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Wadawurrung Country
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	2-10 Moran Way (now addressed as 15-23 Sinclair Circuit) Winchelsea	
Description of the proposal	Amendment to Section 173 Agreement AU572832N	
Who initiated the proposal	The proposal was initiated by Context Planning 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:	PG23/0280	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		
01 March 2024		
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.		

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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.

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Application Summary

Portal Reference A42336PU

Basic Information

Proposed Use	Amendment to Section 173 Agreement AU572832N
Current Use	vacant land.
Site Address	Lots 19-23 on PS 809705B more commonly known as 2, 4, 6, 8 and 10 Mbran Way, Winchelsea
VC Smart	No

Covenant Disclaimer

Does the proposal breach, in any way, an encumbrance on title such as restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope? Yes, one or more encumbrances are breached

This proposal must include all details of request to change restrictive covenant, section 173 or other obligation to be considered.

Contacts

Type	Name	Address	Contact Details
Applicant	Marshall Marshall Sullivan Context Planning		
Owner	51MAINWINCH PTY LTD		
Preferred Contact	Marshall Marshall Sullivan Context Planning		

Meetings

Meeting Type	Officer Name	Date of Meeting
Pre Application	Ben Hynes	28 Sep 2023

Documents Uploaded

Date	Type	Filename
19-10-2023	Recent copy of Title	2-10 Mbran Way, Winchelsea - Combined Title Docs.pdf
19-10-2023	Recent copy of Title	S173 Agreement AU572832N Combind File.pdf
19-10-2023	Encumbrance	S173 Agreement AU572832N Combind File.pdf
19-10-2023	Written Response	Application Form to Amend a Section 173 Agreement.pdf
19-10-2023	Explanatory Letter	Application Letter - Amendment to 173 Agreement.pdf
19-10-2023	Subdivision Plan	2-10 Mbran Way, Winchelsea - Combined Title Docs.pdf
19-10-2023	Additional Document	Land Owner Consent for Section 173 and Covenant Amendments 17102023.pdf



Address
Surf Coast Shire
1 Merrijig Drive,
Torquay, Victoria



Postal Address
PO Box 350,
Torquay, Vic 3228



Contact
(03) 5261 0600 or 1300 610
600
Email: planningapps@surfcoast.vic.gov.au

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Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit

Lodged By

Site User	Marshall Sullivan Context Planning
Submission Date	19 October 2023 - 01:15:PM

Declaration

By ticking this checkbox, I, Marshall Marshall Sullivan, declare that all the information in this application is true and correct; and the Applicant and/or Owner (if not myself) has been notified of the application.



Address

Surf Coast Shire
1 Merrijig Drive,
Torquay, Victoria



Postal Address

PO Box 350,
Torquay, Vic 3228



Contact

(03) 5261 0600 or 1300 610
600

Email: planningapps@surfcoast.vic.gov.au

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Context.

Planning

Town Planning Consultants

Attention

Ben Hynes
Coordinator Statutory Planning
Wadawurrung Country
1 Merrijig Drive (PO Box 350) Torquay VIC 3228

16 October 2022

Dear Ben and the planning team,

Address: Lots 19-23 on PS 809705B more commonly known as 2, 4, 6, 8 and 10 Moran Way, Winchelsea

Proposal: Amendment to Section 173 Agreement AU572832N

We confirm that *Context Planning* continue to assist the land owner of as 2, 4, 6, 8 and 10 Moran Way, Winchelsea to prepare this application to amend the Section 173 Agreement from all 5 lots.

For context, we note that a separate Planning Permit application has been lodged concurrently to this application to vary Restrictive Covenant No. 2 and fundamentally applies to similar matters. Restrictive Covenant No. 1 relates to a Memorandum of Common Provisions (MCP) and is unaffected by this proposal.

In relation to this application we note the following the changes only apply to Clause 3 and provide an improved outcome in relation to fencing, privacy and future dwelling design options.

The relevant application forms, statutory fees along with a copy of the applicable Titles, Covenant, Title Plan and MCP are attached to this application.

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Town Planning Consultants

EXISTING

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner agrees with the Responsible Authority that:

- 3.1. Lots 19 to 23 must be developed such that the façade of any Dwelling on Lots 19 to 23 is orientated to front the Reserve;
- 3.2. Fencing along the southern boundary of Lots 19 to 23, and within the Frontage of those Lots, must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;
- 3.3. Fencing along the southern boundary of Lots 24, 25 and 43 to 46, and within the Frontage of those Lots, must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres; and
- 3.4. Fencing along the remaining boundaries of Lots 19 to 23 must be visually permeable (at least 20% transparent) and have a maximum height of 1.8 metres,

all to the satisfaction of the Responsible Authority.

PROPOSED

The Owner agrees with the Responsible Authority that:

- 3.1. Lots 19 to 23 must be developed such that a Dwelling provides Passive Surveillance of Reserve No. 1. Passive Surveillance means the provision of habitable room windows and open space facing south towards Reserve No.1.
- 3.2. Fencing along the southern boundary of Lots 19 to 23, and three metres back along each east and west boundary must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;
- 3.3. Fencing along the southern boundary of Lots 24, 25 and 43 to 46, and within the Frontage of those Lots, must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres; and
- 3.4. Fencing along the east boundary of Lot 19 (adjoining the reserve) and west boundary of Lot 23 (adjoining Riverview Drive) must be visually permeable (at least 20% transparent) and have a maximum height of 1.8m.
- 3.5. Fencing along the north boundary of Lots 19-23 (adjoining Moran Way) must be visually permeable (at least 20% transparent) and have a maximum height of 1.8m, except for a length not exceeding 50% of the boundary for the primary purpose of enclosing secluded private open space.

All to the satisfaction of the Responsible Authority.

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The Agreement in this case is registered on the Title:

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS809705B 08/12/2021

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
AU572832N 14/07/2021

Image 1 Extract from the Certificate of Title

Overall, the proposal is considered to provide for a positive planning outcome for the site and surrounds which would not negatively impact upon the character or amenity of the immediate or broader area.

In terms of the background and intent of the wording of the Agreement, we submit that its objective, which was to provide for passive surveillance and activation of the reserve, is respected and maintained.

Accordingly we respectfully request that Council decide to amend the agreement in accordance with this proposal in accordance with Section 178E of the *Planning and Environment Act 1987*.

