

## NOTICE OF PROPOSAL TO END AN AGREEMENT

The application reference number is:	<b>AGR.1.2024</b>
Responsible Authority:	<b>East Gippsland Shire Council</b>
Description of the land affected by the agreement:	<b>160 Orrs Road WY YUNG 3875</b>
Description of the proposal:	<b>End Section 173 Agreement AF545507J</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.

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>16 April 2024</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 amend or end the agreement in a manner that is substantively different from the proposal, the responsible authority will give notice of the new proposal to all parties to the agreement and any other persons to whom the responsible authority considers the decision to amend or end the agreement may cause material detriment.

**From:** Courtney - Development Solutions Victoria

**Sent:** Wednesday, 25 October 2023 3:05:30 PM

**To:** Planning Unit Administration

**CC:** Robert Pringle

**Subject:** Ending of a Section 173 Agreement - 160 Orrs Road, Wy Yung

**EXTERNAL EMAIL:** This email has originated from outside of the East Gippsland Shire Council network. Do not click links or open attachments unless you recognise the sender and know the content is safe. Contact ICT ServiceDesk if you are unsure.

Good afternoon Robert,

**Re: Application to amend or end Section 173 Agreement – AF545507J**

We seek clarification on the process of amending or ending a Section 173 Agreement pertaining to the land at 160 Orrs Road, Wy Yung as outlined above.

We previously wrote seeking preliminary advice if such an application would be considered favourably. Based on the advice given, our clients have undertaken preliminary discussions with the neighbours and would like to proceed.

I now seek clarification on the process and assistance with the most suitable method for proceeding.

The objective is to enable the owners of land at 160 Orrs Road to apply for a planning permit to subdivide their land into two lots, creating a vacant allotment on the corner of Kingsley Drive and Orrs Road. The proposed subdivision would ensure that each lot is the minimum 2 hectares as required by the applicable zone being Rural Living Zone – Schedule 1.

The Section 173 Agreement – AF545507J covenants that no land within the subdivision can be further subdivided to create further lots.

The request would be made in accordance with Section 178A of the *Planning and Environment Act 1987* and would as a minimum address the requirements of Regulation 55 of the *Planning and Environment Regulations 2015*.

Our assessment is to seek an application to end the agreement as it applies to the subject site only. This would mean that the agreement is still applicable to the remaining land in the original subdivision.

We attach a copy of the title and applicable agreements. We do not believe ending this agreement or potential future subdivision would affect or be affected by the remaining agreement (AF939419K) as it solely relates to access to Orrs Road. This would be carried through to any new lot.

In order to assist in our preparation of an application and to provide our clients with the correct information, can you please advise of your processes and if any additional specific information would be required?

Can you please also advise what is Council's current delegation policy in relation to these matters?

If you believe it may be easier to discuss these matters in person, please let me know a suitable time to meet.

Kind regards,



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

VOLUME 11085 FOLIO 325

Security no : 124113837430R  
Produced 02/04/2024 12:15 PM

**LAND DESCRIPTION**

Lot 11 on Plan of Subdivision 600907C.  
PARENT TITLE Volume 06647 Folio 284  
Created by instrument PS600907C 14/08/2008

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Joint Proprietors  
CARLISLE CHARLES FREDERICK GASPER  
KAY GASPER  
AN499681A 27/01/2017

**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  
AF545507J 20/12/2007

AGREEMENT Section 173 Planning and Environment Act 1987  
AF939419K 30/06/2008

**DIAGRAM LOCATION**

SEE PS600907C 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: 160 ORRS ROAD WY YUNG VIC 3875

**ADMINISTRATIVE NOTICES**

NIL

DOCUMENT END



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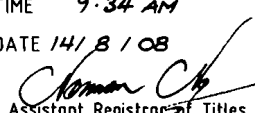
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Document Type	<b>Plan</b>
Document Identification	<b>PS600907C</b>
Number of Pages (excluding this cover sheet)	<b>4</b>
Document Assembled	<b>02/04/2024 12:15</b>

