



P O Box 350, Torquay, Victoria 3228
1 Merrijig Drive, Torquay
Telephone (03) 5261 0600
Email planningapps@surfcoast.vic.gov.au

NOTICE OF PROPOSAL TO AMEND/ END AN AGREEMENT

Description of the land affected by the agreement	2955 PRINCES HIGHWAY WINCHELSEA
Description of the proposal	Application to Amend a Section 173 Agreement
Who initiated the proposal	The proposal was initiated by Anderson Road Developments Pty Ltd of applicant, who applied to the responsible authority for agreement to the proposal under section 178A of the <i>Planning and Environment Act 1987</i>
In accordance with Section 178A(3) of the <i>Planning and Environment Act 1987</i> the responsible authority has notified the applicant that it agrees in principle to the proposal.	
The application reference number is:	OA2620 Please quote this number when making enquiries
You may look at the application and any documents that support the application at the office of the responsible authority	Surf Coast Shire 1 Merrijig Drive Torquay 3228
Plans may be viewed between the hours of 8:30 am to 5:00 pm Monday to Friday Or on the ePlanning portal at: https://eplanning.surfcoast.vic.gov.au/Account/Login.aspx	
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 <i>Planning and Environment Act 1987</i> , may object to, or make any other submission in relation to, the proposal.	
The responsible authority will not make a decision on the proposal under section 178E of the <i>Planning and Environment Act 1987</i> before	
27 March 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.	

PUBLIC NOTICE INFORMATION SHEET
INFORMATION ABOUT THIS NOTICE OF APPLICATION FOR PLANNING PERMIT

Why this notice was sent to you

This application has been advertised in accordance with Section 52 of the *Planning and Environment Act, 1987*. We advertise in order to notify surrounding property owners, occupiers, and other interested parties of a planning proposal which may affect them. This provides you with the opportunity to raise any concerns with us regarding the application.

How to view plans

You are invited to view the application and associated plans at the Surf Coast Shire Planning Offices – 1 Merrijig Drive, Torquay prior to the closing date nominated on the front of the form (during business hours). The application can also be viewed online through the following link: <https://eplanning.surfcoast.vic.gov.au/Account/Login.aspx>

Objections

If you have any related concerns that you want Council to consider, these must be submitted in writing before a decision is made on the application. Your concerns should relate to the planning merits of the application and should outline how you are affected. An objection can be submitted via the ePlanning portal:

<https://eplanning.surfcoast.vic.gov.au/Account/Login.aspx>

How to submit an objection

- You can submit your object via the ePlanning portal
<https://eplanning.surfcoast.vic.gov.au/Account/Login.aspx>
- You can mail your objection to us at PO Box 350, Torquay Vic 3228
- You can email your objection to us at planningapps@surfcoast.vic.gov.au

We will acknowledge receipt of your objection in writing.

Availability of objector information under the Planning and Environment Act 1987

Section 57(5) of the Act provides that *the responsible authority must make a copy of every objection (including your name and personal information) available at its office for any person to inspect during office hours free of charge until the end of the period during which an application may be made for review of a decision on the application.*

A copy of your objection is also provided to the permit applicant.

The information contained in this online registry is provided for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. If you will only use the information for the purpose specified above and that any dissemination or distribution of this information



Application Form for Amending or Ending a Section 173 Agreement

Applicant Details is strictly prohibited.

Note: Pursuant to Section 178A of the Planning and Environment Act only the owner of land, or a person who has entered into an agreement under Section 173 in anticipation of becoming the owner of the land, may apply to the responsible authority for agreement to a proposal to amend an agreement in respect of that land, or end an agreement in respect of that land

Name	ANDERSON ROAD DEVELOPMENTS PT7 LD
Postal Address	PO BOX 133 GEELONG VIC 3220
Email Address	MATHEW@HBO.NET.AU
Contact Phone Number	0418 520 007

Section 173 Agreement Details

Reference and Date of Section 173 Agreement	AH 938203X
Planning Permit Number that Required the Section 173 Agreement	N/A - required pursuant to Amendment C65.
Address of Subject Land	2955 Princes Highway Wonthena
Volume, Folio and Plan of Subdivision Number	

Please Detail

The nature of the change sought to the Section 173 Agreement (eg amend or end):	Replace Outline Development Plan with the attached version
Reason for the proposed change to the Section 173 Agreement:	To facilitate the creation of 2,000sqm lots in the southern portion of the subject site
Has written consent to the proposed change been obtained from the parties to the Section 173 Agreement?	No

Declaration

I declare that I am the applicant and that all the information is true and correct.

Signature: _____

Date: _____

7-8-18

SURF COAST SHIRE	
FILE:	
FOLIO:	
15 AUG 2018	
OFFICER:	
FILE COPY <input type="checkbox"/>	DUPLICATE COPY <input type="checkbox"/>

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Application Form for Amending or Ending a Section 173 Agreement

Ending or Amending a Section 173 Agreement Checklist

When making an application to Council to amend or end a Section 173 Agreement the following documentation must be submitted:

Checklist item	Have you provided?
A completed application form This form can be downloaded from https://www.surfcoast.vic.gov.au/Property/Planning-and-building/Planning-FAQs/Section-173-Agreements#section-2 Remember it is against the law to give false and misleading information	✓
A Copy of Title A full, current copy of Title for the property including any restrictions/ covenants listed. A copy of Title can be obtained from https://www.landata.vic.gov.au/ Copies of Title must be no older than 30 days	✓
Details of all Parties to the Section 173 Agreement A suitably qualified legal practitioner may be required to prepare this information	✓
Written Consent from the Parties to the Section 173 Agreement	—
A Company Search If the subject land is owned by a company, a company search must be submitted with the application to confirm correct ownership details. The company search must be no older than 30 days	✓
Fee An application fee of \$620.30. Please note: Fees may be subject to change	✓
Written Statement Outlining the Reasons for Amending or Ending the Agreement The application must be accompanied by a written statement that outlines the purpose of the amendment or ending of the Agreement, why the amendment or ending of the agreement is required, and any changes in circumstances that necessitates the proposed amendment/ ending of the Agreement.	✓

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

VOLUME 11922 FOLIO 510

Security no : 124073293647V
Produced 07/08/2018 10:43 am

LAND DESCRIPTION

Lot C on Plan of Subdivision 737620J.
PARENT TITLE Volume 11656 Folio 642
Created by instrument PS737620J 13/10/2017