Please do not hesitate to contact me if you have any questions via email
info@context-planning.com

Your sincerely



Marshall Sullivan | Director
Context Planning Pty Ltd

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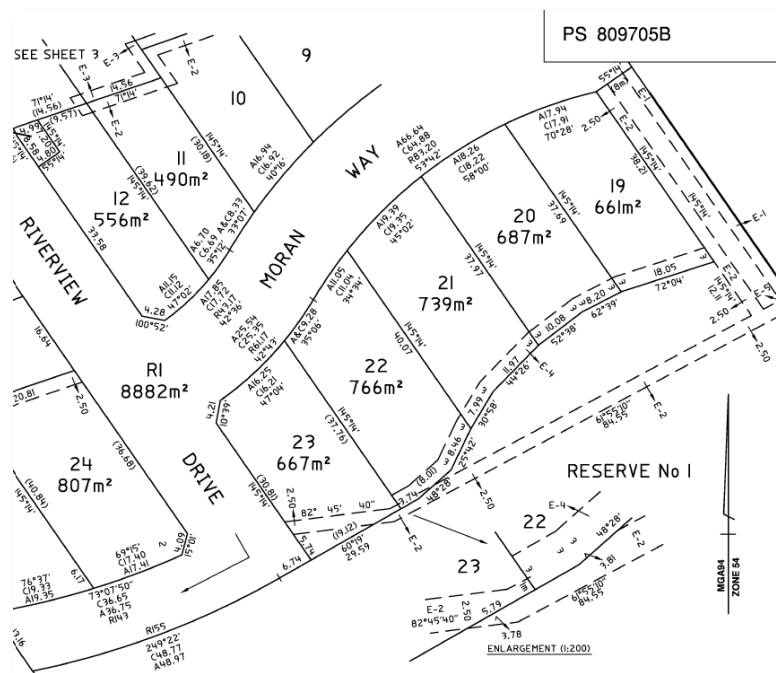
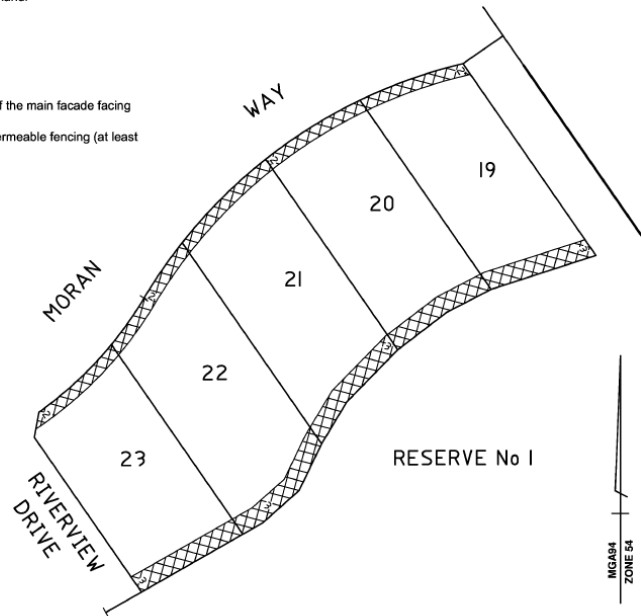
Creation of restriction 2

The registered proprietors of the burdened land covenant with the registered proprietors of the benefited land as set out in the restriction with the intent that the burden of the restriction runs with and binds the burdened land and the benefit of the restriction is annexed to and runs with the benefited land.
 Burdened land: Lots 19-23
 Benefited land: Lots 19-23

Description of Restriction:

- a) No building is to be constructed within the area shown cross hatched
- b) No building shall be constructed on the lots other than buildings with the orientation of the main facade facing Reserve No. 1 and the main pedestrian entrance facing south.
- c) No fencing is to be located on the southern boundary of the lots other than visually permeable fencing (at least 25% transparent) with a maximum height of 1.2m.

PS 809705B



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Application Form for Amending or Ending a Section 173 Agreement



Applicant Details

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	Context Planning
Postal Address	
Email Address	
Contact Phone Number	

Section 173 Agreement Details

Reference and Date of Section 173 Agreement	AU572832N 14/07/2021
Planning Permit Number that Required the Section 173 Agreement	15/0525-2
Address of Subject Land	Lots 19-23 on PS 809705B more commonly known as 2, 4, 6, 8 and 10 Moran Way, Winchelsea
Volume, Folio and Plan of Subdivision Number	2607/276 8050/497 8143/288 8831/576

Please Detail

The nature of the change sought to the Section 173 Agreement (eg amend or end):
Please refer to attached letter dated 16 October 2023.
Reason for the proposed change to the Section 173 Agreement:
To improve privacy opportunities between the respective lots.
Has written consent to the proposed change been obtained from the parties to the Section 173 Agreement?
Following advice from Council on 28 September 2023, consent from the CEO is required and it was prefer this is done once the request has been formally lodged and paid.

Declaration

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

Signature: *M Sullivan* on behalf of 51 Mainwinch Pty Ltd

Date: 16 October 2023

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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	Yes
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	Yes
Details of all Parties to the Section 173 Agreement A suitably qualified legal practitioner may be required to prepare this information	NA
Written Consent from the Parties to the Section 173 Agreement	Yes
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	Yes
Fee An application fee of \$707.60. Please note: Fees may be subject to change	Yes
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.	Yes

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Attention

Surf Coast Shire & Context Planning

16 October 2022

LAND OWNER CONSENT

Address: Lots 19-23 on PS 809705B more commonly known as 2, 4, 6, 8 and 10 Moran Way, Winchelsea

I am a Director of the 51 MAINWINCH PTY LTD and land owner of 2, 4, 6, 8 and 10 Moran Way, Winchelsea.

I confirm that we consent to the variation to the Section 173 Agreement and Restrictive Covenant no. 2 as proposed by Context planning.

Your sincerely



Director
51 MAINWINCH PTY LTD

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

VOLUME 12347 FOLIO 716

Security no : 124109827176N
Produced 17/10/2023 01:08 PM

LAND DESCRIPTION

Lot 23 on Plan of Subdivision 809705B.