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<b>PLAN OF SUBDIVISION</b>				STAGE NO. <del>1</del> <b>2</b> <del>3</del> <b>4</b> <del>5</del> <b>6</b> <del>7</del> <b>8</b> <del>9</del> <b>10</b>	LOT USE ONLY	PLAN NUMBER	
<b>LOCATION OF LAND</b>				<b>EDITION PS 600907E</b>			
PARISH: WY YUNG TOWNSHIP: — SECTION: — CROWN ALLOTMENT: 36 <sup>(1)</sup> (PART)				COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 84/2006/CRT 1. This plan is certified under Section 6 of the Subdivision Act 1988. <del>2. This plan is certified under Section 11(7) of the Subdivision Act 1988.</del> <del>Date of original certification under Section 6 / /</del> <del>3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.</del>			
TITLE REFERENCES: VOL 6647 FOL 284  LAST PLAN REFERENCE: LOT 1 ON TP339382E  POSTAL ADDRESS: 160 ORRS ROAD, (At time of subdivision) LUCKNOW 3875  MGA 94 CO-ORDINATES: E 556 340 (Of approx. centre of land in plan) N 5817 660 <b>ZONE: 55</b>				<b>COUNCIL CERTIFICATION AND ENDORSEMENT</b> OPEN SPACE (i) A requirement for public open space under Section 18 Subdivision Act 1988 <del>has /</del> has not been made. (ii) <del>The requirement has been satisfied.</del> (iii) <del>The requirement is to be satisfied in stage</del> Council Delegate <del>Council seat</del> Date <b>21 / 1 / 08</b> <del>Re-certified under Section 11(7) of the Subdivision Act 1988</del> <del>Council Delegate</del> <del>Council seat</del> Date / /			
<b>VESTING OF ROADS AND/OR RESERVES</b>							
IDENTIFIER		COUNCIL/BODY/PERSON					
ROAD RI		EAST GIPPSLAND SHIRE COUNCIL					
<b>NOTATIONS</b>							
STAGING This <del>is</del> / is not a staged subdivision Planning Permit No 745/2005/P							
DEPTH LIMITATION DOES NOT APPLY  LOTS 1 - 8 HAVE BEEN OMITTED FROM THIS PLAN  SURVEY. THIS PLAN IS / <del>IS NOT</del> BASED ON SURVEY THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s) 12 & 35							
<b>EASEMENT INFORMATION</b>						<b>LR USE ONLY</b>	
LEGEND A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)						STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT  RECEIVED <input checked="" type="checkbox"/>  DATE 11 / 8 / 08	
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of			
E-1	POWERLINE	SEE DIAG.	THIS PLAN - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000 THIS PLAN	SPI ELECTRICITY PTY LTD			
E-2	DRAINAGE	3	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL			
						LR USE ONLY PLAN REGISTERED TIME 9.34 AM DATE 14 / 8 / 08  Assistant Registrar of Titles	
						SHEET 1 OF 4 SHEETS	
<b>Crowthier &amp; Sadler Pty. Ltd.</b> LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875 TELEPHONE (03) 5162 6011			LICENSED SURVEYOR PAUL ANTHONY DWYER				DATE / /
			SIGNATURE ..... DATE <b>22 / 11 / 06</b>				COUNCIL DELEGATE SIGNATURE
			REF 12234 VERSION 3				ORIGINAL SHEET SIZE A3

