

15 June 2021

Form 2

## NOTICE OF AN APPLICATION FOR PLANNING PERMIT

The land affected by the application is located at:	<b>15-16/30 Howitt Avenue EASTWOOD Lot 1 PS 620116</b>
The application is for a permit to:	<b>variation of liquor licence and display of signs</b>
The applicant for the permit is:	<b>Crowther &amp; Sadler Pty Ltd</b>
The application reference number is:	<b>261/2021/P</b>
You may look at the application and any documents that support the application on the website of the responsible authority.	<b>(Intentionally blank)</b>

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 may be affected by the granting of the permit may object or make other submissions to the responsible authority.

An objection must

- ♦ be sent to the Responsible Authority in writing,
- ♦ include the reasons for the objection, and
- ♦ state how the objector would be affected.

The Responsible Authority will not decide on the application before:	<b>Subject to applicant carrying out notice</b>
--	---

**If you object, the Responsible Authority will tell you its decision.**

Please note submissions received will be made available for inspection and may be made available to other parties in accordance with the Planning & Environment Act 1987. If you have concerns about this, please contact the East Gippsland Shire Council's Planning Office.

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

Page 1 of 2

VOLUME 11165 FOLIO 126

Security no : 124089892948B  
Produced 13/05/2021 05:03 PM

### LAND DESCRIPTION

Lot 1 on Plan of Subdivision 620116X.  
PARENT TITLE Volume 11117 Folio 330  
Created by instrument PS620116X 20/10/2009

### REGISTERED PROPRIETOR

Estate Fee Simple  
Sole Proprietor  
FIVEZERO HOLDINGS PTY LTD of LEVEL 1 128 HIGH STREET BELMONT VIC 3216  
AH655936C 07/12/2010

### ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AH655937A 07/12/2010  
WESTPAC BANKING CORPORATION

CAVEAT AH676981D 16/12/2010  
Caveator  
RITCHIES STORES PTY LTD  
Grounds of Claim  
LEASE WITH THE FOLLOWING PARTIES AND DATE.  
Parties  
THE REGISTERED PROPRIETOR(S)  
Date  
27/10/2010  
Estate or Interest  
LEASEHOLD ESTATE  
Prohibition  
ABSOLUTELY  
Lodged by  
DAW LEGAL PTY LTD  
Notices to  
DAW LEGAL PTY LTD of 145 GLEN IRIS ROAD GLEN IRIS VIC 3146

CAVEAT AK387684U 06/06/2013  
Caveator  
POINT ADDIS PTY LTD  
Grounds of Claim  
CHARGE WITH THE FOLLOWING PARTIES AND DATE.  
Parties  
THE REGISTERED PROPRIETOR(S)  
Date  
29/05/2013  
Estate or Interest  
INTEREST AS CHARGE  
Prohibition  
ABSOLUTELY  
Lodged by  
BIRDSEY DEDMAN & BARTLETT  
Notices to  
BIRDSEY DEDMAN & BARTLETT of 166A RYRIE STREET GEELONG VIC 3220

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.

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

Page 2 of 2

AGREEMENT Section 173 PLANNING AND ENVIRONMENT ACT 1987  
P750361X 11/04/1990

**DIAGRAM LOCATION**

SEE PS620116X 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)

**ADMINISTRATIVE NOTICES**

NIL

eCT Control 16320Q WESTPAC BANKING CORPORATION  
Effective from 23/10/2016

DOCUMENT END

ADVERTISED

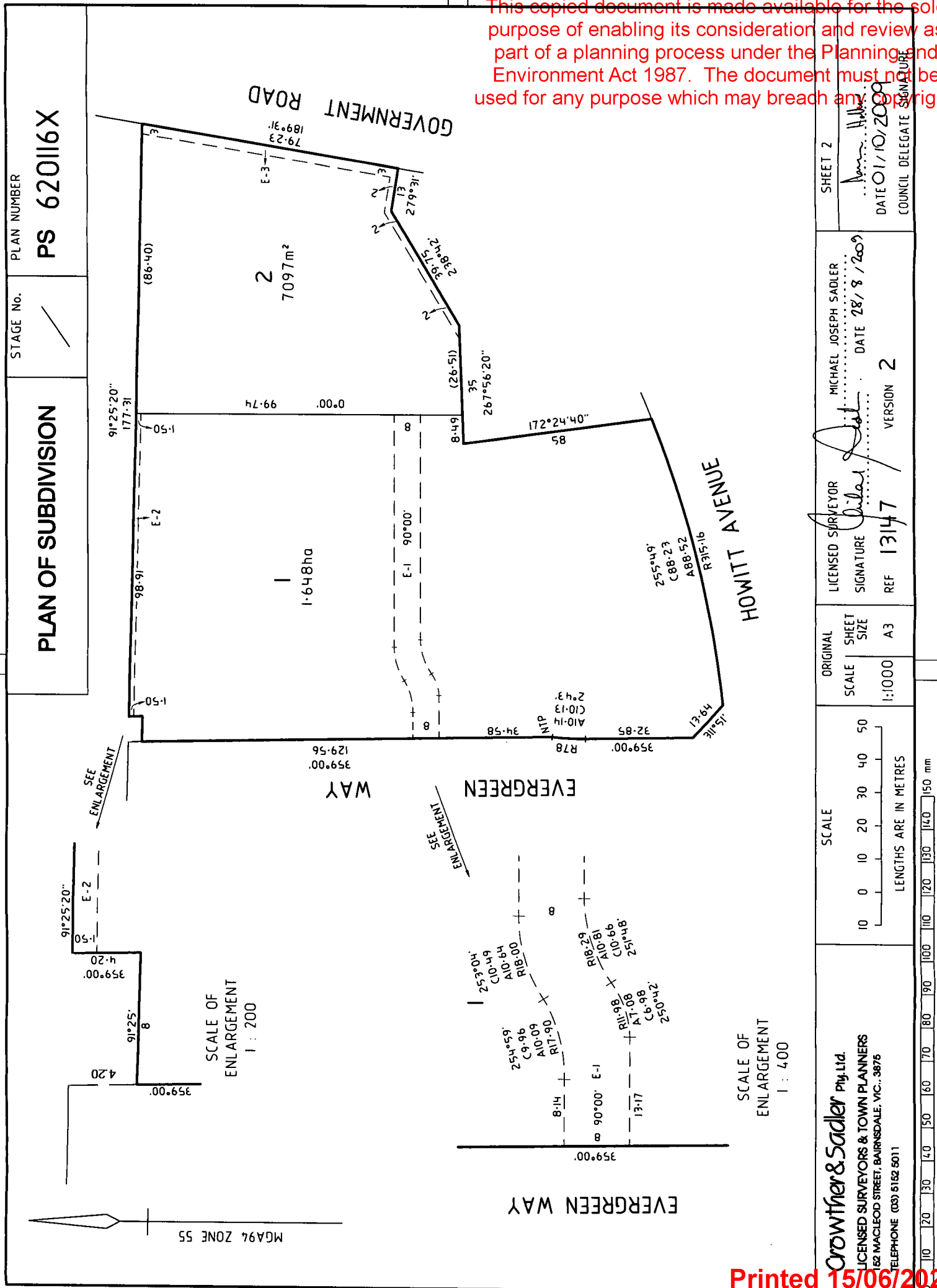
PLAN OF SUBDIVISION		STAGE No. 1 TO USE ONLY <b>EDITION 1</b>	PS620116X 09/10/2009 \$869.80 PS	
<b>LOCATION OF LAND</b>  <b>PARISH:</b> WY YUNG <b>TOWNSHIP:</b> LUCKNOW <b>SECTION:</b> — <b>CROWN ALLOTMENT:</b> 33A (PART) <b>CROWN PORTION:</b> —  <b>TITLE REFERENCES:</b> Vol. 11117 Fol. 330  <b>LAST PLAN REFERENCE:</b> LOT A ON PS616894U  <b>POSTAL ADDRESS:</b> HOWITT AVENUE, (At time of subdivision) BAIRNSDALE, 3875  <b>MGA 84 CO-ORDINATES:</b> E 555 590 (Of approx. centre of land in plan) N 5814 950 <b>ZONE:</b> 55		<b>COUNCIL CERTIFICATION AND ENDORSEMENT</b> <b>COUNCIL NAME:</b> EAST GIPPSLAND SHIRE COUNCIL <b>REF:</b> 35/2009/CRT <del>1. This plan is certified under Section 6 of the Subdivision Act 1988.</del> 2. This plan is certified under Section 11(7) of the Subdivision Act 1988. Date of original certification under Section 6 <b>31/08/2009</b> 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988.  <b>OPEN SPACE</b> (i) A requirement for public open space under Section 18 Subdivision Act 1988 <del>has</del> / has not been made. <del>(ii) The requirement has been satisfied.</del> <del>(iii) The requirement is to be satisfied in stage</del> <del>Council Delegate</del> <del>Council seal</del> <del>Date</del> / / Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate <i>Ann Heller</i> <del>Council seal</del> Date <b>01/10/2009</b>		
<b>VESTING OF ROADS AND/OR RESERVES</b>				
IDENTIFIER	COUNCIL/BODY/PERSON			
NIL	NIL			
<b>NOTATIONS</b>				
<b>STAGING</b> This <del>is</del> / is not a staged subdivision Planning Permit No				
<b>DEPTH LIMITATION</b> DOES NOT APPLY				
SURVEY: THIS PLAN IS / <del>IS NOT</del> BASED ON SURVEY THIS SURVEY IS CONNECTED TO PERMANENT MARK No(s) —				
<b>EASEMENT INFORMATION</b>				
<b>LEGEND</b> A - Appurtenant Easement    E - Encumbering Easement    R - Encumbering Easement (Road)			<b>LR USE ONLY</b> STATEMENT OF COMPLIANCE / EXEMPTION STATEMENT  RECEIVED <input checked="" type="checkbox"/>  DATE <b>09/10/2009</b>	
Easement Reference	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
E-1	CARRIAGEWAY	8	THIS PLAN	LOT 2 IN THIS PLAN
E-1	POWERLINE	8	THIS PLAN - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	SPI ELECTRICITY PTY LTD
E-2	POWERLINE	1.50	THIS PLAN - SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000	SPI ELECTRICITY PTY LTD
E-3	SEWERAGE	SEE DIAG.	THIS PLAN AND PS620116X	EAST GIPPSLAND REGION WATER AUTHORITY
<b>Crowther &amp; Sadler Pty. Ltd.</b> LICENSED SURVEYORS & TOWN PLANNERS 162 MACLEOD STREET, BAIRNSDALE, VIC., 3875 TELEPHONE (03) 6162 6011				LICENSED SURVEYOR <b>MICHAEL JOSEPH SADLER</b> SIGNATURE <i>Michael Sadler</i> DATE <b>28/8/2009</b> REF <b>13147</b> VERSION <b>2</b>
... <i>Ann Heller</i> ... DATE <b>01/10/2009</b> COUNCIL DELEGATE SIGNATURE				ORIGINAL SHEET SIZE <b>A2</b>

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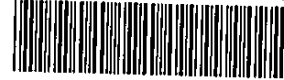
Page 5 of 57

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AH67698ID

16/12/2010 \$69.40 89



an

## CAVEAT

Section 89 Transfer of Land Act 1958

Lodged by:

Name: DAW Legal  
Phone:  
Address: 145 Glen Iris Rd  
Ref: Glen Iris 3146  
Customer Code:

The caveator claims the estate or interest specified in the land described on the grounds set out and forbids the registration of any person as proprietor of and of any instrument affecting the estate or interest to the extent specified.

Land: (title, mortgage, charge or lease)

Certificate of Title Volume 11165 Folio 126

Caveator: (full name and address)

Ritchies Stores Pty Ltd ACN 005 041 814 of Unit 10, 1095 Frankston-Dandenong Road,  
Carrum Downs VIC 3201

Estate or Interest claimed:

An interest as Lessee

Grounds of claim:

Pursuant to an Agreement for Lease dated 27 October 2010 between the Caveator as prospective Lessee and Fivezero Holdings Pty Ltd ACN 113 793 785 as prospective Lessor

Extent of prohibition: (if not ABSOLUTELY delete and insert desired text) ANY DEALING AFFECTING THE INTEREST  
ABSOLUTELY ☒ Any interest that does not recognise the equitable interest of the Caveator as under  
party to an Agreement for Lease dated 27 October 2010

Address in Victoria for service of notice: (include postcode)

DAW Legal Pty Ltd, 145 Glen Iris Road, Glen Iris VIC 3146

Dated: 14 December 2010

Signature of caveator

or

Signature of agent being an  
Austalian Legal Practitioner under the  
Legal Profession Act 2004

*[Signature]*  
DAW Legal P/L

or

Signature of agent

Approval No. 325955A

STAMP DUTY USE ONLY

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THE BACK OF THIS FORM MUST NOT BE USED

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

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Page 6 of 57

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# CAVEAT

Section 89 Transfer of Land Act 1958

Lodged by:

Name: Birdsey Dedman & Bartlett  
Phone: 03 5222 3655  
Address: 166A Ryrie Street, Geelong  
Ref.: Andrew Hill  
Customer Code: 491-A

Privacy Code This form Registrar c used for th searchable	<b>AK387684U</b>	06/06/2013 \$72.80 89	id is
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The caveator claims the estate or interest specified in the land described on the grounds set out and forbids the registration of any person as proprietor of and of any instrument affecting the estate or interest to the extent specified.

