

NOTICE OF PROPOSAL TO END AN AGREEMENT

The application reference number is:	AGR.15.2025
Responsible Authority:	East Gippsland Shire Council
Description of the land affected by the agreement:	65 Nicholson-Sarsfield Road NICHOLSON VIC 3882
Description of the proposal:	End Section 173 Agreement - AK881877C AK881877C

Who initiated the proposal?

The proposal was initiated by Hatch Planning 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 am/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:	17 June 2026
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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.

Kerry Stow

From: Snapforms Notifications <no-reply@snapforms.com.au>
Sent: Thursday, 13 November 2025 8:04 PM
To: Planning Unit Administration
Subject: s173 Agreement Amend/End Application submitted
Attachments: P25-076 - Title Documents - 65 Nicholson-Sarsfield Road Nich.pdf; P25-076 - Section 173 Agreement Assessment - 65 Nicholson-Sarsfield Road Nicholson.pdf; s173_Agreement_AmendEnd_Application_2025-11-13T20-04-00_28875227_0.pdf

s173 Agreement Amend/End Application

An application to end or amend a section 173 legal agreement has been submitted via the East Gippsland Shire Council website, the details of this submission are shown below:

Applicant name: Hatch Planning Pty Ltd

Email address:

Postal address : Grantville VIC 3984

Preferred phone number

Owner's name: Wayne Stanton

Unit (if relevant) and Street number: 65

Street name: Nicholson-Sarsfield Road

Town: Nicholson

Post code: 3882

Lot number: 1

Plan number: 717043K

Title Volume: 11502

Title Folio: 120

The proposal is to...: End in Part (s178A(1)(b))

Agreement dealing number: AK881877C

Agreement Date: 06/02/2014

Permit requiring agreement: 126/2013/P

Applicant Declaration: Yes

Document Authority: Yes

Document Availability: Yes

Privacy Statement Acknowledge: Yes

Copy of Title: [P25-076 - Title Documents - 65 Nicholson-Sarsfield Road Nich.pdf](#)

Written Statement File: [P25-076 - Section 173 Agreement Assessment - 65 Nicholson-Sarsfield Road Nicholson.pdf](#)

Parties to the Agreement: [P25-076 - Section 173 Agreement Assessment - 65 Nicholson-Sarsfield Road Nicholson.pdf](#)

Hatch Planning

Land Use and Development | Subdivision |
Council Assessments | VCAT Representation |
Strategic Planning | Due Diligence Advice

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Our reference: **P25-076**

13 November 2025

The Manager, Planning and Development
East Gippsland Shire Council
273 Main Street
BAIRNSDALE VIC 3875

Dear Sir/Madam,

**APPLICATION TO END SECTION 173 AGREEMENT AK881877C
65 NICHOLSON-SARFIELD ROAD NICHOLSON 3882**

Please find enclosed an application to End Section 173 Agreement AK881877C, relating to land at 65 Nicholson-Sarsfield Road, Nicholson (**Subject Land**).

The agreement applies to land at 65 Nicholson-Sarsfield Road Nicholson (Lot 1 PS717043K) and 116 Sandfords Lane Nicholson (Lot 2 PS717043K). This application seeks to end the agreement in part in accordance with Section 178A(1)(b) of the *Planning and Environment Act 1987*, to end the agreement applying to the subject land.

An assessment of the application against the relevant requirements of Section 178B of the *Planning and Environment Act 1987* is attached, as well as a current copy of title. It is requested that an invoice be forwarded to us for payment of the applicable fee at your earliest convenience.

Should you have any questions regarding the application, please don't hesitate to contact me on the details provided below.

Kind regards,

A handwritten signature in blue ink, appearing to read 'Tim Berger', written over a light blue circular stamp.