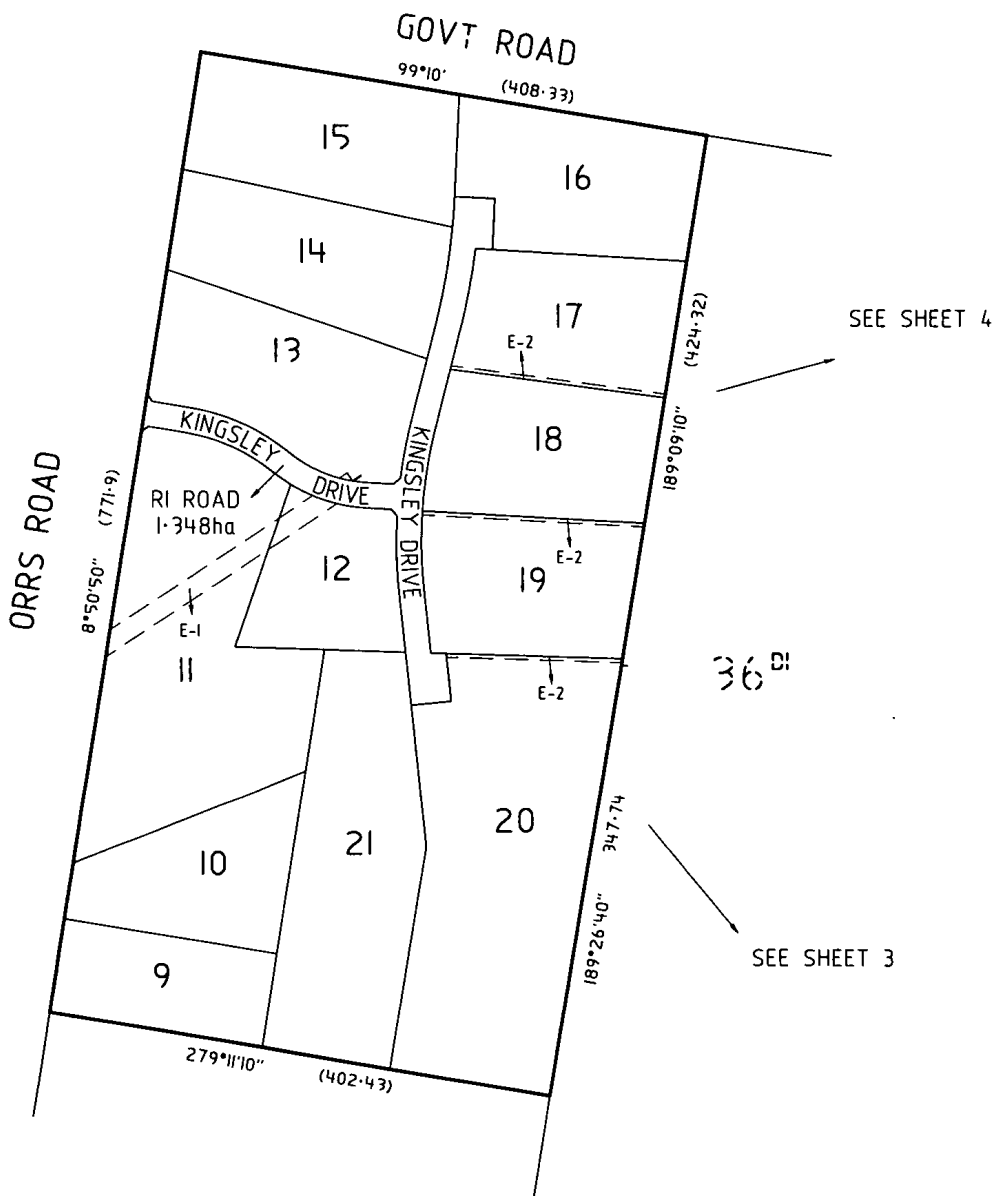
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PLAN OF SUBDIVISION

STAGE NO. PS 800907C  
PLAN NUMBER

MGA94 ZONE 55



**Crowther & Sadler** Pty. Ltd.  
LICENSED SURVEYORS & TOWN PLANNERS  
162 MACLEOD STREET, BAIRNSDALE, VIC., 3876  
TELEPHONE (03) 6162 6011

