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Contact: Nicole Reynolds
Telephone No: (03) 5153 9500
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Ref: 4/2020/AGR

Corporate Centre
273 Main Street (PO Box 1618)
Bairnsdale Victoria 3875
Telephone: (03) 5153 9500
National Relay Service: 133 677
Residents' Info Line: 1300 555 886
Facsimile: (03) 5153 9576
Email: feedback@egipps.vic.gov.au
ABN 81 957 967 765

11 December 2020

To The Addressee

Notice under section 178C(2) of the Planning and Environment Act 1987
Proposal to amend and end in part section 173 agreement AD201621Y
Kings Cove, Metung

Section 173 agreement AD201621Y (**Agreement**) is recorded on the title to your land.

This letter, together with the prescribed form at Attachment 1, provides notice under section 178C(2) of the *Planning and Environment Act 1987* (**Act**) of a proposal by East Gippsland Shire Council (**Council**) to amend and end in part the Agreement in accordance with section 178A(5) of the Act.

Background

1. During the mid-2000s, Kings Cove Metung Pty Ltd (formerly Storth Ryes Pty Ltd) (**KCM**) commenced developing land in Metung for an integrated golf course and residential development known as Kings Cove, Metung.

2. The subdivision of the land occurred in stages. As part of each stage of the subdivision, KCM entered into a section 173 agreement with Council.

3. Council and KCM entered into the Agreement, which was recorded on title in dealing number AD201621Y on 26 October 2004. A copy of the Agreement is included at Attachment 2.

4. The Agreement requires each lot to be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the 'Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Residential Zone' (**Guidelines**).

5. Under the Guidelines:

   a. KCM is entitled to appoint an Architectural Review Committee (**ARC**); and

   b. the ARC must approve the plans and specifications of a building before it is constructed on a lot.

6. KCM was formally wound up and deregistered on 18 April 2017.

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7. As KCM no longer exists, it is not possible to obtain approval from the ARC under the Guidelines. Therefore, a landowner wishing to develop their lot, whether for a new dwelling or to extend or alter an existing dwelling, will be in breach of the Agreement if the approval of the ARP is not obtained before development is commenced.

Proposal under section 178A(5) of the Act

The Agreement is currently recorded on all those certificates of title listed in Tables A and B to this letter. It is proposed to:

1. amend the Agreement burdening the properties listed in Table A; and

2. end the Agreement burdening the properties listed in Table B.

Proposed amendment – Table A
The Agreement burdening the properties listed in Table A is proposed to be amended. The proposed amendments to the Agreement are shown as tracked-changes in the document at Attachment 3.

What is the purpose of the proposed amendment?
The purpose of the proposed amendment is to:

1. enable landowners to develop their lots without the approval of the ARC, and therefore, without breaching the Agreement; and

2. provide a practical way to give ongoing effect of the Guidelines even though the approval of the ARC will no longer be required.

What is the proposed amendment?

The proposed amendment involves:

1. removing the obligation on landowners to use and develop their lots in accordance with the Guidelines; and

2. including certain obligations from the Guidelines in the Agreement.

Proposed ending – Table B
The Agreement burdening the properties listed in Table B is proposed to be ended as to those properties. Once it has been ended, the Agreement will be removed from title.

Why is the Agreement no longer required in respect of these properties?
The properties in Table B are currently subject to more than one section 173 agreement that imposes the same (or very similar) set of obligations. In order to ensure clarity and reduce duplication, the Agreement is proposed to be ended in respect of these properties. By way of separate applications, the other agreements will be either amended or ended.
As a result, one of the other agreements (in its proposed amended form) will remain recorded on the title to these properties to ensure the ongoing effect of relevant obligations.

Your rights

You may look at the proposal and any documents that support the proposal on the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps .

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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 Act, may object to, or make any other submission in relation to, the proposal.

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The responsible authority will not make a decision on the proposal under section 178E of the Act before **18 January 2021**.

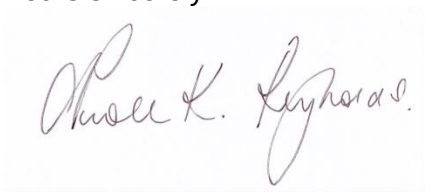
If the responsible authority decides to amend or end the agreement, or refuses to amend or end the agreement, the responsible authority will give notice of its decision to any person who made an objection.

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.

If you have any questions, please contact me.

Yours sincerely



NICOLE REYNOLDS
Acting Manager Planning

Attachments

- Attachment 1 – Prescribed Form
- Attachment 2 – Agreement AD201621Y
- Attachment 3 – Proposed amended Agreement
- Attachment 4 – Frequently Asked Questions

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TABLE A – The Agreement is proposed to be amended in respect of these properties

No.	Volume and Folio	Address
1.	10838/720	17 The Fields, Metung
2.	10838/721	19 The Fields, Metung
3.	10838/722	21 The Fields, Metung
4.	10838/724	31 The Fields, Metung
5.	10838/725	35 The Fields, Metung
6.	10838/726	32 The Fields, Metung
7.	10838/727	24 The Fields, Metung
8.	10838/728	18 The Fields, Metung
9.	10838/729	14 The Fields, Metung
10.	10838/731	Road R1 on PS517828L
11.	10838/732	Reserve 1 on PS517828L
12.	10838/733	Reserve 2 on PS517828L (16A The Fields, Metung)
13.	10932/042	25 The Fields, Metung
14.	10932/043	27 The Fields, Metung
15.	10838/712	5 The Stockyard, Metung
16.	10838/713	11 The Stockyard, Metung
17.	10838/714	15 The Stockyard, Metung
18.	10838/715	19 The Stockyard, Metung
19.	10838/716	20 The Stockyard, Metung
20.	10838/717	16 The Stockyard, Metung
21.	10838/718	12 The Stockyard, Metung
22.	10838/719	6 The Stockyard, Metung

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TABLE B – The Agreement is proposed to be ended in respect of these properties

No.	Volume and Folio	Address
1.	10941/484	11 Storth Ryes Avenue, Metung
2.	10941/485	17 Storth Ryes Avenue, Metung
3.	10941/486	19 Storth Ryes Avenue, Metung
4.	10941/487	23 Storth Ryes Avenue, Metung
5.	10941/488	27 Storth Ryes Avenue, Metung
6.	10941/489	31 Storth Ryes Avenue, Metung
1.	10941/490	1 The Billabong, Metung
2.	10941/491	2 The Billabong, Metung
3.	10941/492	8 The Billabong, Metung
4.	10941/493	14 The Billabong, Metung
5.	10941/494	17 The Billabong, Metung
6.	10941/495	15 The Billabong, Metung
7.	10941/496	9 The Billabong, Metung

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ATTACHMENT 1 – Prescribed Form (Form 18)

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FORM 18

Section 178C

NOTICE OF PROPOSAL TO AMEND AND END IN PART AN AGREEMENT

RESPONSIBLE AUTHORITY:

East Gippsland Shire Council

DESCRIPTION OF THE LAND AFFECTED BY THE AGREEMENT:

Volume 10838 Folios 712-722 (inclusive), Folios 724-729 (inclusive), Folios 731-733 (inclusive)

Volume 10932 Folios 042-043 (inclusive)

Volume 10941 Folios 484-496 (inclusive)

DESCRIPTION OF THE PROPOSAL:

To amend and end in part the section 173 agreement recorded on title in dealing number AD201621Y on 26 October 2004

APPLICATION REFERENCE NUMBER:

4/2020/AGR

WHO INITIATED THE PROPOSAL?