Tim Berger
Director
Hatch Planning Pty Ltd

Hatch Planning

Land Use and Development | Subdivision |
Council Assessments | VCAT Representation |
Strategic Planning | Due Diligence Advice

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**PROPOSAL**

The application seeks approval to end Section 173 Agreement AK881877C, as it applies to land at 65 Nicholson-Sarsfield Road, Nicholson.

STATUTORY REQUIREMENTS

An application to amend or end an agreement must be made in writing to the responsible authority. It must include the information set out in regulation 55 and it must be accompanied by the prescribed fee.

Regulation 55 sets out the following criteria:

For the purposes of section 178A(2) of the Act, an application for agreement to a proposal to amend or end an agreement must be in writing and must —

- (a) state the applicant's name, address and phone number; and*
- (b) clearly identify the agreement proposed to be amended, ended or ended in part; and*
- (d) in the case of a proposal to end an agreement, clearly describe—*
 - (i) if the proposal is to end the agreement in part, the part of the agreement to be ended; and*
 - (ii) 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*
 - (iii) why the agreement or that part of it is no longer required.*

The required information has been provided by way of the attached application form and this submission.

ASSESSMENT

Section 178B sets out the matters that the responsible authority must consider when forming a view about a proposal. The matters required to be considered include the purpose of the agreement and the reasons why the responsible authority entered into the agreement in the first place. An assessment against Section 178B is set out below.

The assessment is not a planning merits assessment, including not having regard to the planning scheme or the objectives of planning. The matters are to be considered holistically and not unduly restrictively.¹



Section 178B(2) – Ending an Agreement

In considering a proposal under Section 178A to end an Agreement, the responsible authority must consider:

Matter	Response
<p>The purpose of the agreement</p>	<p>As discussed further in this submission, the agreement was entered as a requirement of the Farming Zone, to ensure that the objectives of the Farming Zone were not undermined by serial house lot excisions. Given that the subject land is within a settlement boundary, and recognised as suitable for future residential use (without a farming future), the agreement is not required to achieve the purpose for which it was entered into.</p> <p>This factor tends to favour a decision to amend the 173 Agreement.</p>
<p>Whether and why the agreement is no longer required</p>	<p>Since the grant of the original Planning Permit (126/2013/P) that led to the creation of the agreement, a number of matters have changed that support the ending of the agreement:</p> <ul style="list-style-type: none"> a) As referenced further in this submission, Amendment VC103 was gazetted 3 months after the issue of the permit, which removed the requirement for the Section 173 Agreement to be entered into. Given the planning scheme has been amended to no longer require such an agreement, this tends in favour of the agreement no longer being required as a matter of planning policy. b) The subject land was brought into the Nicholson Settlement Boundary as a result of Planning Scheme Amendment C121. The panel report for this amendment found that: <p style="margin-left: 40px;"><i>Since the excision of 65 Nicholson - Sarsfield Road, it is clear that this parcel does not have a 'farming future'. The Panel agrees with submissions that the land</i></p>



	<p><i>appears to meet the criteria adopted for additional TZ land to a comparable extent to the land the Amendment proposes to rezone to TZ as: it adjoins the town; the Panel was advised that reticulated services are available; and inspection confirmed that the land forms part of a topographic unit along the western side of the creek with the land to the north already zoned LDRZ</i></p> <p>In this context, the agreement does not serve its underlying purpose by remaining on the land.</p> <p>This factor tends to favour in deciding whether to amend the 173 Agreement.</p>
<p>Whether the ending of the agreement would disadvantage any person, whether or not a party to the agreement;</p>	<p>The ending of the agreement as it relates to the subject site would not disadvantage any person. The creation of the agreement was a mandatory requirement of the Scheme, and not imposed to address concerns of another party or person not subject to the agreement.</p> <p>This factor is neutral in deciding whether to end the 173 Agreement.</p>
<p>The reasons why the responsible authority entered into the agreement</p>	<p>At the time of issue of the relevant Planning Permit (126/2013/P), Clause 35.07-3 of the East Gippsland Planning Scheme imposed the following mandatory requirement:</p> <p><i>The subdivision is to create a lot for an existing dwelling. The subdivision must be a two lot subdivision. An agreement under Section 173 of the Act must be entered into with the owner of each lot created which ensures that the land may not be further subdivided so as to create a smaller lot for an existing dwelling. The agreement must be registered on title.</i></p> <p>This requirement was removed from the Planning Scheme by Planning Scheme Amendment VC103, gazetted 5 September 2013. No equivalent provision has been inserted into the Planning Scheme since.</p> <p>This factor is neutral in deciding whether to end the 173</p>