Land: *(volume and folio, and if applicable mortgage, charge or lease)*

Certificate of Title Volume 11165 Folio 126

Caveator: *(full name)*

**POINT ADDIS PTY.LTD** (A.C.N. 130 792 228)

Estate or Interest claimed:


An interest as chargee

Grounds of claim:

Charge dated 29<sup>th</sup> May 2013 between **FIVEZERO HOLDINGS PTY.LTD** (ACN 113 793 785) as chargor and **POINT ADDIS PTY.LTD** (ACN 130 792 228) as chargee

Extent of prohibition: *(if not ABSOLUTELY delete and insert desired text)*  
**ABSOLUTELY**

Address for service of notice: *(full name and address, include postcode)*

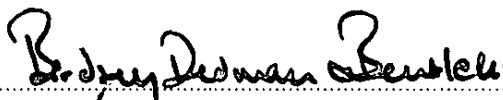
 Birdsey, Dedman & Bartlett, Solicitors, 166a Ryrie Street, Geelong 3220

Dated: 4 June 2013

~~Signature of Caveator~~

~~or~~

Signature of Australian Legal Practitioner  
(under the Legal Profession Act 2004)  
for Caveator



~~or~~

~~Signature of Licenced Conveyancer  
(under the Conveyancers Act 2006)  
for Caveator~~



ANDREW ROLAND HILL  
166A Ryrie Street, Geelong  
An Australian legal practitioner  
Legal Profession Act 2004

~~or~~

~~Signature of agent~~

Approval No. 18171111L

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**REGD**

P750361X

Lodged By MADDOCK LONIE & CHISHOLM  
(Ref: YP:JEP 295/20931)  
Code 1167E

110490 1249 MISC 47 P750361X

VICTORIA

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

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 (insert Certificate of Title Volume and Folio)

Volume 3299 Folio 782, Volume 9791 Folio 339,  
Volume 9809 Folio 357 and Volume 9740 Folio 041.

Vol 10032 Fol 482  
484

ADDRESS OF THE LAND

Flinn Estate, Bairnsdale

RESPONSIBLE AUTHORITY (name and address)

The Town of Bairnsdale of Town Offices, 8 Pearson Street, Bairnsdale

PLANNING SCHEME

Town of Bairnsdale Planning Scheme

AGREEMENT DATE The *FIFTH* day of *MARCH* 1990.

AGREEMENT WITH (name and address)

Tairua No. 10 Pty. Ltd., Tairua No. 13 Pty. Ltd. and Tairua No. 14 Pty. Ltd.  
all care of Armitage Fawcett & Co., Chartered Accountants, 10-12 Grey Street  
Traralgon.

A copy of the Agreement is attached to this Application.

TOWN OF BAIRNSDALE

Signature of Responsible Authority .....

Name of Officer

TOWN CLERK

Date

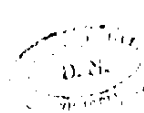
5.8.90

A memorandum of the within instrument  
has been entered in the Register BOOK



47 & 10019-379 cancelled whole.  
Transferred to new C/T

Vol. 10032 Fol. 694  
Vol. 10032 Fol. 695  
10019-379





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THIS AGREEMENT made the *FIFTH* day of *MARCH* 19 *90*

BETWEEN:

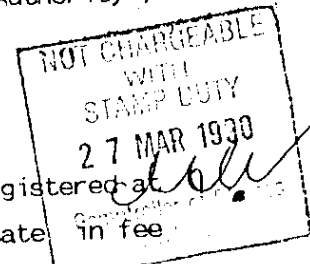
TAIRUA NO. 10 PTY. LTD., TAIRUA NO. 13 PTY. LTD.  
and TAIRUA NO. 14 PTY. LTD. all of C/- Armitage  
Fawcett & Co., Chartered Accountants, 10-12 Grey  
Street, Traralgon (hereinafter jointly and  
severally called "the Company") of the first part.

and

THE TOWN OF BAIRNSDALE of Town Office Bairnsdale  
(hereinafter called "the Responsible Authority")  
of the other part.

WHEREAS:

- A. The Company is registered on or is entitled to be registered at the Office of Titles as the proprietor of an estate in fee simple in the land described in Schedule 1 to this Agreement (hereinafter called "the subject land").
- B. The Responsible Authority is the responsible authority for the <sup>(Town)</sup> ~~Town~~ of Bairnsdale Planning Scheme (hereinafter called "the planning scheme").
- C. The Company desires to develop the subject land as a serviced residential estate with provision for appropriate ancillary facilities in stages generally in accordance with Schedule 2 hereto.
- D. The proposed development of the subject land will necessitate amendment of the Planning Scheme generally in accordance with the amending planning schemes copies of which are attached hereto and marked with the letters "A" and "B" respectively being hereinafter referred to as Proposed Amendment No. 1 and Proposed Amendment No. 2 in respect of the lands depicted in Schedule 4 hereto.
- E. The Responsible Authority will, subject to the observance by the Company of the terms and conditions of this Agreement and insofar as it is lawfully able so to do, use its best endeavors



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to amend the Planning Scheme in the manner proposed under Proposed Amendment No. 1 and Proposed Amendment No. 2 and after such amendment exercise its powers, duties and functions insofar as it is able so to do as Responsible Authority under the Planning and Environment Act 1987 to grant permits to allow the staged development of the subject land as a serviced residential estate in accordance with Schedule 2 hereto.

- F. The Company has agreed with the Responsible Authority to enter into this Agreement with respect to, inter alia, the construction of roads, footways, the provision of open space and the making of land available for ancillary facilities in accordance with this Agreement.
- G. The Responsible Authority and the Company have agreed that without restricting or limiting their respective powers to enter into this Agreement and in so far as it can be so treated this Agreement shall be treated as being an Agreement entered into pursuant to Section 173 of the Planning and Environment Act 1987.

NOW THIS DEED WITNESSETH as follows:-

1. In this Agreement, unless inconsistent with the context or subject matter:-
  - (a) The Company makes each of the covenants to be performed by it (save and except for its covenants contained in Clause 7.6 hereof) on its own behalf and on behalf of the Owner from time to time hereafter of the subject land and each part thereof as has not then been subdivided into residential allotments in accordance with this Agreement.
  - (b) The Company makes each of the covenants contained in Clause 7.6 (a) and (b) hereof to be performed by it on its behalf and on behalf of the Owner for the time being hereafter of the subject land and each part thereof including the owners from time to time of the residential allotments which may be subject to the provisions of sub-paragraphs (a) and (b) thereof.

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- (c) "Owner" shall mean the person or persons entitled from time to time to be registered by the Registrar of Titles as the proprietor of an estate in fee simple of the subject land or any part thereof and for the time being includes the Company.
  - (d) "Engineer" shall mean the Municipal Engineer or person acting in that capacity of the Responsible Authority from time to time.
2. This Agreement shall come into operation:-
- (a) in so far as it relates to the land depicted in Schedule 3 hereto (being the land currently within a Residential Development zone under the provisions of the Planning Scheme) including specifically the provisions of Clause 4.2 hereof at the date of execution of this Agreement;
  - (b) in respect of the land contained within Proposed Amendment No. 1 the obligations of the Owner specified in Clauses 3.1, 4.1, 4.2 and 7.3 shall not come into force and effect unless and until Amendment No. 1 or an amendment to substantially like effect comes into force and effect;
  - (c) in respect of the land contained within Proposed Amendment No. 2 to the Planning Scheme the obligations of the Owner specified in Clauses 3.1, 4.1, 4.2 and 7.3 shall not come into force and effect unless and until Amendment No. 2 or an amendment to like effect comes into operation.
- 3.1 The Company shall proceed to develop the subject land in that order indicated on the staging plan in Schedule 5 hereto unless an alternative order is agreed to by the Responsible Authority from time to time.
- 3.2 Where stages on that plan have the same number it is intended that those stages shall proceed concurrently.

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3.3 Upon lodging with the Responsible Authority of any application for a permit under the Planning Scheme or for approval of a plan of subdivision pursuant to the provisions of the Subdivisions Act 1988 the Responsible Authority will take all reasonable steps to expedite the determination of such application.

3.4 It is mutually agreed between the parties hereto that no allotment intended to be used for the purpose of a detached house shall have an area of less than 650 square metres and that it is intended that the allotments intended for residential purposes shall generally range in area between 700 and 1000 m<sup>2</sup>.

3.5 Without limiting the generality of Clause 3.1 of this Agreement, the Company covenants that it will seek to ensure that a cohesive pattern of development is maintained within the subject land at all times, and it will ensure that individual stages of development will be released for sale only where <sup>there</sup> ~~this~~ is realistic user demand for additional residential allotments.

3.6 It is acknowledged by the Company that the reserves specified on the plan in Schedule 2 hereto are deficient in area desirably required for active recreation for the community to reside upon the subject land when fully developed by 3.9 hectares and that the Responsible Authority may, from time to time, require payment pursuant to the Subdivisions Act 1988 not exceeding in total a sum calculated in the following manner:

Site value of;

$$\frac{\text{subject land}}{1} \times \frac{3.9}{\text{Area of the subject Land in hectares.}}$$

3.7 The Council agrees that the moneys paid to it in accordance with Clause 3.6 shall be expended for the purpose of places of resort and recreation or improvement of places of public resort and recreation which are sufficiently proximate to the subject land to be used for the enjoyment of the community to reside on the subject land.

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- 4.1 The Company hereby covenants that concurrently with the development of the subdivision of the stages specified in Schedule 5 hereto the Owner will carry out and construct the roadworks including footways specified in Schedule 5(ii) (unless alternative road works are agreed to by the Responsible Authority from time to time) in accordance with plans and specifications satisfactory to the Responsible Authority and such works to be completed to the satisfaction of the Responsible Authority upon the advice of its Engineer.
- 4.2 The Company undertakes and agrees that it will within twelve months from:
- (a) the date upon which the Responsible Authority seals a Plan of Subdivision for a stage of subdivision in the western section depicted in Schedule 5 other than stages 1 and 2;
  - (b) the date upon which the Responsible Authority advises that the site for the road depicted in Schedule 5 (ii) hereto between Bullunwall Road and the Mitchell River Backwater (hereinafter called "the western access road") and the bridge depicted in Schedule 5 (ii) are both lawfully available for the construction thereon of a road and bridge respectively; or
  - (c) the date upon which the last of all necessary permits and approvals for the construction and use of such road and bridge is received;
- (whichever be the last) (hereinafter called "the operative date") commence to construct -
- (a) the western access road generally in accordance with and to the standard specified in Schedule 5 (i) hereto; and
  - (b) a bridge over the Mitchell River Backwater generally in accordance with the type and section specified in Schedule 5 (i) hereto and in accordance with structural standards satisfactory to the Responsible Authority;

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and to complete such construction within 24 months from the operative date and to maintain, repair and make good to the satisfaction of the Responsible Authority on the advice of the Engineer all faults or failures which shall develop, appear or occur in such works within 12 months after the completion thereof.

4.3 The obligations of the Owner with regard to the construction of the western access road and bridge are subject to the Responsible Authority making the site of the western access road and bridge lawfully available for such purpose and the Company and the Responsible Authority mutually agree that the Company shall pay to the Responsible Authority the sum of \$1,600.00 in consideration for the grant to the Company of easement rights of way (which term shall include the creation of the same as a public highway), to the grant of all necessary permits, approvals and consents whatsoever for the construction and use of such road and bridge and to the grant of easement rights for the construction and maintenance of services of sewerage, water supply and electricity on, under and through such site if required for the subdivision of the subject land.

4.4 In the event that an amendment to the Planning Scheme is required for the purpose of such bridge and the western access road or either the Responsible Authority shall use its best endeavors to effect such an amendment.

4.5 Not later than the date upon which the Minister submits Proposed Amendment No. 1 to the Governor-in-Council for approval and prior to the commencement of construction of the said bridge and the western access road the Company shall at <sup>145</sup> ~~its~~ expense lodge with the Responsible Authority a guarantee by a bank or other financial institution acceptable to the Responsible Authority and in a form satisfactory to the Responsible Authority in an amount equal to the estimated cost of construction of the said bridge and road guaranteeing the due and proper completion of those works. In the event that the construction of the bridge

*[Handwritten signature]*

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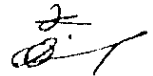
and the western access road cannot be lawfully commenced within three years after the date the Proposed Amendment No. 1 is submitted for approval or upon such earlier date as the Responsible Authority resolves that it is satisfied that the site for the bridge or the western access road cannot be made lawfully available for such purposes or that all necessary permits, approvals and consents therefore cannot be obtained the said guarantee will lapse.

4.6 The construction of the -

- (a) western access road; and
- (b) the said bridge

shall be in accordance with plans and specifications satisfactory to the Responsible Authority which shall have regard to the views and requirements of -

- (i) in the case of the said bridge the Division of Land of the Department of Conservation Forests and Land; and
- (ii) where applicable the ~~Road Construction Authority~~ <sup>Roads Corporation</sup> ~~Road Traffic Authority~~ and Rural Water Commission or any other statutory authority or government department.