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

You may look at the proposal and any documents that support the proposal at the website of the responsible authority www.eastgippsland.vic.gov.au/PlanningApps

This can be done anytime and is free of charge.

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

The responsible authority will not make a decision on the proposal under section 178E of the **Planning and Environment Act 1987** before **18 January 2020**

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

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

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

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1 x Agreement

LODGED BY Warren, Graham & Murphy,
Kings Cove Nelung Rd
CODE 1716W VICTORIA

COMMISSIONER OF STATE REVENUE B.A.K. VICTORIA

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AD201621Y
26/10/2004 $90 173

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 that 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 Agreement be entered on the Certificate of Title to the land referred to.

LAND	Certificate of Title Volume 10743 Folio 418
ADDRESS OF LAND	48 Kings Cove Boulevard, Metung
RESPONSIBLE AUTHORITY	East Gippsland Shire Council
PLANNING SCHEME	East Gippsland Planning Scheme
AGREEMENT DATE	The 8th day of October, 2004
AGREEMENT WITH	Kings Cove Metung Pty. Ltd. (ACN 006 383 179)

A copy of the Agreement is attached to this Application

Signature of the Responsible Authority .....

Name of Officer NICK KEARNS, MANAGER DEVELOPMENT

Date 23/09/2004

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EAST GIPPSLAND SHIRE COUNCIL

Council

- and –

KINGS COVE METUNG PTY LTD (A.C.N. 006 383 179)

the Owner

Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land: 48 Kings Cove Boulevard, METUNG VIC 3904
Certificate of Title Volume 10743 Folio 418 - Lot F PS509057V
"The Fields" & "The Stockyards", Kings Cove
PLAN OF SUBDIVISION NO. 517828L (Stage 1B)

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PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the 8th day of October 2004

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL,

Of 273 Main Street, Bairnsdale, ("**Council**")

- and –

KINGS COVE METUNG PTY LTD (A.C.N. 006 383 179)

Of Level 1, 63 The Esplanade, Paynesville, Victoria ("**the Owner**")

INTRODUCTION

A. The Council is the Responsible Authority for the Planning Scheme under the Act.

B. The Owner is the registered proprietor of the Subject Land.

C. The Council has issued **Planning Permit Number 334/2003/P** ("the Planning Permit") allowing the land to be subdivided into 31 Lots in accordance with the Endorsed Plan.

A copy of the Planning Permit is attached to this Agreement and marked "**A**".

D. It is a condition of the Planning Permit that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plan and the conditions of the Planning Permit

E. As at the date of this Agreement the Subject Land is encumbered by Mortgage No. **X256305M** 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:

(a) to give effect to the requirements of the Planning Permit; and

(b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

IT IS AGREED:

DAD201621Y-5-1

1. DEFINITIONS

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

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

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

1.3. **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "C".

1.4. **"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.

1.5. **"Planning Permit"** means the Planning Permit referred to in recital C. of this Agreement.

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

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1.7. **"Subject Land"** means the land situated at 48 Kings Cove Boulevard, Metung being the land referred to in Certificate of Title **Volume 10743 Folio 418** and any reference to the Subject Land in this Agreement will include a reference to any lot created by the subdivision of the Subject Land or any part of it.

1.8. **"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.

2. INTERPRETATION

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In this Agreement unless the context admits otherwise:

2.1. The singular includes the plural and vice versa.

2.2. A reference to a gender includes a reference to each other gender.

2.3. A reference to a person includes a reference to a firm, corporation or other corporate body and that person's successors in law.

2.4. If a party consists of more than one person this Agreement binds them jointly and each of them severally.

2.5. A 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.

2.6. The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

2.7. 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.

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DAD201621Y-7-8

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner covenants and agrees that:

3.1. Development in accordance with Development Permit

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by the Council.

3.2. Condition 11 of Planning Permit

the Subject Land shall only be developed in compliance with Condition 11 of the Planning Permit which requires that:-

- *"The development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.*
- *Each lot will be developed and used for the purpose of a single dwelling and associated outbuilding in accordance with the document "Kings Cove – Metung_ Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stage 2 to 9, Low Density Residential Zone" dated December, 2001 (or as amended) (The Document).*
- *Any amendment to The Document will be to the satisfaction of the Responsible Authority.*
- *No lot created within Stage 1B will have vehicular access to Archibald Drive.*
- *The provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.*
- *A copy of this permit will be attached to and will form part of the contract of sale for every lot.*

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- *Landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.*
- *The agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.*
- *The agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.*
- *This agreement will be prepared at the owner's cost 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".*

3.3. Council's Costs to be Paid

the Owner must pay to the Council, the 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 and until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

DAD201621Y-8-6

The Owner further covenants and agrees that:

4.1. Notice and Registration

the Owner will bring this Agreement to the attention of all prospective purchasers, mortgagees, transferees and assigns;

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DAD201621Y-9-4

4.2. Further actions

4.2.1. the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Council to enforce the performance by the Owner of such covenants and undertakings;

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

4.3. Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

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5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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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 effected by this Agreement.

7. SUCCESSORS IN TITLE

Without limiting the operation or effect which this Agreement has, the Owner must ensure that successors in title shall be required to give effect to and do all acts and sign all documents which will require those successors in title to give effect to this Agreement.

8. GENERAL MATTERS

DAD201621Y-10-1

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 hand delivery or prepaid post.

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8.2. 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 two business days after the date of posting; or

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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 the Council to the Owner or any variation of the terms and conditions of this Agreement or any judgment or order obtained by the Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of the 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 the Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council 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

DAD201621Y-11-5

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

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10. ENDING OF AGREEMENT

This Agreement may be ended by agreement between Council and the Owner.

EXECUTED by the parties on the date set out at the commencement of this Agreement.

The **COMMON SEAL** of **EAST GIPPSLAND SHIRE COUNCIL** was affixed on behalf of Council by authority of the Chief Executive Officer on the 22 day of September, 2004 in exercise of the power delegated under Administrative Procedures (Use of Common Seal) Local Law in the presence of)

.....

Chief Executive Officer

DAD201621Y-12-9

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The **COMMON SEAL** of KINGS COVE METUNG)
PTY LTD was hereunto affixed in)
accordance with its Constitution in the presence of:-)

KINGS COVE METUNG PTY LTD A.C.N. 006 383 179
The Common Seal Of

..... Director

.....Director/Secretary

Mortgagee's Consent

GIPPSLAND SECURED INVESTMENTS LIMITED as Mortgagee of Registered Mortgage No. **X256305M** 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.

.....

For & on behalf of the Mortgagee.