SHEET 2 OF 4 SHEETS

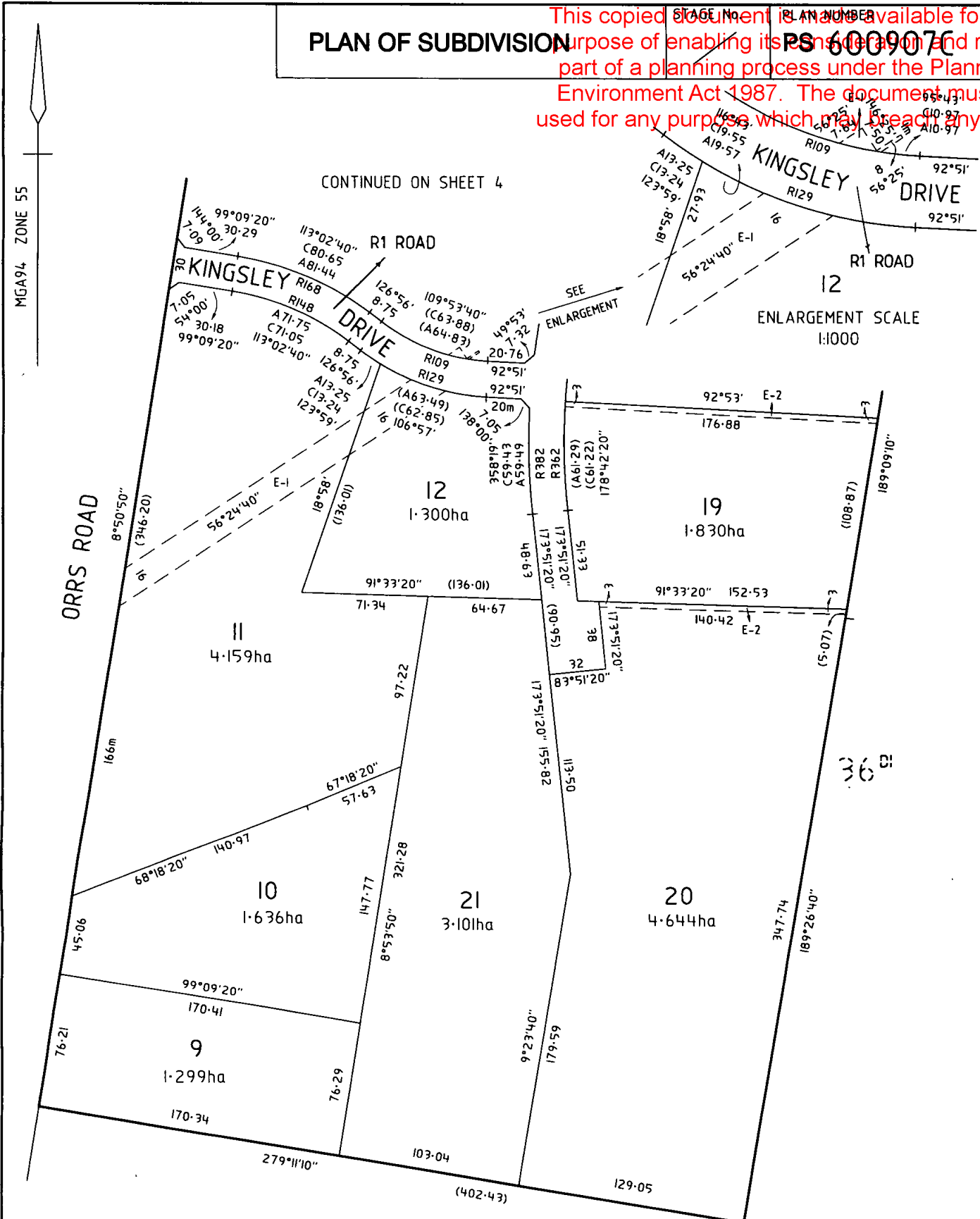
ORIGINAL	SCALE	40 0 40 80 120 160
SHEET SIZE A3	SCALE 1:4000	LENGTHS ARE IN METRES

LICENSED SURVEYOR PAUL ANTHONY DWYER  
SIGNATURE DATE / /  
REF 12234 VERSION 3

DATE / /  
COUNCIL DELEGATE SIGNATURE

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# PLAN OF SUBDIVISION PS 600907C



**Crowther & Sadler Pty. Ltd.**  
 LICENSED SURVEYORS & TOWN PLANNERS  
 152 MACLEOD STREET, BAIRNSDALE, VIC., 3875  
 TELEPHONE (03) 5182 6011

ORIGINAL SHEET SIZE	A3	SCALE	1:2000
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LICENSED SURVEYOR: PAUL ANTHONY DWYER

