

## NOTICE OF PROPOSAL TO END AN AGREEMENT

The application reference number is:	<b>AGR.12.2025</b>
Responsible Authority:	<b>East Gippsland Shire Council</b>
Description of the land affected by the agreement:	<b>61 Koraleigh View NICHOLSON VIC 3882</b>
Description of the proposal:	<b>End Section 173 Agreement AL961631J</b>

### Who initiated the proposal?

The proposal was initiated by Development Solutions Victoria 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.

The proposal was initiated by the responsible authority under section 178A(5) of the *Planning and Environment Act 1987*.

The proposal was initiated by the responsible authority under section 178E(3)(c) of the *Planning and Environment Act 1987* to end the agreement in a manner that is substantively different from a proposal for which notice was previously given under section 178C of the *Planning and Environment Act 1987*.

You may look at the application and any documents that support the application at 273 Main Street, Bairnsdale. This can be done during office hours and is free of charge.

Additionally, the documentation is posted to the website of the responsible authority. This can be done anytime by visiting the following website:

<https://www.eastgippsland.vic.gov.au/building-and-development/advertised-planning-permit-applications>.

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 <i>Planning and Environment Act 1987</i> before:	<b>15 August 2025</b>
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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 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 end the agreement may cause material detriment.

Our ref: 25038

1<sup>st</sup> May 2025

Andrew Bates  
Acting Statutory Planning Coordinator  
East Gippsland Shire Council  
PO Box 1618  
Bairnsdale Vic 3875

Dear Andrew,

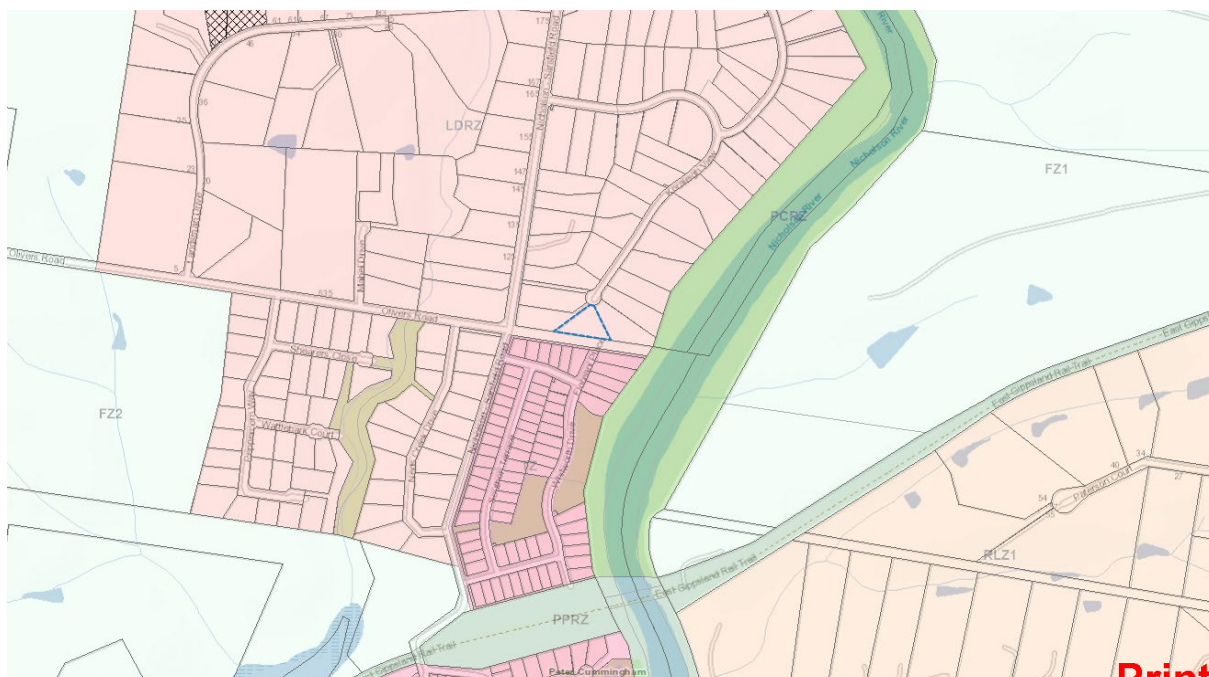
**Re: Request to end Section 173 Agreement – AL961631J  
61 Koraleigh View, Nicholson**

We write to seek Councils 'in principle' consent to apply to end Section 173 Agreement AL961631J pertaining to land at 61 Koraleigh View, Nicholson under the provisions of Section 178A of the *Planning and Environment Act 1987*.

The agreement was created as a result of the subdivision of land. The original parcel of land was approximately 41.12 hectare and through several stages created 68 lots.

The subdivision was undertaken in 2015. It was a requirement of the approval of the subdivision planning permit, that a Section 173 Agreement be registered on the individual titles to ensure specific controls to each lot could be required beyond the completion of the subdivision.

The subject land is currently zoned Low Density Residential Zone (LDRZ) and is surrounded by land also zoned LDRZ and General Residential Zone (GRZ).



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The subject site is partially affected by the Erosion Management Overlay (EMO) and the Environmental Significance Overlay – Schedule 1-30 (ESO1-30).

The intention of the Section 173 Agreement is to give ongoing effect to the conditions on Planning Permit (299/2011/P) which allowed the subdivision of the land. The conditions broadly relate to water tanks, fences, access, building envelopes and waste envelopes. This request is to vary the requirements specifically relating to the building envelopes.

We appreciate that it is not standard practice to simply end Section 173 Agreements, however in this particular case we feel that there is no negative impact with clear outcomes that will not be detrimental to surrounding landowners. Furthermore, it is considered unlikely that this decision would result in a proliferation of requests to end agreements.

Approving this request, in ending this agreement and reinstating another agreement with varied wording, will allow for a request to be made and for Council to consider, the construction of a building to be outside the building envelope as registered within the Section 173 Agreement.

It is our proposal that we end this Section 173 Agreement and create a new Agreement with varied wording as stated below:

*The Owner must not build, construct or erect or cause or permit to built, constructed or erected any buildings outside a Building and Waste Disposal Envelope unless with prior written consent of the responsible authority.*

As opposed to:

*The Owner must not build, construct or erect or cause or permit to built, constructed or erected any buildings outside a Building and Waste Disposal Envelope.*

We believe that this request is reasonable and acknowledge that neighbouring properties have also amended their Agreements to enable owners to seek Council consent to build outside the nominated building envelope.

This process will still require any buildings outside the nominated building envelope to be approved by Council, ensuring that any potential implications will be appropriately considered.

We look forward to progressing this request in a timely manner. Should you require any further information, please do not hesitate to contact our office.

Regards,



**Courtney Campbell**  
Development Solutions Victoria

# East Gippsland Shire Council

273 Main Street (PO Box 1618)  
Bairnsdale VIC 3875  
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Fax: (03) 5153 9576  
National Relay Service: 133 677  
ABN: 81 957 967 765

## Application to End or Amend a Section 173 Agreement

s178A Planning and Environment Act 1987; r55 Planning and Environment Regulations 2015

### Applicant Details:

Applicant name: DEVELOPMENT SOLUTIONS VICTORIA PTY LTD	
Business trading name: (if applicable)	
Email address: ADMIN@DEVSOLVIC.COM.AU	
Postal address: 48 BAILEY STREET, BAIRNSDALE	
	Postcode: 3875
Preferred Phone number: 03 5152 4858	Secondary number:

### Owners Details: (if not the applicant)

Owner name: TIMOTHY JAMES AND JACLYN RACHELLE PALMER	
Business trading name: (if applicable)	
Email address: ADMIN@DEVSOLVIC.COM.AU	
Postal address: 48 BAILEY STREET, BAIRNSDALE	
	Postcode: 3875
Preferred Phone number: 03 5152 4858	Secondary number:

### Description of the Land Subject to the Application:

Street number: 61	Street name: KORALEIGH VIEW
Town: NICHOLSON	Postcode 3882
Lot Number: 20	Plan Number: 722623L
Volume/Folio: 11582/869	

If the proposal relates to multiple addresses/parcels, please attach a document with the details of the additional land included, and ownership detail for each property.