4.7 Should the Owner fail or neglect to carry out and complete the construction of the -

- (a) western access road; and
- (b) the said bridge

or to maintain or appear or make good the same as hereinbefore provided the Engineer may cause to be served on the Owner a notice in writing specifying the works matters or things in respect whereof the Owner is in default and should such default continue for the space of 28 days after the service of such notice or such longer period as shall be specified in the said notice the Responsible Authority may by its officers servants agents workmen or contractors enter upon the said land (or any other land of the Owner) and cause the said works to be constructed or completed and made good or any defaults, defects or failures in the said works which shall have developed appeared or occurred within the said period specified in Clause 4.2 hereof to be maintained, repaired or made good and for such



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purpose the Responsible Authority may employ a contractor or contractors and professional advisers.

4.8 Any notice served on the owner pursuant to Clause 4.7 hereof may set out the cost as estimated by the Engineer and stated in such notice of constructing or completing the construction of the said works or maintaining repairing or making good any such faults, defects or failures aforesaid and in the event of the Owner not complying with such notice within such period of 28 days or such longer period as may be specified in the said notice the Engineer may cause to be served on the owner a demand in writing for the amount of the cost as estimated as aforesaid and the amount thereof shall forthwith be paid by the Owner to the Responsible Authority. As soon as may be after the completion of such work the Engineer shall certify the actual cost thereof to the Responsible Authority and the difference between such actual cost and the estimated cost paid by the Owner to the Responsible Authority or by the Responsible Authority to the Owner as the case may require.

4.9 If any such notice served on the Owner pursuant to Clause 4.7 hereof shall not require the Owner to pay such cost as aforesaid then and in such case the actual cost of any works carried out by or on behalf of the Responsible Authority pursuant to Clause 4.7 hereof shall on demand ~~to~~ be paid by the Owner to the Council.

4.10 For the purpose of 4.8 the Certificate of the Engineer as to the amount of the actual cost incurred by the Responsible Authority under that clause shall be final binding and conclusive as between the parties hereto.

4.11 After the construction of the western access road and of the said bridge to the satisfaction of the Responsible Authority in accordance with the advice of the Engineer the same shall vest in the Responsible Authority subject to the rights (if any) that the Crown may have in the said bridge.



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4.12 Any notice hereunder which the Responsible Authority may give to the Company may be served by delivering the same to the Company at its registered office or by putting the same into the post in a prepaid envelope addressed to the Company and its registered office and any notice so posted shall be conclusively deemed to have been served at the expiration of 48 hours from the time of posting.

4.13 The Owner will after the commencement <sup>of</sup> ~~for~~ the construction of the works pay to the Council upon demand an amount not exceeding two and a half per cent of the estimated cost of construction of the roads referred to in Clause 4.1 hereof, the western access road and the said bridge, for the supervision of the works by an officer or officers of the Responsible Authority.

4.14 The Company agrees that in the event of the Major Collector A road depicted in Schedule 5 (ii) being constructed to provide a means of access to early stages of subdivision in the west section to a standard less than the ultimate standard that would be required pursuant to Clause 4.1 it will reconstruct such road to the standard required by or under Clause 4.1 and:

- (a) such reconstruction shall be undertaken in stages;
- (b) each stage of reconstruction shall be to the extent that such road lies within or abuts a stage of subdivision;
- (c) the reconstruction of each stage of the roadworks shall be undertaken concurrently with the development of the adjacent or abutting stage of subdivision; and
- (d) for the purposes of this Agreement such stages of reconstruction shall be deemed to be works required pursuant to clause 4.1.

5.1 It is agreed by the Responsible Authority and the Owner that the west section and the east section of the Through Road depicted in Schedule 5 (ii) need only be constructed to single carriageway width until -

(a) (i) the Responsible Authority as the Council under the Subdivisions Act 1988 <sup>certifies</sup> ~~seals~~ any plan of subdivision

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- 10 -

creating 300 or more residential allotments in the western section as depicted in Schedule 5; or  
(ii) 3000 vehicles movement per day are generated at the intersection of the western access road and Bullunwall Road

(whichever be the sooner) whereupon the Company will forthwith commence the construction of the western section of the Through Road to its full design width in accordance with Schedule 5 (i) and complete those works to the satisfaction of the Responsible Authority within 12 months from the date of the commencement.

(b) (i) the Responsible Authority as the Council under the Subdivisions Act 1988 <sup>certifies</sup> ~~seals~~ any plan of subdivision creating 300 or more residential allotments in the eastern and central sections as depicted in Schedule 5; or

(ii) 3000 vehicle movements per day, are generated at the intersection of the said Through Road and Ormeo Highway

(whichever be the sooner) whereupon the Company will forthwith commence the construction of the eastern section of the Through Road to its full design width in accordance with Schedule 5 (i) and complete those works within 12 months from the date of commencement.

5.2 On or before the date that the Company is required to commence works pursuant to Clause 5.1 the Company shall at <sup>its</sup> ~~its~~ expense lodge with the Responsible Authority a guarantee by a bank or other financial institution acceptable to the Responsible Authority and in a form satisfactory to the Responsible Authority in an amount equal to the estimated cost of construction of those works guaranteeing the due and proper completion of those works provided that it is expressly acknowledged by the Company that the Responsible Authority will not be obliged to <sup>certify</sup> ~~seal~~ any Plan of Subdivision in either the west section or the east and central section creating 300 or

- 11 -

more residential allotments in either such section until the guarantee in respect of the works required to be commenced as a consequence of that sealing, has been lodged with the Responsible Authority.

5.3 Clauses 4.7 to 4.13 shall apply mutatis mutandis to the construction of the works required by this clause.

6.1 The Company will give to the Responsible Authority a guarantee by a bank or other acceptable financial institution in a form satisfactory to the Responsible Authority for an amount not exceeding the estimated cost of the works to be carried out by the Company under any and each requirement imposed by the Responsible Authority on any stage or stages of the development before commencing work on the stage to which such requirement relates unless there already exists a satisfactory guarantee in respect of those works under which the bank or other institution guarantees to the Responsible Authority payment by the Company of all or any moneys which may become payable by the Company to the Responsible Authority under this Agreement in respect of the works the subject of the requirement.

6.2 (a) The guarantees to be given under Clauses 4.5, 5.2 and 6.1 shall be partially discharged from time to time upon the Engineer delivering to the Guarantor a certificate in writing certifying that such part or parts of the works done have been constructed or executed to the satisfaction of the Responsible Authority and that payment therefor, if the case requires, has been made by the Company provided that the guarantee is not reduced below the estimated cost of the works remaining to be completed.

(b) The guarantee shall be finally discharged upon the Engineer delivering to the Guarantor a certificate in writing that all the works to be constructed by the Company have been constructed executed and maintained to the satisfaction of the Responsible Authority.

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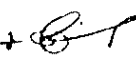
- 12 -

- 6.3 It is agreed that during the maintenance period of the works referred to Clauses 4 and 5 hereof the Responsible Authority shall be entitled to require the Company to pay to it or lodge a bank guarantee (or guarantees) for an amount equal to five per cent of the actual cost of construction of the western access road, the said bridge and the works required pursuant to Clause 5.
- 7.1 The roads within the subject land specified in Schedule 5 (ii) hereof shall be constructed to the satisfaction of the Responsible Authority to a like standard to that usually required by the Responsible Authority for comparable roads constructed pursuant to the Local Government Act 1989.
- 7.2 The Company shall provide reticulated underground electricity, reticulated water supply and reticulated sewerage services to each allotment created on the subject land to the satisfaction of the Responsible Authority prior to the commencement of the use of such allotment for residential purposes provided that underground electricity need not be provided to the allotments in Stage 1A in the eastern sector.
- 7.3 The Company undertakes:-
- (a) to undertake the basic grading and surface drainage of all reserves;
  - (b) to develop on such reserves as may be reasonably required by the Responsible Authority, car parking areas to the satisfaction of the Responsible Authority;
  - (c) to undertake the planting of all reserves for public resort and recreation which are generally located above the designated flood prone area depicted in Schedule 6 hereto with grass or pasture (as appropriate) and to plant such trees or shrubs as are consistent to the satisfaction of the Responsible Authority.
  - (d) to provide a reticulated water supply throughout each reserve generally located above the designated flood prone area depicted in Schedule 6 hereto sufficient to enable spray irrigation facilities to be operated therefrom.

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- 13 -

- (e) to fully develop all link paths (as designated in Schedule 5 (iii)) with footpaths (including bicycle paths where shown in Schedule 5 (iii)) and appropriate landscaping in accordance with plans and specifications to be approved by the Responsible Authority.
  - (f) to submit with every application for a planning permit to subdivide land which includes therein any land generally located above the designated flood prone area depicted in Schedule 6 hereto to be set aside as a public resort and recreation reserve, a landscape development plan and program of works which are to be undertaken by the Company (at its cost) on all land to be set aside; 
  - (g) to erect such fencing around the area shown in Schedule 2 as a "Reserve for Conservation Purposes" as is considered necessary by the Responsible Authority to prevent unauthorized public access thereto, and upon the completion of such fencing surrender ownership of the said land to the Crown.
- 7.4 The Company hereby covenants that concurrently with the development of the stages of the subdivision it will develop the pedestrian/bicycle network depicted in Schedule 5 (iii) to the satisfaction of the Responsible Authority.
- 7.5 The owner of any allotment having an abuttal to a road which is delineated as a Through Road or a Major Collector "A" or "B" Road on the Road Hierarchy Plan and upon which is located or proposed to be constructed a shared footway or bike path shall not construct, maintain or allow to grow any fence, hedge or any other vegetation screen having a height in excess of 1 metres within 3 metres of such abuttal.
- 7.6 (a) The Company agrees that the owner of each allotment on the subject land which abuts a reserve depicted on any plan of subdivision of the subject land or any part thereof shall be solely responsible for the cost of fencing the boundary between such allotment and such reserve to the intent that the person or body in which such reserve is vested or which

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owns such reserve shall not be liable for any costs of fencing such boundary:

- (b) It is agreed between the Responsible Authority and the Company that any allotment which is, as to part, within an area the designated flood prone area depicted in Schedule 6 hereto shall not have erected upon that part of such allotment as lies <sup>between</sup> such line any substantial improvements other than fencing of a post and wire construction and landscaping to an extent satisfactory to the Responsible Authority. + BT

7.7 (a) This clause will not limit or restrict the powers of the Council under the Subdivisions Act 1988 or the Local Government Act 1989 to require the owner of any part of the subject land in respect of which an Application is made to the Council for Subdivision to undertake -

- (i) to cause to be provided the works of drainage specified by the Council;
- (ii) to contribute towards the cost of existing or future works for the acceptance of surface and stormwater from the land whether or not such a works have been or will be situated within the boundaries of the land; and
- (iii) where the requirement is made pursuant to a condition of a planning permit by a referral authority to give or cause to be given to the Council a written statement from the appropriate statutory authority that an agreement has been entered into with that authority in relation to such drainage.

- (b) The Company undertakes and agrees that it will construct outfall drainage for the acceptance of surface and stormwater from each stage being developed in accordance with plans and specifications approved of by the Council and secure or carry out and complete such construction to the satisfaction of the Engineer prior to the completion of

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sale, transfer, assignment or otherwise disposal of any of the allotments on that stage.

- (c) Such outfall drainage shall be designed and constructed with sufficient capacity to cater for drainage from all stages on the subject land developed or to be developed which will flow through the drainage system on the stage being developed.
- (d) The Company will obtain any necessary easements of drainage over the land lying between the stage being developed and the Mitchell River Backwater or other lawful point of discharge approved of by the Responsible Authority to enable the land in the stage being developed to lawfully drain to the Mitchell River Backwater or such other lawful point of discharge.
- (e) In respect of that land in the west section shown in Schedule 5 which drains towards the Mitchell River Backwater, provided that the land is being developed in stages in the order indicated on the staging plan in Schedule 5 hereto or as otherwise agreed by the Responsible Authority under Clause 3.1 hereof and is subject as is hereinafter provided were the stage being developed<sup>and</sup> is separated from the Mitchell River Backwater or other lawful point of discharge by the land which -
  - (i) comprises one or more stages of development depicted in Schedule 5 or the land depicted as currently withheld from development in Schedule 2;
  - (ii) includes the route for the outfall drainage from the stage being developed to the Mitchell River Backwater; and
  - (iii) is then undeveloped and not under construction -

(in this clause hereafter called "the intermediate land") the outfall drain beyond the boundary of the stage being developed need not be constructed otherwise than at the time and as part of the development of the stages in the

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- 16 -

intermediate land and the owner for the time being of the intermediate land shall unconditionally accept the discharge onto and across the intermediate land to the Mitchell River Backwater or other lawful point of discharge of drainage from such outfall drain.

- (f) If any stage of the intermediate land is sold by the Company prior to the construction thereon of the outfall drain in the manner provided for in sub-paragraphs (b) and (c) hereof, then and in that case the Company will lodge with the Council a guarantee by a bank or other financial institution acceptable to the Responsible Authority in a form satisfactory to the Responsible Authority in an amount equal to the estimated cost of construction of the outfall drain in that stage guaranteeing the due and proper completion of those works in accordance with the provisions of sub-paragraphs (b) and (c) hereof.