	Agreement.
Any relevant permit or other requirements the land is subject to under the Subdivision Act 1988	<p>The relevant Planning Permit (126/2013/P) is considered spent (per the decision of the Victorian Supreme Court in <i>Manderson v Wright [2016] VSC 677 (11 November 2016)</i>, as the plan of subdivision has been registered and new titles issued (refer paragraphs 24-29 of <i>Manderson</i>). As there were no other requirements of the permit, the original permit imposes no ongoing obligations on the land – ongoing restrictions are given effect through the agreement subject to this application.</p> <p>This factor is neutral in deciding whether to end the 173 Agreement.</p>
Any other prescribed matter	<p>There are no other prescribed matters.</p> <p>This factor is neutral in deciding whether to end the 173 Agreement.</p>

Based on the above assessment, it is considered that the amendment to the agreement has merit and more benefits than disbenefits. Consequently, it is respectfully requested that in-principle support, and subject to receipt of submissions, approval to the ending of the agreement on the subject land as sought be provided by the Responsible Authority in accordance with Section 178A(3) of the *Planning and Environment Act 1987*.

ⁱ *Randazzo v Greater Geelong CC [2017] VCAT 972*:

23 Under Section 184G(4), the Tribunal is not required to take into account the broader planning objectives set out under s84B(2). This reinforces our point above that this proceeding does not involve any planning merits review.



-
- 24 In *Res 1 Enterprises Pty Ltd v Banyule City Council* [2014] VCAT 1552, the proposal before the Tribunal involved consideration of the factors set out in Section 178B(2). The presiding Member Deputy President Dwyer expressed the view that these Section 178B(2) factors “*are not unduly restrictive and are, to some extent, ambulatory depending on the purpose of the agreement, and thus allow a consideration of potentially a wide range of matters. The factors in s178B(2) must be interpreted widely because section 173 agreements themselves cover a very broad range of matters.*”. We are satisfied that despite it being Section 178B(1) rather than Section 178B(2) that is before us, the thrust of this statement by DP Dwyer is still relevant here, because of the very strong overlap between the relevant provisions in Section 178B(1) and 178B(2).
- 25 We will now deal with each of the relevant factors in s178B(1), in turn. However it is important/t to appreciate that whilst the Tribunal should reach this individual view for each factor, DP Dwyer has clarified that there is then a holistic judgment to be made in making an overall determination under Section 184G(1) – see [24] of *D&L MacPherson Nominees Pty Ltd v Bass Coast Shire Council* [2016] VCAT 647.



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

Page 1 of 1

VOLUME 11502 FOLIO 120

Security no : 124124905976N
Produced 29/05/2025 04:56 PM**LAND DESCRIPTION**

Lot 1 on Plan of Subdivision 717043K.
PARENT TITLE Volume 10021 Folio 882
Created by instrument PS717043K 18/06/2014

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
WAYNE RICHARD STANTON
AW537214X 10/02/2023