PARENT TITLES :

Volume 02607 Folio 276 Volume 08050 Folio 497 Volume 08143 Folio 288

Volume 08831 Folio 576

Created by instrument PS809705B 08/12/2021

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

PS809705B 08/12/2021

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS809705B 08/12/2021

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

AU572832N 14/07/2021

DIAGRAM LOCATION

SEE PS809705B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 2 MORAN WAY WINCHELSEA VIC 3241

ADMINISTRATIVE NOTICES

NIL

eCT Control 18701R WHYTE, JUST & MOORE

Effective from 08/12/2021

DOCUMENT END

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

VOLUME 12347 FOLIO 715

Security no : 124109827069E
Produced 17/10/2023 01:06 PM

LAND DESCRIPTION

Lot 22 on Plan of Subdivision 809705B.

PARENT TITLES :

Volume 02607 Folio 276 Volume 08050 Folio 497 Volume 08143 Folio 288

Volume 08831 Folio 576

Created by instrument PS809705B 08/12/2021

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

PS809705B 08/12/2021

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS809705B 08/12/2021

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

AU572832N 14/07/2021

DIAGRAM LOCATION

SEE PS809705B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 4 MORAN WAY WINCHELSEA VIC 3241

ADMINISTRATIVE NOTICES

NIL

eCT Control 18701R WHYTE, JUST & MOORE

Effective from 08/12/2021

DOCUMENT END

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

VOLUME 12347 FOLIO 714

Security no : 124109826981A
Produced 17/10/2023 01:05 PM

LAND DESCRIPTION

Lot 21 on Plan of Subdivision 809705B.

PARENT TITLES :

Volume 02607 Folio 276 Volume 08050 Folio 497 Volume 08143 Folio 288

Volume 08831 Folio 576

Created by instrument PS809705B 08/12/2021

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

PS809705B 08/12/2021

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS809705B 08/12/2021

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

AU572832N 14/07/2021

DIAGRAM LOCATION

SEE PS809705B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 6 MORAN WAY WINCHELSEA VIC 3241

ADMINISTRATIVE NOTICES

NIL

eCT Control 18701R WHYTE, JUST & MOORE

Effective from 08/12/2021

DOCUMENT END

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

VOLUME 12347 FOLIO 713

Security no : 124109826869W
Produced 17/10/2023 01:03 PM

LAND DESCRIPTION

Lot 20 on Plan of Subdivision 809705B.

PARENT TITLES :

Volume 02607 Folio 276 Volume 08050 Folio 497 Volume 08143 Folio 288

Volume 08831 Folio 576

Created by instrument PS809705B 08/12/2021

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

PS809705B 08/12/2021

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS809705B 08/12/2021

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

AU572832N 14/07/2021

DIAGRAM LOCATION

SEE PS809705B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 8 MORAN WAY WINCHELSEA VIC 3241

ADMINISTRATIVE NOTICES

NIL

eCT Control 18701R WHYTE, JUST & MOORE

Effective from 08/12/2021

DOCUMENT END

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

VOLUME 12347 FOLIO 712

Security no : 124109826644R
Produced 17/10/2023 12:59 PM

LAND DESCRIPTION

Lot 19 on Plan of Subdivision 809705B.

PARENT TITLES :

Volume 02607 Folio 276 Volume 08050 Folio 497 Volume 08143 Folio 288

Volume 08831 Folio 576

Created by instrument PS809705B 08/12/2021

REGISTERED PROPRIETOR

Estate Fee Simple

Sole Proprietor

PS809705B 08/12/2021

ENCUMBRANCES, CAVEATS AND NOTICES

COVENANT PS809705B 08/12/2021

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

AU572832N 14/07/2021

DIAGRAM LOCATION

SEE PS809705B FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 10 MORAN WAY WINCHELSEA VIC 3241

ADMINISTRATIVE NOTICES

NIL

eCT Control 18701R WHYTE, JUST & MOORE

Effective from 08/12/2021

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Document Type	Plan
Document Identification	PS809705B
Number of Pages (excluding this cover sheet)	6
Document Assembled	17/10/2023 13:13

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The document is invalid if this cover sheet is removed or altered.

The information contained in this online registry is provided for the
PLAN OF SUBDIVISION **EDITION 2** **PS 809705B**

LOCATION OF LAND
 PARISH: **MIRNEE**
 TOWNSHIP: **WINCHELSEA**
 SECTION: -
 CROWN ALLOTMENT: **24, 23, 22 (PART)**
 CROWN PORTION: -
 TITLE REFERENCE: VOL.8050 FOL.497
 VOL.2607 FOL.276
 VOL.8831 FOL.576
 VOL.8143 FOL.288
 LAST PLAN REFERENCE: TP.408138J (LOTS 1,2 & 3)
 TP.548576Y (LOT 1)
 LP.87419 (LOT 1)
 TP.244450S (LOT 1)
 POSTAL ADDRESS: **51 & 61 MAIN STREET**
 (at time of subdivision) **WINCHELSEA, 3241**
 MGA CO-ORDINATES: E: **761 546** ZONE: **54**
 (of approx centre of land N: **5 762 743** MGA **94**
 in plan)

Council Name: Surf Coast Shire Council
 Council Reference Number: S4676
 Planning Permit Reference: 15/0525
 SPEAR Reference Number: S138275M
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 at Certification
 Digitally signed by: Leah Protyniak for Surf Coast Shire Council on 15/07/2020
Statement of Compliance issued: 01/12/2021
 Public Open Space
 A requirement for public open space under section 18 of the Subdivision Act 1988 has been made and the requirement has been satisfied at Statement of Compliance

VESTING OF ROADS AND/OR RESERVES

IDENTIFIER	COUNCIL/BODY/PERSON
ROAD R1 RESERVE No.1 RESERVE No.2	SURF COAST SHIRE SURF COAST SHIRE POWERCOR AUSTRALIA LTD.