- (g) Prior to the development of:-

- (i) Any stage depicted in Schedule 5 which will drain across the land depicted in Schedule 2 as currently withheld from development (in this sub-clause called "the withheld land") the Company will construct outfall drainage in accordance with sub-clause (b) of this clause across the withheld land; and
- (ii) any stage of the development in the central section depicted in Schedule 5 the Company will construct outfall drainage in accordance with sub-clause (b) of this clause connecting the said central section with Goose Fully to the satisfaction of the Responsible Authority and shall obtain any easements of drainage for the purpose of such outfall drain or drains (which the municipal council certifies is or are necessary for the economical and efficient subdivision of the Company's land) in accordance with sub-clause (d) of this clause.



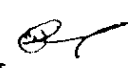
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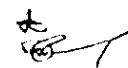
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7.8 (a) Where any allotment is created on the subject land which has an abuttal to the bank (as defined in the Water Act 1958) of the Mitchell River Backwater (hereinafter called "the Backwater") the Company shall as and when thereafter requested by the Department of Conservation Forests and Land grant easement rights over that part of each such allotment as lies within 20 metres of such bank to Her Majesty Queen Elizabeth the Second in the right of the State of Victoria (hereinafter called "the Crown") as the person in whom the bed and banks of the Backwater are vested pursuant to the provisions of the Water Act 1958 to permit officers, servants and agents of the Crown with such vehicles and equipment as are reasonably necessary entering upon that land from time to time and carrying out works for the purpose of maintaining the bed and banks of the Backwater.

(b) No fence shall be constructed on any such allotment within 20 metres of such bank other than along the common boundary between such an allotment and a District Park and any fence along such common boundary shall include gates appropriate for the exercise of easement rights granted or liable to be granted under sub-section (a) of this clause.

8.1 Where in this Agreement it is provided that any matter or thing shall be done to the satisfaction of the Responsible Authority the Responsible Authority shall include in each permit under the <sup>(Town of)</sup> ~~Town of~~ Bairnsdale Planning Scheme for the use or development comprising, including or to which such matter or thing relates, a condition that such matter or thing shall be done to the satisfaction of the Responsible Authority. 

8.2 In the event of a dispute arising as to whether any such matter or thing has been done to the satisfaction of the Responsible Authority within the terms of a condition <sup>in</sup> ~~is~~ such a permit and either party refers the matters in dispute to the Administrative Appeals Tribunal for the decision pursuant to Section 80 of the 

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Planning and Environment Act 1987, the decision of the Administrative Appeals Tribunal shall be final for the purposes of this Agreement and given effect to by the Responsible Authority and the Company.

- 9.1 It is agreed that the site for ancillary facilities depicted on the plan in Schedule 2 hereto shall be set aside for those purposes unless the Responsible Authority and the Company agree to an alternative site for such facilities and that if needs be, the Council with the terms and conditions of this Agreement and insofar as it is lawfully able to do so initiate and take all steps necessary to expedite such amendments of the Planning Scheme as required to permit such of those sites to be used for the purpose designated.
- 9.2 Save for the sites designated in Schedule 2 hereto or any alternative sites agreed between the Responsible Authority and the Company no part of the subject land shall be developed or used for the purpose of a shop.
- 9.3 It is the intention of the Company that the land will be subdivided, developed and used generally, for residential purposes in the manner shown in Schedule 2 but this Agreement will not prevent any owner for the time being of any allotment making application for the use or development of any part of that land for a purpose permissible under the Planning Scheme but not otherwise inconsistent with the aforesaid intent.
10. The Company agrees that in the event of the Responsible Authority advising it that it desires to purchase any part of the subject land for community facilities which would complement the use and development of the subject land as a residential estate it will sell each such site as <sup>is</sup> designated by the written notice given to it by the Responsible Authority to the Responsible Authority.
- (a) in respect of the site or sites in total not exceeding 4800 square metres in area for an amount equivalent to the same

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proportion of the actual cost of developing the subject land and including the stage of development creating each such site as the area of such site bears to the total area of the allotments created on the subject land up to and including the said stage; and

(b) in respect of any site or sites or part of a site whereby the total area sold pursuant to this clause exceeds 4,800 square metres for an amount equivalent to the then market value of the land sold as agreed or in default agreement as valued by a valuer nominated by the President for the time being of the Victorian Division of the Australian Institute of Valuers the fee of such valuer to be borne equally by the Company and the Responsible Authority.

11. Nothing in this Agreement shall fetter the Company's right of appeal in relation to any condition imposed in any permit or against any determination refusing to grant a permit or a determination of the Responsible Authority that it is not satisfied in respect of any matter which is satisfaction save for any such matter which is specifically provided for herein.
12. Subject to the Company having carried out and completed all its covenants and agreements hereunder to the reasonable satisfaction of the Responsible Authority this Agreement shall lapse upon the completion of the development specified in schedule 2 hereto.
13. The Company agrees to all things necessary to enable the Responsible Authority to enter a memorandum of this Agreement on the Certificate of Title to the subject land in accordance with Section 181 of the Planning and Environment Act 1987 including signing any further Agreement, acknowledgement or document to enable the said memorandum to be entered as aforesaid.

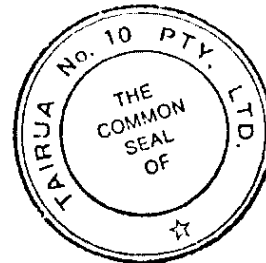
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IN WITNESS WHEREOF the parties hereto have executed this Agreement  
the day and year first hereinbefore mentioned.

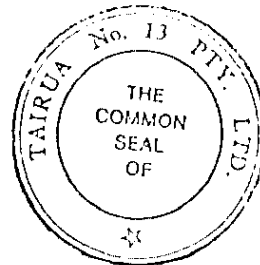
THE COMMON SEAL of TAIRUA NO. 10 )  
PTY. LTD. was hereunto affixed in )  
accordance with its Articles of )  
Association in the presence of: )



..... Director

..... Secretary

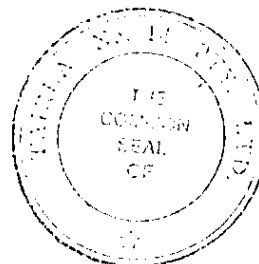
THE COMMON SEAL of TAIRUA NO. 13 )  
PTY. LTD. was hereunto affixed in )  
accordance with its Articles of )  
Association in the presence of: )



..... Director

..... Secretary

THE COMMON SEAL of TAIRUA NO. 14 )  
PTY. LTD. was hereunto affixed in )  
accordance with its Articles of )  
Association in the presence of: )



..... Director

..... Secretary

THE COMMON SEAL of the MAYOR )  
COUNCILLORS AND RATEPAYERS OF THE )  
TOWN OF BAIRNSDALE was hereunto )  
affixed in the presence of: )

..... Councillor

..... Town Clerk

..... Mayor

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SCHEDULE 1

SUBJECT LAND

TAIRUA NO. 10 PTY. LTD.

- (i) Lot 24 on Plan of Subdivision No. 2677 Parish of Wy Yung and being the whole of the land described in Certificate of Title Volume 3299 Folio 782.
- (ii) Certificate of Title Volume 9791 Folio 339.

TAIRUA NO. 13 PTY. LTD.

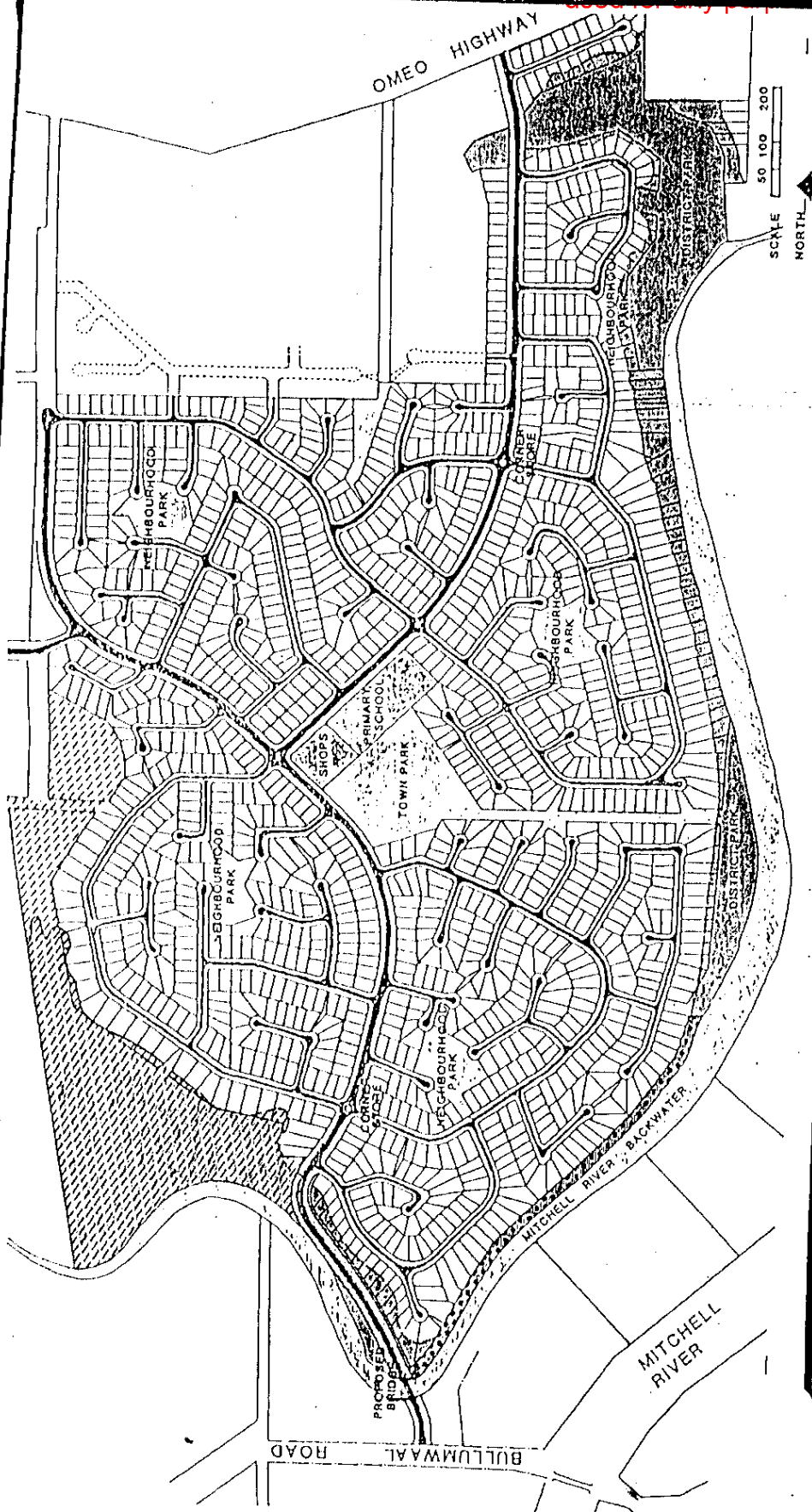
Certificate of Title Volume 9809 Folio 357.

TAIRUA NO. 14 PTY. LTD.

Certificate of Title Volume 9740 Folio 041.

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OUTLINE DEVELOPMENT PLAN

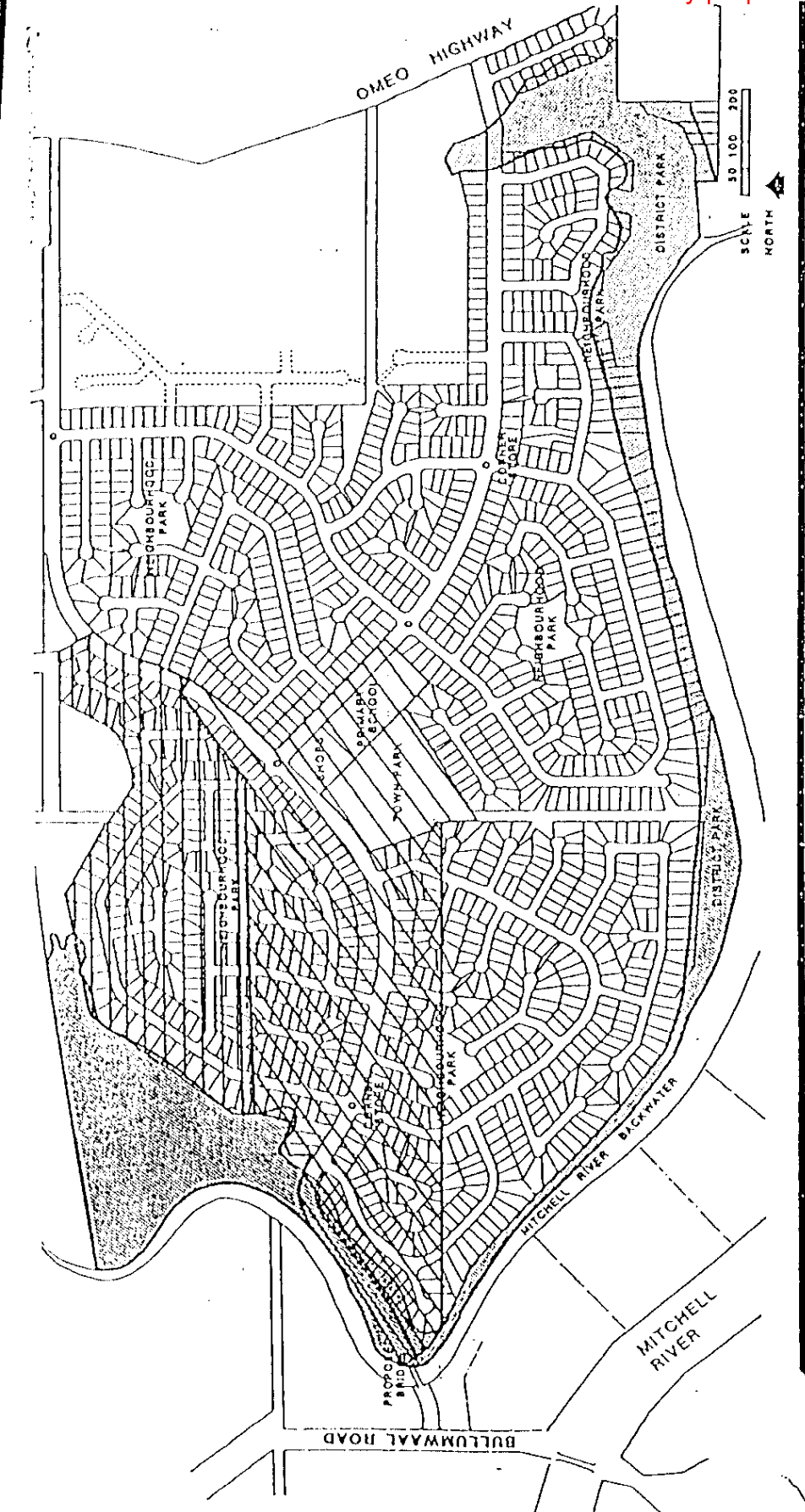
- RESERVE FOR CONSERVATION PURPOSE
- LAND CURRENTLY WITHHELD FROM DEVELOPMENT
- AREA OF NATURAL BEAUTY AND INTEREST