### The Proposal:

<b>The proposal is to:</b>	<input type="checkbox"/> Amend (s178A(1)(a))	<input checked="" type="checkbox"/> End (s178A(1)(b))	<input type="checkbox"/> End in part (s178A(1)(b))
<b>Agreement</b> dealing number and date	AL961631J	1 d	7 d
		0 m	6 m
		2 y	0 y
		1 y	5 y
Planning Permit which required the Agreement:	299/2011/P		

### Payment of Fees

This application has an associated cost in accordance with the *Planning and Environment (Fees) Regulations* 2016. An invoice will be generated once the application has been assessed to confirm it is complete, and to confirm the number of notice letters, which informs the advertising cost.

# East Gippsland Shire Council

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Who is the invoice to be made out to? (provide name, address, phone number and email):

Invoice Recipient (Payer): DEVELOPMENT SOLUTIONS VICTORIA	
Address 48 BAILEY STREET, BAIRNSDALE	
	Post Code: 3875
Email Address: ADMIN@DEVSOLVIC.COM.AU	
Preferred Phone Number: 03 5152 4858	Secondary Number:

## Application Requirements

### Required

- **A copy of the Title(s).**
  - A full, current copy of the title(s) of the property (properties) including any restrictions/covenants listed. A copy of this can be purchased from the Land Titles Office [www.landata.vic.gov.au](http://www.landata.vic.gov.au). Copies of Titles must not be older than 3 months from the application date.
- **Details of all parties to the Section 173 Agreement**
  - A full list of current Titles affected by the Instrument, to assist with the giving of notice. Note, if all parties to an agreement consent to the proposal in writing (or if all parties make the application together), notice is not required.
  - A suitably qualified legal practitioner can help prepare this information.
- **A written statement which details:**
  - For an application to amend an agreement:
    - the proposed amendment; and
    - the purpose of the proposed amendment; and
    - any change in circumstances that necessitates the proposed amendment; OR
  - For an application to end an agreement in whole or in part:
    - if the proposal is to end the agreement in part, the part of the agreement to be ended; and
    - if the proposal is to end the agreement as to any part of the land, the part of the land to be removed from the application of the agreement; and
    - why the agreement or that part of it is no longer required.

### Required, if relevant

- **A company search**
  - If the subject land is owned by a company, a company search must be submitted with the application to confirm the correct ownership details. The company search must not be older than 3 months from the lodgement date.

## After a decision is made

**Ending an Agreement:** Council will provide a cost estimate at the time of approval for legal services associated with registering the ending of the Agreement. You will be invoiced by Council's solicitors for the final amount. The costs must be paid before the registration is undertaken.

**Amending an Agreement:** Council will provide a cost estimate at the time of approval for legal services associated with preparing the amended agreement, execution and registration of the Amended Agreement. You will be invoiced by Council's solicitors for the final amount. The costs must be paid before the registration is undertaken.

**Notice of decision/refusal:** If you are given a notice of refusal, or if a notice of decision to end/amend is provided, then there is opportunity for review of the decision at VCAT in accordance with the Act.

## Privacy Statement

The East Gippsland Shire Council asks for details about you to make decisions on planning applications. The information you give to us on this form is used for your application and is required for Council to make its decision under the *Planning and Environment Act 1987*. Sometimes we may provide a copy of this application form to another person, but only if it is for a legitimate purpose that is related to the planning process, or we



# East Gippsland Shire Council

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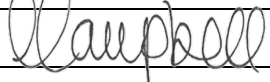
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Fax: (03) 5153 9576  
National Relay Service: 133 677  
ABN: 81 957 967 765

are allowed by law, or to protect people or property. If your information is put onto Council's website or provided to another person, Council will always try to make sure your privacy is protected in line with the *Privacy and Data Protection Act 2014*. For instance, if requested by another person, after deciding that it is requested for a legitimate purpose, Council will obtain an undertaking from the recipient confirming how they will use your personal information and that they will destroy it once used.

You may ask for more information about Council's Privacy Policy by contacting our Privacy Officer on 03 5153 9500 or e-mail [feedback@egipps.vic.gov.au](mailto:feedback@egipps.vic.gov.au). You can gain access to information you provided to us through the Freedom of Information Act 1982, more information about FOI is available on Council's website.

## Declarations:

- ☒ I declare that I am the applicant and that all the information in this application is true and correct.
- ☒ I confirm that I have authority to use the relevant documents.
- ☒ In the event that the giving of notice is required pursuant to Section 178C of the *Planning and Environment Act 1987*, I permit documents submitted as part of this application, including my name and address, to be made available for public viewing on Council's website for the duration of the notice period and until a determination is made. I also permit the full documentation, including my email address and phone number being made available upon request by third parties with an interest in the proposal for use in relation to the application, on condition that the information is destroyed when the matter is finalised.
- ☒ I accept the East Gippsland Shire Council Privacy Statement.

Applicant signature: 	
Name: Courtney Campbell	Date: 01 / 05 / 2025

## Submitting your application:

<b>Electronic</b>	Complete electronically on our website Email to <a href="mailto:planning@egipps.vic.gov.au">planning@egipps.vic.gov.au</a>
<b>Mail</b>	Post the signed, completed form together with copies of any documentation to: PO Box 1618 BAIRNSDALE VIC 3875.
<b>In Person</b>	Bring the completed form and supporting documents to any of the following locations: <div> <div>Service Centre Opening Hours: 9.00am to 5:00pm. Monday to Friday.</div> <div> Mallacoota Service Centre Opening Hours: Monday and Tuesday 10.00am to 2.00pm Wednesday, Thursday, Friday 2.00pm to 5.00pm </div> </div> <div> Bairnsdale Corporate Centre: 273 Main Street. Lakes Entrance Service Centre: 18 Mechanics Street. Omeo Service Centre: 179 Day Avenue. Orbost Service Centre: 1 Ruskin Street. Paynesville Service Centre: 55 The Esplanade. Mallacoota Service Centre: 70 Maurice Avenue </div>

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

Page 1 of 3

VOLUME 11582 FOLIO 869

Security no : 124124072602E  
Produced 01/05/2025 09:23 AM

### LAND DESCRIPTION

Lot 20 on Plan of Subdivision 722623L.  
PARENT TITLE Volume 11582 Folio 828  
Created by instrument PS722623L 09/07/2015

### REGISTERED PROPRIETOR

Estate Fee Simple  
Joint Proprietors  
TIMOTHY JAMES PALMER  
JACLYN RACHELLE PALMER  
AR060656N 25/05/2018

### ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT AM073724T 03/08/2015

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  
AL961631J 17/06/2015

### DIAGRAM LOCATION

SEE PS722623L 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: 61 KORALEIGH VIEW NICHOLSON VIC 3882

### ADMINISTRATIVE NOTICES

NIL

DOCUMENT END

# Imaged Document Cover Sheet

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Document Type	<b>Plan</b>
Document Identification	<b>PS722623L</b>
Number of Pages (excluding this cover sheet)	<b>9</b>
Document Assembled	<b>01/05/2025 09:23</b>