NOTATIONS

CREATION OF RESTRICTION 1
 The registered proprietors of the burdened land covenant with the registered proprietors of the benefited land as set out in the restrictive covenant with the intent that the burden of the restrictive covenant runs with and binds the burdened land and the benefit of the restrictive covenant is annexed to and runs with the benefited land.
 Burdened land: Lots 1-30
 Benefited land: Lots 1-30
 Description of Restriction: The burdened land cannot be used except in accordance with the provisions recorded in MCP AA5428
 Expiry date: 31 December 2070
 For additional Creation of Restriction see Sheet 5
WARNING: The restrictive covenant(s)/restriction(s) in this plan may have been varied or removed. For current information, please refer to the relevant folio(s) of the Register, noting section 88(3) of the Transfer of Land Act 1958
 STAGE 1
 NUMBER OF LOTS : 30
 TOTAL STAGE AREA : 3.335ha

NOTATIONS

DEPTH LIMITATION Does not apply
 SURVEY:
 This plan is based on survey.
 STAGING:
 This is not a staged subdivision.
 Planning Permit No. 15/0525
 This survey has been connected to permanent marks No(s).
 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-1 & E-5	DRAINAGE	2.01	INST. 2649855	LOTS 1 & 2 ON LP.68462
E-2, E-4 & E-5	PIPELINES OR ANCILLARY PURPOSES	SEE PLAN	THIS PLAN Section 136 of the Water Act 1989.	BARWON REGIONAL WATER CORPORATION
E-3 & E-4	DRAINAGE	SEE PLAN	THIS PLAN	SURF COAST SHIRE



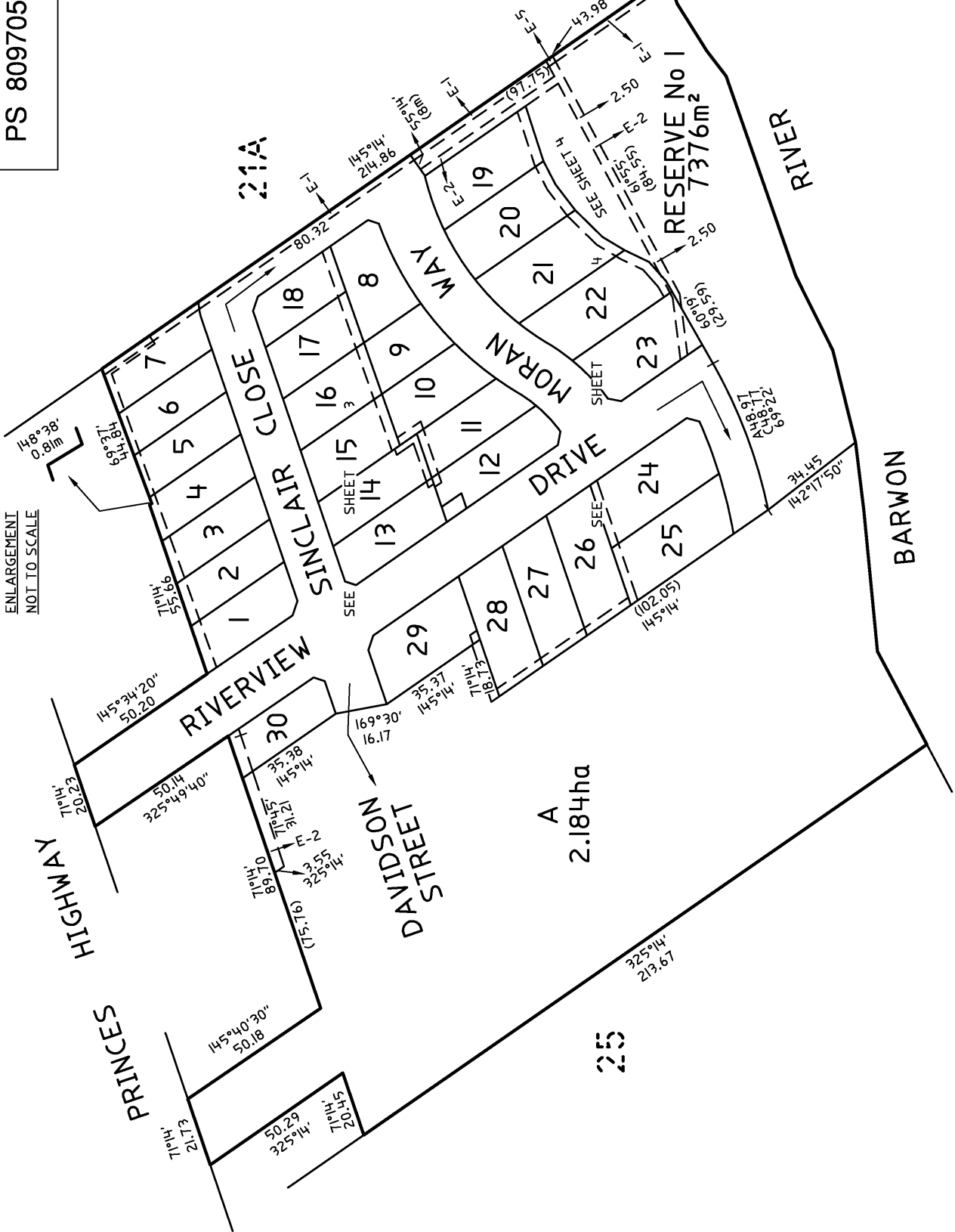
ST. QUENTIN
 Surveyors · Town Planners · Engineers
 51 LITTLE FYANS STREET,
 P.O. BOX 919, GEELONG 3220
 TELEPHONE (03) 5201 1811 FAX (03) 5229 2909

SURVEYORS FILE REF: 14868_V10
 Digitally signed by: MATTHEW MCGRATH, Licensed Surveyor,
 Surveyor's Plan Version (10),
 14/07/2020, SPEAR Ref: S138275M

ORIGINAL SHEET SIZE: A3 SHEET 1 OF 5
 PLAN REGISTERED
 TIME: 2.26pm DATE: 08/12/2021
 Assistant Registrar of Titles Denise Satti