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DAD201621Y-14-6

Form 4.4

PLANNING PERMIT

Permit No: 334/2003/P
Planning Scheme: East Gippsland
Responsible Authority: East Gippsland Shire

ADDRESS OF THE LAND

48 Kings Cove Boulevard METUNG VIC 3904
Lot B LP 448622

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32156 1

THE PERMIT ALLOWS

Subdivision of the land into 31 lots in accordance with the endorsed plans

THE FOLLOWING CONDITIONS APPLY TO THIS PERMIT:

1. The subdivision as shown on the endorsed plans must not be altered without the prior written consent of the responsible authority.
2. The applicant shall engage a suitably qualified consultant to undertake the preparation of detailed engineering design, drawings, documentation and specifications for the construction of road and drainage works and for the provision of services, all to the satisfaction of Council and meeting the requirements of the relevant service authorities.
3. Infrastructure shall be designed in accordance with standard engineering principles and practices. Full and detailed calculations shall be provided. The design shall provide for the following minimum requirements.
   (a) Investigation shall be undertaken to determine existing site conditions to determine design requirements. All reports and full details of all investigations undertaken shall be provided with designs submitted to Council for approval. Full and detailed calculations supporting all aspects of design shall be provided.
   (b) Pavement design shall be undertaken in accordance with accepted engineering practice. Pavement design for collector roads shall also take into consideration traffic that may be generated from the potential for future development to the south-west of the subject site. Supporting calculations for pavement design including the provision of geotechnical reports shall be provided.
   (c) The cul-de-sac or turning heads of proposed new roads shall be constructed and sealed to provide sufficient space for the manoeuvring of all service and emergency vehicles. "T" or "Y" shaped turning heads are acceptable. Provision of suitable area for vehicles to perform a 3 point turn will be acceptable.
   (d) A driveway crossover or culvert shall be constructed for all allotments to Council's satisfaction and in accordance with Council requirements. Crossing places shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices. Proposed details of design and construction for crossovers shall be provided.
   (e) The stormwater drainage system shall be designed in accordance with standard engineering practice to provide for the collection of all stormwater

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runoff, resulting from a storm having an ARI of 1 in 20 Years, and concentrated by buildings, pavements, and/or siteworks to avoid damage or inundation to any property. Each allotment shall be provided with a connection to the drainage system. Connections to the drainage system shall be in accordance with Council requirements. Pipes through the council verge area shall be constructed of steel or concrete, not PVC.

(f) The stormwater drainage system shall incorporate measures to ensure the quality of stormwater discharging from the development is maintained. The drainage system shall provide such water quality measures as considered necessary which may include, but not be limited to, the provision of sediment traps, wetlands, detention basins, Gross Pollutant Traps and drainage pits incorporating litter baskets.

(g) Drains shall incorporate features to prevent erosion which may include but not be limited to suitable stone pitching in the invert or energy dissipation devices placed at regular intervals along the length of the drain.

(h) Where a proposed drainage system submitted to Council for approval indicates that construction of drains will be on private property easements for drainage purposes and meeting the requirements of Council for access and maintenance purposes shall be vested in Council free of charge.

(i) Outlets shall incorporate an energy dissipation devices to prevent any erosion.

(j) With the exception of roadside drainage structures roadside verges shall have a batter slope no greater than 8 horizontal to 1 vertical.

(k) All earthworks associated with the development shall be stabilised in accordance with standard engineering design and practices against erosion and failure. No earthworks may encroach across neighbouring property boundaries.

(l) Design for the installation of services shall meet the requirements of the relevant authorities and shall be approved by those authorities.

(m) The design shall address and include all applicable and statutory signage and traffic control requirements. Design drawings and specifications shall provide for the installation of appropriate signage and pavement markings conforming with the requirements of AS 1742 Manual of uniform traffic control devices. Provision of necessary signage and pavement marking shall be undertaken by the developer

(n) All documentation for the construction of infrastructure shall include adequate provision for:

(i) maintenance and repair of damage to existing infrastructure damaged as a result of works associated with this development

(ii) quality assurance and testing procedures

(iii) provision for adequate notification and inspections by Council representatives at various key stages of the works

(iv) works to be undertaken with due regard to environmental requirements.

(o) An agreement shall be entered into which shall be noted on title requiring the property being developed as a golf course to accept all stormwater runoff from the development. This agreement shall be a continuing agreement and binding on all future registered proprietors of that property.

(p) An appropriately qualified and registered practitioner to the satisfaction of the Responsible Authority must supervise all stages of works to be constructed on the site. Copies of all test results certified by a NATA

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accredited laboratory shall be provided with a certification by a Chartered Professional Engineer that all works have been constructed in accordance with approved plans and specifications will be required.

4. Any portion of Council's existing infrastructure damaged as a result of work undertaken on the site or associated with the development shall be repaired/reinstated to Council's satisfaction at the developer's expense.

5. No works shall commence until such time as all necessary approvals from Council and relevant service authorities have been obtained.

6. Construction works on the subject land may only be conducted between the hours of 7.00 am to 6.00 pm Monday to Saturday (inclusive).

7. During and after construction works, the site must be managed to minimise dust generation and movement causing loss of amenity to the surrounding neighbourhood to the satisfaction of the responsible authority.

8. All earthworks associated with the proposal must be undertaken in accordance with the provisions of Environment Protection Authority (EPA) Publication No. 275 "Construction Techniques for Sediment and Pollution Control" (Copy available from EPA, Traralgon).

9. Prior to the issue of a Statement of Compliance the applicant shall pay to the Council an amount of money equal to 0.75% of the estimated cost of the engineering works plus 2.5% of the actual cost of the engineering works for checking of plans and specifications and for on-site supervision of the engineering works respectively in accordance with Clause 8 and 9 of the Subdivision (Permit and Certification Fees) Regulations.

10. Trees that do not fit the category of being "planted" as part of the initial development require a separate planning permit for removal unless exempted by provisions of the East Gippsland Planning Scheme.

11. Prior to the issue of a Statement of Compliance, the applicant must enter into an Agreement under Section 173 of the Planning and Environment Act 1987 with the responsible authority to covenant that:

- the development of each lot approved by this permit will only be carried out in accordance with the requirements of a Soil and Water Management Plan.
- each lot will be developed and used for the purpose of a single dwelling and associated outbuildings in accordance with the document "Kings Cove - Metung - Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone", dated December 2001 (or as amended) (The Document).
- Any amendment to The Document will be to the satisfaction of the Responsible Authority.
- no lot created within Stage 1B will have vehicular access to Archibald Drive.
- the provision of access to and development of the proposed Public Open Space Reserve shall be to the satisfaction of the responsible authority.
- a copy of this permit will be attached to and will form part of the contract of sale for every lot.
- landscaping works around private residences will have regard to the Storth Ryes Landscape Concept Report, which encourages the use of indigenous plant species and recommends appropriate planting objectives and plant

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lists for site conditions. Known weed or invasive "pest" plants will not be encouraged.

- the agreement may be ended wholly or in part or as to any part of the land by the responsible authority with the approval of the responsible authority with the approval of the Minister or by agreement between the responsible authority and all persons who are bound by the agreement.
- the agreement will bind the owner(s) and must run with the land so that all successors in the title are bound by the agreement.
- this agreement will be prepared at the owner's cost 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.