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
AK881877C 06/02/2014

DIAGRAM LOCATION

SEE PS717043K 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: 65 NICHOLSON-SARFIELD ROAD NICHOLSON VIC 3882

ADMINISTRATIVE NOTICES

NIL

DOCUMENT END



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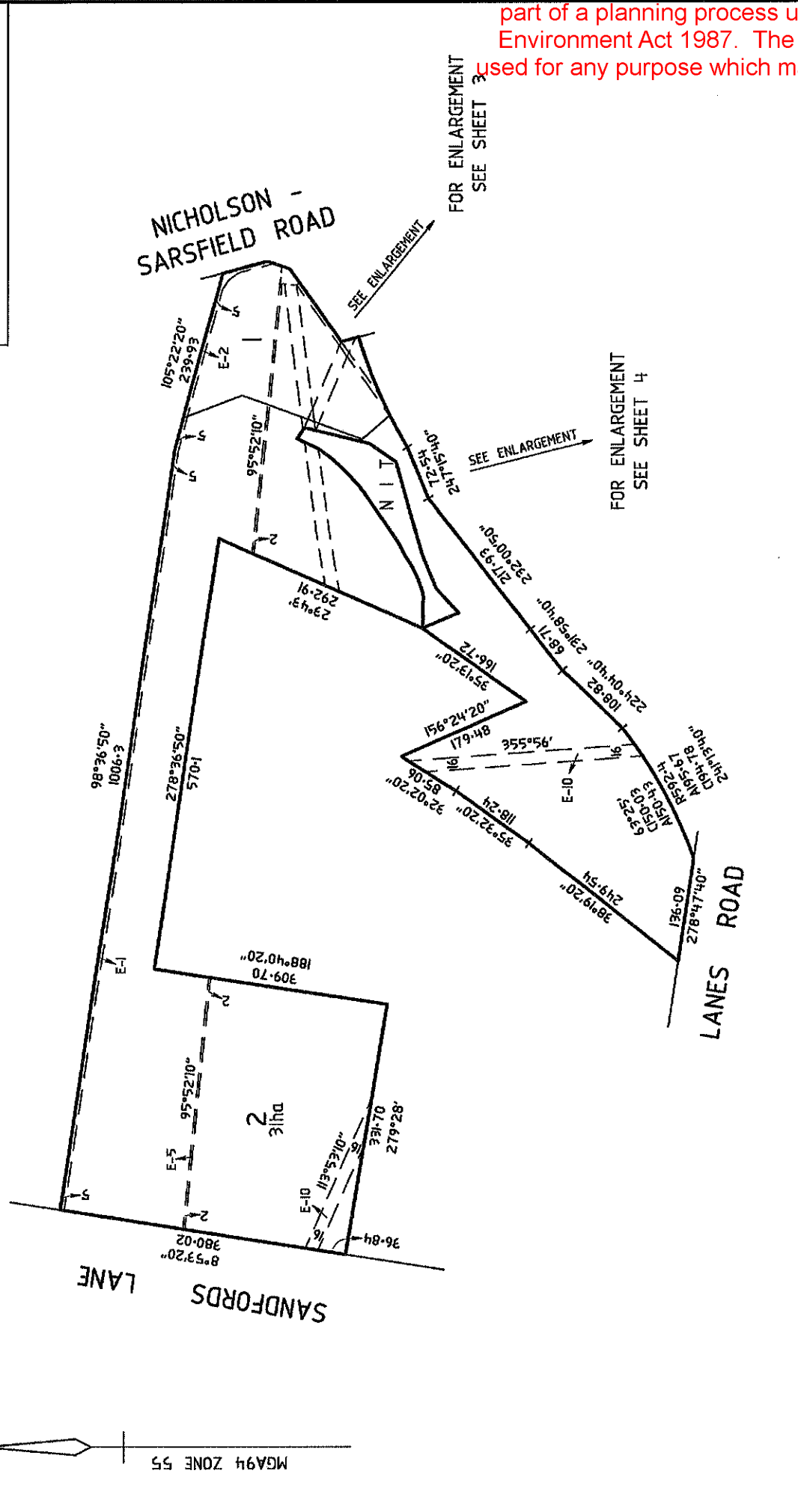
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Signed by Council: East Gippsland Shire Council, Council Ref: 126/2013/P, PS171043K, Original Certification: 42/12/2013, S.O.C.: 07/04/2014