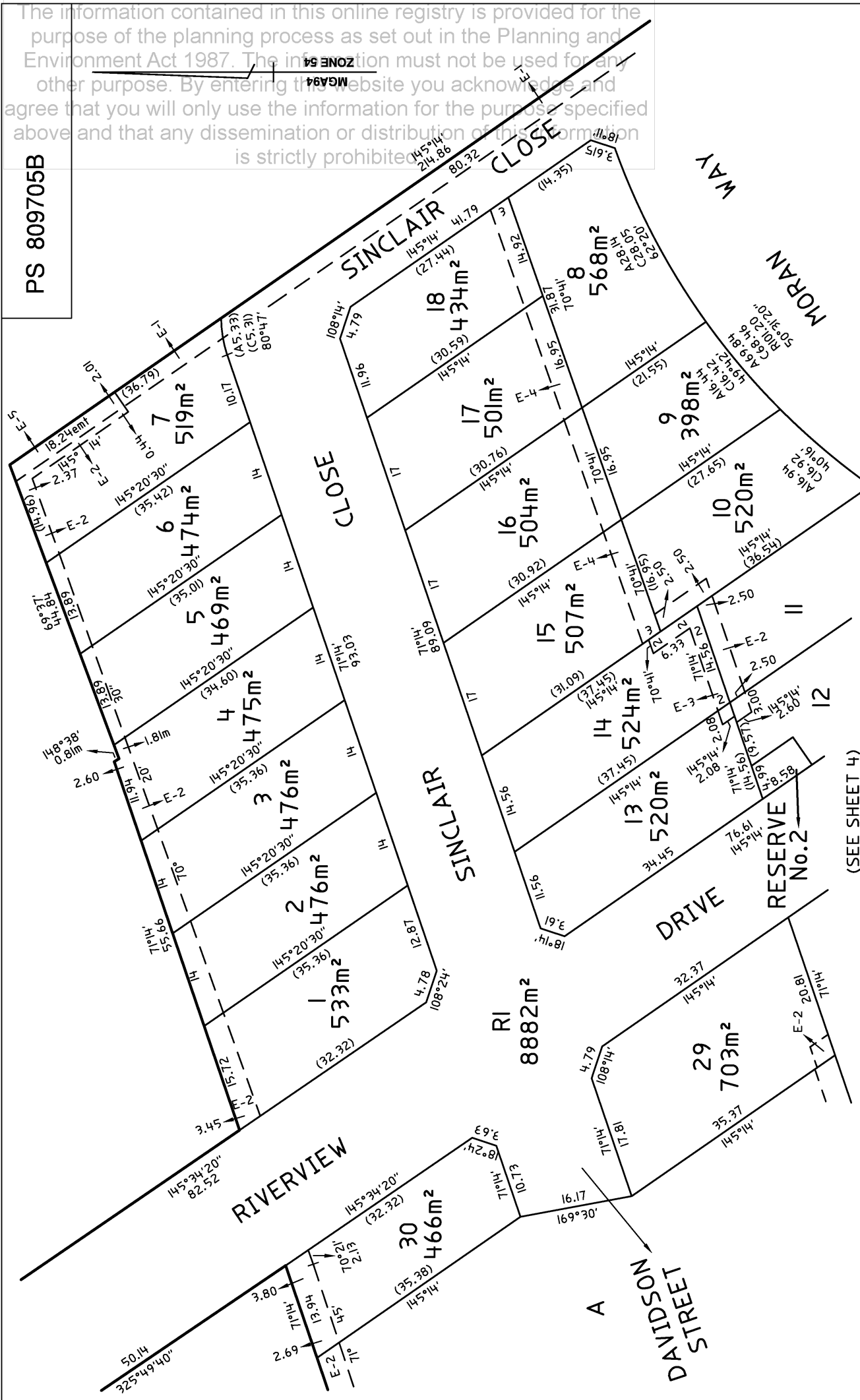
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PS 809705B



ENLARGEMENT NOT TO SCALE

<p>ST. QUENTIN Surveyors - Town Planners - Engineers</p> <p>51 LITTLE FYANS STREET, P.O. BOX 919, GEELONG 3220 TELEPHONE (03) 5201 1811 FAX (03) 5229 2909</p> <p>Amended by: MATTHEW MCGRATH, Licensed Surveyor - 06/12/2021.</p>	<p>Scale: 1:1250</p> <p>Lengths are in metres</p>	<p>Original Sheet Size: A3</p> <p>Digitally signed by: Surf Coast Shire Council, 15/07/2020, SPEAR Ref: S138275M</p>	<p>SHEET 2</p>
	<p>Digitally signed by: MATTHEW MCGRATH, Licensed Surveyor, Surveyor's Plan Version (10), 14/07/2020, SPEAR Ref: S138275M</p>	<p>Digitally signed by: Surf Coast Shire Council, 15/07/2020, SPEAR Ref: S138275M</p>	



PS 809705B

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 Surveyors - Town Planners - Engineers
 51 LITTLE FYANS STREET,
 P.O. BOX 919, GEELONG 3220
 TELEPHONE (03) 5201 1811 FAX (03) 5229 2909
 Amended by: MATTHEW MCGRATH, Licensed Surveyor - 061426921.