12. The development of lots approved by this permit for the purpose of a dwelling will be exempt from the need to obtain a separate planning permit provided:
    - all buildings are constructed wholly within approved building envelopes;
    - all construction and site development works are carried out strictly in accordance with the approved Soil and Water Management Plan, to the satisfaction of the responsible authority, and
    - the requirements of Clause 32.03-2 (Use for one or two dwellings or a dependent persons unit) can be met.
13. Street names must be to the satisfaction of the responsible authority.
14. Prior to the issue of a Statement of Compliance, the subject land must be landscaped and planted in accordance with the requirements of the "Storth Ryes Landscape Concept Report" prepared by Murphy Design Group and dated April 2000. Specifically the following requirements must be met:
    - Section 1.13 Other Roads
    - Section 1.15 Pedestrian Walkways
    - Section 1.16 Boundaries
15. Plans detailing the landscaping and streetscaping treatments, consistent with the "Storth Ryes Landscape Concept Report" and the Typical Landscape treatments contained in this report, and must be prepared by an appropriately qualified person and approved by the responsible authority prior to the commencement of any landscaping works.
16. The applicant must enter into an agreement under the Water Act for the provision of water supply works.
17. The applicant must meet the cost of the necessary water mains extension.
18. The applicant must pay a headworks and distribution charge at a level determined by East Gippsland Water at the time of payment. As a guide the level applicable on 17/6/03 is $2,000 per lot created by the subdivision.
19. The applicant must enter into an agreement under the Water Act for the provision of sewerage works.
20. The applicant must meet the cost of the necessary sewer mains extension.
21. The applicant must pay an outfall and disposal charge at a level determined by East Gippsland Water at the time of payment. As a guide, the level of charge on 17/6/03 is $2,100 per lot created by the subdivision.
22. The applicant must provide easements as necessary.

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23. The applicant must connect development to East Gippsland Water's water and sewerage services to the satisfaction of the Authority.

24. The applicant must enter into an agreement with TXU Electricity Ltd for supply of electricity to each lot on the endorsed plan.

25. The applicant must enter into an agreement with TXU Electricity Ltd for the rearrangement of the existing electric supply system.

26. The applicant must enter into an agreement with TXU Electricity Ltd for rearrangement of the points of supply to any existing installations affected by any private electric power line which would cross a boundary created by the subdivision, or by such means as may be agreed by TXU Electricity Ltd.

27. The applicant must provide easements satisfactory to TXU Electricity Ltd for the purpose of "Electricity (power lines)" in the favour of TXU Electricity Ltd pursuant to Section 44 of the Electricity Industry Act 1993, where easements have not been otherwise provided, for all existing TXU Electricity Ltd electric power lines and for any new power lines required to service the lots on the endorsed plan and /or abutting land.

28. The applicant must obtain for the use of TXU any other easement external to the subdivision required to service the lots.

29. The applicant must adjust the position of any existing TXU Electricity Ltd easement to accord with the position of the electricity line(s) as determined by survey.

30. The applicant must set aside on the plan of subdivision for the use of TXU, reserves satisfactory to TXU where any electric substation (other than a pole mounted type) is required to service the subdivision.

31. The applicant must provide survey plans for any electric substation required by TXU Electricity Ltd and for associated power lines and cables and execute leases for a period of 30 years, at a nominal rental with a right to extend the lease for a further 30 years. TXU Electricity Ltd requires that such leases are to be noted on the title by way of a caveat or a notification under section 88(2) of the Transfer of Land Act prior to the registration of the plan of subdivision.

32. The applicant shall enter into an agreement with Telstra or other licensed Telecommunications carrier for the satisfactory provision of telephone cable reticulation one metre into each lot created.

33. The applicant shall pay to Telstra the reasonable cost of any works necessary, as a result of the subdivision, to remove or alter the position of any existing facility on the subdivision or on any adjacent land or Government Road pursuant to section 91(1) and (2) of the Australian Telecommunications Act 1989.

34. The plan of subdivision submitted for certification under the Subdivision Act 1988 must be referred to the relevant authority in accordance with Section 8 of the Act.

35. All roads must be designed, constructed and maintained for a load capacity of at least 15 tonnes.

36. There must be no obstructions within one metre of the formed width of roads at any time and there must be four metres height clearance above all roads to allow fire vehicle access.

37. The amount and location of parking facilities must be determined in such a manner as to encourage users not to impede access of emergency vehicles.

38. Adequate provisions for turning of brigade vehicles must be provided in dead end roads and cul-de-sacs. This may be through either the provision of a court

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bowl with a trafficable area of minimum 16 metres radius or a "wye" or "tee" head with formed road surface of each leg being of at least 8 metres length from the centre pojnt of the head and four metres width.

39. The water reticulation plan must be approved by the CFA prior to commencement of construction.

40. There must be a hydrant within 120 metres from the outer edge of any building envelope and fire hydrants must be no more than 200 metres apart to CFA's satisfaction.

41. Fire hydrants must be clearly identified in accordance with the Fire Service Guideline – Identification of Hydrants for Fire Fighting Purposes.

42. Areas of public open space must be managed in a minimum fuel condition during the fire danger period.

Time

43. The approval for subdivision will expire if the subdivision is not completed within five years of the date of this permit.

44. The approval for buildings and works associated with the development of dwellings, including vegetation removal within approved building envelopes, will expire if one of the following circumstances applies:

- The building or works is not started within ten years of the date of this permit.
- The building or works is not completed within two years of commencement on each lot within the subdivision.

This applies only to the construction of dwellings and the removal of vegetation within approved building envelopes and as permitted in line with the requirements specified in Condition 7 of this permit.

Notes:

1. The payment of headworks and outfall charges will be at the time of sale/settlement of each lot, or all outstanding monies to be paid in full within two years from the date of issue of Statement of Compliance for the subdivision by the Authority, whichever occurs first.

2. It is recommended that, at an early date the applicant commences negotiations with TXU Electricity Ltd in order that supply arrangements can be worked out in detail, so prescribed information can be issued without delay.

3. Arrangements for supply will be subject to obtaining the agreement of other Authorities and any landowners affected by routes of the electric power lines required to supply the lots and for any tree clearing.

4. Prospective purchasers of lots on this plan should contact the TXU Electricity Ltd Bairnsdale office to determine the availability of a supply of electricity. Financial contributions may be required.