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor
ANDERSON ROAD DEVELOPMENTS PTY LTD of 3 DALTON STREET SOUTH GEELONG VIC 3220
PS737620J 13/10/2017

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AG607785C 02/07/2009
BENDIGO AND ADELAIDE BANK LTD

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

AGREEMENT Section 173 Planning and Environment Act 1987
AH938203X 10/05/2011

AGREEMENT Section 173 Planning and Environment Act 1987
AJ197987S 15/09/2011

DIAGRAM LOCATION

SEE PS737620J 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 03500L BENDIGO AND ADELAIDE BANK LTD - SAFE CUSTODY
Effective from
13/10/2017

DOCUMENT END

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APPLICATION BY RESPONSIBLE AUTHORITY FOR MAKING RECORDING OF AN AGREEMENT

AH938203X



Section 181

Planning and Environment Act 1987

Lodged by: **Best Hooper**
Name:

Phone:

Address:

Ref: **485**

Customer Code:

The Authority having made an agreement referred to in section 181(1) of the **Planning and Environment Act 1987** requires a recording to be made in the Register for the land.

Land: 2955 Princes Highway Winchelsea Lot 1, TP1709025 - Vol 09350 Fol 340 **4**

Authority: SURF COAST SHIRE COUNCIL of 25 Grossmans Road, Torquay 3228

Section and Act under which Agreement made:

Section 173 Planning and Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority:

Name of Officer:

Mark Davies

Position held:

Chief Executive Officer

Dated:

27.4.11

AH938203X

10/05/2011 \$105.20 173



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DATED the **11** day of **March**

2011

SURF COAST SHIRE COUNCIL

- and -

ANDERSON ROAD DEVELOPMENTS PTY LTD

**Agreement Under Section 173
of the *Planning and Environment Act 1987***

Land: 2955 Princes Highway Winchelsea

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10/05/2011 \$105.20 173


PLANNING AND ENVIRONMENT ACT 1987

SECTION 173 AGREEMENT

THIS AGREEMENT is made the 4 day of March 2011

BETWEEN:

Surf Coast Shire Council of 25 Grossmans Road, Torquay, in the State of Victoria
("the Council")

and

ANDERSON ROAD DEVELOPMENTS PTY LTD of Level 2, 1 Yarra Street, Geelong
in the State of Victoria
("the Owner")

WHEREAS:

- A. The Council is the Planning Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The Subject Land is intended to be rezoned from Farming Zone to part Residential 1 Zone and part Low Density Residential under Amendment C65 to the Planning Scheme.
- D. The Council supports the Amendment subject to the execution of this Agreement by the Owner.
- E. As at the date of this Agreement, the Subject Land in C/T Lot 1 TP 1709025 V.09350 F.340 is encumbered by Mortgage No. **AG607785C** in favour of the Mortgagee. The Mortgagee has consented to the Owner entering into this Agreement with respect to that part of the Subject Land.
- F. The parties enter into this Agreement to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

The information contained in this online registry is provided for the purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By entering this website you acknowledge and agree that you will only use the information for the purpose specified above and **IT IS AGREED:** circulation or distribution of this information is strictly prohibited.

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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 **"Approved Development Contributions Plan"** has the same meaning as in the Act.
- 1.4 **"the Council"** means the Surf Coast Shire as the Planning Authority for the Planning Scheme and any subsequent person or body which is the Planning Authority for the Planning Scheme.
- 1.5 **"Lot"** has the same meaning as in the *Subdivision Act 1988*.
- 1.6 **"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.
- 1.7 **"the Owner"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes the Mortgagee in Possession.
- 1.8 **"Party or Parties"** means the Owner and the Council under this Agreement as appropriate.
- 1.9 **"Plan of Subdivision"** has the same meaning as in the *Subdivision Act 1988*.
- 1.10 **"Planning Scheme"** means the Surf Coast Planning Scheme.

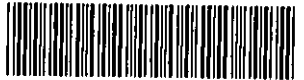
The information contained in this online registry is provided for the purpose of the planning process as set out in the Planning and Environment Act 1988. "Public Open Space" has the same meaning as in the Subdivision Act 1988. By entering this website you acknowledge and agree that you will only use the information for the purpose specified above and that any dissemination or distribution of this information is strictly prohibited.

1.12 "the Subject Land" means land known as:

- 2955 Princes Highway, Winchelsea (Certificate of Title Lot 1 TP 1709025 Volume 09350 Folio 340)

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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 word or expression used in this Agreement has its ordinary meaning unless that word or expression is defined in this Agreement. If a word or expression is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.
- 2.6 any reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.7 the introductory clauses to this Agreement are and will be deemed to form part of this Agreement.
- 2.8 the obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run to law and equity with the Land **PROVIDED THAT** if and when 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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3. OWNER'S COVENANTS

- 3.1 The Owner covenants and agrees that the land shall not be subdivided, except generally in accordance with the Outline Development Plan attached to this Agreement, and no lot shall be less than 1,000 square metres in area.
- 3.2 The Owner covenants and agrees that lots adjacent to the Business 4 Zone shall not be less than 2,000 square metres in area.
- 3.3 The Owner covenants and agrees that an Environmental Management Plan (EMP) will be submitted with any planning permit application to subdivide the land. The EMP will include:
 - 3.3.1 A description and map of all environmental assets located on and adjacent to the subject land, including vegetation and drainage lines.
 - 3.3.2 A list of fauna present and a description of various habitat opportunities (or limitations) including vegetation type, structure or other habitat niches.
 - 3.3.3 An analysis of the impacts of the proposed use and development on local flora and fauna.
 - 3.3.4 A street tree planting program, including a list of species, number of plants and locations of proposed planting. Species must comprise indigenous species associated with the former EVC. This should include planting along a pathway to connect up to the Golf Course and playground (sited at the north end of the Golf Course) through the development.
 - 3.3.5 Provision of landscaping areas/envelopes within lots abutting Anderson Street and requirements for some landscaping of these areas utilising indigenous species.
 - 3.3.6 A prohibition on the planting of environmental weeds on any part of the land.

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3.3.7 An investigation of the possibility of reusing surplus soil resulting from subdivision construction works for landscaping within the estate.

3.4 The Owner covenants and agrees that private access will not be gained for any lot directly from Anderson Street.

3.5 The Owner covenants and agrees that landscape areas shall be set aside on designated lots as shown on the Outline Development Plan attached to this Agreement. These landscape areas shall be planted with species indigenous to the locality and shall be maintained to the satisfaction of the Responsible Authority. No buildings will be permitted to be erected within the landscape areas.