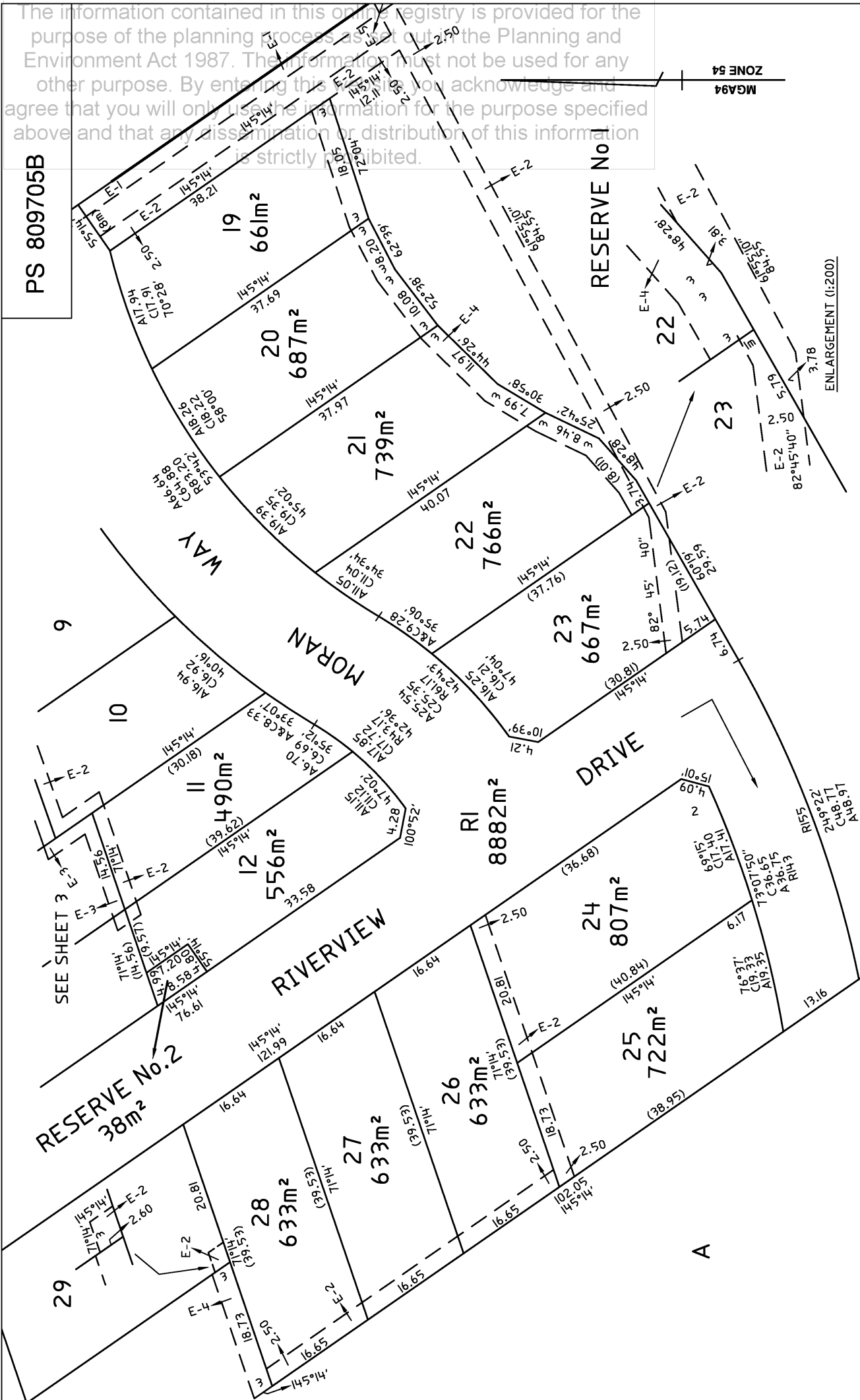
Digitally signed by: MATTHEW MCGRATH, Licensed Surveyor, Surveyor's Plan Version (10), 14/07/2020, SPEAR Ref: S138275M

Digitally signed by: Surf Coast Shire Council, 15/07/2020, SPEAR Ref: S138275M

SCALE 1:500
 LENGTHS ARE IN METRES

ORIGINAL SHEET SIZE: A3
 SHEET 3

(SEE SHEET 4)



PS 809705B

MGA94
ZONE 54

SHEET 4

ORIGINAL SHEET
SIZE: A3

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

Amended by: MATTHEW MCGRATH, Licensed Surveyor-06/11/2021.

Creation of restriction 2

The registered proprietors of the burdened land covenant with the registered proprietors of the benefited land as set out in the restriction with the intent that the burden of the restriction runs with and binds the burdened land and the benefit of the restriction is annexed to and runs with the benefited land.

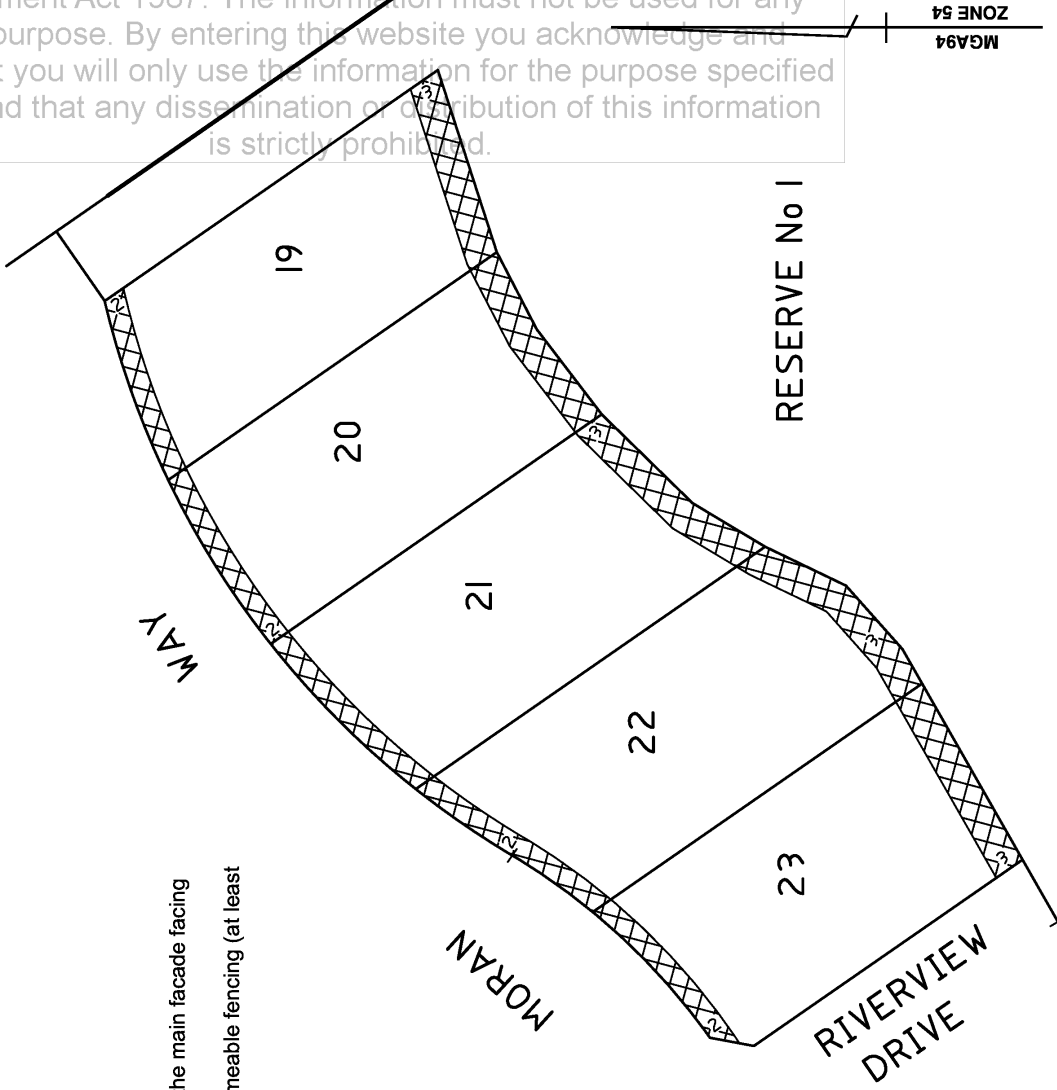
Burdened land: Lots 19-23

Benefited land: Lots 19-23

Description of Restriction:

- a) No building is to be constructed within the area shown cross hatched
- b) No building shall be constructed on the lots other than buildings with the orientation of the main facade facing Reserve No. 1 and the main pedestrian entrance facing south.
- c) No fencing is to be located on the southern boundary of the lots other than visually permeable fencing (at least 25% transparent) with a maximum height of 1.2m.