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Date Issued: 26 August 2003

Signature for the Responsible Authority

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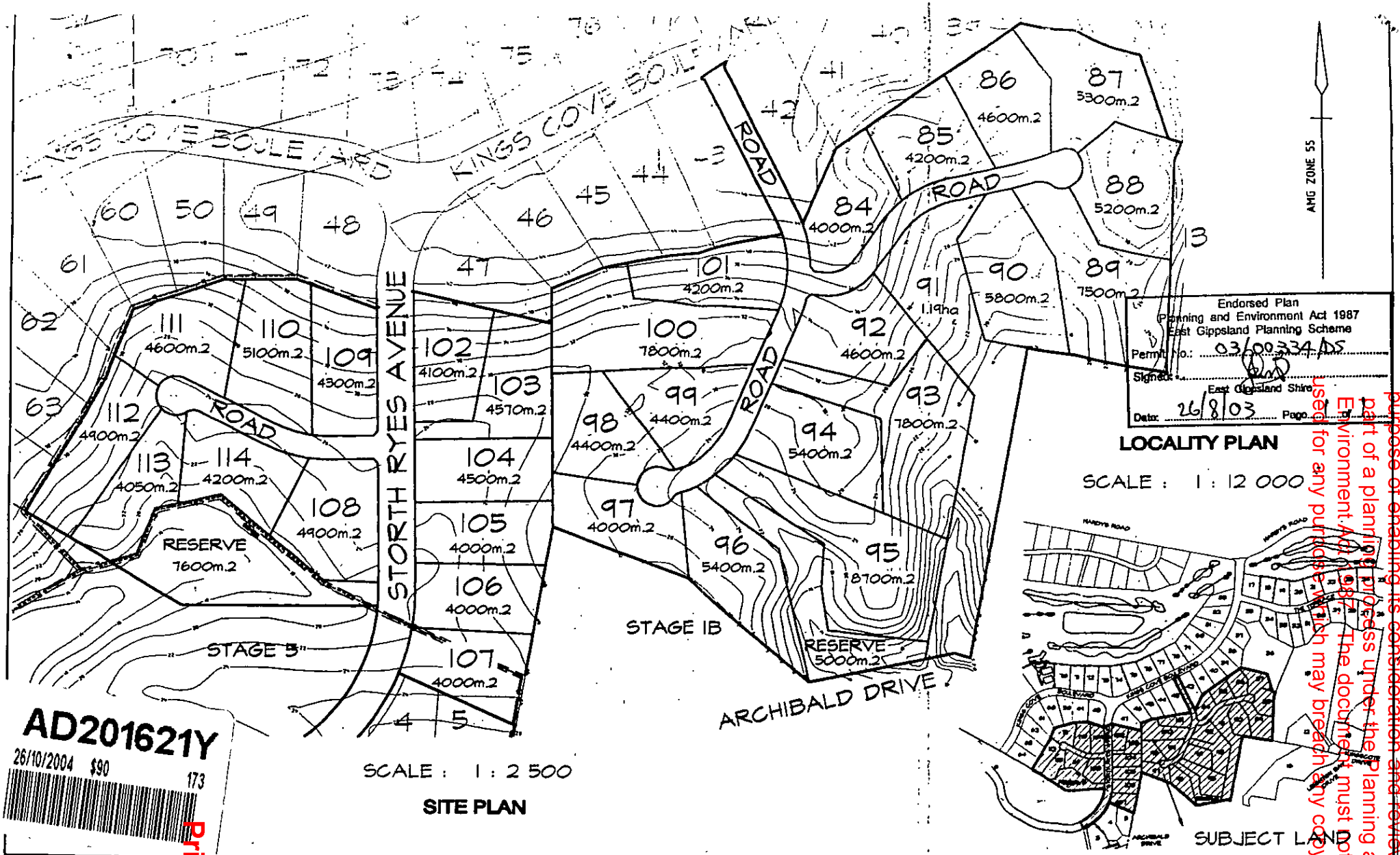

LOCALITY PLAN

SCALE : 1 : 12 000

SCALE : 1 : 2 500

SITE PLAN

AD201621Y
26/10/2004 $90 173

KINGS COVE KINGS COVE BOULEVARD, METUNG	NOTATIONS	PROPOSED SUBDIVISION
Crowther & Sadler Pty. Ltd. LICENSED SURVEYORS & TOWN PLANNERS 182 MACLEOD STREET, BAIRNSDALE, VIC., 3875 TELEPHONE (03) 5152 8011 FAX (03) 5152 5705 SURVEYORS REF. 10352	STAGES 1B & 5 HEIGHTS ARE IN METRES TO AHD DATUM CONTOUR INTERVAL 2 m FINAL LOT DIMENSIONS SUBJECT TO SURVEY AREAS ARE APPROXIMATE ONLY	PARISH OF BUMBERRAH CROWN ALLOTMENTS 78A, 81A, 81E (PARTS) LOT F ON PS 509097V DWG No. 10352 - P VERSION 1 SHEET 1 OF 1 SHEETS

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PLAN OF SUBDIVISION

STAGE No.	LTO USE ONLY	PLAN NUMBER
/	EDITION 1	PS 517828L

LOCATION OF LAND

PARISH: BUMBERRAH
TOWNSHIP: BAIRNSDALE
SECTION: —
CROWN ALLOTMENT: 78A, 81A & 81E (PARTS)
CROWN PORTION: —

TITLE REFERENCES: VOL 10743 FOL 418

LAST PLAN REFERENCE: LOT F - PS509057V

POSTAL ADDRESS: (At time of subdivision) KINGS COVE BOULEVARDE, METUNG, 3904

AMG CO-ORDINATES: (Of approx. centre of land in plan) E 573 730 N 5806 880 ZONE: 55

COUNCIL CERTIFICATION AND ENDORSEMENT

COUNCIL NAME: EAST GIPPSLAND SHIRE COUNCIL REF: 195/2003/CRT

~~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 15 / 01 / 2004

3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.

OPEN SPACE

(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 07 / 10 / 2004

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER	COUNCIL/BODY/PERSON
R1	EAST GIPPSLAND SHIRE COUNCIL
RESERVE No. 1	EAST GIPPSLAND SHIRE COUNCIL
RESERVE No. 2	TXU ELECTRICITY LTD

NOTATIONS

STAGING This ~~is~~ / is not a staged subdivision
Planning Permit No 03/00334/DS

DEPTH LIMITATION DOES NOT APPLY

LOTS 1 TO 83 HAVE BEEN OMITTED FROM THIS PLAN

DAD201621Y-21-3

AD201621Y 173 26/10/2004 $90

SURVEY: THIS PLAN IS / ~~IS NOT~~ BASED ON SURVEY

THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s)

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 & E-3	CARRIAGEWAY	30	INST. M221327	VOL 9369 FOL 911, VOL 9369 FOL 912 & VOL 9369 FOL 913
E-2, E-3	WATER SUPPLY	3	THIS PLAN	EAST GIPPSLAND REGION WATER AUTHORITY & LAND IN THIS PLAN
E-1, E-4 & E-3	DRAINAGE	SEE DIAG	THIS PLAN	EAST GIPPSLAND SHIRE COUNCIL & LAND IN THIS PLAN

LTO USE ONLY
STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT
RECEIVED ☐
DATE / /

LTO USE ONLY
PLAN REGISTERED
TIME
DATE / /
Assistant Registrar of Titles

SHEET 1 OF 5 SHEETS

Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
TELEPHONE (03) 5152 5011

LICENSED SURVEYOR MICHAEL JOSEPH SADLER
SIGNATURE DATE 6 / 10 / 2004
REF. 10558 VERSION 6

DATE 07 / 10 / 2004
COUNCIL DELEGATE SIGNATURE

ORIGINAL SHEET SIZE A3

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PLAN OF SUBDIVISION

STAGE No. /

PLAN NUMBER PS 517828L

SHEET 2 OF 5 SHEETS

DATE 07/10/2004 COUNCIL DELEGATE SIGNATURE

LICENSED SURVEYOR MICHAEL JOSEPH SADLER SIGNATURE DATE 6/10/2004

REF 10558 VERSION 6

ORIGINAL SHEET SIZE A3

SCALE 1:2500

SCALE 25 0 25 50 75 100 125 LENGTHS ARE IN METRES

AMG ZONE 55

Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
TELEPHONE (03) 5152 5077

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PLAN NUMBER PS 517828L

STAGE No. /

PLAN OF SUBDIVISION

SHEET 3 OF 5 SHEETS

DATE 07/10/2004

COUNCIL DELEGATE SIGNATURE

LICENSED SURVEYOR MICHAEL JOSEPH SADLER

SIGNATURE [signature] DATE 6/10/2004

REF 10558 VERSION 6

ORIGINAL SHEET SIZE A3

SCALE 1:1250

SCALE OF ENLARGEMENT 1:250

SCALE 12·5 0 12·5 25 37·5 50 62·5

LENGTHS ARE IN METRES

FOR CONTINUATION SEE SHEET 4

THE FIELDS

RESERVE No 2 12m²

RESERVE No. 1 5686m²

91 92 93 94 400m² 95 1·134ha 96 5498m² 97 4142m² 98 4603m² 99 4005m² 100 8219m² 101 R1