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PLAN OF SUBDIVISION					LV USE ONLY EDITION 1	PLAN NUMBER PS 722623L
<b>Location of Land</b>  <b>Parish:</b> Sarsfield <b>Township:</b> - <b>Section:</b> 2 <b>Crown Allotment:</b> 4A1 (part) <b>Crown Portion:</b> -  <b>Title References:</b> V. 11582 F. 828  <b>Last Plan Reference:</b> Lot B on PS722606L  <b>Postal Address:</b> Nicholson - Sarsfield Road, <small>(at time of subdivision)</small> Nicholson, 3882  <b>MGA 94 Co-ordinates:</b> E 565 300 <small>(of approx. centre of plan)</small> N 5815 700 <b>Zone:</b> 55					<b>Council Certification and Endorsement</b>  <b>Council Name:</b> East Gippsland Shire Council <b>Ref:</b> 1. This plan is certified under Section 6 of the Subdivision Act 1988. 2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6     /     / 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.  <b>Open Space</b> (i) A requirement for public open space under Section 18 Subdivision Act 1988 has / has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in stage Council Delegate Council seal Date     /     / Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council seal Date     /     /	
<b>Vesting of Roads or Reserves</b>					<b>Notations</b>  <b>Staging</b> This is / is not a staged subdivision Planning Permit No     299/2011/P  <b>Depth Limitation</b> Does not apply Lots A, B, 4-10 and 32-42 have been omitted from this plan.  <b>WATERWAY NOTATION:</b> LOTS 21, 22, 23, 26, 43, 44, 45, 46 AND LOT C IN THIS PLAN MAY ABUT CROWN LAND THAT MAY BE SUBJECT TO A CROWN LICENCE TO USE   <b>Survey:</b> This plan is / is not based on survey This plan has been connected to permanent mark no(s). PM32, PM37, PM38   This is a SPEAR plan	
Identifier	Council/Body/Person					
Road - R1 Reserve No.1 Reserve No.2	East Gippsland Shire Council East Gippsland Shire Council AusNet Electricity Services Pty Ltd					
<b>Easement Information</b>					<b>LRS USE ONLY</b> STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT  RECEIVED <input checked="" type="checkbox"/>  DATE   22/6/2015  PLAN REGISTERED TIME:   12.20 PM DATE:   9/7/2015 BILL SKALITSIS Assistant Registrar of Titles  SHEET 1 OF 8 SHEETS	
<b>Legend</b> A - Appurtenant Easement                      E - Encumbering Easement                      R - Encumbering Easement (Road)						
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of		
E-1	Transmission of Electricity	See diag.	C/E M880918M	S.E.C of Victoria		
E-2	Drainage	See diag.	This Plan	East Gippsland Shire Council & Land in this Plan		
E-4	Powerline	See diag.	PS715883X - Section 88 Electricity Industry Act 2000	SPL Electricity Pty Ltd		
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: left;"> <p><b>SK spatial</b> Land Surveying Consultants P:1300 853 157 F:8456 5995 M:0400 543 157 sks@oneplangroup.com.au www.oneplangroup.com.au GIPPSLAND - MELBOURNE</p> </div> <div style="text-align: center;"> <p><b>OnePlan</b> Land Development Group</p> </div> </div>					LICENSED SURVEYOR     ..... SCOTT CHARLES KIMM .....  DIGITALLY SIGNED BY LICENSED SURVEYOR:  REF 09067-2                      VERSION   4	
<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: left;"> <p><b>SK spatial</b> Land Surveying Consultants P:1300 853 157 F:8456 5995 M:0400 543 157 sks@oneplangroup.com.au www.oneplangroup.com.au GIPPSLAND - MELBOURNE</p> </div> <div style="text-align: center;"> <p><b>OnePlan</b> Land Development Group</p> </div> </div>					DATE     /     / COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE   A3	

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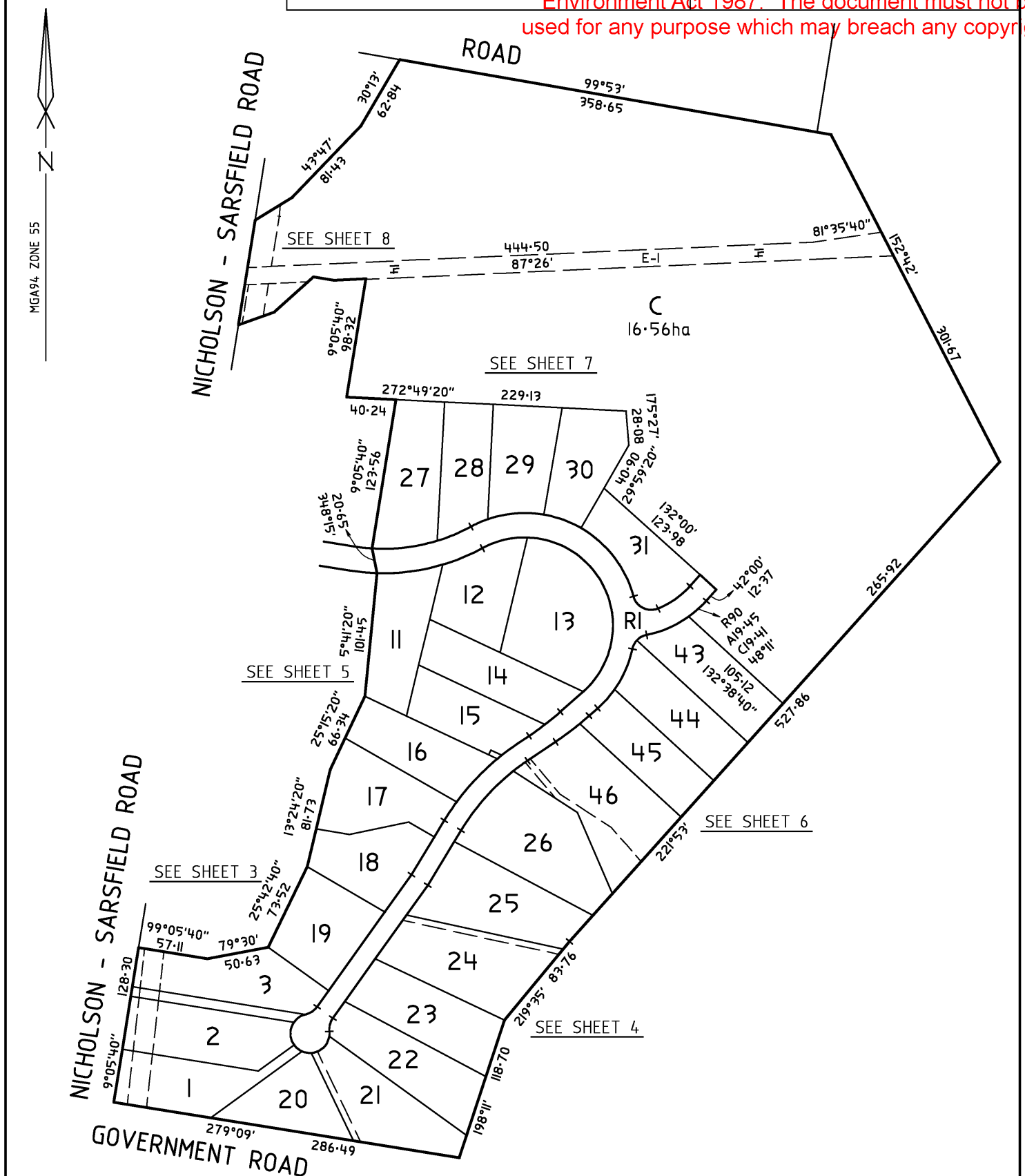
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Signed by Council: East Gippsland Shire Council, PP Ref: 299/2011/P, Cert Ref: PS722623L, Original Certification: 08/06/2018, S.500, 8/06/2015