PLAN OF SUBDIVISION			LV USE ONLY EDITION 1	PS 717043K
LOCATION OF LAND			COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL	
PARISH :	BROADLANDS			
TOWNSHIP :	---			
SECTION :	A			
CROWN ALLOTMENT :	4B, 4C, 4E, 4F, & 5F (PARTS)			
CROWN PORTION :	---			
TITLE REFERENCE :	VOL 10021 FOL 882			
LAST PLAN REFERENCE :	LOT 1 - PS310163S			
POSTAL ADDRESS : (At time of subdivision)	65 NICHOLSON - SARSFIELD ROAD, NICHOLSON 3882			
MGA94 Co-ordinates (of approx centre of land in plan)	E 564 370 N 584 580	ZONE: 55 GDA 94		
VESTING OF ROADS AND/OR RESERVES			NOTATIONS	
IDENTIFIER	COUNCIL/BODY/PERSON		DEPTH LIMITATION DOES NOT APPLY	
NIL	NIL		Survey: This plan is/is not based on survey. To be completed where applicable. This survey has been connected to permanent marks no(s) In Proclaimed Survey Area No.	
			STAGING This is/is not a staged subdivision. Planning Permit No. 126/2013/P	
			WATERWAY NOTATION: LOT 2 IN THIS PLAN MAY ABUT CROWN LAND THAT MAY BE SUBJECT TO A CROWN LICENCE TO USE	
			THE DIMENSIONS OF LOT 2 ARE NOT THE RESULT OF THIS SURVEY THE AREA OF LOT 2 IS BY DEDUCTION FROM TITLE	
EASEMENT INFORMATION				
LEGEND: A - Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
			SEE SHEET 5	
Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 182 MACLEOD STREET, BAIRNSDALE, VIC., 3875 TELEPHONE (03) 5162 6011			LICENSED SURVEYOR MICHAEL JOSEPH SADLER	
			DIGITALLY SIGNED BY LICENSED SURVEYOR: DATE / /	
			REF 15354	VERSION 2
			SHEET 1 OF 5 SHEETS ORIGINAL SHEET SIZE A3 PLAN REGISTERED TIME: 2:50 pm DATE: 18/06/2014 Tarek Mahmoud Assistant Registrar of Titles	