SEE ENLARGEMENT

AMG ZONE 55

Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE VIC. 3875
TELEPHONE (03) 5152 5011

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PLAN OF SUBDIVISION

STAGE No. /

PLAN NUMBER PS 517828L

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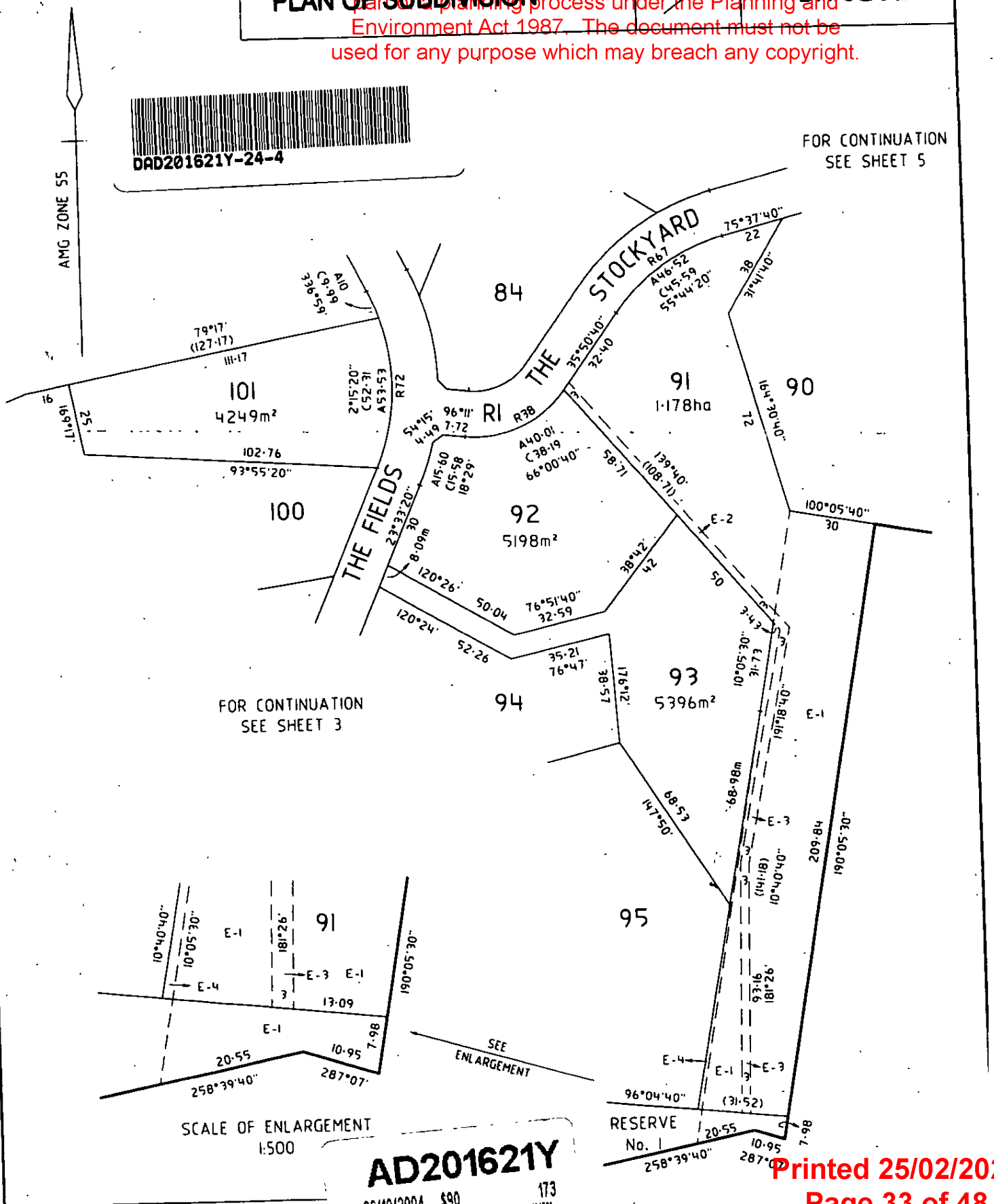

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26/10/2004 $90 173

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Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
152 MACLEOD STREET, BAIRNSDALE, VIC., 3875
TELEPHONE (03) 5152 5011

