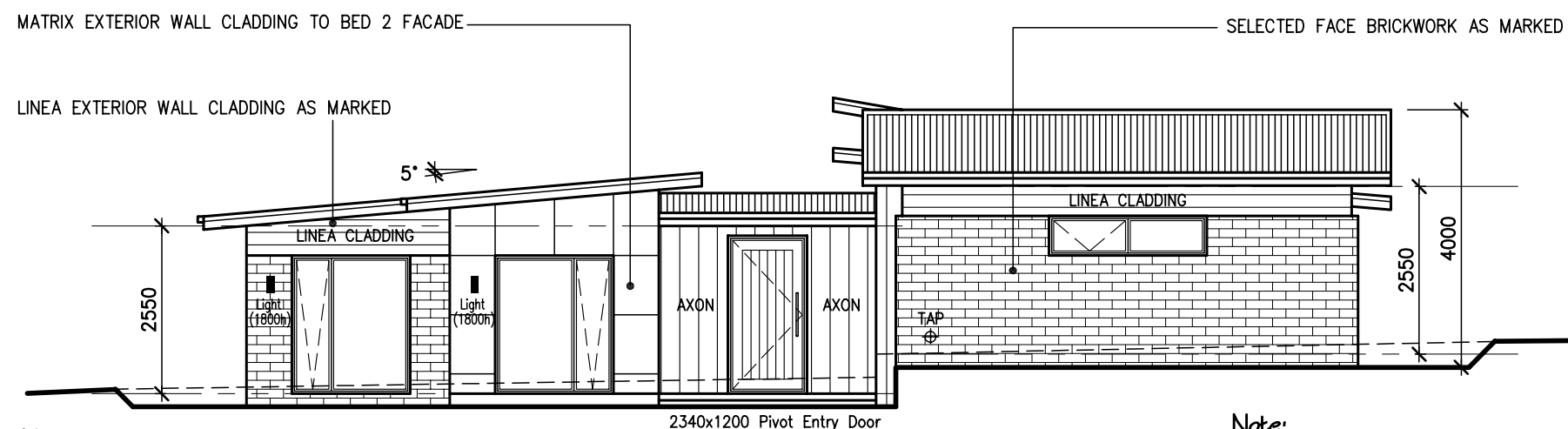
CLIENT: **D & E Gover**
DRAWING TITLE: **FLOOR PLAN - SCALE 1:100**

PROJECT: PROPOSED NEW RESIDENCE
Lot 14
Penrose Place,
Newlands Arm

PAGES: 1 OF 9
SHEET SIZE: A3
JOB NO: 230502
DRAWN: CRAIG WIGHT
DATE: 13/3/24

FLOOR AREAS:
INTERNAL: 186.09m2
GARAGE: 92.49m2
PORCH: 4.50m2
ALFRESCO: 23.92m2
TOTAL: 307.00m2
FUTURE DECK: 47.75m2

REV.	DETAILS:	DATE:
A	PRELIMINARY DRAWINGS	13/9/23
B	WORKING DRAWINGS	30/10/23
C	ALTERED DRAWINGS	13/3/24



Note:
FLASHING OVER BRICKWORK WHERE REQUIRED (MONOLITH)