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PS 717043K



SHEET 2 OF 5 SHEETS
 ORIGINAL SHEET SIZE A3

LICENSED SURVEYOR MICHAEL JOSEPH SADLER
 DATE / /
 DIGITALLY SIGNED BY LICENSED SURVEYOR:
 REF 15354 VERSION 2

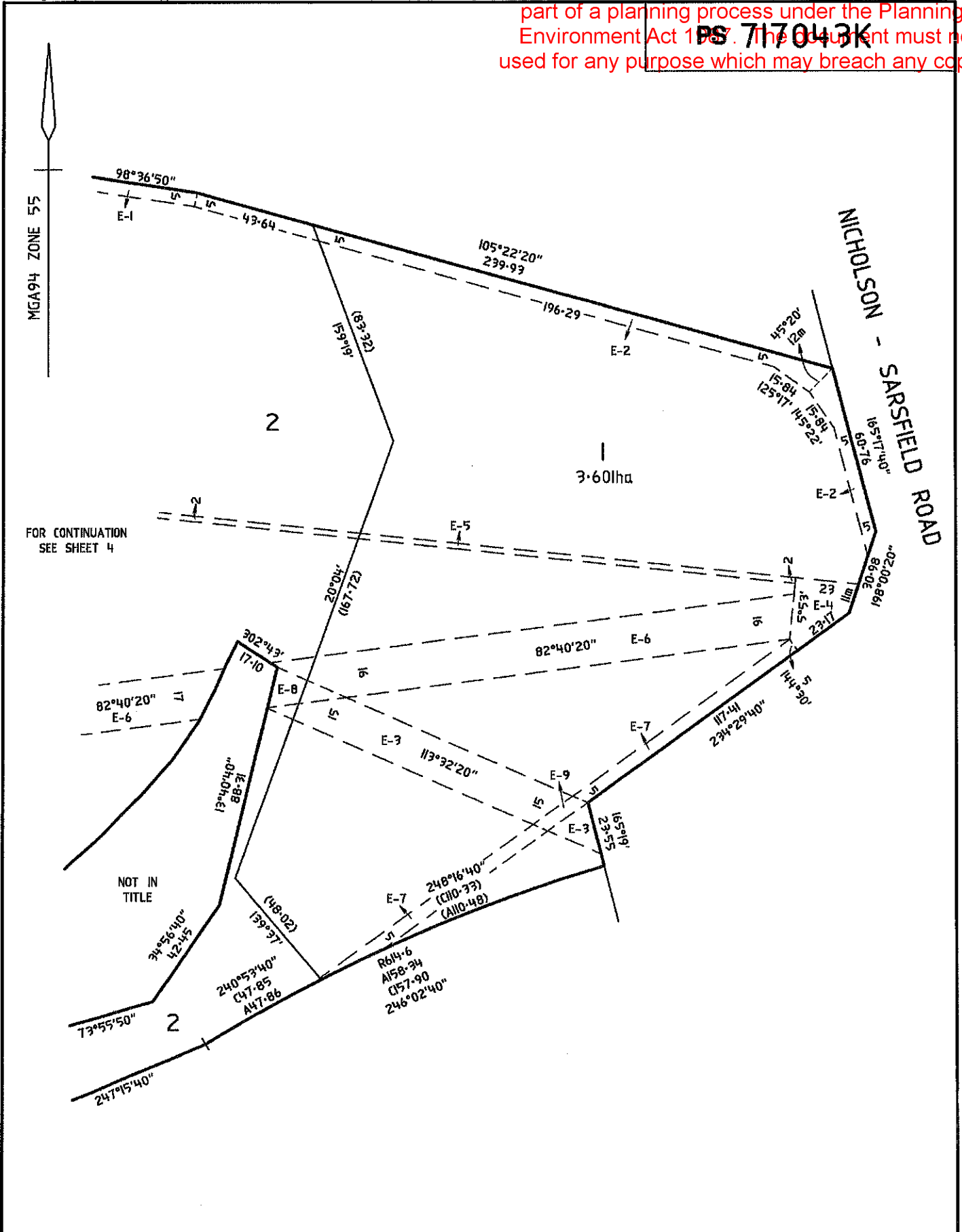
SCALE
 50 0 50 100 150 200 250
 LENGTHS ARE IN METRES
 ORIGINAL SCALE 1:5000

Crowther & Sadler Pty Ltd.
 LICENSED SURVEYORS & TOWN PLANNERS
 152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
 TELEPHONE (03) 6182 5011

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Signed by Council: East Gippsland Shire Council, Council Ref: 126/2013/P, PS171043K, Original Certification: 12/12/2013, S.O.C.: 07/04/2014

PS 717043K



<p>Crowther & Sadler Pty.Ltd. LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BARRNSDALE, VIC., 3876 TELEPHONE (03) 6162 6011</p>	<p>SCALE</p> <p>12.5 0 12.5 25 37.5 50 62.5</p> <p>LENGTHS ARE IN METRES</p>	<p>ORIGINAL SCALE</p> <p>1:1250</p>	<p>SHEET 3 OF 5 SHEETS</p> <p>ORIGINAL SHEET SIZE A3</p>
	<p>LICENSED SURVEYOR MICHAEL JOSEPH SADLER</p> <p>DIGITALLY SIGNED BY LICENSED SURVEYOR:</p> <p>REF 15354 VERSION 2 DATE / /</p>		
	<p>Signed by: Michael Joseph Sadler (Crowther & Sadler - Crowther & Sadler) Surveyor's Plan Version (2) SPEAR Ref: S039428T 06/11/2013</p>		