3.6 The Owner covenants and agrees that no solid fencing (ie. less than 50% permeable) shall be erected along a property boundary which abuts Anderson Street or any future municipal reserve abutting Anderson Street.

3.7 The Owner covenants and agrees as follows:



PUBLIC OPEN SPACE CONTRIBUTION

3.7.1 To make a cash contribution to the Council for Public Open Space being 10% of the site value of the Subject Land intended to be used for residential purposes to the satisfaction of the Council ("the Public Open Space Contribution").

3.7.2 The Public Open Space Contribution cash payment required for each stage of subdivision shall be made prior to the issue of a statement of compliance for that stage of subdivision of the Subject Land and will be based on the valuation of the Subject Land at that time.

3.8 The Owner covenants and agrees to not make any application for a planning permit for the subdivision of the subject land unless and until either:-

- a) A Development Contributions Plan applying to the subject land is incorporated into the Planning Scheme, or

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b) The Owner enters into a further Section 173 Agreement under which it covenants to make development contributions in relation to the subject land to the satisfaction of the Council.

4. OWNER'S WARRANTIES

4.1 Without limiting the operation or effect which this Agreement has the Owner warrants that:

4.1.1 apart from the parties referred to in this Agreement, or other persons disclosed in writing to the Council prior to the signing of this Agreement, no other person has any interest either legal or equitable in the Subject Land which may be affected by this Agreement or by development or use of the Subject Land pursuant to the Scheme or any permit or approved plan under the Scheme

4.1.2 the Owner has obtained all necessary authorities and consents to bind all other persons who have any interest either legal or equitable in the Subject Land.

5. FURTHER COVENANTS OF THE OWNER

The Owner covenants and agrees that he will:

5.1 Notice

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

5.2 Compliance

5.2.1 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;



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5.2.2 will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement and the register on the Certificate of Title to the Subject Land in accordance with Section 181 of the Act and to 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.

5.3 Successors in Title

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

- 5.3.1 Give effect to and do all acts and sign all documents which require those successors to give effect to this Agreement; and
- 5.3.2 Execute a Deed agreeing to be bound by the terms of this Agreement.

Agreement under Section 173 of the Act

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

6. GENERAL MATTERS

6.1 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:

- 6.1.1 by delivering it personally to that party;
- 6.1.2 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



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6.1.3 sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post

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6.2 a notice or other communication is deemed served:

6.2.1 if delivered, on the next following business day;

6.2.2 if posted, on the expiration of two business days after the date of posting; or

6.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested transmission before the end of the business day on which it is sent.

6.3 No Waiver

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

6.4 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.

6.5 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any planning approval or certification of any plans of subdivision applicable to the Subject Land or relating to any use or development of the Subject Land.

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7. COMMENCEMENT OF AGREEMENT

This Agreement commences from the date of this Agreement.

8. ENDING OF AGREEMENT

This Agreement shall end when the parties agree in writing to terminate the Agreement.

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

THE COMMON SEAL of SURF COAST)
SHIRE COUNCIL was hereunto affixed)
in accordance with instrument of delegation)
dated 23 September 2009 in the presence of:)

..... Chief Executive Officer

EXECUTED by **ANDERSON ROAD**)
DEVELOPMENTS PTY LTD in)
accordance with section 127(1) of the)
Corporations Act 2001 by being)
signed by authorised persons:

..... Director

MATHEW HOARE

..... Full Name

99 BARWON TCE
STH GEELONG VIC

..... Usual Address

.....

..... Director/Secretary

.....

..... Full Name

.....