SHEET 4 OF 5 SHEETS

ORIGINAL

SHEET SIZE	SCALE
A3	1:1250

SCALE 12·5 0 12·5 25 37·5 50

LICENSED SURVEYOR
SIGNATURE
REF 10558

MICHAEL JOSEPH SADLER
DATE 6/10/2004
VERSION 6

DATE 07/10/2004
COUNCIL DELEGATE SIGNATURE

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PLAN NUMBER PS 517828L

STAGE No. /

PLAN OF SUBDIVISION

SHEET 5 OF 5 SHEETS

DATE 07/10/2004

COUNCIL DELEGATE SIGNATURE

MICHAEL JOSEPH SADLER DATE 6/10/2004

LICENSED SURVEYOR SIGNATURE VERSION 6

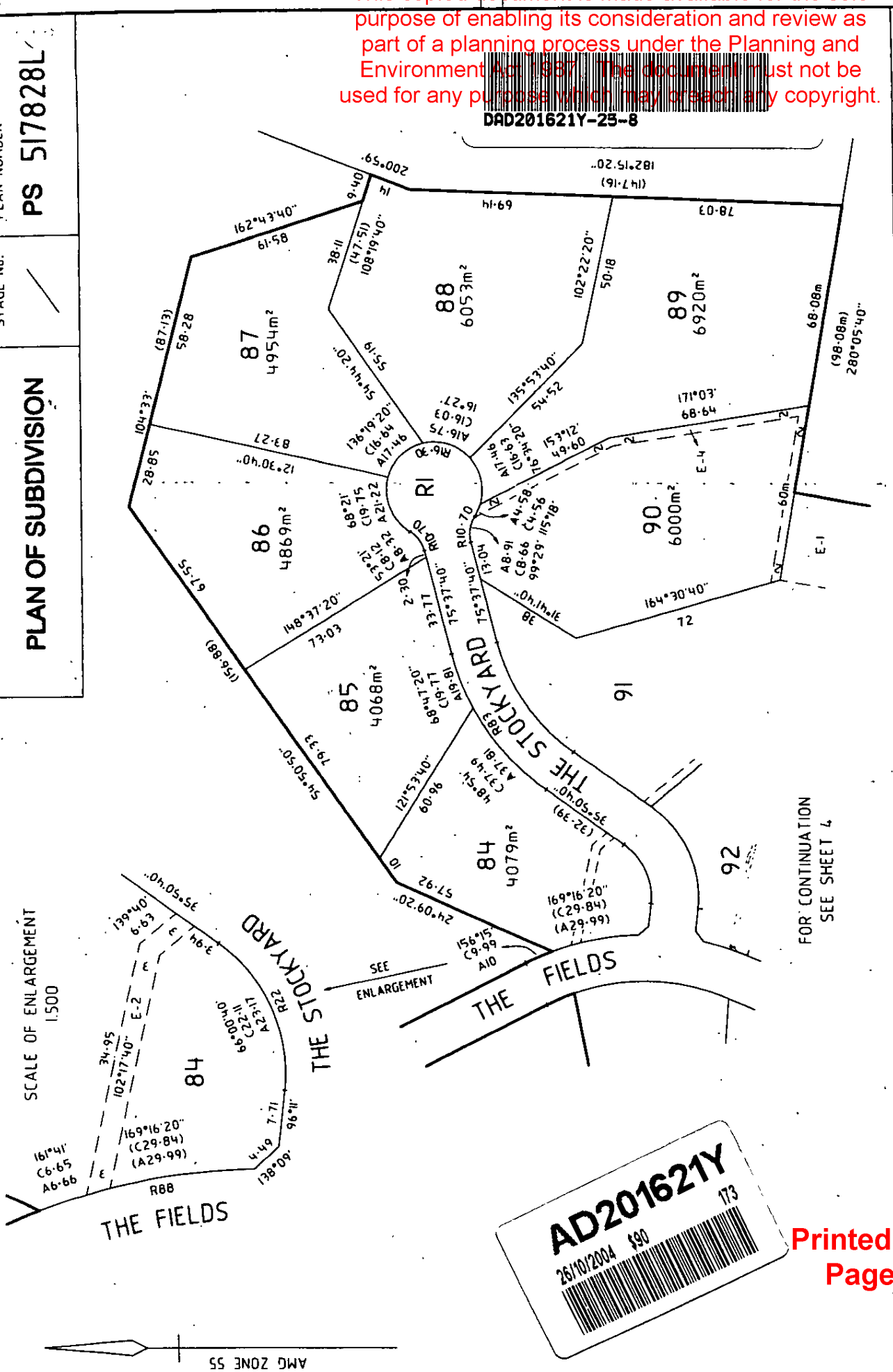
REF 10958

ORIGINAL SHEET SIZE A3

SCALE 1:1250

SCALE 12·5 0 12·5 25 37·5 50 12·5

LENGTHS ARE IN METRES



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173
26/10/2004 $90

Crowther & Sadler Pty. Ltd.
LICENSED SURVEYORS & TOWN PLANNERS
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EAST GIPPSLAND SHIRE COUNCIL

- and -

KINGS COVE METUNG PTY LTD
(A.C.N. 006 383 179)

AGREEMENT UNDER SECTION 173
OF THE PLANNING AND ENVIRONMENT
ACT 1987

WARREN GRAHAM & MURPHY,
Solicitors,
119 Main Street,
BAIRNSDALE VIC 3875

REF: ACT:act4765/03
PS 517828L
The Fields & The Stockyards

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ATTACHMENT 3 – Proposed amended Agreement

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EAST GIPPSLAND SHIRE COUNCIL

Council

AND

KINGS COVE METUNG PTY LTD (ACN 006 383 179)

Owner

Agreement under Section 173 of the Planning and Environment Act 1987

Subject Land	48 Kings Cove Boulevard, Metung, VIC 3904 Certificate of Title Volume 10743 Folio 418 – Lot F PS 509057V "The Fields" & "The Stockyards", Kings Cove PLAN OF SUBDIVISION NO. 517828L (Stage 1B)

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PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the day of

BETWEEN:-

EAST GIPPSLAND SHIRE COUNCIL,
Of 273 Main Street, Bairnsdale (**The Council**)

and

KINGS COVE METUNG PTY LTD (ACN 006 383 179)
Of Level 1, 63 The Esplanade, Paynesville (**The Owner**)

INTRODUCTION

A. Council is the responsible authority for the Planning Scheme under the Act.

B. The Owner is the registered proprietor of the Subject Land.

C. The Council has issued Planning Permit Number 334/2003/P (**the Planning Permit**) allowing the land to be subdivided into 31 Lots in accordance with the Endorsed Plan.

A copy of the Planning Permit is attached to this Agreement and marked "A".

D. It is a condition of the Planning Permit that the Owner enter into this Agreement to develop and use the land in accordance with the Endorsed Plans and the conditions of the Planning Permit.

E. On 8 October 2004, Council and Kings Cove Metung Pty Ltd (**the Former Owner**) entered into this Agreement in accordance with the Planning Permit. The Agreement was recorded on the certificate of title to the Subject Land in dealing number AD201621Y on 26 October 2004.

F. Under clause 3.2 of the Agreement, the Subject Land is required to be used and developed in accordance with the "Kings Cove – Metung – Guidelines for Construction, Siting of, External Alterations and Additions to Buildings and Structures on Kings Cove Stages 2 to 9, Low Density Residential Zone" dated December 2001 (**the Guidelines**).

G. Under the Guidelines, the Former Owner is entitled to appoint an Architectural Review Committee (**ARC**). The consent of the ARC must be obtained before the Subject Land is developed.

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H. Since the Agreement was entered into, the Former Owner has been formally wound up and deregistered. It is no longer possible to obtain the consent of the ARC under the Guidelines.

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~~F. As at the date of this Agreement the Subject Land is encumbered by Mortgage No. AC805M in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to the Subject Land.~~

I. The Council has decided to amend the Agreement under section 178E of the Act in order to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines and to include certain obligations under the Guidelines in the Agreement.

~~G.~~J. The Parties enter into this Agreement:

(a) to give effect to the requirements of the Planning Permit; ~~and~~

(b) to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land;

(c) to remove the Owner's obligation to use and develop the Subject Land in accordance with the Guidelines; and

~~(b)~~(d) to include certain obligations under the Guidelines in the Agreement.

IT IS AGREED:

1. DEFINITIONS

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

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

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

1.3 **"Building Envelope"** means a building envelope shown on the Endorsed Plan.

~~1.3~~1.4 **"the Endorsed Plan"** means the plan, endorsed with the stamp of the Council that forms part of the Planning Permit. A copy of the plan, as at the date of this Agreement, is attached to this Agreement and marked with the letter "C".

1.5 **"Lot"** means a lot on the Endorsed Plan.

~~1.4~~1.6 **"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

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fee simple of the Subject Land or any part of it and includes a Mortgagee in possession.

1.~~5~~1.7 **"Planning Permit"** means the Planning Permit referred to in recital C of this Agreement.

1.~~6~~1.8 **"Planning Scheme"** means the East Gippsland Planning Scheme and any other planning scheme which applies to the Subject Land.

1.9 **"Soil and Water Management Plan"** means the "Kings Cove - Stage 2 Soil and Water Management Plan – Specifications for Construction of Dwellings" dated December 2001, as amended from time to time. A copy of the Soil and Water Management Plan is available for inspection at Council offices during normal business hours upon giving Council reasonable notice.

1.10 **"Solid Fence"** means a fence that is less than 50% transparent.

1.~~7~~1.11 **"Subject Land"** means the land situated at 48 Kings Cove Boulevard, Metung being the land referred to in Certificate of Title Volume 10743 Folio 418 and any reference to the Subject Land in this Agreement includes a reference to any lot created by the subdivision of the Subject Land or any part of it.

1.~~8~~1.12 **"Mortgagee"** means the person or persons registered or entitled from time to time to be registered by the Registrar or Titles as Mortgagee 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.

2.5 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.

2.6 The introductory clauses to this Agreement are and will be deemed to form part of this Agreement.

2.7 The Owner's obligations 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, the 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.

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3. SPECIFIC OBLIGATIONS OF THE OWNER

3.1 **Development in accordance with the Development Permit**

the Subject Land shall only be developed in accordance with the Endorsed Plans and conditions of the Planning Permit or any subsequent amendment to the permit approved by Council.