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PS 717043K

Signed by Council: East Gippsland Shire Council, Council Ref: 126/2013/P, PS171043K, Original Certification: 12/12/2013, S.O.C.: 07/04/2014

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	WATER SUPPLY	5	C/E J304299	C/T VOL 9248 FOL 934
E-2	WATER SUPPLY	SEE DIAG	LP206305V	LAND IN LP206305V
E-3, E-8, E-9	CARRIAGEWAY	15	LP206305V	LAND IN LP206305V
E-4, E-5	WATER SUPPLY	SEE DIAG	THIS PLAN	LOT 4 ON LPH43932
E-4, E-6, E-8	WATER SUPPLY & ELECTRICTY SUPPLY	SEE DIAG	THIS PLAN - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	LOT 1 ON LP206305 & SPI ELECTRICITY PTY LTD
E-4, E-7, E-9	WATER SUPPLY	SEE DIAG	THIS PLAN	LOT 1 ON TPI32079
E-10	ELECTRICTY SUPPLY	16	THIS PLAN - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	SPI ELECTRICITY PTY LTD

<p>Crowther & Sadler Pty.Ltd. LICENSED SURVEYORS & TOWN PLANNERS 182 MACLEOD STREET, BAIRNSDALE, VIC., 3876 TELEPHONE (03) 5182 5011</p>	SCALE		ORIGINAL SCALE	SHEET 5 OF 5 SHEETS
	LENGTHS ARE IN METRES			ORIGINAL SHEET SIZE A3
	LICENSED SURVEYOR MICHAEL JOSEPH SADLER DIGITALLY SIGNED BY LICENSED SURVEYOR: REF 15354 VERSION 2 DATE / /			

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**Plan of Subdivision PS717043K
Certification of plan by Council (Form 2)**

SUBDIVISION (PROCEDURES) REGULATIONS 2011

SPEAR Reference Number: S039428T
Plan Number: PS717043K
Responsible Authority Name: East Gippsland Shire Council
Responsible Authority Reference Number 1: 126/2013/P
Responsible Authority Reference Number 2: PS171043K
Surveyor's Plan Version: 2

Certification

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

Public Open Space

A requirement for public open space under section 18 of the Subdivision Act 1988

Has not been made at Certification

Digitally signed by Council Delegate: Aaron Hollow
Organisation: East Gippsland Shire Council
Date: 12/12/2013



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AK881877C

PLANNING AND ENVIRONMENT REGULATIONS 1988

Form 9.1

LODGED BY: ENGEL & PARTNERS PTY
109 MAIN STREET
BAIRNSDALE
CODE: 0392C

TITLES OFFICE USE ONLY

**APPLICATION BY A RESPONSIBLE
AUTHORITY under Section 181 Planning
and Environment Act 1987 for ENTRY
OF A MEMORANDUM OF AGREEMENT
under Section 173 of 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 10021 FOLIO 882

ADDRESS OF THE LAND 65 Nicholson-Sarsfield Road Nicholson 3882

**RESPONSIBLE AUTHORITY EAST GIPPSLAND SHIRE COUNCIL of 273 MAIN STREET
BAIRNSDALE 3875**

PLANNING SCHEME EAST GIPPSLAND PLANNING SCHEME

AGREEMENT DATE

AGREEMENT WITH

Leonard Robert Sanford

A copy of the Agreement is attached to this Application.