# PLAN OF SUBDIVISION

PLAN NUMBER

PS 722623L



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ORIGINAL	SCALE
SHEET SIZE	30 0 30 60 90 120
A3	1:3000
	LENGTHS ARE IN METRES

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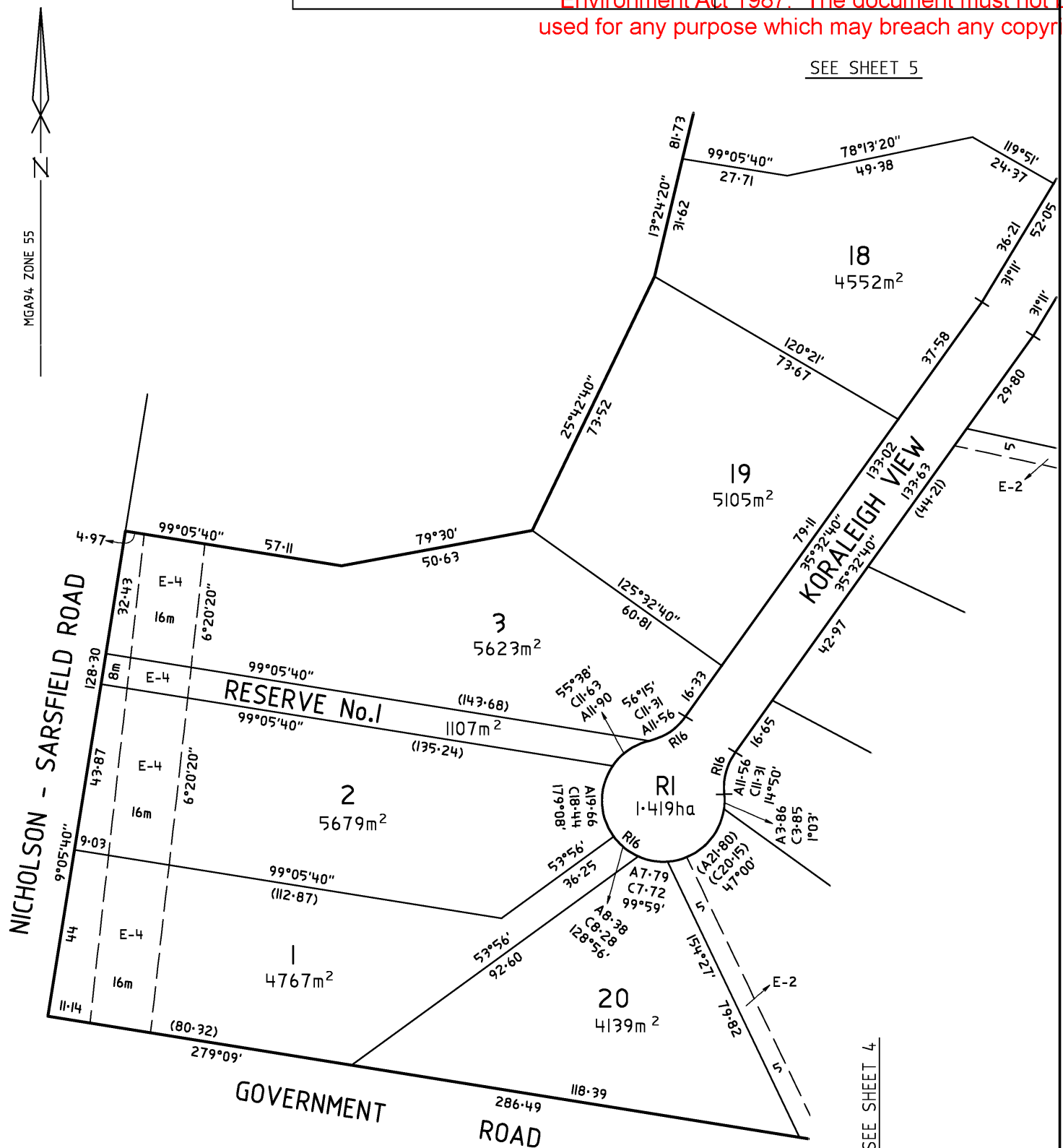