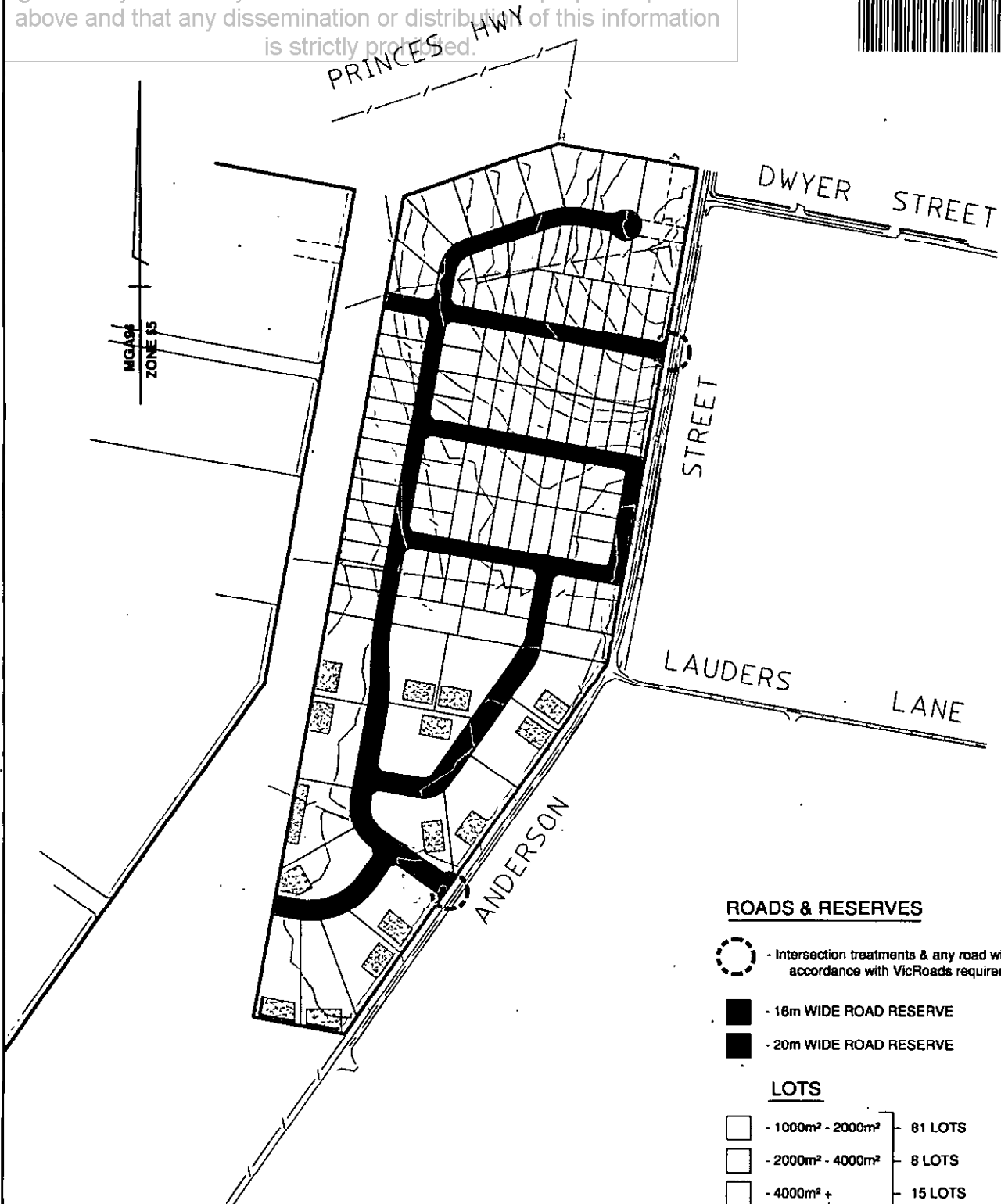
..... Usual Address

.....

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AH938203X

10/05/2011 \$105.20 173



ROADS & RESERVES

- Intersection treatments & any road widening in accordance with VicRoads requirements
- 16m WIDE ROAD RESERVE
- 20m WIDE ROAD RESERVE

LOTS

- 1000m² - 2000m² } 81 LOTS
 - 2000m² - 4000m² } 8 LOTS
 - 4000m² + } 15 LOTS
 - POTENTIAL W.S.U.D. & STORMWATER RETENTION } 4 LOTS
 - 600m² EFFLUENT ENVELOPE
 - 3m DEEP LANDSCAPE ENVELOPE IN LOT LOCATION TO BE CONFIRMED BASED UPON DRAINAGE REQUIREMENTS
- TOTAL 108 LOTS**

ST. QUENTIN
 Surveyors · Town Planners · Engineers
 54 CORIO STREET, P.O. BOX 919, GEELONG 3220
 TELEPHONE (03) 5229 2011 FAX (03) 5229 2909

This plan has been prepared to support a Town Planning Application to subdivide land and should not be used for any other purpose. It is subject to Approval by Council and may be amended without notice.
 This note is an integral part of this plan.

**OUTLINE DEVELOPMENT PLAN
 ANDERSON STREET
 WINCHELSEA**

SCALE 1 : 4000	LEVEL DATUM A.H.D.	
TITLE REF.		
PLAN DRAWN A3 30/11/10	SURVEY REF. 8202	VER. 06

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FORM 18

Schedule 1 of the Planning and Environment Regulations 2005

**APPLICATION BY A RESPONSIBLE AUTHORITY
FOR THE MAKING OF A RECORDING OF AN AGREEMENT**

AJ197987S

Section 181

15/09/2011 \$107.50 173


Planning and Environment Act 1987

Lodged by:

Name: BEST HOOPER

Phone: 9670 8951

Address: 563 Little Lonsdale Street, Melbourne

Ref: JL:JF:11270738

SURF COAST SHIRE	
FILE	0108
FOLIO	DN/38/936
26 AUG 2011	
OFFICER	
FILE COPY <input checked="" type="checkbox"/>	PRINTED COPY <input type="checkbox"/>

Customer Code: 0485 U

The Authority having made an Agreement referred to in Section 181(1) of the *Planning and Environment Act 1987* requires a recording to be made in the Register for the land.

Land: Certificate of Title Volume 09350 Folio 340.

Authority: Surf Coast Shire Council
25 Grossmans Road, Torquay Vic 3228

Section and Act under which Agreement made:

Section 173 Planning and Environment Act 1987

A copy of the Agreement is attached to this Application.

Signature for the Authority: 

Name of Officer: MARK DAVIES

Date: 2-9-11

SURF COAST SHIRE	
26 AUG 2011	
PLANNING	DEPARTMENT

AJ197987S

15/09/2011 \$107.50 173



2011

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SURFCOAST SHIRE COUNCIL

Council

- and -

ANDERSON ROAD DEVELOPMENTS PTY LTD

The Owner

**Agreement Under Section 173
of the *Planning and Environment Act 1987***

Land: 2955 Princes Highway, Winchelsea

BEST HOOPER
Solicitors
563 Little Lonsdale Street
MELBOURNE

Ref: TLC:MF:08271377
Tel: 9670 8951
Fax: 9670 2954

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PLANNING AND ENVIRONMENT ACT 1987
SECTION 173 AGREEMENT

THIS AGREEMENT is made the _____ day of _____ 2011

BETWEEN:

SURFCOAST SHIRE COUNCIL of 25 Grossmans Road, Torquay, in the State of Victoria ("the Council")

and

ANDERSON ROAD DEVELOPMENTS PTY LTD of Level 2, 1 Yarra Street, Geelong in the State of Victoria ("the Owner")

WHEREAS:

- A. The Council is the Planning Authority pursuant to the Act for the Planning Scheme.
- B. The Owner is the registered proprietor of the Subject Land.
- C. The Subject Land has been rezoned from Farming Zone to Residential 1 Zone and part Low Density Residential Zone under the Planning Scheme.
- D. Pursuant to an existing Section 173 Agreement (Dealing No. AH938203X) the Owner has agreed not to make application for a planning permit to subdivide the Subject Land without first entering into a further agreement to make development contributions in relation to the Subject Land to the satisfaction of the Council or until a Development Contributions Plan applying to the Subject Land is incorporated into the Planning Scheme ("the Existing Agreement").
- E. As at the date of this Agreement, the Subject Land is encumbered by Mortgage No. **AG607785C** 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 Council is preparing an Approved Development Contributions Plan for incorporation into the Planning Scheme. At the time of this Agreement there is no Approved Development Contributions Plan applying to the Subject Land.

G. The parties enter into this Agreement to achieve and advance the objectives of planning in Victoria and the objectives of the Planning Scheme in respect of the Subject Land.

AJ197987S



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 **"this Agreement"** means this Agreement and any agreement executed by the parties expressed to be supplemental to this Agreement.
- 1.3 **"Approved Development Contributions Plan"** has the same meaning as in the Act.
- 1.4 **"the Council"** means the Surf Coast Shire as the Planning Authority for the Planning Scheme Amendment and any subsequent person or body which is the Planning Authority for the Planning Scheme.
- 1.5 **"Lot"** has the same meaning as in the *Subdivision Act 1988*.
- 1.6 **"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.
- 1.7 **"the Owner"** means the person or persons registered or entitled from time to time to be registered by the Registrar of Titles as the proprietor or proprietors of an estate in fee simple of the Subject Land or any part of it and includes the Mortgagee in Possession.