3.2 [Clause 3.2 deleted]

3.3 **Obligations from the Guidelines**

the Owner covenants and agrees that, unless with the prior written consent of Council:

3.3.1 the Owner must not construct, or permit to be constructed, a building outside the Building Envelope on the Subject Land;

3.3.2 the Owner must develop the Subject Land in accordance with the Soil and Water Management Plan;

3.3.3 no more than one dwelling may be developed on a Lot;

3.3.4 any dwelling erected on the Subject Land must have a floor area of not less than 170 square metres within the outer walls thereof calculated by excluding the area of any carport, garage, terrace, pergola or verandah and must be built only of new materials;

3.3.5 all outbuildings visible from the street, reserve, adjoining allotments or the lake must be designed, constructed and maintained to be similar to the main building on that lot;

3.3.6 if a Lot is developed with a dwelling, fully enclosed and covered parking must be provided for not less than two motor vehicles;

3.3.7 any areas used for the purpose of drying or airing clothes, storage tanks or refuse storage must not be visible from the street, reserves, adjoining allotments or the lake;

3.3.8 vehicle driveways and other paved areas visible to the public must be constructed of clay brick, masonry pavers, crushed stone, stone sheeted bitumen, hot mix, patterned and coloured concrete, exposed aggregate concrete or formed quality gravel surface;

3.3.9 the Owner must not erect, or permit to be erected, a fence on any boundary of a Lot adjoining a road reserve; and

3.3.10 the Owner must not erect, or permit to be erected, a Solid Fence within 15 metres of the front or rear boundaries of a Lot or within 5 metres of a side boundary of a Lot.

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3.23.4 **Council's costs to be paid**

the Owner must pay to the Council, the Council's reasonable costs and expenses (including legal expenses) of an incidental to the preparation, drafting, finalisation, engrossment, execution, registration and enforcement of this Agreement wand until those costs are paid they will remain a debt of the Owner to the Council.

4. FURTHER OBLIGATIONS OF THE OWNER

4.1 Notice and Registration

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

4.2 Further actions

4.2.1 the Owner will do all things necessary, including signing any further agreements, undertakings, covenants and consents, approvals or other documents necessary for the purpose of ensuring that the Owner carries out the Owner's covenants under this Agreement and to enable the Owner to enforce the performance by the Owner of such covenants and undertakings;

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

4.3 Exemption

The Owner will exempt the Council, its employees, contractors and agents from and against all costs, expenses, losses or damages whatsoever which they or any of them may sustain incur or suffer, or be or become liable for or in respect of any suit, action, proceeding, judgment or claim brought by any person whatsoever arising from or referable to this Agreement or any non-compliance thereof.

5. AGREEMENT UNDER SECTION 173 OF THE ACT

The Council and the Owner agree that without limiting or restricting their respective powers to enter into this Agreement and, insofar as it can be so treated, this Agreement is made pursuant to Section 173 of the Act.

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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,

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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 successors in title shall be required to give effect to and do all acts and sign all documents which will require those successors in title to give effect to this Agreement.

8. GENERAL

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;

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

8.4 **Severability**

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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

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void then it must be severed and the other provisions of this Agreement will remain operative.

8.5 **No fettering of the 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.

10. ENDING OF AGREEMENT

This Agreement may be ended by agreement between Council and the Owner.

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SIGNED, SEALED AND DELIVERED as an agreement under Division 2 of Part 9 of the Act and as a Deed between the Parties.

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

…….. Chief Executive

…… Witness

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Frequently Asked Questions

1. **What is a section 173 agreement?**

   A section 173 agreement is a legal agreement between Council and an owner of land entered into under section 173 of the *Planning and Environment Act 1987* (**PE Act**). It may impose conditions or restrictions on the use or development of land and will bind future owners and occupiers of the land.

2. **How do I know if a section 173 agreement burdens my land?**

   If your land is burdened by a section 173 agreement, it will be recorded on the certificate of title to your land.

3. **What do the section 173 agreements require of landowners?**

   The section 173 agreements affecting the residential estates in Kings Cove, Metung and Riviera Harbours, Paynesville impose various obligations on landowners. In particular, the agreements require landowners to comply with a set of design guidelines (**Design Guidelines**).

   The Design Guidelines then require that an owner obtains the approval of an architectural review committee (**ARC**) or an architectural review panel (**ARP**) before any development takes place or an existing development is altered.

   The ARC and the ARP were funded and controlled by the original owners of the land, being Kings Cove Metung Pty Ltd and Riviera Properties Projects Limited.

   In 2017, both companies were wound up and deregistered.

4. **How does the winding up of the original owners affect the operation of the section 173 agreements?**

   The winding up of the original owners means that houses cannot be built on vacant lots and existing buildings cannot be extended without breaching the agreements. This is because the required approvals from the ARC and the ARP cannot be obtained under the Design Guidelines.

5. **Why has Council decided to take action?**

   Council has decided to take action because it is a party to the agreements and this is a significant issue facing a large number of landowners.

6. **Why is Council proposing to amend some agreements and end other agreements?**

   Council is proposing to end agreements where a property is subject to more than one agreement imposing the same (or very similar) obligations. This will remove duplicate agreement(s) from these titles. One agreement will remain on the title, which is proposed to be amended.

   Council is proposing to amend agreements to delete the obligation to comply with the Design Guidelines so the approval of the ARC or the ARP will be no longer required. The amendments also seek to incorporate certain aspects of the Design Guidelines into agreements.

7. **Is Council proposing any changes to the restrictive covenants?**

   No. Owners should seek their own advice if they have concerns about a restrictive covenant.

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8. **How long will the process for amending and ending the section 173 agreements take?**

   This will depend on various factors, including whether any objections are received and whether any applications for review are lodged with the Victorian Civil and Administrative Tribunal (**VCAT**).

   If there are no objections to a proposal, the process will likely be finalised in early 2021. If there is community opposition to a proposal and an application is lodged with VCAT, the process in relation to that agreement will likely take an additional 9 to 12 months.

9. **What happens to any planning applications lodged with Council before the section 173 agreements are amended or ended?**

   Council will continue to consider all planning applications in accordance with the East Gippsland Planning Scheme and the PE Act. It must consider any agreement recorded on the certificate of title to the land. The relevance of an agreement to a permit application will vary from case to case.

   Officers will continue to work with landowners in response to their individual applications and circumstances.

10. **Who is responsible for the costs of amending and ending the section 173 agreements?**

    Council will be responsible for the costs of amending and ending the section 173 agreements. This includes the fees associated with lodging the various documents at the Land Registry.

11. **Why have I received multiple letters relating to different section 173 agreements?**

    You will have received multiple letters if your land is burdened by more than one section 173 agreement that is proposed to be amended/ended.

    You should read each letter carefully as each letter relates to a different agreement. If you wish to object to a proposal affecting your land, you will need to clearly identify the specific application to which you object.

12. **Why are only some aspects of the Design Guidelines incorporated into the amended section 173 agreements?**

    Council did not include every aspect of the Design Guidelines in the amended agreements to avoid them becoming unnecessarily complex. Further, some aspects of the Design Guidelines were too ambiguous and subjective for Council and landowners to reasonably determine compliance.

13. **Why is the ending clause proposed to be amended in some section 173 agreements?**

    Council proposes to amend some of the ending clauses to remove obsolete requirements that require the consent of the Minister for Planning.

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