SIGNATURE: \_\_\_\_\_ DATE: / /

REF: 12234 VERSION: 3

SHEET 3 OF 4 SHEETS

DATE: / /

COUNCIL DELEGATE SIGNATURE: \_\_\_\_\_







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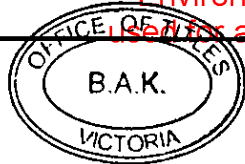
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Lodged by: Wards Barristers & Solicitors Pty Ltd  
DX 82203 Bairnsdale  
Code: 3556G

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

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

**LAND**

Certificate of Title Volume 6647 Folio 284

**ADDRESS OF THE LAND**

160 Orrs Road, Lucknow 3875

**RESPONSIBLE AUTHORITY**

East Gippsland Shire Council, 273 Main Street, Bairnsdale 3875

**PLANNING SCHEME**

East Gippsland Shire Planning Scheme

**AGREEMENT DATE**

19/12/07

**AGREEMENT WITH**

DUMELL HOLDINGS PTY LTD

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority

*[Handwritten Signature]*

Name of Officer

AARON HOLLOW, MANAGER DEVELOPMENT

Date

13/12/2007

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Date / /2007

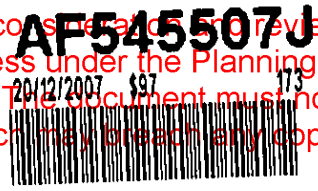
## Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land:  
160 Orrs Road, Lucknow

East Gippsland Shire Council  
and

Dumell Holdings Pty Ltd - A.C.N. 006 835 374

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

DATE 19/12/2007

## BETWEEN

**EAST GIPPSLAND SHIRE COUNCIL**  
of Corporate Centre, 273 Main Street, Bairnsdale

(Council)

## AND

**DUMELL HOLDINGS PTY LTD**  
A.C.N. 006 835 374  
of 120 Macleod Street, Bairnsdale

(Owner)

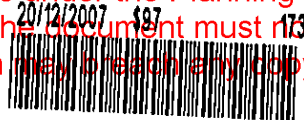
## RECITALS

- A. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. On 2nd May 2006 Council issued Planning Permit No. 745/2005/P/A (which Permit was amended on 3rd January 2007) allowing the Subject Land to be subdivided in accordance with a plan to be endorsed under condition 1 of the Planning Permit (the Endorsed Plan). Condition 4 of the Planning Permit requires the Owner to enter into this Agreement to provide for the matters set out in that condition. A copy of the Planning Permit is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.
- D. Condition 4 of the Planning Permit provides that:
  - "4. Before the use or development starts (Before the issue of a Statement of Compliance), the owner of the land must enter into an agreement with the responsible authority in accordance with Section 173 of the Planning & Environment Act 1987, which will covenant that:
    - (a) the land the subject of this subdivision will not be further subdivided to create further lots.

The agreement will bind the applicant as the owner and shall run with the land so that all successors in title are bound by the agreement. This agreement will be prepared by the applicant, at the applicants cost and to the satisfaction of the responsible authority, and shall be registered on the title in accordance with Section 181 of the Planning and Environment Act 1987."
- E. As at the date of this Agreement, the Subject Land is encumbered by Mortgage No. X798897C in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.
- F. The parties enter into this Agreement:

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- F.1 to give effect to the requirements of the Planning Permit; and
- F.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

**THE PARTIES AGREE**

**1. DEFINITIONS**

---

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

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

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

**Endorsed Plan** means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit. A copy of the Endorsed Plan is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

**lot** means a lot on the Endorsed Plan.

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

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

**party or parties** means the Owner and Council under this Agreement as appropriate.

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

**Subject Land** means the land situated at 160 Orrs Road, Lucknow being the land referred to in Certificate of Title Volume 6647 Folio 284 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

**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.

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- 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 it has the meaning as defined in the Act.
- 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 are and will be deemed to form part of this Agreement.
- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

### **3. SPECIFIC OBLIGATIONS OF THE OWNER**

---

The Owner agrees that once the subdivision authorised by the Planning Permit is registered, the Subject Land may not be further subdivided in any way so as to create an additional lot.