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1.8 "Party or Parties" means the Owner and the Council under this Agreement as appropriate.

1.9 "Plan of Subdivision" has the same meaning as in the *Subdivision Act* 1988.

1.10 "Planning Scheme" means the Surf Coast Planning Scheme.

1.11 "the Subject Land" means the land situated at and being comprised in Volume and Folio as set out below:

- 2955 Princes Highway, Winchelsea (Certificate of Title Lot 1 TP 1709025 Volume 09350 Folio 340).

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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 word or expression used in this Agreement has its ordinary meaning unless that word or expression is defined in this Agreement. If a word or expression is not defined in this Agreement and it is defined in the Act it has the meaning as defined in the Act.
- 2.6 any reference to an Act, Regulation or the Planning Scheme includes any Acts, Regulations or amendments amending, consolidating or replacing the Act, Regulation or Planning Scheme.
- 2.7 the introductory clauses to this Agreement are and will be deemed to form part of this Agreement.



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2.8 the obligations of the Owner under this Agreement, will take effect as separate and several covenants which are annexed to and run to law and equity with the Land **PROVIDED THAT** if and when the Subject Land is subdivided, this Agreement must be read and applied so that each subsequent owner of a lot is only responsible for those covenants and obligations which relate to that Owner's lot.

3. OWNER'S COVENANTS

3.1 The Owner covenants and agrees as follows:

DEVELOPMENT INFRASTRUCTURE CONTRIBUTION

3.1.1 To pay to the Council an amount of \$3,310.43 per residential lot created through the subdivision of the Subject Land as a contribution towards the provision of development infrastructure as summarised in Table 3.1.1. These amounts shall be adjusted annually on July 1st each year (starting July 2011) to cover inflation by applying the Building Price Index June Quarter for Melbourne in Rawlinsons Australian Construction Handbook for capital works items; and land value change index derived by a Certified Practising Valuer for the land components, payment shall be made for each lot on any Plan of Subdivision for the Subject Land prior to the issue of a statement of compliance for any such lot.

Table 3.1.1: Summary of Development Infrastructure Charge

	Roads *	Community Facilities	Open Space and Recreation	Pathways & Trails	Total Development Infra. Charge
Area	Residential				
	Per Lot	Per Lot	Per Lot	Per Lot	Per Lot
Contribution	\$1,048.57	\$1083.44	\$379.63	\$798.79	\$3,310.43

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COMMUNITY INFRASTRUCTURE CONTRIBUTION

3.1.2 To pay to the Council an amount of \$601.30 per residential lot created through any Plan of Subdivision of the Subject Land as a contribution towards the provision of community infrastructure as summarised in Table 3.1.2. This amount shall be adjusted annually on July 1st each year (starting July 2011) to cover inflation by applying the Building Price Index June Quarter for Melbourne in Rawlinsons Australian Construction Handbook, up until the amount equals \$900. Any amount above \$900 shall only be adjusted in line with any order published in the Government Gazette by the Governor in Council pursuant to Clause 46L(2) of the Act. Payment shall be made for each lot on any Plan of Subdivision for the Subject Land prior to the issue of a building permit for any such lot.

Table 3.1.2: Summary of Community Infrastructure Charge

Total Community Infrastructure Charges	
Area	Residential
	Per Lot
Contribution	\$601.30



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3.2 Upon incorporation into the Planning Scheme of an Approved Development Contributions Plan for the Winchelsea Township which requires the payment by the Owner of development infrastructure and community infrastructure charges in respect of any land forming part of the Subject Land, the charges required by the Planning Scheme shall replace those specified in the Agreement. The new charges shall become applicable immediately when Notice of Approval of the Planning Scheme Amendment incorporating the Approved Development Contributions Plan appears in the Government Gazette.

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 on a party/party basis) of and incidental to the preparation, drafting, review, finalisation, engrossment, execution and registration of this Agreement and until those costs are paid they will remain a debt of the Owner to the Council.

4. WARRANTIES

4.1 Without limiting the operation or effect which this Agreement has the Owner warrants that:

4.1.1 apart from the parties referred to in this Agreement, or other persons disclosed in writing to the Council prior to the signing of this Agreement, no other person has any interest either legal or equitable in the Subject Land which may be affected by this Agreement or by development or use of the Subject Land pursuant to the Scheme or any permit or approved plan under the Scheme.

4.1.2 the Owner has obtained all necessary authorities and consents to bind all other persons who have any interest either legal or equitable in the Subject Land.

5. FURTHER COVENANTS OF THE OWNER

The Owner covenants and agrees that he will:

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5.1 Notice

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

5.2 Compliance

5.2.1 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;

5.2.2 will consent to the Council making application to the Registrar of Titles to make a recording of this Agreement and the register on the Certificate of Title to the Subject Land in accordance with Section 181 of the Act and to 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.

5.3 Agreement under Section 173 of the Act

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

6. GENERAL MATTERS

6.1 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:

6.1.1 by delivering it personally to that party;

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6.1.2 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

6.1.3 sending it by facsimile provided that a communication sent by facsimile shall be confirmed immediately in writing by the sending party by hand delivery or prepaid post

6.2 a notice or other communication is deemed served:

6.2.1 if delivered, on the next following business day;

6.2.2 if posted, on the expiration of two business days after the date of posting; or

6.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested transmission before the end of the business day on which it is sent.

6.3 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 Council against the Owner will not in any way amount to a waiver of any of the rights or remedies of Council in relation to the terms of this Agreement.

6.4 Severability

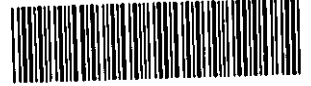
If a court, arbitrator, tribunal or other competent authority determines that a word, phrase, sentence, paragraph or clause of this Agreement is unenforceable, illegal or void then it must be severed and the other provisions of this Agreement will remain operative.

6.5 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council to make any decision or impose any requirements or conditions in connection with the granting of any

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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.

7. COMMENCEMENT OF AGREEMENT

This Agreement commences from the date of this Agreement.