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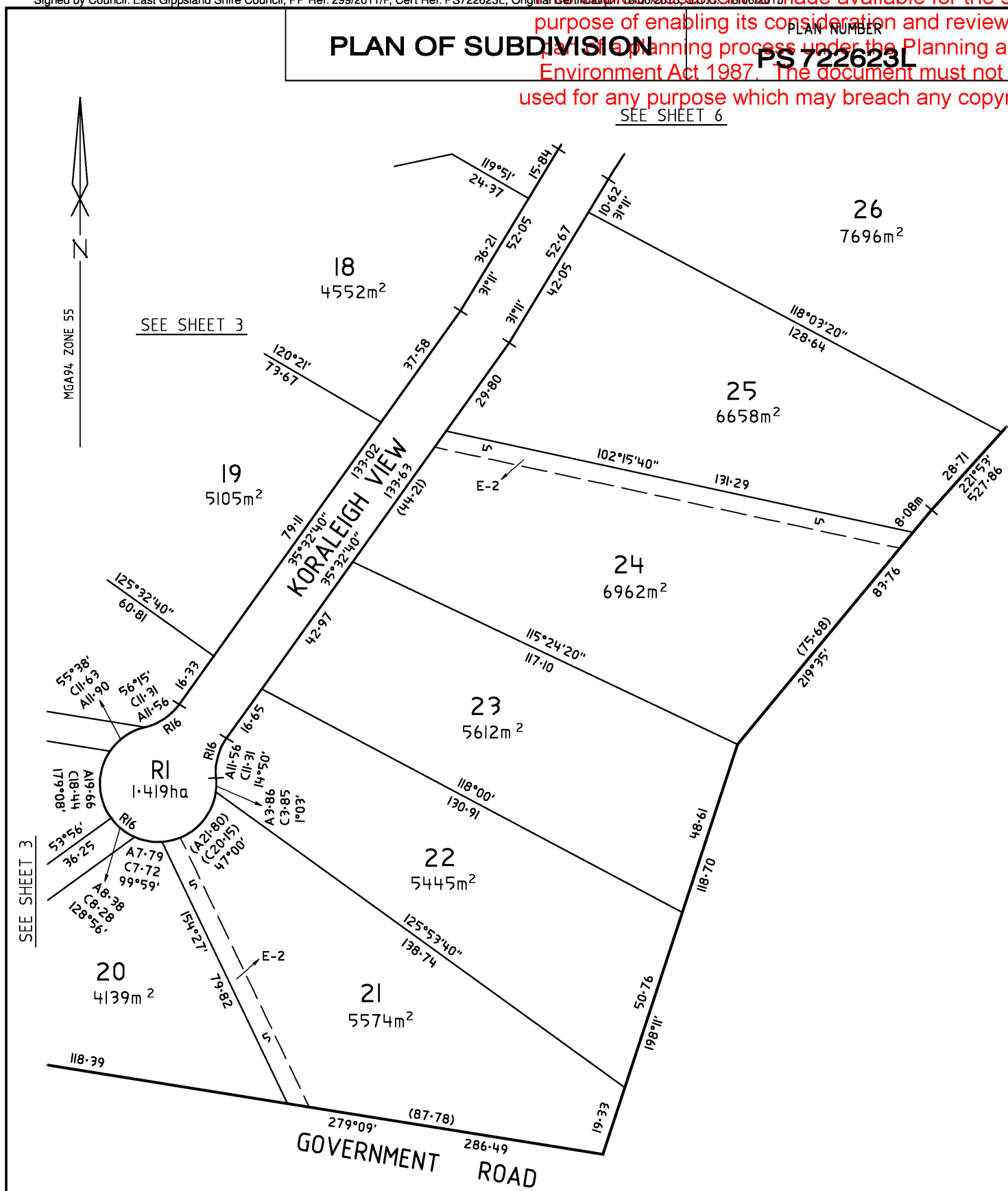
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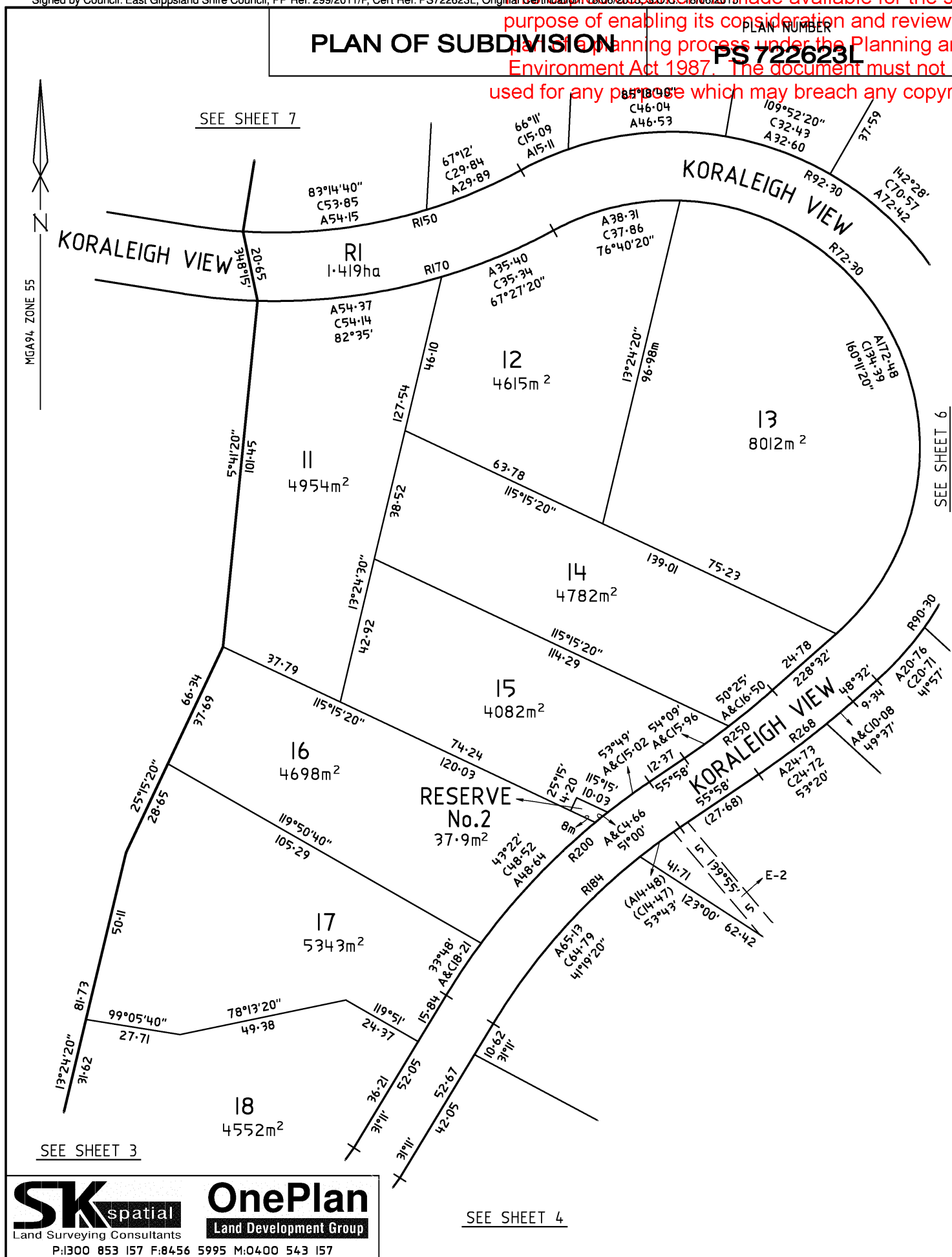
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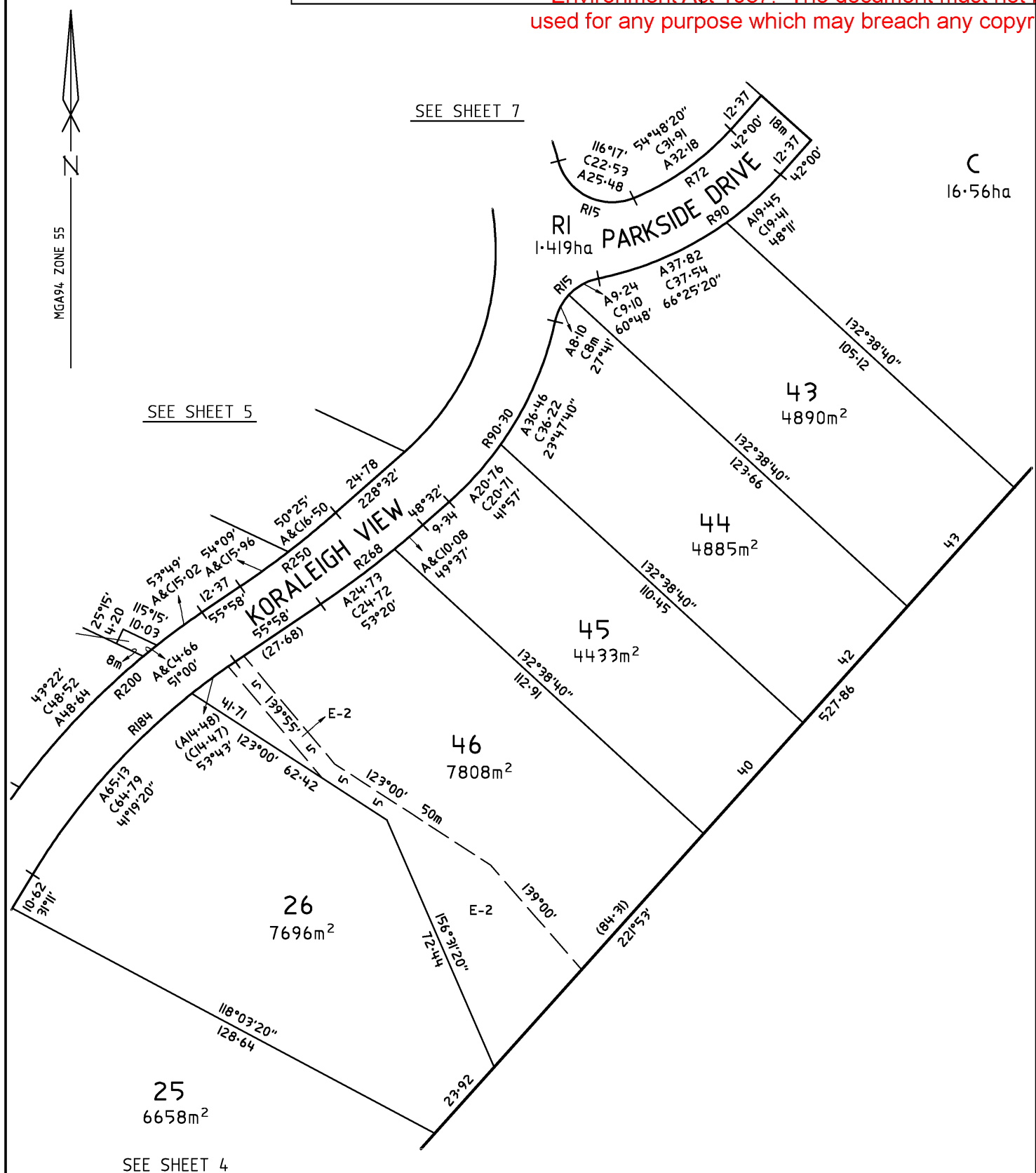
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## PLAN NUMBER