SCHEDULE 2



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## SCHEDULE 4

PROPOSED AMENDMENT NO. 1

PROPOSED AMENDMENT NO. 2

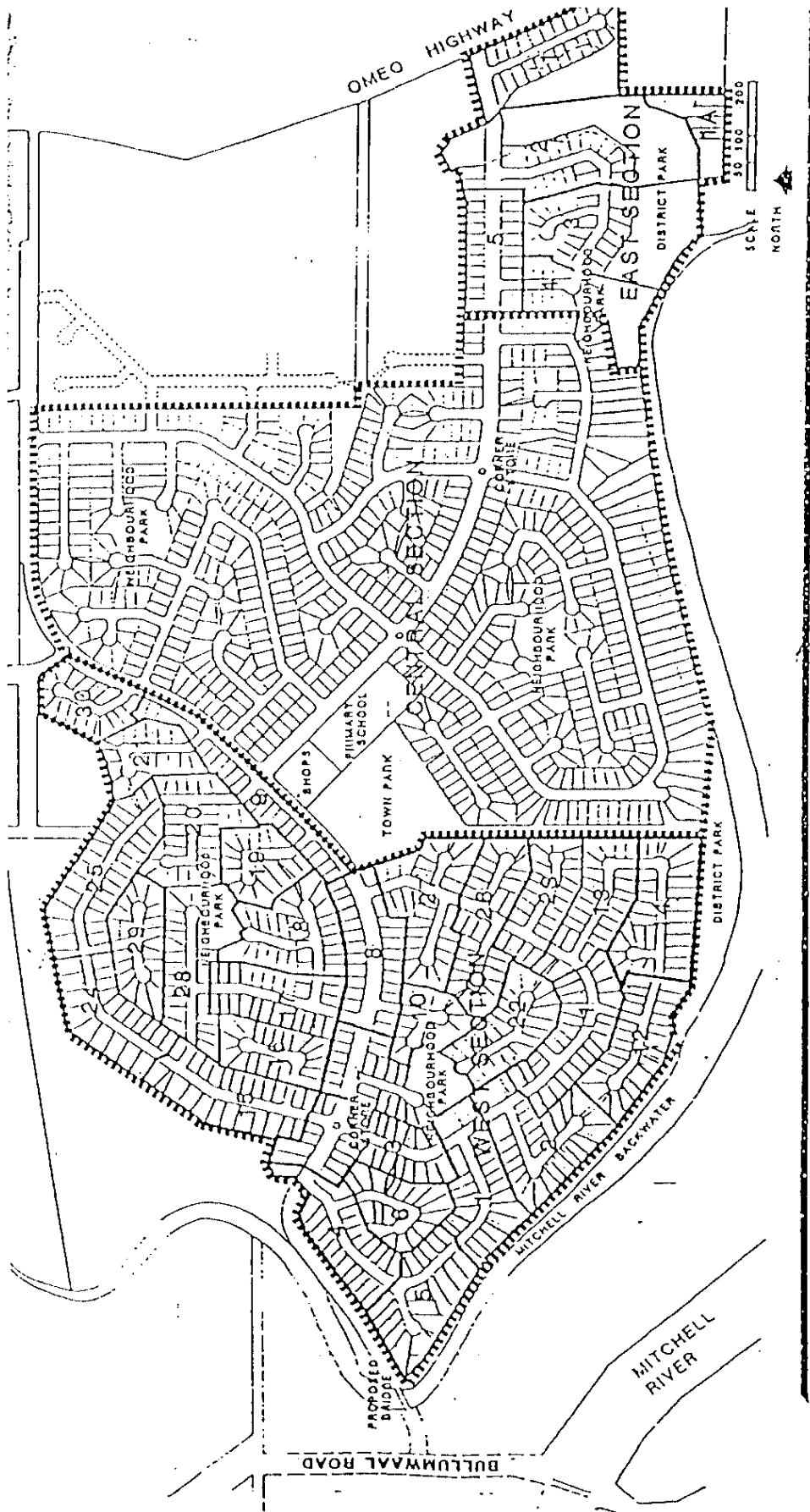
RESIDENTIAL DEVELOPMENT ZONE

RESIDENTIAL DEVELOPMENT ZONE

AREA OF NATURAL BEAUTY AND INTEREST

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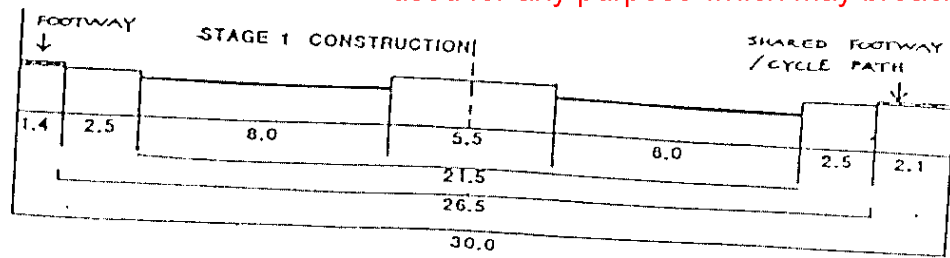
SCHEDULE 5  
STAGED DEVELOPMENT PLAN



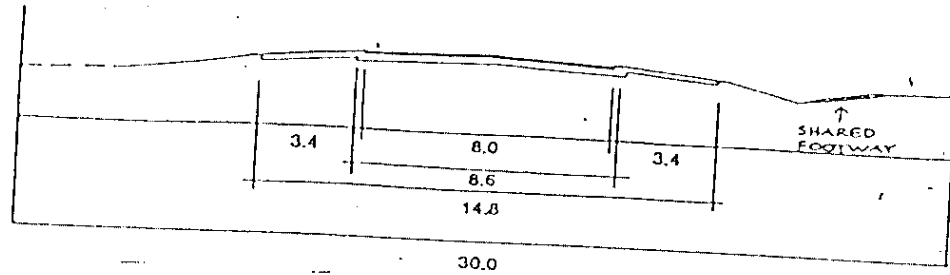
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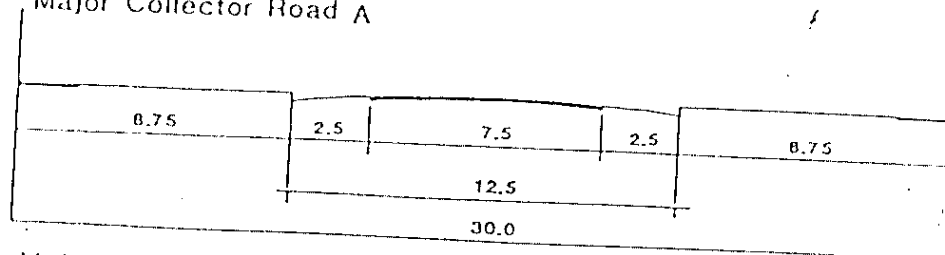
1 Through Road dual carriageway



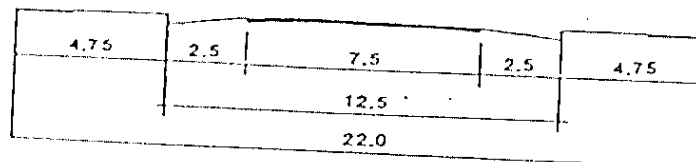
2 Western Access Road undivided carriageway



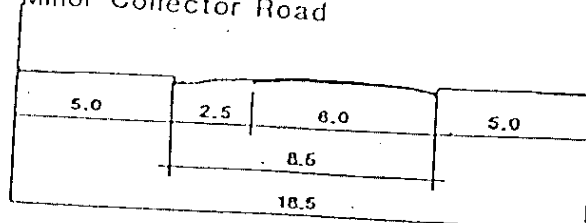
3 Major Collector Road A



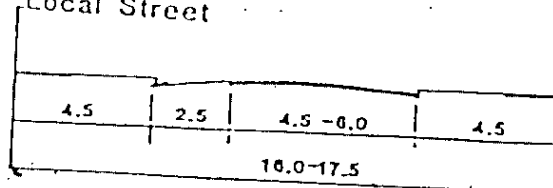
Major Collector Road B



4 Minor Collector Road



5 Local Street



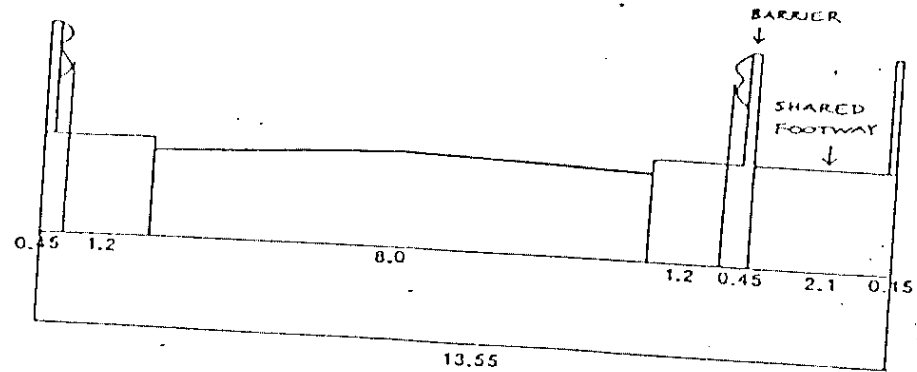
Schedule 5(i)

FLINN ESTATE  
SUGGESTED  
CROSS SECTIONS

ADVERTISED

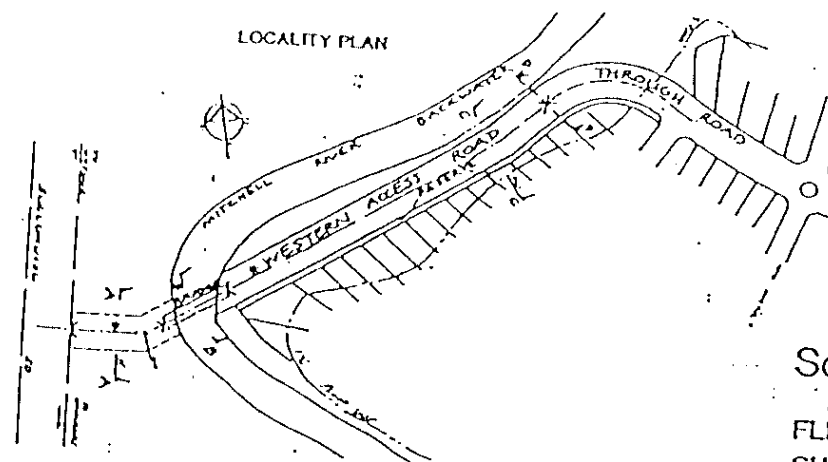
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## 6 Backwater Bridge Cross-Section



### LOCALITY PLAN

- \* CROSS-SECTION A-A AND C-C : WESTERN ACCESS ROAD UNDIVIDED CARRIAGEWAY
- CROSS-SECTION B-B : BACKWATER BRIDGE
- CROSS-SECTION D-D : THROUGH ROAD DUAL CARRIAGEWAY