8. ENDING OF AGREEMENT

- 8.1 This Agreement ends when the Owner has complied with all of the covenants by the Owner under the Agreement to the satisfaction of the Council.
- 8.2 This Agreement may be ended by agreement between Council and the Owner.
- 8.3 If this Agreement relates to more than one lot and the owner of that lot has complied with all of the obligations in relation to that lot, the owner of that lot may request Council to end this Agreement in relation to that lot.
- 8.4 As soon as reasonably practicable after the Agreement has ended, Council will, at the request and at the cost of the Owner, make application to the Registrar of Titles under Section 183(1) of the Act to cancel the recording of this Agreement on the register.

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

Signed on behalf of the Surf Coast Shire Council)
by Mark Davies, Chief Executive Officer)
pursuant to the instrument of delegation)
dated 23 September 2009 in the presence of:)

Mark Davies

[Handwritten signature]

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Witness

**EXECUTED by ANDERSON ROAD)
DEVELOPMENTS PTY LTD in)
accordance with section 127(1) of the)
Corporations Act 2001 by being)
signed by authorised persons:)**

[Handwritten signature]

Director

MATHEW HOARE

Full name

99 BARLOW TREE

Usual address

3TH GEELONG VIC

.....

Director/Secretary

.....

Full name

.....

Usual address

.....

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Bendigo and Adelaide Bank Ltd as Mortgagee of Registered Mortgage No. AG067785C in respect of Certificate of Title Volume 09350 Folio 340 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 and on behalf of the Mortgagee.

Victoria

EXECUTED by BENDIGO AND ADELAIDE)
BANK LIMITED ABN 11 068 049 178 by being)
signed by its Attorneys ~~LINDA MARIE GILBERT~~)
~~ROSEMARY ELEANOR HAYES~~)
who certify that they are the)
~~TEAM MANAGER~~) Attorney
~~LOANS OFFICER~~)
being authorised Officers of the Company)
under Power of Attorney dated 9 April)
2008 a certified copy of which is filed in)
Permanent Order Book No. 277 at Page 027)
Item 16 in the presence of:-) Attorney

Witness:

Witness Full Name: Kelly May Lawrence

Lawrence

The information contained in this online registry is provided for the
PLAN OF SUBDIVISION EDITION 1 PS 737620J

LOCATION OF LAND
 PARISH: MIRNEE
 TOWNSHIP: -
 SECTION: -
 CROWN ALLOTMENT: -
 CROWN PORTION: R (PART)
 TITLE REFERENCE: VOL.11656 FOL.642
 LAST PLAN REFERENCE: PS.709196D (LOT A)
 POSTAL ADDRESS: TOULON COURT
 (at time of subdivision) WINCHELSEA 3241
 MGA CO-ORDINATES: E: 760 880 ZONE: 54
 (of approx centre of land N: 5 762 530 GDA 94
 in plan)

Council Name: Surf Coast Shire Council
 Council Reference Number: S4337
 Planning Permit Reference: 11/0108A
 SPEAR Reference Number: S081089H
 Certification
 This plan is certified under section 6 of the Subdivision Act 1988
 Public Open Space
 A requirement for public open space under section 18 of the Subdivision Act 1988 has been made and the requirement has not been satisfied
 has been made and the requirement has been satisfied for: Stage 2 at Statement of Compliance (Document updated 06/10/2017)
 Digitally signed by: Michelle Watt for Surf Coast Shire Council on 24/02/2017
 Statement Of Compliance issued: 06/10/2017

VESTING OF ROADS AND/OR RESERVES **NOTATIONS**

IDENTIFIER	COUNCIL/BODY/PERSON
ROAD R-1 RESERVE No.1	SURF COAST SHIRE SURF COAST SHIRE

Lots 1-19 have been omitted from this plan.
 Existing drainage easement in favour of Surf Coast Shire (shown as E-1 & E-5 on PS 709196D) will merge upon registration of this plan.

NOTATIONS

DEPTH LIMITATION Does not apply

SURVEY:
 This plan is based on survey.

STAGING:
 This is not a staged subdivision.
 Planning Permit No. 11/0108A

This survey has been connected to permanent marks No(s). 24, 28 & 49
 In Proclaimed Survey Area No.104

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-2 & E-4	PIPELINES OR ANCILLARY PURPOSES	SEE PLAN	PS.709196D- Section 136 of the Water Act 1989.	BARWON REGION WATER CORPORATION
E-4, E-7 & E-8 E-5 & E-7	DRAINAGE PIPELINES OR ANCILLARY PURPOSES	SEE PLAN SEE PLAN	THIS PLAN THIS PLAN	SURF COAST SHIRE BARWON REGION WATER CORPORATION



ST. QUENTIN
 Surveyors · Town Planners · Engineers
 51 LITTLE FYANS STREET,
 P.O. BOX 919, GEELONG 3220
 TELEPHONE (03) 5201 1811 FAX (03) 5229 2909

SURVEYORS FILE REF: 13588_STAGE2

Digitally signed by: MATTHEW MCGRATH (StQuentin Consulting Pty Ltd),
 Surveyor's Plan Version (08),
 20/01/2017, SPEAR Ref: S081089H