PS 809705B



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SCALE
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LENGTHS ARE IN METRES
0 5 10 15 20

Digitally signed by: MATTHEW MCGRATH, Licensed Surveyor,
Surveyor's Plan Version (10),
14/07/2020, SPEAR Ref: S138275M

ORIGINAL SHEET
SIZE: A3

Digitally signed by:
Surf Coast Shire Council,
15/07/2020,
SPEAR Ref: S138275M

SHEET 5



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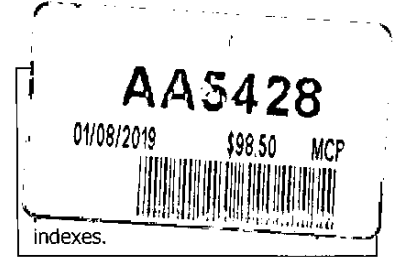
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purpose of the planning process as set out in the Planning and Environment Act 1987. The information must not be used for any other purpose. By entering this website you acknowledge and agree to the terms and conditions of use set out in the Public Information Policy above and that any dissemination or distribution of this information is strictly prohibited.

Memorandum of Common Provisions Section 91A Transfer of Land Act 1958



Lodged by:

Name: WHYTE, JUST & MOORE
Phone: (03) 5222 2077
Address: 27 Malop Street
Geelong VIC 3220
Reference:
Customer Code: 1737N

This memorandum contains provisions which are intended for inclusion in instruments and plans to be subsequently lodged for registration.

Recitals

- A. This MCP has been prepared by 51 Mainwinch Pty Ltd to regulate and impose restrictions on the form, design and use of buildings on the Lot in the development known as Rivers Edge (Stage 1) so as to create a high level of amenity for the occupiers and owners of the Lots within the Plan of Subdivision.
- B. The provisions of this MCP are incorporated into a restriction created by the Plan of Subdivision.

Definitions

For the purposes of this MCP the following definitions apply:

“approved materials” means brick, brick veneer, rendered or coated fibre board, masonry, stone, concrete, glass or timber, galvanised iron or zincalume, or any combination of those materials;

“Building” has the same meaning as in the Building Act;

“Building Act” means the Act of the Victorian Parliament known as the Building Act 1993 and any re-enactment or replacement of that Act;

“carport” means an enclosed or partially enclosed building providing covered vehicular parking/accommodation. For the purpose of this definition partially enclosed means one or more sides of the building is soild or screened;

“dwelling” means a building used as a self-contained residence which must include:

- (a) a kitchen sink;
- (b) food preparation facilities;
- (c) a bath or shower; and
- (d) a closet pan and wash basin;

“frontage” means the road alignment at the front of a Lot. If a Lot abuts two or more roads, the one to which the building, or proposed building, faces;

30800812A

1. The provisions are to be number consecutively from number 1.
2. Further pages may be added but each page should be consecutively numbered.
3. To be used for the inclusion of provisions in instruments and plans.

MCP

Page 1 of 3

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

Memorandum of Common Provisions

Section 91A Transfer of Land Act 1958

AA5428

01/08/2019 \$98.50 MCP



“façade” means the principal front of a building that faces on to a street or open space;

“fence” means the meaning given to that term in Part 4 of the Regulations;

“garden shed” means a small building used to store garden materials and tools;

“Garage” means a domestic enclosed garage constructed primarily for the purpose of storage of motor vehicles, trailers, caravans, campervans, boats and the like;

“habitable room” has the same meaning given to that in the Building Code of Australia;

“Lot/s” means any Lot contained in the Plan of Subdivision and includes any Lot created by further subdivision of the Lot;

“MCP” means this Memorandum of Common Provisions;

“occupancy permit” means an occupancy permit issued under the Building Act;

“outbuildings” means a smaller separate building such as a shed that belongs to the dwelling;

“Plan of Subdivision” means Plan of Subdivision PS 809705B;

“residential purposes” means an element of permanence or residence for a considerable time, or having the character of a person’s settled or usual abode;

“recreation or commercial vehicles” means including but not limited to boats, caravans, dune buggies and motor cycles.

“Restrictions” means the restrictions contained in the Plan of Subdivision and includes this MCP;

“Regulations” means the Building Regulations 2006 or any subsequent Regulations made pursuant to the Building Act;

“street” means any road other than a lane, footway, alley or right of way;

“Scheme” means the planning scheme of the local authority responsible for the land contained within the Plan of Subdivision;

Provisions

1. DEVELOPMENT OF LOTS

Only one dwelling used for residential purposes is permitted per Lot and no further subdivision of the Lot is permitted.

2. DWELLING MATERIALS

The external walls of the dwelling must not be constructed of any materials other than the approved materials provided that galvanised iron or zinalume does not comprise more than 25% of the external walls.

30800812A

MCP

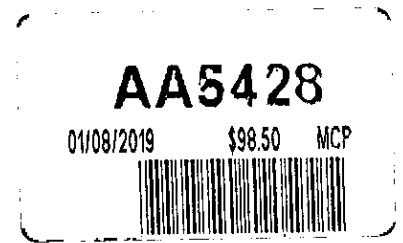
Page 2 of 3

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

Memorandum of Common Provisions

Section 91A Transfer of Land Act 1958



3. BUILDING AREA

No dwelling may be erected or permitted to remain on a Lot that has an area greater than 500m², except one dwelling which has a minimum floor area of 140m².