### **4. FURTHER OBLIGATIONS OF THE OWNER**

---

#### **4.1 *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.

#### **4.2 *Further actions***

The Owner further covenants and agrees that:

- 4.2.1 the Owner will do all things necessary to give effect to this Agreement;
- 4.2.2 the Owner will make application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary to this to be done including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section.

#### **4.3 *Council's Costs to be Paid***

The Owner further covenants and agrees that the Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.

**AF545507J**

20/12/2007 \$97 173



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## **5. AGREEMENT UNDER SECTION 173 OF THE ACT**

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Council and the Owner agree that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed pursuant to the Planning Permit.

## **6. OWNER'S WARRANTIES**

---

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

## **7. SUCCESSORS IN TITLE**

---

Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

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

## **8. GENERAL MATTERS**

---

### **8.1 Notices**

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

- 8.1.1 by delivering it personally to that party;
- 8.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 8.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

### **8.2 Service of Notice**

A notice or other communication is deemed served:

- 8.2.1 if delivered, on the next following business day;
- 8.2.2 if posted, on the expiration of 7 business days after the date of posting; or

**AF545507J**

20/12/2007 \$97 173



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8.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

**8.3 No Waiver**

Any time or other indulgence granted by 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.

**8.4 Severability**

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

**8.5 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.

**9. COMMENCEMENT OF AGREEMENT**

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

**SIGNED, SEALED AND DELIVERED** as a Deed by the parties on the date set out at the commencement of this Agreement.

The Common Seal of the East Gippsland Shire Council was hereunto affixed on the 11<sup>th</sup> day of December 2007, in the presence of:



*[Handwritten signature]*

Chief Executive

*[Handwritten signature]*

Witness

**AF545507J**

20/12/2007 \$97 173



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*Handwritten initials*

The Common Seal of Dumell Holdings Pty Ltd )  
was hereunto affixed in accordance with the )  
Company's Constitution in the presence of: )

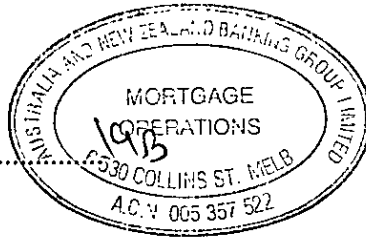
*Signature of Anthony Bernard Ward*  
.....Director  
Name: ANTHONY BERNARD WARD  
Address: 160 Orrs Road, Lucknow

*Signature of Sharon Maree Ward*  
.....Director  
Name: SHARON MAREE WARD  
Address: 160 Orrs Road, Lucknow

**Mortgagee's Consent**

Australia and New Zealand Banking Group Limited as Mortgagee of registered mortgage No. X798897C 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.

*Signature of Peter O'Rourke*



EXECUTED by AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED  
ABN 11 005 357 522 by  
being SIGNED by its Attorney

AUSTRALIA AND NEW ZEALAND BANKING GROUP LIMITED ABN 11 005 357 522  
By its Attorney

*Signature of Peter O'Rourke*

who holds office as  
employee of the ANZ  
for the time being of Australia and New Zealand Banking Group Limited in Victoria

*Peter O'Rourke*  
under Power of Attorney dated 28/04/2005  
a certified copy of which  
is filed in the permanent order  
Book Number 277 at Page 19 Item 6  
in the presence of:

*Signature of Peter O'Rourke*

**AF545507J**

20/12/2007 \$97 173





# Imaged Document Cover Sheet

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DX 82203 Bairnsdale  
Code: 3556G

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

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

LAND *LOTS 11 13 14 & 15 ON PS600 907C BEING PART OF*

Certificate of Title Volume 6647 Folio 284 *NOW = 11085-328, 327, 328 & 329*

*L7E 15/8/08*

**AMENDED**

**ADDRESS OF THE LAND**

160 Orrs Road, Lucknow 3875

16 JUL 2008

With the consent of  
Australian Legal Practitioner for *AUTHORITY*  
(BY PHONE)