North Elevation 1:100

Note:
450mm RAKED EAVE OVERHANG - BRICK WALLS
600mm RAKED EAVE OVERHANG - CLAD WALLS



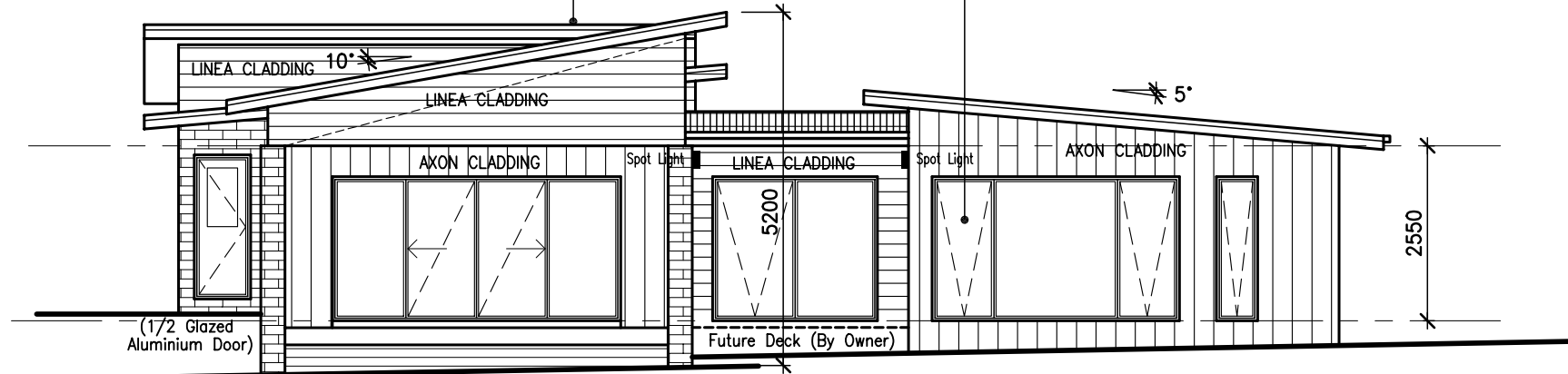
West Elevation 1:100

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			DRAWING TITLE: ELEVATIONS - SCALE 1:100						

SELECTED UNICOTE ROOF SHEETING WITH 5°, 7°30' & 10° PITCH'S AS MARKED

SELECTED ALUMINIUM AWNING WINDOWS (THERMALLY BROKEN)



Note:

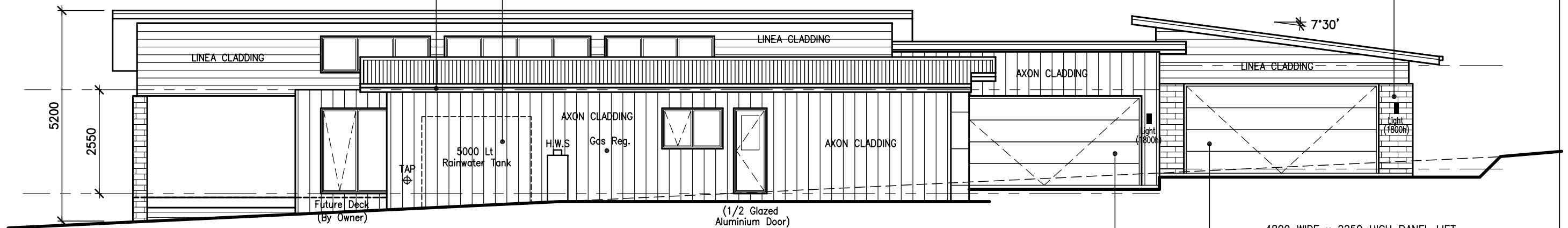
450mm RAKED EAVE OVERHANG - BRICK WALLS
600mm RAKED EAVE OVERHANG - CLAD WALLS

South Elevation 1:100

SELECTED UNICOTE FASCIA & GUTTERING

AXON EXTERIOR WALL CLADDING AS MARKED

SELECTED FACE BRICKWORK AS MARKED



East Elevation 1:100

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CLIENT:
D & E Gover
DRAWING TITLE:
ELEVATIONS - SCALE 1:100

PROJECT: PROPOSED NEW RESIDENCE
Lot 14
Penrose Place,
Newlands Arm

PAGES: 3 OF 9
SHEET SIZE: A3
JOB NO: 230502
DRAWN: CRAIG WIGHT
DATE: 13/3/24

FLOOR AREAS:
INTERNAL: 186.09m2
GARAGE: 92.49m2
PORCH: 4.50m2
ALFRESCO: 23.92m2
TOTAL: 307.00m2

REV.	DETAILS:	DATE:
A	PRELIMINARY DRAWINGS	8/8/23
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EXTERNAL MATERIALS and COLOUR SCHEDULE

(Dwelling)

Section 173 Agreement AU930951L

Request for written consent

14 Penrose Place Newlands Arm 3875

	<p>ROOF</p> <p>Corrugated metal</p> <p>Colour: Monolith</p>
	<p>WALLS</p> <p>Overland Pristine</p> <p>Colour: Freycinet</p>
	<p>WALLS</p> <p>Axon/Linea Cladding</p> <p>Colour: 'Grey Ridge'</p>