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SHEET 6 OF 8 SHEETS

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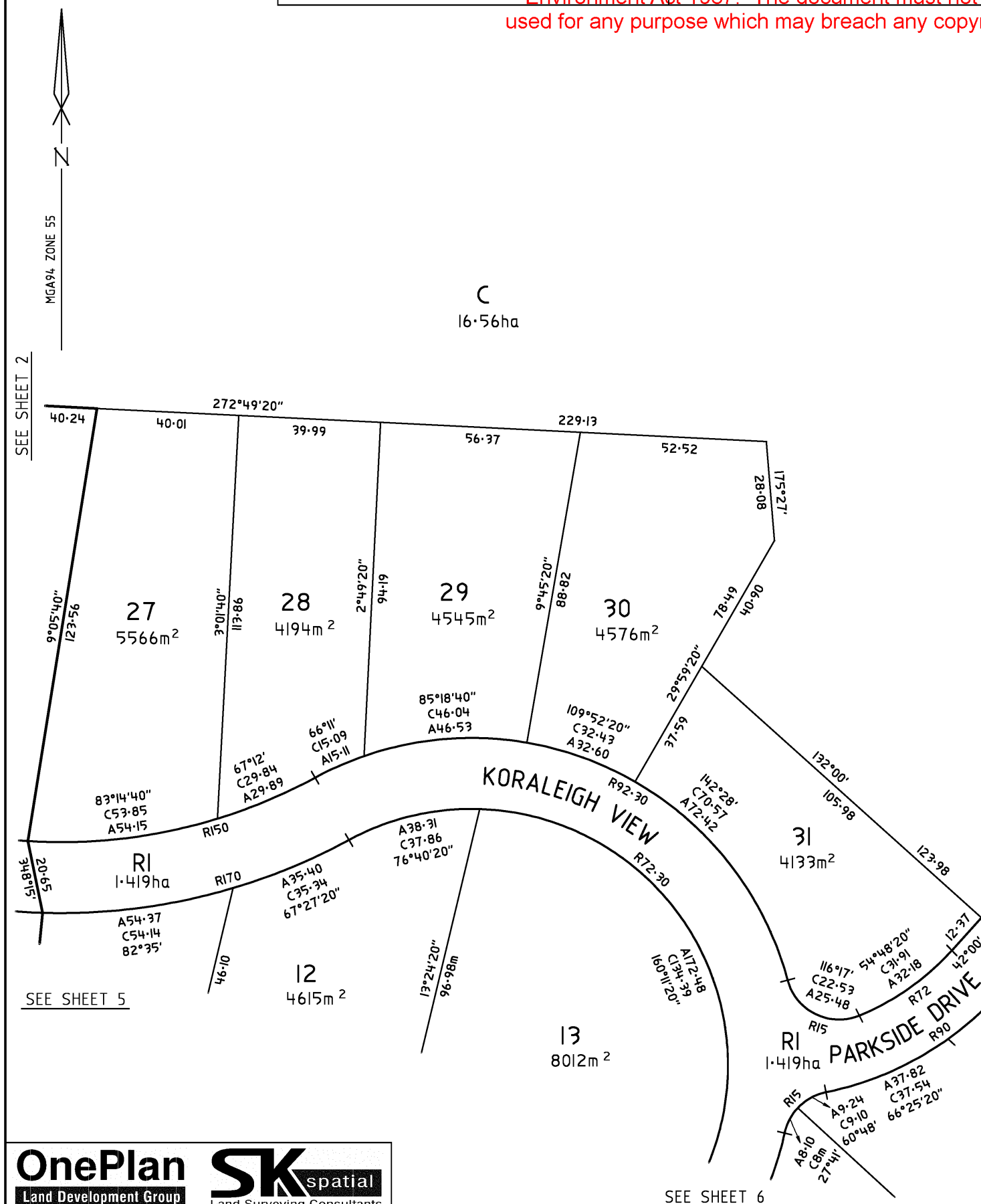
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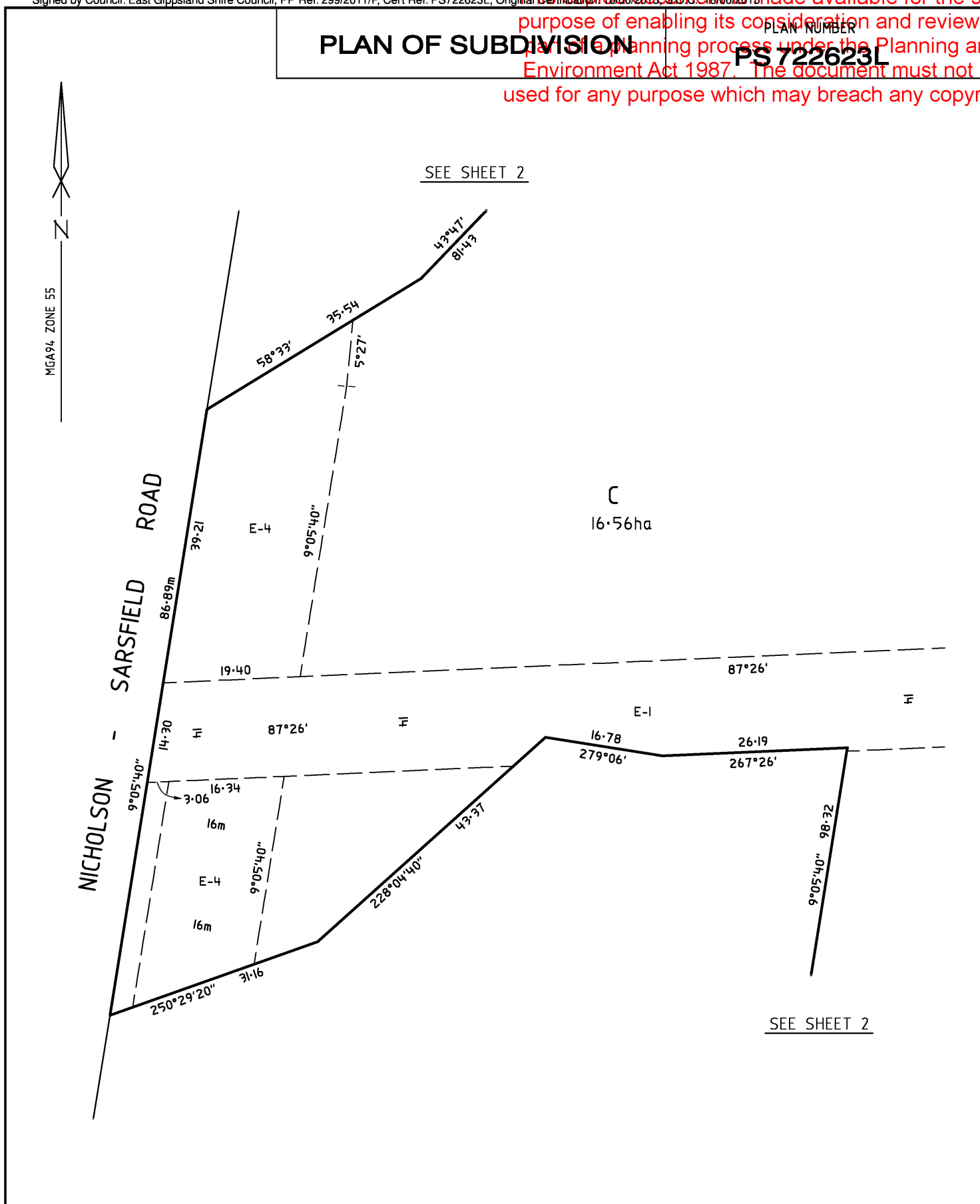
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# PLAN OF SUBDIVISION