**RESPONSIBLE AUTHORITY**

East Gippsland Shire Council, 273 Main Street, Bairnsdale 3875

**PLANNING SCHEME**

East Gippsland Shire Planning Scheme

**AGREEMENT DATE**

27/05/2008

**AGREEMENT WITH**

DUMELL HOLDINGS PTY LTD

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority

*Aaron Hollow*

Name of Officer

*AARON HOLLOW, MANAGER DEVELOPMENT*

Date

*26/6/2008*

ADVERTISED

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Date **27 1 5** /2008

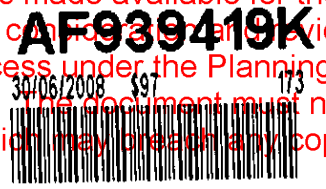
## **Agreement under Section 173 of the Planning and Environment Act 1987**

**Subject Land:  
160 Orrs Road, Lucknow**

**East Gippsland Shire Council  
and**

**Dumell Holdings Pty Ltd - A.C.N. 006 835 374**

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

**AF939419K**

DATE / /2008



## BETWEEN

**EAST GIPPSLAND SHIRE COUNCIL**  
of Corporate Centre, 273 Main Street, Bairnsdale

(Council)

## AND

**DUMELL HOLDINGS PTY LTD**  
A.C.N. 006 835 374  
of 120 Macleod Street, Bairnsdale

(Owner)

## RECITALS

- A. Council is the Responsible Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is or is entitled to be the registered proprietor of the Subject Land.
- C. On 2nd May 2006 Council issued Planning Permit No. 745/2005/P/A and was amended on 3 January 2007 (“**Planning Permit**”) allowing the Subject Land to be subdivided into 21 lots in accordance with the Endorsed Plan. Condition 34 of the Planning Permit requires the Owner to enter into this Agreement to provide for the matters set out in that condition. A copy of the Planning Permit is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.
- D. Condition 34 of the Planning Permit provides that:
  - Section 173 Agreement. Before the issue of a Statement of Compliance, the owner of the land must enter into an agreement with Council in accordance with Section 173 of the Planning and Environment Act 1987 which will covenant that:
    - The Owners of lots 1, 8, 13, 14, 15 will not have any access to Orrs Road and the Owners of lot 11 will only have the one existing access to Orrs Road.
    - The Agreement will bind the Applicant as the Owner and must run with the land so that all successors in Title are bound by the Agreement. This Agreement will be prepared at the Applicant’s expense and to the satisfaction of the Responsible authority, and must be registered on Title in accordance with Section 181 of the Planning and Environment Act 1987. ”
- E. As at the date of this Agreement, the Subject Land is encumbered by Mortgage No. X798897C in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.



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F. The parties enter into this Agreement:

F.1 to give effect to the requirements of the Planning Permit; and

F.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

**THE PARTIES AGREE**

**1. DEFINITIONS**

---

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

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

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

**Endorsed Plan** means the plan endorsed with the stamp of Council from time to time as the plan which forms part of the Planning Permit. A copy of the Endorsed Plan is available for inspection at Council offices during normal business hours upon giving the Council reasonable notice.

**lot** means a lot on the Endorsed Plan.

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

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

**party or parties** means the Owner and Council under this Agreement as appropriate.

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

**Subject Land** means the land situated at 160 Orrs Road, Lucknow being the land referred to in Certificate of Title Volume 6647 Folio 284 and any reference to the Subject Land in this Agreement includes any lot created by the subdivision of the Subject Land or any part of it.

**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.

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- 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 it has the meaning as defined in the Act.
- 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 are and will be deemed to form part of this Agreement.
- 2.8 The obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run at law and equity with the Subject Land provided that if the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that owner's lot.

### 3. SPECIFIC OBLIGATIONS OF THE OWNER

---

The Owner covenants and agrees that once the subdivision authorised by the Planning Permit is registered:

- 3.1 lots 1, 8, 13, 14 and 15 must not be accessible via Orrs Road; and
- 3.2 lot 11 must not be accessible via Orrs Road except via the access that already exists, to the satisfaction of Council.