Schedule 5(i)  
continued  
FLINN ESTATE  
SUGGESTED CROSS  
SECTIONS

*[Handwritten signature]*

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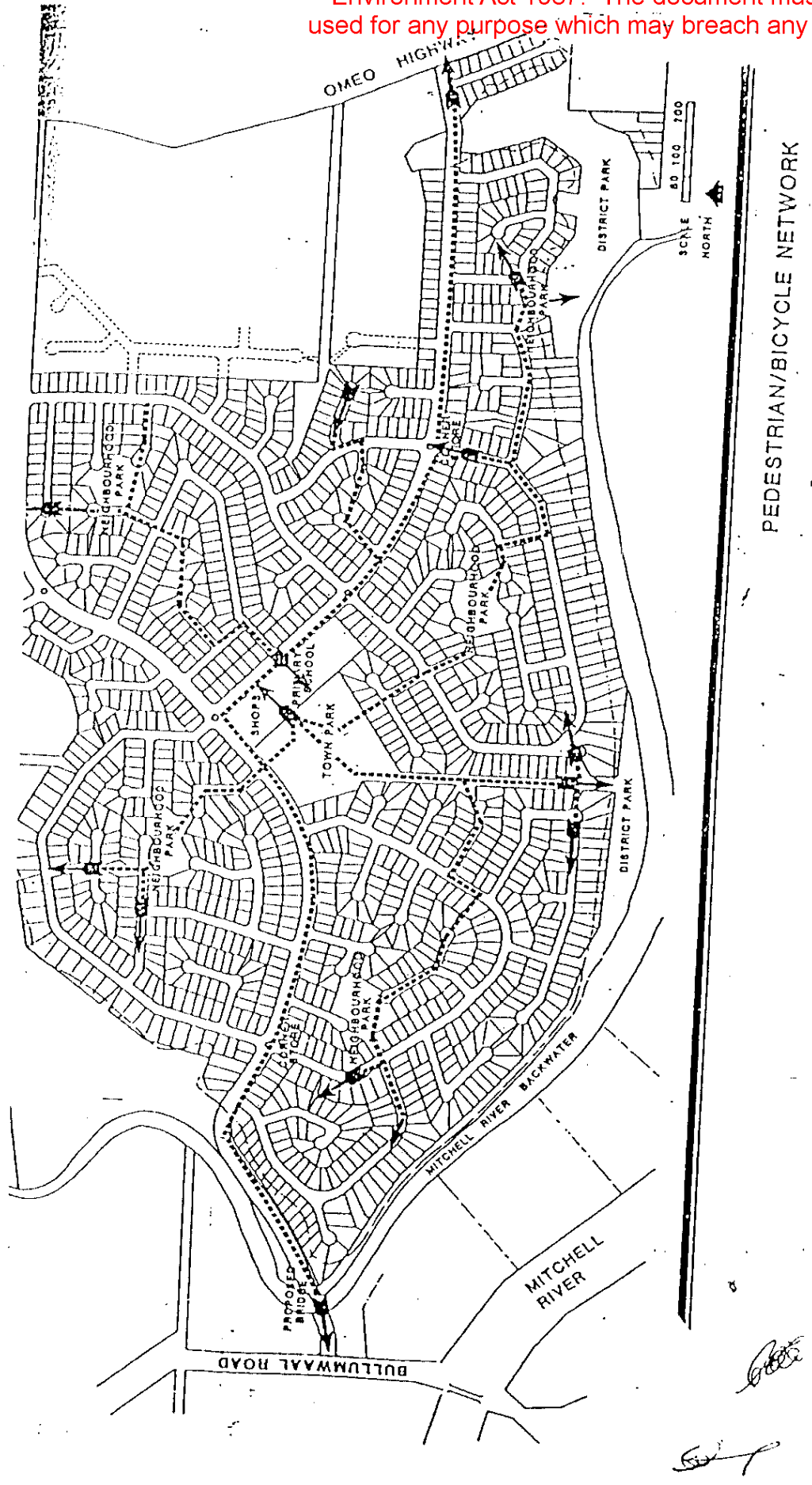


# SCHEDULE 5(ii) ROAD HIERARCHY

- 1 THROUGH ROAD DIVIDED CARRIAGEWAY (30 METRE RESERVE)
- 2 WESTERN ACCESS ROAD UNDIVIDED CARRIAGEWAY (30 METRE RESERVE)
- 3 MAJOR COLLECTOR A (30 METRE RESERVE)
- MAJOR COLLECTOR B (22 METRE RESERVE)
- MINOR COLLECTOR (18.5 METRE RESERVE)

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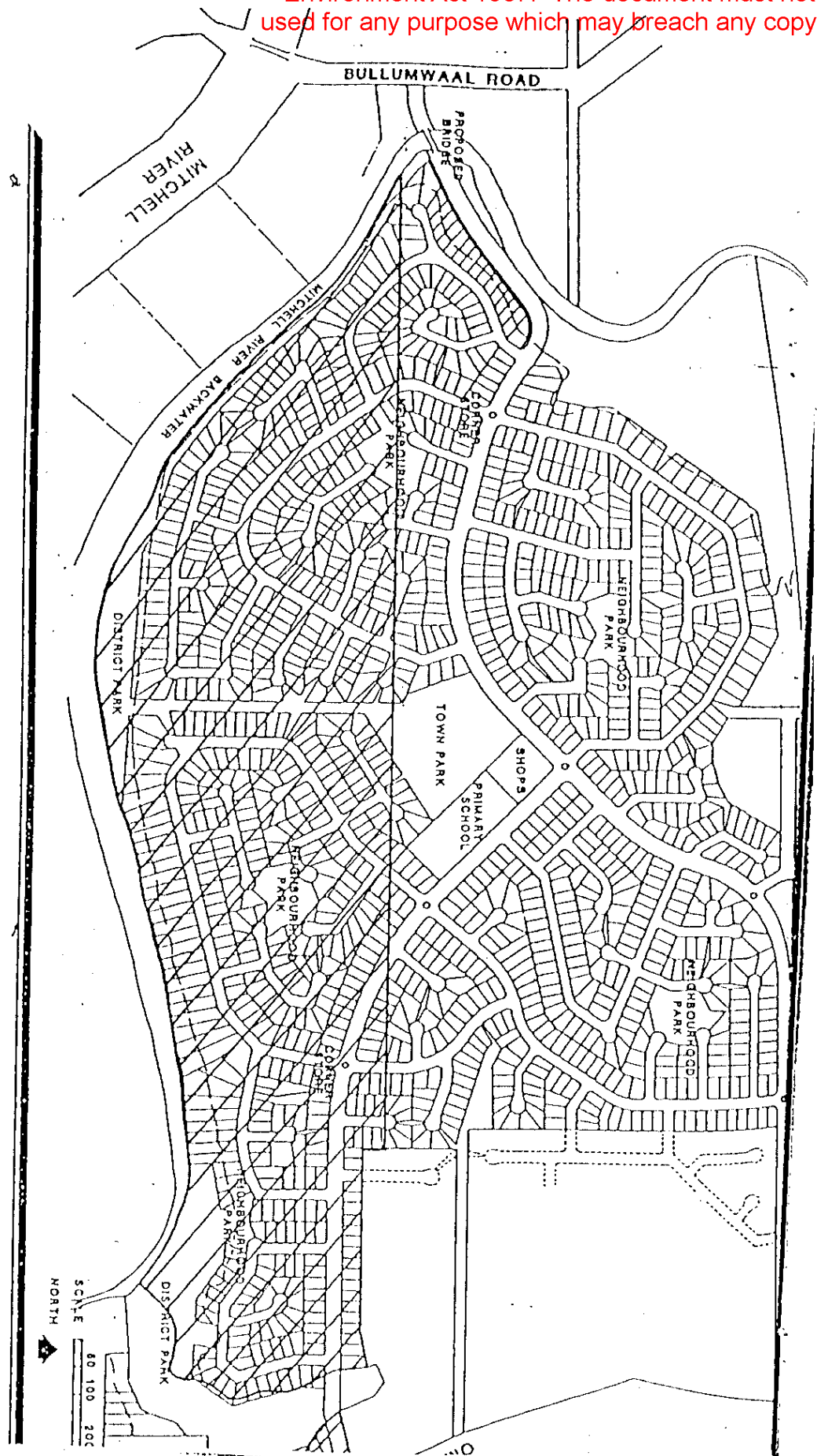
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16 JAN 1989

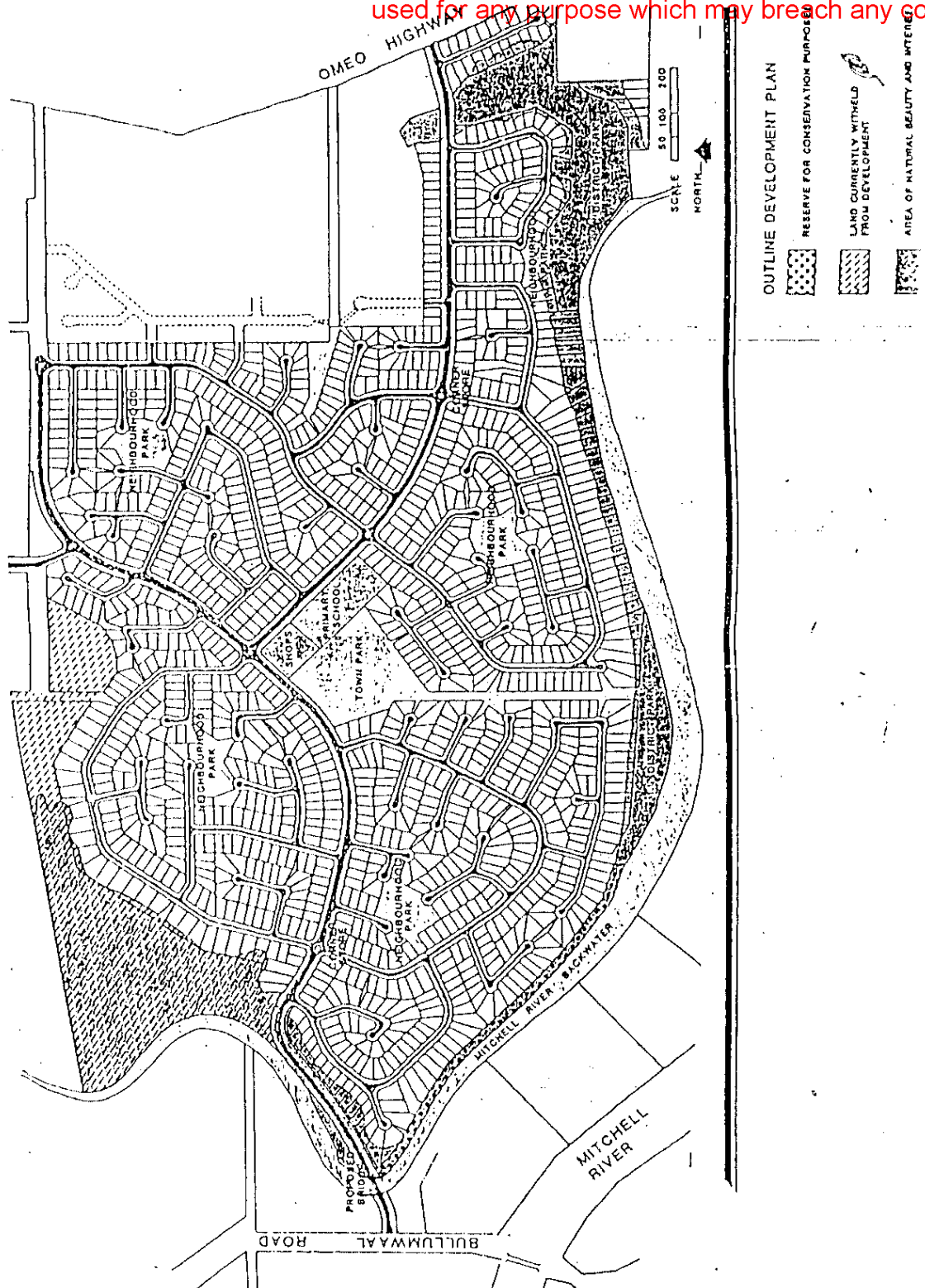
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SCHEDULE 3  
LAND CURRENTLY WITHIN  
RESIDENTIAL DEVELOPMENT ZC



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"A"

61

TOWN OF BAIRNSDALE PLANNING SCHEME

AMENDMENT NO. 60

PART A - GENERAL

1. Title

This Planning Scheme may be cited as the Town of Bairnsdale Planning Scheme, Amendment No. 60.

2. Arrangement of Scheme

This Planning Scheme is comprised of the following parts:

Part I - General

Part II - Variation of the Principal Scheme

3. Interpretations

"Approval Date" means the date on which notice of approval of the Planning Scheme by the Governor-in-Council was published in the Government Gazette.

"Principal Scheme" means the Town of Bairnsdale Planning Scheme approved by the Governor-in-Council on the 23rd day of November, 1976, as amended.

4. Application of Scheme

After the approval date the Principal Scheme shall be amended and varied in the manner and to the extent shown in Part II hereof, and such Principal Scheme and the variation herein shall be read and construed as one.

PART B - VARIATION OF THE PRINCIPAL SCHEME

5. Planning Scheme Map

The Planning Scheme Map of the Principal Scheme shall be varied in the manner and to the extent shown on the map attached as Schedule 1 hereto.



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TOWN OF DAINSDALE PLANNING SCHEME  
AMENDMENT N° 60  
SCHEDULE 1



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TOWN OF BAIRNSDALE PLANNING SCHEME

AMENDMENT NO. 62

PART A - GENERAL

1. Title

This Planning Scheme may be cited as the Town of Bairnsdale Planning Scheme, Amendment No. 62.

2. Arrangement of Scheme

This Planning Scheme is comprised of the following parts:

Part I. - General

Part II - Variation of the Principal Scheme

3. Interpretations

"Approval Date" means the date on which notice of approval of the Planning Scheme by the Governor-in-Council was published in the Government Gazette.