PLAN NUMBER

PS 722623L



**OnePlan**

Land Development Group

**SK**spatial

Land Surveying Consultants

P:1300 853 157 F:8456 5995 M:0400 543 157  
sks@oneplangroup.com.au www.oneplangroup.com.au  
GIPPSLAND - MELBOURNE

LICENSED SURVEYOR

..... SCOTT CHARLES KIMM .....

SHEET 8 OF 8 SHEETS

DIGITALLY SIGNED BY LICENSED SURVEYOR:

REF 09067-2

VERSION 4

Printed 6/08/2025  
Page 16 of 35

## Plan of Subdivision PS722623L

### Concurrent Certification and Statement of Compliance (Form 3)

SUBDIVISION (PROCEDURES) REGULATIONS 2011

SPEAR Reference Number: S058861V

Plan Number: PS722623L

Responsible Authority Name: East Gippsland Shire Council

Responsible Authority Permit Ref. No.: 299/2011/P

Responsible Authority Certification Ref. No.: PS722623L

Surveyor's Plan Version: 4

#### Certification

☒ This plan is certified under section 6 of the Subdivision Act 1988

#### Statement of Compliance

☒ This is a statement of compliance issued under section 21 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 at Certification

Digitally signed by Council Delegate: Sarah McLaughlin

Organisation: East Gippsland Shire Council

Date: 18/06/2015

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# Transfer of Land

## Creating an Easement and/or Restrictive Covenant

### Section 45 Transfer of Land Act 1958

Lodged by

Name:

Phone:

Address:

Reference:

Customer Code:

AM073724T  
10/05/2025

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

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

Land: (volume and folio)

Volume: 11582. FOLIO: 869

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

all its estate in fee simple

Consideration:

\$140,000

Transferor: (full name)

NICHOLSON RIVER PTY LTD ACN 140 839 710

Transferee: (full name and address including postcode)

BRADLEY JAMES BLACKLEDGE AND TRACEY ANN BLACKLEDGE  
of 102 Bethross Drive TAMBO UPPER VIC 3885 As Joint Proprietors

Directing Party: (full name)

Creation and/or Reservation of Easement and/or Restrictive Covenant

"The transferees the said BRADLEY JAMES BLACKLEDGE AND TRACEY ANN BLACKLEDGE with the intent that the benefit of this Covenant shall be attached to and run at law and in equity with the whole of the land comprised in Plan of Subdivision No PS722623L (other than the land hereby transferred) and each and every part thereof and that the burden of this Covenant shall be annexed to and run at law and in equity with the land hereby transferred and each and every part thereof and that the same shall be noted and appear on every Certificate of Title for the said land and every part thereof as an encumbrance affecting the same DOES HEREBY COVENANT with the Transferor and other registered proprietor or proprietors for the time being of the land comprised in the said Plan of Subdivision (other than the land hereby transferred) that the Transferees will not:

30800812A

Duty Use Only

T2

Page 1 of 3

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Land Victoria, 570 Bourke Street, Melbourne, 3000, Phone 8636-2010

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# Transfer of Land

## Creating an Easement and/or Restrictive Covenant

### Section 45 Transfer of Land Act 1958

Dated: 23.7.15

Parties:

Signatures of the Parties



- Erect, place, permit, licence or authorise on the land any buildings other than a single dwelling (together with usual outbuildings) such dwelling to contain a floor area of not less than 160m<sup>2</sup> with the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola, porch or verandah;
- Erect, place, permit, licence or authorise on the land any building or outbuilding other than a building or outbuilding which is externally constructed of new materials save for second hand bricks;
- Erect, place, permit, licence or authorise on the land any building which is relocatable, or relocated from any other property.
- Erect, place, permit, licence or authorise on the land any boundary fence other than a post and wire or wire netting fence.
- Extract or remove or permit the extraction or removal of any soil, gravel or earth or other materials from the said land except for the purpose of excavating for the foundations of a building or of a swimming pool or tennis court or for gardening, landscaping or driveway within the said land.
- Permit the land or any part thereof to be used for the riding or driving of off road motorcycles or any other off road vehicles for recreation purposes.
- Permit the land or any part thereof to be used for the purpose of commercial breeding or boarding of or training kennels for cats or dogs for for the purpose of keeping roosters thereon.
- Permit the land to be used for the parking, garaging or servicing of any motor vehicle on excess of 5 tonnes gross vehicle mass (GVM) except for the purpose of loading or unloading of goods unless the vehicle is a vehicle engaged in construction works on the said land.
- Use or permit the use of the said land for any offensive or noxious purpose.
- Further subdivide the land in any way so as to create an additional lot.

Dated: 23.7.15

Execution and attestation:

30800812A

T2

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# Transfer of Land

## Creating an Easement and/or Restrictive Covenant

Section 45 Transfer of Land Act 1958

Dated: 23.7.15

Parties:

Signatures of the Parties

*Bradley James Blackledge*

EXECUTED by NICHOLSON RIVER PTY LTD  
(ACN 140 839 710)  
by being signed by the person authorised  
to sign for the company:

*Ross Charles Heath*

Director and Company Secretary

Full Name: Ross Charles HEATH  
Usual Address: 10 Robb Street  
BAIRNSDALE VIC 3875

*Ross Charles Heath*

Director

Full Name: Simon James ANDERSON  
Usual Address: 11 Bent Street  
BAIRNSDALE VIC 3875

SIGNED by the Transferees

*Bradley James Blackledge*  
Bradley James Blackledge

*Tracey Ann Blackledge*  
Tracey Ann Blackledge

in the presence of:

*Witness*

Witness

30800812A

# T2

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# Application by a Responsible Authority for the making of a Recording of an Agreement

Section 181 Planning and Environment Act 1987

## Form 18

**AL961631J**

17/06/2015 \$121.50 173



Lodged by:

Name: **EASTCOAST CONVEYANCING**  
MADDOCKS  
Phone: 9258-3555  
Address: Level 6, 140 William Street, Melbourne, Victoria, 3000  
Ref: KAL-RTS:6237836 14-0683  
Customer Code: 1107E 549U

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: Volume 11521 Folio 242

Authority: East Gippsland Shire Council of 273 Main Street, Bairnsdale, Victoria

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

A copy of the Agreement is attached to this Application

Signature for the Authority:

Name of officer:

Sarah McLaughlin

Position Held:

Senior Planner

Date:

15/06/2015

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Telephone 61 3 9258 3555  
Facsimile 61 3 9258 3666

info@maddocks.com.au  
www.maddocks.com.au

DX 259 Melbourne

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

**Subject Land: 140 Nicholson-Sarsfield Road, Nicholson**

**East Gippsland Shire Council**  
and

**Nicholson River Pty Ltd**  
**ACN 140 839 710**

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AL961631J

17/06/2015

\$121.50

473

## Agreement under section 173 of the Planning and Environment Act 1987

Dated 15/06/2015

### Parties

Name	East Gippsland Shire Council
Address	273 Main Street, Bairnsdale, Victoria
Short name	Council

Name	Nicholson River Pty Ltd ACN 140 839 710
Address	10 Robb Street, Bairnsdale, Victoria
Short name	Owner

### Background

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

### The Parties agree

#### 1. Definitions

In this Agreement unless the context admits otherwise:

**Act** means the *Planning and Environment Act 1987*.

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

**Building and Waste Disposal Envelope** means an area identified on the Endorsed Plan as a 'Building envelope' or the like.