### 4. FURTHER OBLIGATIONS OF THE OWNER

---

#### 4.1 *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.

#### 4.2 *Further actions*

The Owner further covenants and agrees that:

- 4.2.1 the Owner will do all things necessary to give effect to this Agreement;



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4.2.2 the Owner will make application to the Registrar of Titles to make a recording of this Agreement in the Register on the Certificate of Title of the Subject Land in accordance with Section 181 of the Act and do all things necessary for this to be done including signing any further agreement, acknowledgment or document or procuring the consent to this Agreement of any mortgagee or caveator to enable the recording to be made in the Register under that section.

#### 4.3 *Council's Costs to be Paid*

The Owner further covenants and agrees that the Owner will immediately pay to Council, Council's reasonable costs and expenses (including legal expenses) of and incidental to the preparation, drafting, review, finalisation, engrossment, execution, registration and enforcement of this Agreement which are and until paid will remain a debt due to Council by the Owner.

## 5. **AGREEMENT UNDER SECTION 173 OF THE ACT**

---

Council and the Owner agree that without limiting or restricting the respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made as a Deed pursuant to Section 173 of the Act, and the obligations of the Owner under this Agreement are obligations to be performed by the Owner as conditions subject to which the Subject Land may be used and developed pursuant to the Planning Permit.

## 6. **OWNER'S WARRANTIES**

---

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

## 7. **SUCCESSORS IN TITLE**

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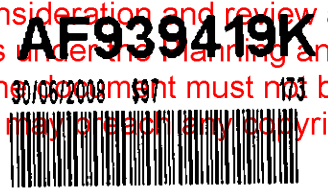
Without limiting the operation or effect that this Agreement has, the Owner must ensure that, until such time as a memorandum of this Agreement is registered on the title to the Subject Land, successors in title shall be required to:

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

**AF939419K**



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**8. GENERAL MATTERS**

---

**8.1 Notices**

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

- 8.1.1 by delivering it personally to that party;
- 8.1.2 by sending it by prepaid post addressed to that party at the address set out in this Agreement or subsequently notified to each party from time to time; or
- 8.1.3 by sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post.

**8.2 Service of Notice**

A notice or other communication is deemed served:

- 8.2.1 if delivered, on the next following business day;
- 8.2.2 if posted, on the expiration of 7 business days after the date of posting; or
- 8.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested retransmission before the end of that business day.

**8.3 No Waiver**

Any time or other indulgence granted by 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.

**8.4 Severability**

If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

**8.5 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.

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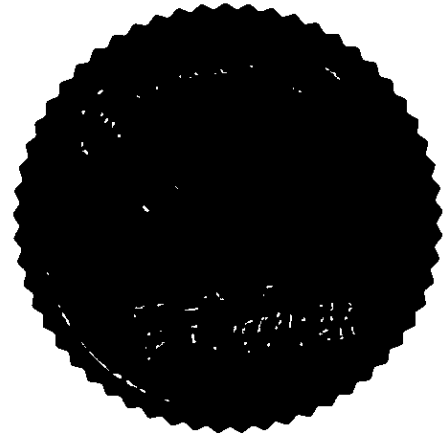


**9. COMMENCEMENT OF AGREEMENT**

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

**SIGNED, SEALED AND DELIVERED** as a Deed by the parties on the date set out at the commencement of this Agreement.

The Common Seal of the East Gippsland Shire Council was hereunto affixed on the ...20... day of ...JUNE..... 2008, in the presence of:



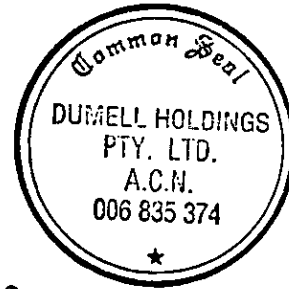
.....  
*[Signature]*

Chief Executive

.....  
*Holly Casey*

Witness

The Common Seal of Dumell Holdings Pty Ltd was hereunto affixed in accordance with the Company's Constitution in the presence of:



.....  
*[Signature]* Director  
Name: ANTHONY BERNARD WARD  
Address: 160 Orrs Road, Lucknow

.....  
*[Signature]* Director  
Name: SHARON MAREE WARD  
Address: 160 Orrs Road, Lucknow

**Mortgagee's Consent**

Australia and New Zealand Banking Group Limited as Mortgagee of registered mortgage No. X798897C 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.

.....  
*[Signature]*