Signature for the Responsible Authority..... *[Signature]*

Name of Officer... *Aaron Hollow, Manager Dev.*

Date *24/01/2014*

AK881877C

Date 16 / 01 / 2014

**Agreement under section 173
of the Planning and Environment Act 1987**
Subject Land: 65 Nicholson-Sarsfield Road Nicholson

East Gippsland Shire Council

and

Leonard Robert Sanford

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AK881877C

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AK881877C

Agreement under section 173 of the Planning and Environment Act 1987

Dated 16 / 01 / 2014

Parties

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

Name	Leonard Robert Sanford
Address	65 Nicholson-Sarsfield Road Nicholson 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 condition 6 of the Planning Permit.
- D. 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.
- E. The Parties enter into this Agreement:
 - E.1 to give effect to the Planning Permit; and
 - E.2 to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

AK881877C

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.

Lot has the same meaning as in the Planning Scheme.

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

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 or any part of it and includes a mortgagee-in-possession.

Party or Parties means the Parties to this Agreement.

Planning Permit means planning permit No. 126/2013/P as amended from time to time, issued on 7 June 2013, authorising the subdivision of the Subject Land 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.

Subject Land means the land situated at 65 Nicholson-Sarsfield Road Nicholson being the land referred to in Certificate of Title Volume 10021Folio 882 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;

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- 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. Owner's specific obligations

Notwithstanding anything in the Planning Scheme, the Owner must not subdivide the Subject Land in a way that creates an additional Lot except in accordance with the Planning Permit.

4. Owner's acknowledgments

The Owner acknowledges that the further subdivision of the Subject Land in a way that creates an additional Lot except in accordance with the Planning Permit is prohibited.

5. Owner's further obligations

5.1 Notice and registration

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

5.2 Further actions

The Owner:

- 5.2.1 must do all things necessary to give effect to this Agreement;
- 5.2.2 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 section 181 of the Act and 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.

5.3 Council's costs to be paid

Prior to this Agreement being recorded on the Certificate of Title of the Subject Land, the Owner must pay to Council, Council's costs and expenses (including legal expenses) of preparing, drafting, finalising, signing, recording and enforcing this Agreement.

6. 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.

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7. 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.

8. 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:

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

9. General matters**9.1 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:

- 9.1.1 personally on the person;
- 9.1.2 by leaving it at the person's current address for service;
- 9.1.3 by posting it by prepaid post addressed to that person at the person's current address for service;
- 9.1.4 by facsimile to the person's current number for service; or
- 9.1.5 by email to the person's current email address for service.

9.2 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.

9.3 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.

9.4 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.

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9.5 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.

9.6 Governing law

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

10. 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.

11. Ending of Agreement

- 11.1 This Agreement ends when the Owner has complied with all of the Owner's obligations under this Agreement.
- 11.2 After the Agreement has ended, Council will, at the Owner's written request and at the Owner's cost, apply to the Registrar of Titles under section 183(1) of the Act to cancel the record of this Agreement.

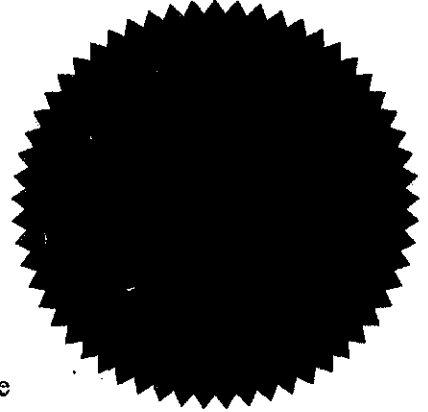
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Signing Page

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

The Common Seal of the East Gippsland Shire Council was hereunto affixed on the 16th day of January in the presence of: 2014



Kate Nelson
.....

ACTING
Chief Executive

Lolleen Smith
.....

Witness

Signed Sealed and Delivered by
LEONARD ROBERT SANFORD in the
presence of:

)
) *L-R SANFORD*
.....

John Sanford
.....
Witness

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Mortgagee's Consent

National Australia Bank Ltd as Mortgagee under Instrument of mortgage No. S336228E 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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