**Current Address** means:



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

**Current Email means:**

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

**Dwelling** has the same meaning as in the Planning Scheme.

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

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

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

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

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

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

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

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

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

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

**Proposed Lot** means a lot shown on the Endorsed Plan.

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

**Reserve** means an area identified on the Endorsed Plan as any of 'Res 1', 'Res 2', 'Res 3', 'Res 4' or 'Public Purposes Reserve' or the like.



**Subject Land** means the land situated at 140 Nicholson-Sarsfield Road, Nicholson being the land referred to in certificate of title volume 11521 folio 242 and any reference to the Subject Land includes any lot created by the subdivision of the Subject Land or any part of it.

## 2. Interpretation

In this Agreement unless the context admits otherwise:

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

## 3. Purposes of Agreement

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

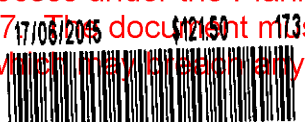
- 3.1 give effect to the Planning Permit; and
- 3.2 achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

## 4. Reasons for Agreement

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

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

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## 5. Agreement required

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

## 6. Owner's specific obligations

The Owner covenants and agrees that:

### 6.1 Rainwater Tanks

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

- 6.1.1 the Owner must, at the Owner's full cost, install and maintain a Rainwater Tank on the Lot with a capacity of at least 10,000 litres to collect rainwater runoff from the roof of the Dwelling on the Lot
- 6.1.2 the Rainwater Tank must:
  - (a) be used as the primary water source for:
    - (i) toilet flushing; and
    - (ii) laundry services; and
  - (b) contain an external tap for garden irrigation purposes.

### 6.2 Fences

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

- 6.2.1 submit Fence Design Plans showing fences to a maximum height of 1.5 metres to Council for its written approval prior to construction of the fence;
- 6.2.2 construct the boundary fence in accordance with the approved Fence Design Plans;
- 6.2.3 thereafter maintain the boundary fence to ensure the fence remains of a similar height and style to the other boundary fences on the Subject Land abutting a Reserve; and
- 6.2.4 not construct or allow to be constructed, any gate in the boundary fence other than a pedestrian gate not exceeding 1.0 metre in width.

### 6.3 Access

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

### 6.4 Maintenance contribution for offsets

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

AL961631J



## 6.5 Building envelopes

the Owner must not build, construct or erect or cause or permit to be built, constructed or erected any Building outside a Building and Waste Disposal Envelope.

## 6.6 Waste disposal envelopes

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

## 6.7 Septic tanks

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

- 6.7.1 secondary treatment of wastewater; and
- 6.7.2 disposal of treated wastewater by subsurface irrigation.

# 7. Owner's further obligations

## 7.1 Notice and registration

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

## 7.2 Further actions

The Owner:

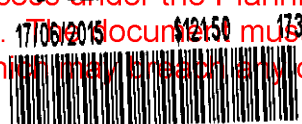
- 7.2.1 must do all things necessary to give effect to this Agreement;
- 7.2.2 consents to Council applying to the Registrar of Titles to record this Agreement on the certificate of title of the Subject Land in accordance with s 181 of the Act; and
- 7.2.3 agree to do all things necessary to enable Council to do so, including:
  - (a) sign any further agreement, acknowledgment or document; and
  - (b) obtain all necessary consents to enable the recording to be made.

## 7.3 Council's costs to be paid

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

- 7.3.1 preparing, drafting, finalising, signing, recording and enforcing this Agreement;
- 7.3.2 preparing, drafting, finalising and recording any amendment to this Agreement;
- 7.3.3 determining whether any of the Owner's obligations have been undertaken to Council's satisfaction; and
- 7.3.4 preparing, drafting, finalising and recording any document to give effect to the ending of this Agreement.

AL961631J



#### 7.4 Time for determining satisfaction

If Council makes a request for payment of any costs or expenses under clause 7.3.3, the Parties agree that Council will not decide whether the Owner's obligation has been undertaken to Council's satisfaction, or whether to grant the consent sought, until payment has been made to Council in accordance with the request.

#### 7.5 Interest for overdue money

7.5.1 The Owner must pay to Council interest in accordance with s 227A of the *Local Government Act 1989* on any amount due under this Agreement that is not paid by the due date.

7.5.2 If interest is owing, Council will apply any payment made to interest and any balance of the payment to the principal amount.

#### 7.6 Notification of compliance with Owner's obligations

The Owner must notify Council of its compliance with all of the Owner's obligations.

---

### 8. Agreement under s 173 of the Act

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

---

### 9. Owner's warranties

The Owner warrants that apart from the Owner and any other person who has consented in writing to this Agreement, no other person has any interest, either legal or equitable, in the Subject Land which may be affected by this Agreement.

---

### 10. Successors in title

Until such time as a memorandum of this Agreement is recorded on the certificate of title of the Subject Land, the Owner must require successors in title to:

- 10.1 give effect to this Agreement; and
- 10.2 enter into a deed agreeing to be bound by the terms of this Agreement.

---

### 11. General matters

#### 11.1 Notices

A notice or other communication required or permitted to be served by a Party on another Party must be in writing and may be served:

- 11.1.1 personally on the other Party;
- 11.1.2 by leaving it at the other Party's Current Address;

AL961631J



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

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

## 11.2 No waiver

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

## 11.3 Severability

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

## 11.4 No fettering of Council's powers

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

## 11.5 Inspection of documents

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

## 11.6 Governing law

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

---

## 12. Commencement of Agreement

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



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## Signing Page

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

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*

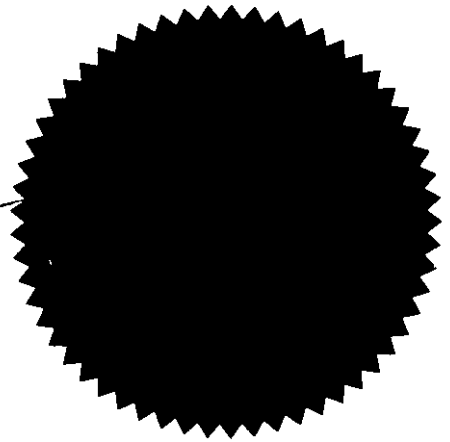
Witness

*Colleen Smith*

Print name

15-06-15

*Long*



Executed by **Nicholson River Pty Ltd ACN 140 839 710** in accordance with s 127(1) of the *Corporations Act 2001*:

*Simon James Anderson*

Signature of Director

*Simon James Anderson*

Print full name

)  
)  
)  
)

*Ross Charles Heath*

Signature of Director (or Company Secretary)

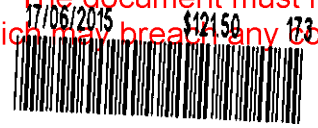
*Ross Charles Heath*

Print full name

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### Mortgagee's Consent

National Australia Bank Ltd as Mortgagee under instrument of mortgage no. AL493274P consents to the Owner entering into this Agreement and in the event that the Mortgagee becomes mortgagee-in-possession, agrees to be bound by the covenants and conditions of this Agreement.

.....

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