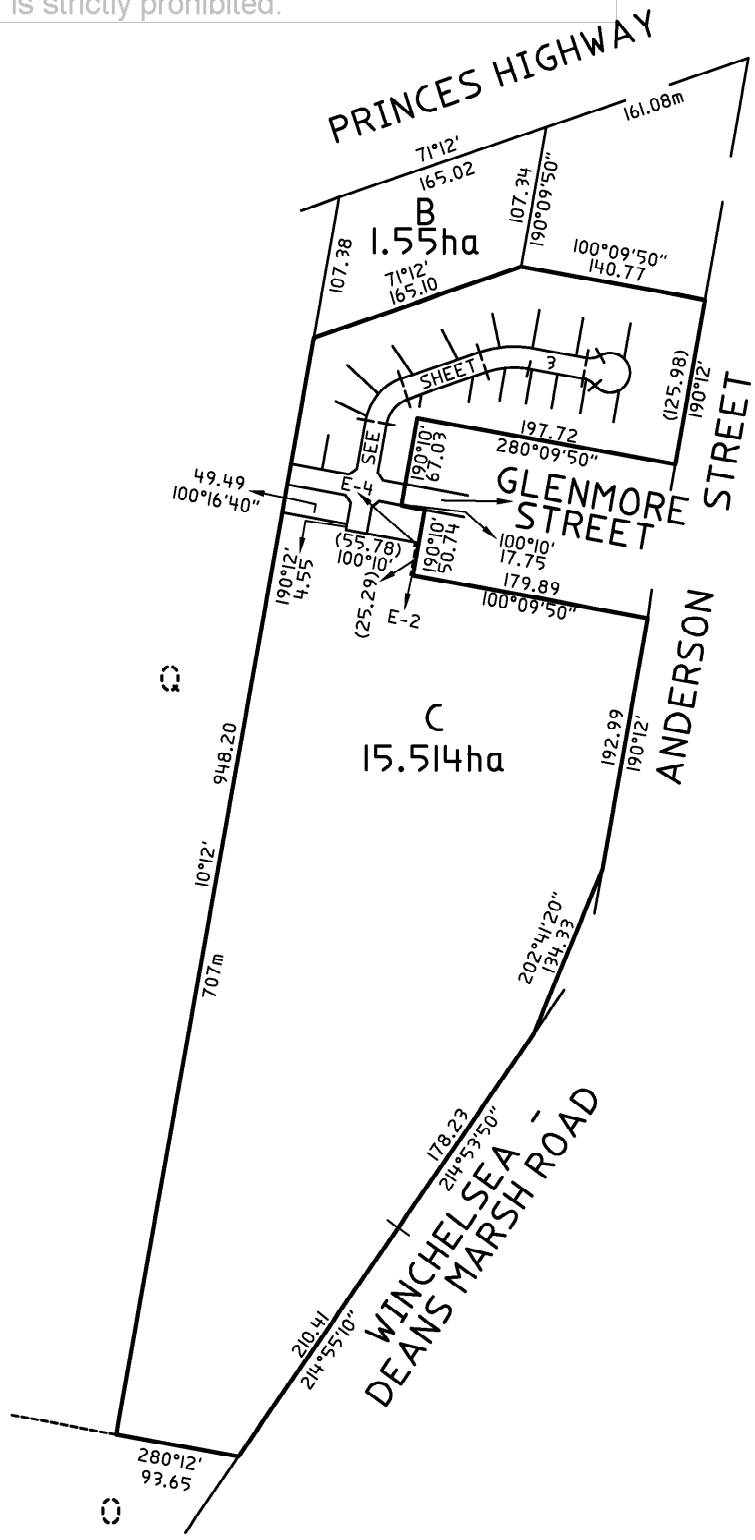
ORIGINAL SHEET SIZE: A3 SHEET 1 OF 3

PLAN REGISTERED
 TIME: 3:03 DATE: 13/10/17
 Randall McDonald
 Assistant Registrar of Titles

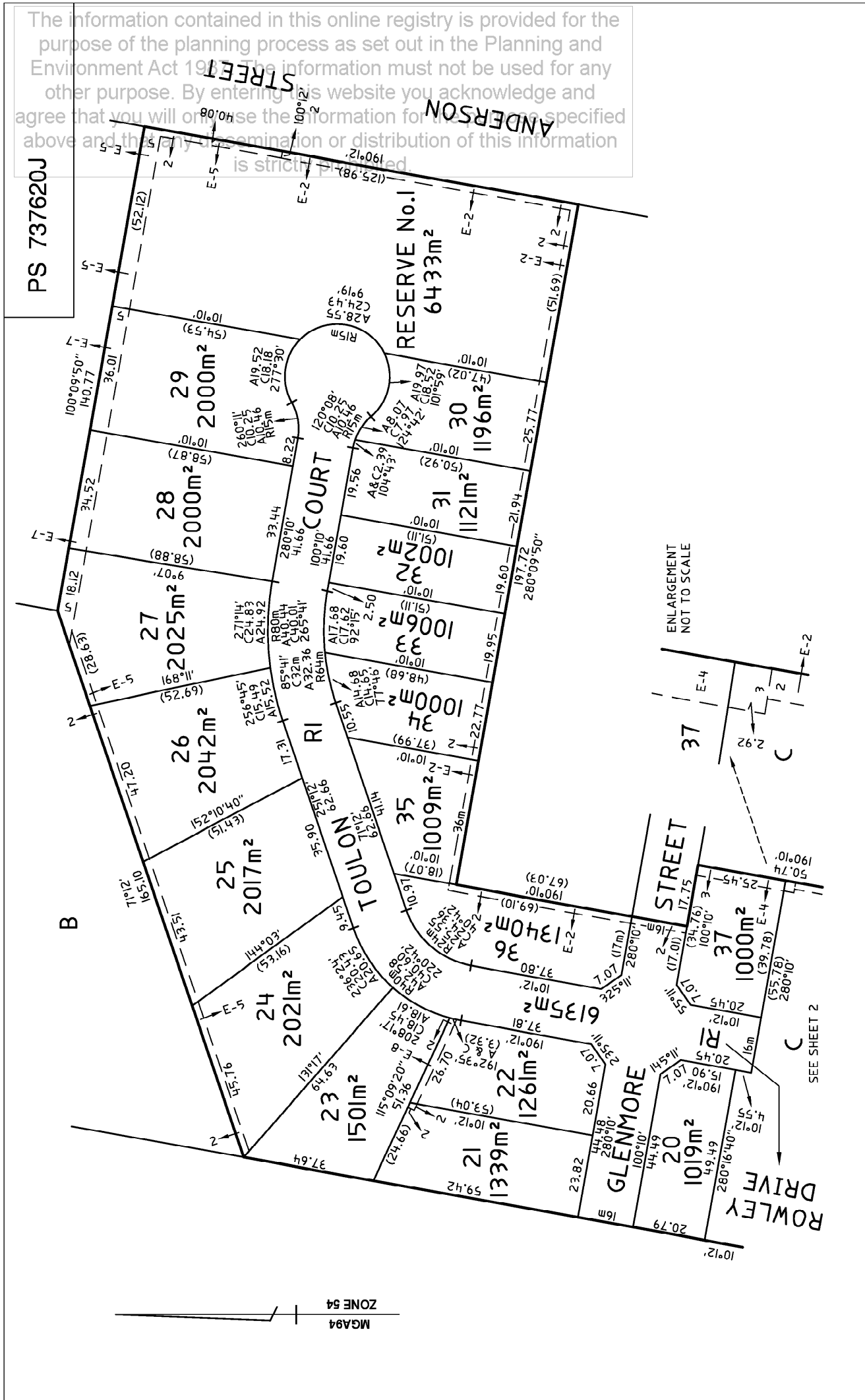
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PS 737620J