"Principal Scheme" means the Town of Bairnsdale Planning Scheme approved by the Governor-in-Council on the 23rd day of November, 1976, as amended.

4. Application of Scheme

After the approval date the Principal Scheme shall be amended and varied in the manner and to the extent shown in Part II hereof, and such Principal Scheme and the variation herein shall be read and construed as one.

PART B - VARIATION OF THE PRINCIPAL SCHEME

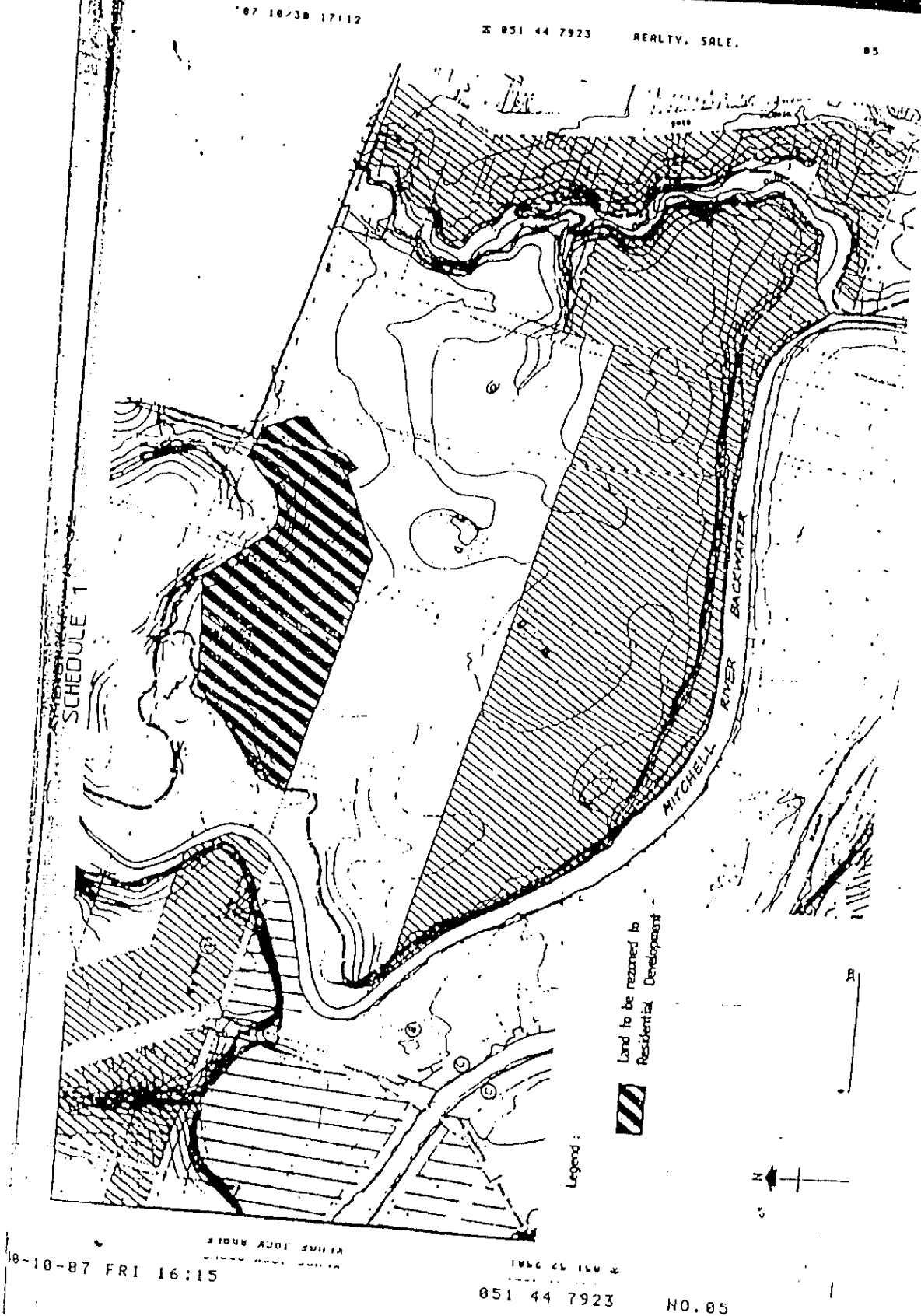
5. Planning Scheme Map

The Planning Scheme Map of the Principal Scheme shall be varied in the manner and to the extent shown on the map attached as Schedule 1 hereto.

*[Handwritten signature]*

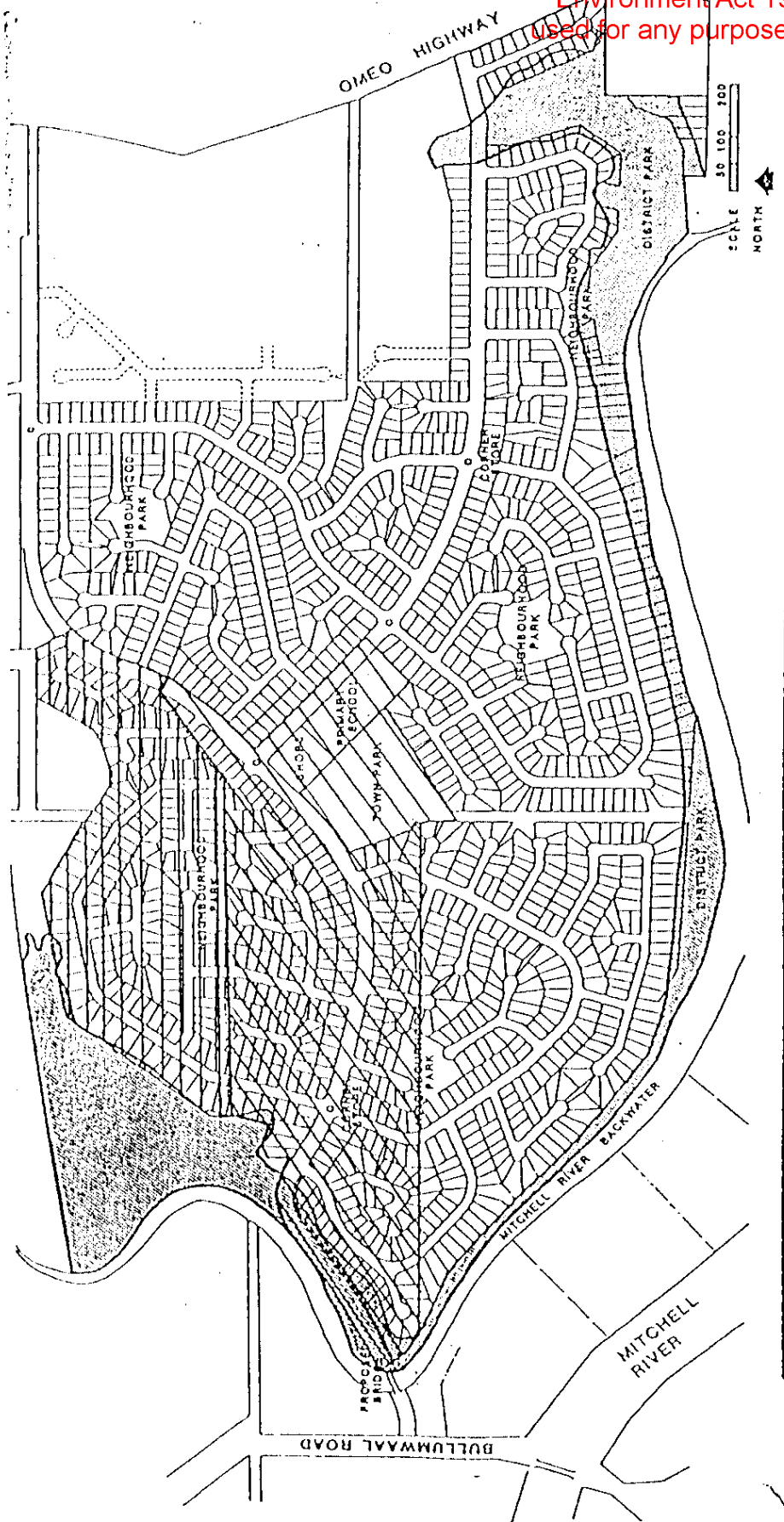
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## SCHEDULE 4

PROPOSED AMENDMENT NO. 1.

PROPOSED AMENDMENT NO. 2.



RESIDENTIAL DEVELOPMENT ZONE



RESIDENTIAL DEVELOPMENT ZONE



AREA OF NATURAL BEAUTY AND INTEREST

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DATED

19

TAIRUA NO. 10 PTY. LTD.  
TAIRUA NO. 13 PTY. LTD. and  
TAIRUA NO. 14 PTY. LTD.

-and-

THE TOWN OF BAIRNSDALE

-----  
AGREEMENT MADE PURSUANT TO  
SECTION 173 OF THE TOWN AND  
COUNTRY PLANNING ACT 1987.  
-----

CARROLL & DILLON  
Solicitors  
2nd Floor  
84 William Street  
MELBOURNE 3000

Tel: (03) 670 5407  
Ref: JEM 88/800070

DATED 5<sup>TH</sup> MARCH 1990

THE TOWN OF BAIRNSDALE

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 PLANNING AND ENVIRONMENT  
ACT 1987

MADDOCK LONIE & CHISHOLM  
Solicitors,  
440 Collins Street,  
Melbourne.

602 5677 YP:JEP 295/20931

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Our ref: 19159

14 May 2021

Coordinator Statutory Planning  
East Gippsland Shire Council  
Via email: [planning@egipps.vic.gov.au](mailto:planning@egipps.vic.gov.au)

**Attention: Mr. Robert Pringle**

Dear Robert,

**Re: Application for Planning Permit  
Variation to Liquor Licence and Display of Signage  
Shop 15-16, 30 Howitt Avenue, Eastwood**

On behalf of our Client, Aroma Coffee House and Eatery, please find enclosed an Application for Planning Permit to enable the sale and consumption of alcohol and display of signage associated with their recently expanded premises.

Our Client has been operating from Shop 16, 30 Howitt Avenue since January 2019 and has quickly developed a loyal customer base. A Planning Permit was issued by Council on 21 January 2019 that allowed for the sale and consumption of liquor, display of business identification signage and a reduction in car parking requirement.

A Restaurant and Café Licence (Licence No. 32350728) was subsequently obtained by our Client, which prescribes a maximum capacity of 67 patrons, and the following trading hours for the sale and consumption of alcohol:

ANZAC Day:	Between 12 noon and 11pm
Any other day:	Between 11am and 11pm



*Existing premises at Shop 16*

The business has recently expanded into the adjoining premises (Shop 15) to provide a new bar and dining area, more indoor seating and inside bathroom facilities.





*Expanded floor area at Shop 15*

The expanded dining area opened to customers recently, with a temporary Liquor Licence (Limited Licence 90158826) issued on 26 April 2021 to provide for the sale and consumption of alcohol within the expanded dining area specifically for Mother's Day (9 May 2021).

The subject Application now seeks to provide for the ongoing sale and consumption of alcohol within the expanded premises, pursuant to Clause 52.27 relating to *Licensed Premises*. Permission is sought for the following:

- An increase in the area where liquor is allowed to be consumed or supplied, to encompass the additional floor area and outdoor seating area. A new Red Line Plan is enclosed which depicts the area proposed to be included within the amended Liquor Licence.
- The number of patrons allowed under a licence to be increased to 137, to reflect the additional floor area.
- Variation in hours to reflect the ordinary hours for a Restaurant and Café Licence, being as follows:  
 7am to 11pm, Monday-Saturday (excluding ANZAC Day & Good Friday);  
 10am to 11pm on Sunday; and  
 Noon to 11pm, ANZAC Day and Good Friday.<sup>1</sup>
- To amend the description of the subject land on the Liquor Licence to reference Shops 15 and 16, not Shop 14 as currently nominated. At the time the Liquor Licence was obtained the existing premises was known as Shop 14, however the Property Managers have subsequently renumbered the individual tenancies. The existing premises is now known as Shop 16, and the additional premises as Shop 15.

<sup>1</sup> <https://www.vcglr.vic.gov.au/liquor/restaurant-cafe/apply-new-licence/things-consider-applying>

The Application is supported by a Maximum Patron Capacity Report prepared by East Gippsland Building Permits.

Whilst Clause 52.27 relating to Licensed Premises calls for referral and notice in accordance with the requirements of Clause 66, we note that the nature of the proposal is exempt from such requirement. The Application does not require referral to the Victorian Commission for Gambling and Liquor Regulation as it not associated with a bar, hotel or nightclub that is to operate after 1am, as stipulated in the Table to Clause 66.03. Similarly, referral is not required to Victoria Police, consistent with the requirements of the Table to Clause 66.05 as the proposal is not for a bar, hotel or nightclub that is to operate after 1am.

The proposed variation to the arrangements for the sale and consumption of liquor is considered a sound Planning outcome which responds appropriately to the decision guidelines of Clause 52.27 having regard for the following:

- The proposal is entirely consistent with State Policy strategies that encourage commercial facilities within existing neighbourhood activity centres, ideally located to service the needs of the local population (Clause 17.02-1S).
- The expansion of an existing business into a premises that has been in the most part vacant since construction is considered a positive response to Local Policy strategies which encourage the consolidation of the local activity centre (Clause 21.09-1).
- Concerns about possible amenity impacts on the surrounding area can largely be dismissed given the premises has operated for twenty-eight months without issue. Practices successfully adopted by management for the responsible serving of alcohol will not change as a result of the expanded footprint and patron capacity. The business currently operates with no visible impact on the amenity of the surrounding area.
- The proposed change to the hours within which alcohol is able to be served is consistent with the business's current trading hours. To our Client's knowledge, there are no recorded incidents of public disturbance arising from our Client's premises, or from patrons leaving the premises. We have contacted Sergeant Hodder of Victoria Police who previously oversaw the Bairnsdale Liquor Accord, who has confirmed there are no recorded instances of any anti-social behaviour arising from the premises<sup>2</sup>.
- By increasing the capacity of an existing licensed premises, potential concerns relating to cumulative impact have little relevance.

As part of the expansion, additional business identification signage is proposed to the building's façade, overlooking the accessway and car parking area to the west. Three signage elements are proposed, two of which have been installed, as our Client had relied upon the ability for each premises to erect 8m<sup>2</sup> of business identification signage per premises, in accordance with Section 1 to Clause 52.05-11.

<sup>2</sup> Pers comm, 12 May 2021.



*Recently installed signage on façade of Shop 15*

Conservatively, we have presumed that the extension of the existing premises means the Section 1 allocation has been exhausted, and the additional signage, with a combined area of approximately 6.73m<sup>2</sup>, will require Planning approval.

The enclosed Signage Plan (Version 1) depicts the three signage elements which are described as follows:

- The circular Aroma 'coffee stain' sign to the south of the entry doors, with a radius of 1.2m and an area of approximately 4.5m<sup>2</sup>. This sign has been installed.
- The rectangular signage panel affixed to the four windows to the north of the entry doors, with each panel measuring 200mm by 750mm. The total signage area for this strip of five panels is 0.75m<sup>2</sup>. This sign type has also been installed.
- Lettering affixed to the fascia of the verandah with an area of approximately 1.48m<sup>2</sup>. This sign type has not yet been installed.

The extent of signage proposed is considered reasonable given each sign is affixed to the building fabric. No additional structures are proposed, ensuring there will be no impact on views or protrusions into the skyline or a driver's line of sight. Substantial areas of unobscured glass remain available for passive surveillance within the building façade, providing an active frontage.

The environment within which the signs will be displayed is not a sensitive or natural location. Advertising signage is a dominant feature of the buildings presenting to the car park and accessways.



The scale of signage proposed is in keeping with that displayed by other businesses within the neighbourhood activity centre, and maintains a common theme with existing signage associated with Shop 16.



*Existing signage on the western façade of Shop 16*

No illumination of the signage, internal or external is proposed, avoiding any potentially negative impacts relating to glare or intensity to pedestrians or passing vehicles.

The scale and form of signage proposed is considered appropriate for the nature of the business, and will be easily integrated into the existing context.

The expansion of the premises will not give rise to an additional car parking demand beyond that anticipated by the original development. The original development proposed the subject land would be used for the purposes of an office. At the time of the original approval, an office use required a car parking provision in the order of 3.5 spaces per 100m<sup>2</sup> of net floor area (as prescribed by the car parking table to Clause 52.06-5 implemented through Planning Scheme Amendment VC37 on 19 January 2006).

Plans prepared by Architecture HQ detail a car parking provision of 4.4 spaces per 100m<sup>2</sup> for that portion of the subject land to be used for Office / Medical / Dental. Based on the controls of the day, parking provision associated specifically with Shop 15 was surplus to the minimum provision prescribed by the Planning Scheme.

Under today's controls (as prescribed by Table 1 to Clause 52.06-5, implemented through Planning Scheme Amendment VC160 on 24 January 2020), the car parking ratio required for a Food and drink premises is 4 spaces per 100m<sup>2</sup> of leasable floor area.

In accordance with the provisions of Clause 52.06-3, the proposed increase in floor area associated with an existing use does not require a Planning Permit for the provision of car parking, given the number of car parking spaces currently provided for the approved use of Shop 15 (Office) has not been reduced by the new use.

The increase in floor area does not require an increase in the provision of bicycle facilities as prescribed by Clause 52.34. The premises will continue to rely on existing provision.



*Existing bicycle facilities to the south of the premises*

We respectfully request that Council consider our request favourably and resolve to grant a Planning Permit for the variation of a Liquor Licence and the display of advertising signage.

As always, please do not hesitate to contact our office should you require any further information in relation to this matter.

Regards,

KATE YOUNG

Encl. Application for Planning Permit  
Fees (\$1,977.15 – via cheque)  
Red Line Plan  
Signage Plan  
EGPB Maximum Patron Capacity Report



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Thursday, 13 May 2021

**Building Report:** Victorian Commission for Gaming and Liquor Regulation  
Five Zero Holdings Pty Ltd  
PO Box 2004  
GEELONG VIC 3220

### **Introduction:**

This report has been requested by Ben West to determine the maximum number of people to be accommodated at the Aroma Coffee House & Eatery.

### **Scope:**

The scope of this report was to measure the building and facilities provided and determine the maximum number of people accommodated as set out in the BCA having regard to:

- a) floor area
- b) facilities provided
- c) width of exits
- d) Liquor Licensing Commission requirements

This report is limited to the tenancy of number 15, 16 and external proposed licence area.

### **Building:**

The building is a single storey building being the southern two tenancy located at 30 Howitt Avenue, Eastwood 3875.

### **Calculations:**

- a) **Floor Area**  
The individual floor areas of each relevant room were measured and multiplied by the relevant number of people as set out in the BCA Table D1.13 (see Table (a) below).
- b) **Facilities Provided**  
The number of sanitary facilities provided were identified, recorded and compared with the numbers required as per BCA Part F2.3. These are listed as set out in Table (b) below.
- c) **Exit Widths**  
The exits were identified, measured and compared with the provisions of BCA Part D1.6. These are listed in Table (c) below.
- d) **Victorian Commission for Gaming and Liquor Regulation Requirements.**  
The individual floor areas of each relevant room and outside area were measured and multiplied by 0.75.

**Table (a) – Floor Areas**

Ground Floor (internally)

Room	Area	Rate	Number
Dinning Room 1	73	1	73
Dinning Room 2	64	1	64
South Verandah	N/A	-	-
West Verandah	N/A	-	-
<b>Total Number of People</b>			<b>137</b>

**Table (b) – Number of Facilities**

Location	Male Pan	Urinal	Male Basin	Female Pan	Female Basin
Male	3	1	2		
Female				3	3
Disabled		1	1	1	1
<b>Totals</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>4</b>	<b>4</b>

Number of People	1 → 100	2 → 100	2 → 200	4 → 150	2 → 150
	2 → 400		1 → 200		1 → 200
<b>Totals</b>	<b>500</b>	<b>100</b>	<b>400</b>	<b>150</b>	<b>350</b>

Maximum Number – 100 Males based on urinals  
– 150 Females based on pans

Must be equal numbers per sex.

Therefore the maximum number of people based on urinals is **200**.

ie: 100 Males & 100 Females.

**Table (c) – Width of Exits**

Exit Location	Actual Width	Width	Effective Exit Width
West door 1	1:800	.250	2,000
West door 2	1:800	.250	2,000
South door	1:800	.250	2,000
<b>Total Exit Width</b>			<b>6m</b>

2 meters → 200 People

4 meters → 600 People

**Total: 800 People**



**Table (d) – CGLR Requirements**


Ground Floor

Room	Area	Rate	Number
Dining Room 1	73	@.75	97
Dining Room 2	64	@.75	85
South Verandah	37.5	@.75	50
South Verandah 2	11.5	@.75	15
West Verandah	55.4	@.75	73
<b>Total Number of People</b>			<b>320</b>

**Summary 1 VCGLR**

The maximum number of people to be accommodated on the Ground Floor Class 6 part of the building is 182 people internally and externally 138 people giving a total of 320 people based on the Liquor Licensing Commission Requirements however this is limited to 137 based on the floor area available in accordance with the National Construction Code (NCC).

Signed

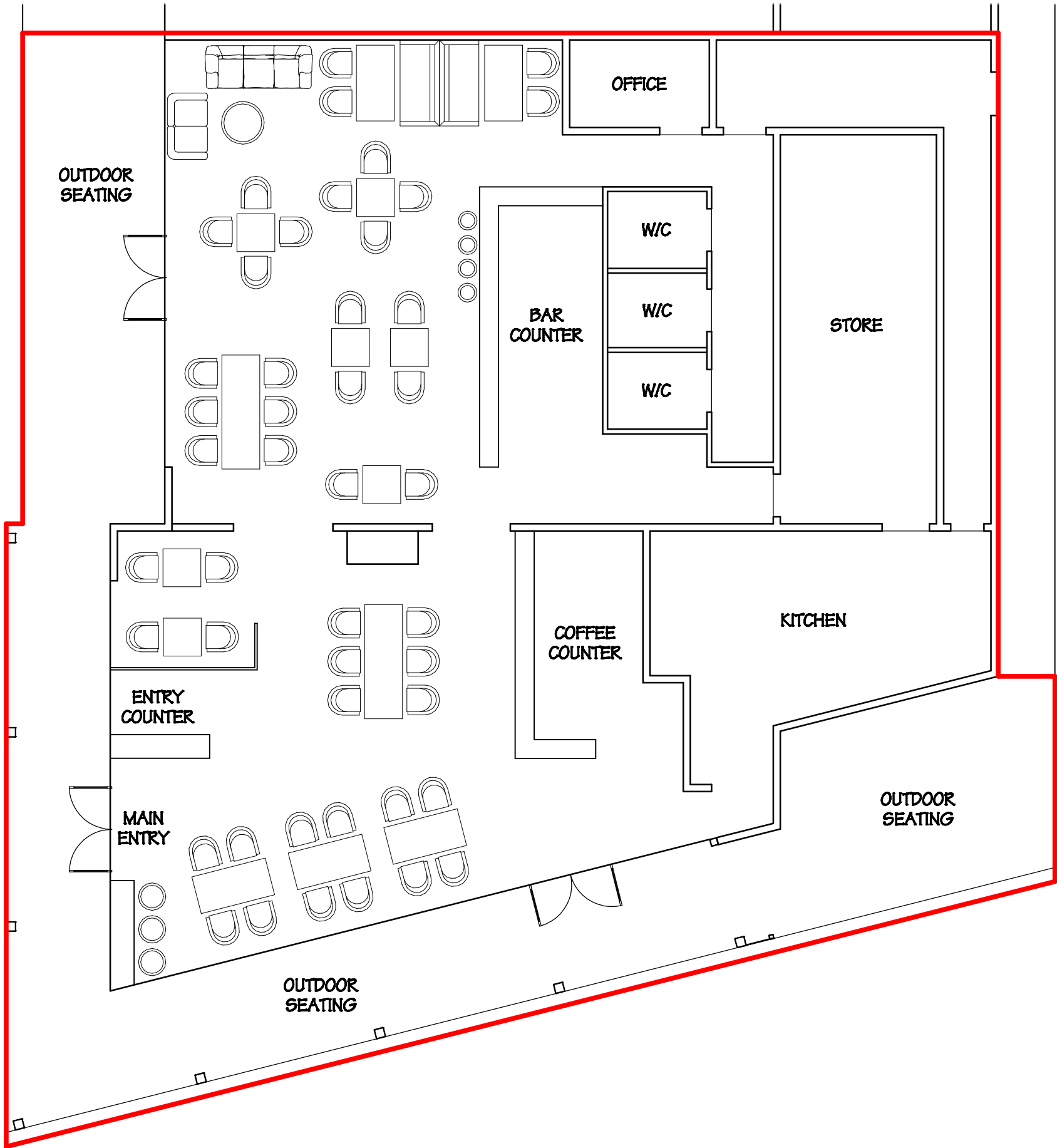


Brian Ross  
Building Surveyor – BS1274  
East Gippsland Building Permits Pty Ltd.

REDLINE PLAN

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**Crowther & Sadler** Pty. Ltd.  
LICENSED SURVEYORS & TOWN PLANNERS  
152 MACLEOD STREET, BAIRNSDALE, VIC., 3875  
P. (03) 5162 5011 E. [contact@crowthersadler.com.au](mailto:contact@crowthersadler.com.au)

**AROMA COFFEE HOUSE & EATERY**  
SHOP 16/30 HOWITT AVENUE, EASTWOOD

SCALE (SHEET SIZE A3)

SURVEYORS REF.

1 : 100

19519

Printed 15/06/2021

VERSION 2 - DRAWN 13/06/2021

Page 56 of 57

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AROMA COFFEE HOUSE & EATERY SHOP 16/30 HOWITT AVENUE, EASTWOOD	NOTATIONS		SIGNAGE PLAN
<div>Crowther &amp; Sadler Pty. Ltd.</div> <div>LICENSED SURVEYORS &amp; TOWN PLANNERS</div> <div>152 MACLEOD STREET, BAIRNSDALE, VIC., 3875</div> <div>P. (03) 5152 5011 E. contact@crowthersadler.com.au</div>	SCALE (SHEET SIZE A3)	SURVEYORS REF.	
	NOT TO SCALE	19519 VERSION 1 - DRAWN 12/05/2021	
FILENAME: W:\Jobs\19000-19999\19500-19599\19519 Aroma Coffee House\19519 Signage Plan V1.pro			Printed 15/06/2022