MG94
ZONE 54



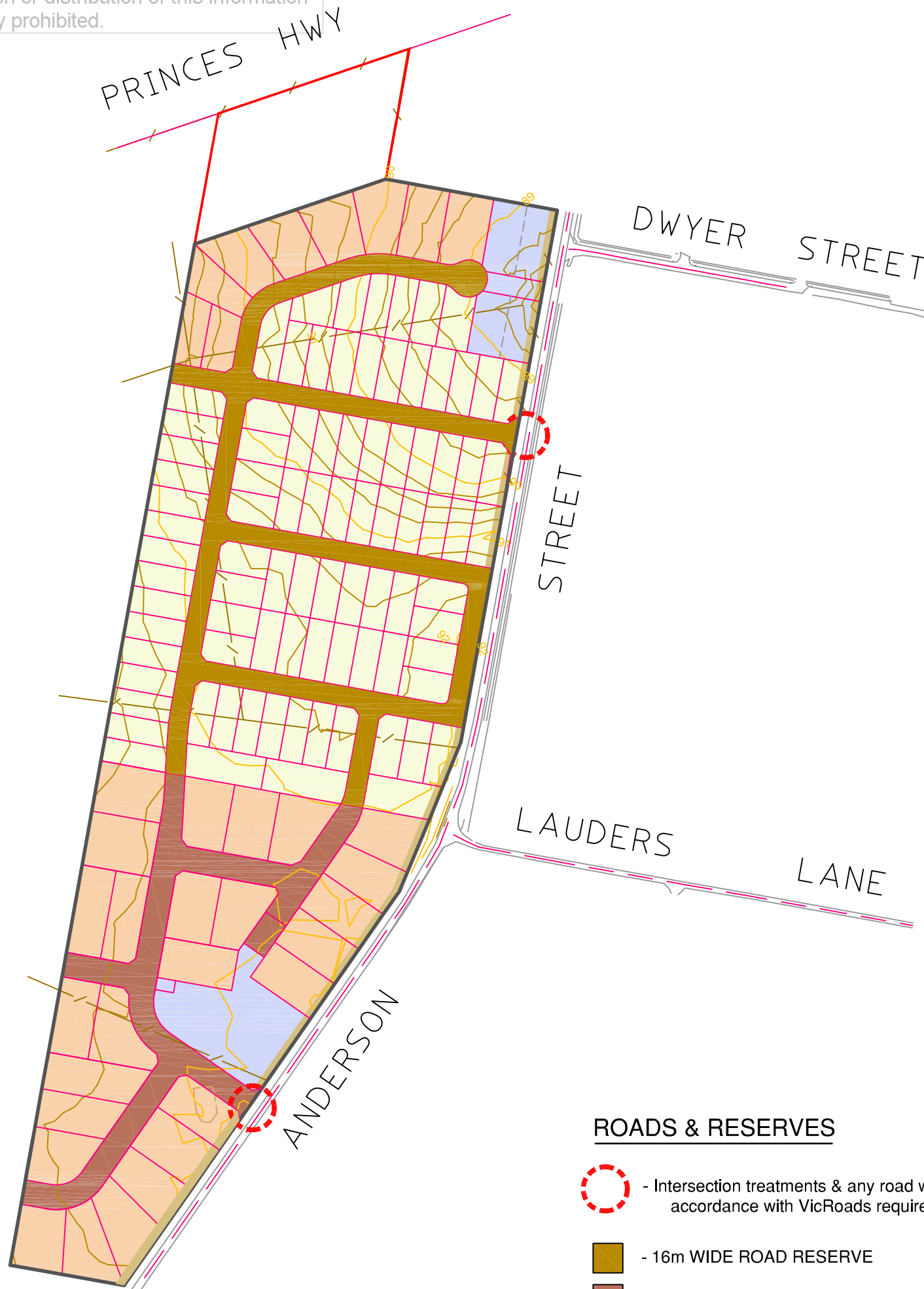
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<p>ST. QUENTIN Surveyors - Town Planners - Engineers 51 LITTLE FYANS STREET, P.O. BOX 919, GEELONG 3220 TELEPHONE (03) 5201 1811 FAX (03) 5229 2909</p>	<p>Digitally signed by: MATTHEW MCGRATH (StQuentin Consulting Pty Ltd), Surveyor's Plan Version: (08) 20/01/2017, SPEAR Ref: S081089H</p>	<p>SCALE 1:1000</p>	<p>10 0 10 20 30 40 LENGTHS ARE IN METRES</p>	<p>ORIGINAL SHEET SIZE: A3</p>	<p>REF: 13588</p>	<p>SHEET 3</p>
	<p>Digitally signed by: MATTHEW MCGRATH (StQuentin Consulting Pty Ltd), Surveyor's Plan Version: (08) 20/01/2017, SPEAR Ref: S081089H</p>	<p>Digitally signed by: Surf Coast Shire Council, 24/02/2017, SPEAR Ref: S081089H</p>				

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MGA94
ZONE 55



ROADS & RESERVES

- Intersection treatments & any road widening in accordance with VicRoads requirements

- 16m WIDE ROAD RESERVE

- 20m WIDE ROAD RESERVE

LOTS

- 1000m² - 2000m² } 81 LOTS

- 2000m² - 4000m² } 34 LOTS

- POTENTIAL W.S.U.D. & STORMWATER RETENTION

TOTAL
115 LOTS

- 3m DEEP LANDSCAPE ENVELOPE IN LOT LOCATION TO BE CONFIRMED BASED UPON DRAINAGE REQUIREMENTS

SURF COAST SHIRE COUNCIL
Planning Department

13 Aug 2019

OA2620 / D19/118805



ST. QUENTIN

Surveyors • Town Planners • Engineers

51 LITTLE FYANS STREET,
P.O. BOX 919, GEELONG 3220
TELEPHONE (03) 5201 1811 FAX (03) 5229 2909

This plan has been prepared to support a Town Planning Application to subdivide land and should not be used for any other purpose. It is subject to Approval by Council and may be amended without notice. This note is an integral part of this plan.

**OUTLINE DEVELOPMENT PLAN
ANDERSON STREET
WINCHELSEA**

SCALE
1 : 4000

LEVEL DATUM
A.H.D.

TITLE REF.

A3

PLAN DRAWN
30/11/10

SURVEY REF.
8202

VER.
11