4. TIMING OF DRIVEWAYS, LANDSCAPING, PATHS AND FENCES

The construction of all driveways, paths, fences, sowing of lawns and landscaping of front gardens and nature strips on the Lot will not be delayed by the owner of a Lot for a period exceeding six (6) months from the issue of the occupancy permit for the dwelling constructed on the Lot.

5. OUTBUILDINGS

- a) Only one garden shed with a floor area no greater than 50 square metres may be erected or permitted to remain on the Lot.
- b) Any additional outbuilding (including the garden shed) must not be constructed with external walls of any materials other than coated colorbond metal or the approved materials provided the galvanized iron or zincalume does not comprise more than 25% of the external walls.

6. USE OF THE LOT

- a) A Lot must not be used for the purpose of carrying on any noxious or offensive trade or activity;
- b) A Lot must not be used for the storage or parking of vehicles except for the extent to which such use is ancillary to the use of the Lot for residential purposes;
- c) The area between the dwelling on the Lot and the street frontage of a Lot must not be used for parking vehicles unless a dwelling is constructed on the Lot and the vehicles are screened from public view. For the purposes of this provision, this excludes vehicles parked on the Lot on a temporary basis for the purpose of supplying goods to an occupier of the dwelling on the Lot or in connection with the construction of a dwelling on the Lot.

30800812A

MCP

Page 3 of 3

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

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Department of Environment, Land, Water & Planning

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 17/10/2023 01:12:49 PM

Status	Registered	Dealing Number	AU572832N
Date and Time Lodged	14/07/2021 10:14:39 AM		

Lodger Details

Lodger Code	18776H
Name	HARWOOD ANDREWS
Address	
Lodger Box	
Phone	
Email	
Reference	7cmm:21903753

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction	VICTORIA
--------------	----------

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Estate and/or Interest

FEE SIMPLE

Land Title Reference

2607/276
8050/497
8143/288
8831/576

Instrument and/or legislation

RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	SURF COAST SHIRE COUNCIL
Address	
Property Name	SURF COAST SHIRE OFFICE
Street Number	1
Street Name	MERRIJIG
Street Type	DRIVE



Department of Environment, Land, Water & Planning

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Locality TORQUAY
State VIC
Postcode 3228

Additional Details

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of SURF COAST SHIRE COUNCIL

Signer Name

Signer Organisation

Signer Role

Execution Date 14 JULY 2021

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.



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SECTION 173 AGREEMENT PLANNING AND ENVIRONMENT ACT 1987

SURF COAST SHIRE COUNCIL

Responsible Authority

- and -

51MAINWINCH PTY LTD

}

Owner

in relation to land at:

51 AND 61 MAIN STREET, WINCHELSEA VIC 3241

5AMC: 21903753

Harwood Andrews
ABN 98 076 868 034
70 Gheringhap Street,
Geelong 3220, Victoria, Australia
DX 22019 Geelong
PO Box 101 Geelong Vic 3220

T 03 5225 5225 F 03 5225 5222

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THIS AGREEMENT is made the

28

day of

June

2021

PARTIES:

- 1. **Surf Coast Shire Council** of 1 Merrijig Drive, Torquay 3228 **(Responsible Authority)**
- 2. **51MAINWINCH PTY LTD**) **(Owner)**

RECITALS:

- R.1. The Owner is the registered proprietor of the land known as 51 and 61 Main Street, Winchelsea, being the land described in Certificates of Titles volume 02607 folio 276, volume 08831 folio 576, volume 08050 folio 497 and volume 08143 folio 288 (**Land**).
- R.2. The Responsible Authority is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act.
- R.3. The Responsible Authority issued planning permit number 15/0525-2 on 20 January 2017 (amended 7 March 2017, 21 November 2018, 1 May 2019 and 15 March 2021) allowing "Multi-lot staged subdivision, removal of native vegetation and creation of access to road zone category 1 in accordance with the endorsed plan/s" (**Permit**).
- R.4. Condition 27(a) of the Permit provides:

Prior to Statement of Compliance – Stage 2

27. In addition to the requirements of Condition 26, before a Statement of Compliance is issued for Stage 2 of the subdivision, the subdivider must:

- a) *enter into an agreement with the responsible authority made pursuant to section 173 of the Planning and Environment Act 1987, and make application to the Registrar of Titles to have the agreement registered on title to the land under section 181 of the Act, which provides for the following:*
 - *That Lots 19-23 must be developed with the orientation of the façade of dwellings to front the reserve;*
 - *That fencing along the front shared boundary to the reserve of Lots 19-23 and within the front setback area of the dwellings must be low, visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;*
 - *Any fencing along the front of Lots 24 & 25 and lots 43-46 and within the front setback area of the dwellings must be low, visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;*
 - *Any fencing along the remainder of the lot boundaries for Lots 19-23 must have a maximum height of 1.8 metres and be visually permeable (at least 20% transparent).*

The owner must pay the costs of preparation, review, execution and registration of the agreement.

...

to the satisfaction of the Responsible Authority.

- R.5. This Agreement is entered into between the Responsible Authority and the Owner pursuant to section 173 of the Act in order to meet the requirements of condition 27(a) of the Permit and to achieve the objectives of planning in Victoria.

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IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this Agreement unless inconsistent with the context or subject matter:

- 1.1. **Act** means the *Planning and Environment Act 1987* (Vic).
- 1.2. **Agreement** means this Agreement and any agreement executed by the parties varying or expressed to be supplemental to this Agreement.
- 1.3. **Current Address for Service**
 - 1.3.1. for the Responsible Authority means the address shown under the heading "Parties" in this Agreement, or any other principal office address listed on the website of the Responsible Authority; and
 - 1.3.2. for the Owner means the address shown under the heading "Parties" in this Agreement or any other address provided by the Owner to the Responsible Authority for any purpose or purposes relating to the Land.
- 1.4. **Current Email Address for Service**
 - 1.4.1. for the Responsible Authority means info@surfcoast.vic.gov.au, or any other email address listed on the website of the Responsible Authority; and
 - 1.4.2. for the Owner means any email address provided by the Owner to the Responsible Authority for the express purpose of electronic communication regarding this Agreement.
- 1.5. **Current Number for Service**
 - 1.5.1. for the Responsible Authority means 03 5261 0525, or any other facsimile number listed on the website of the Responsible Authority; and
 - 1.5.2. for the Owner means any facsimile number provided by the Owner to the Responsible Authority for the express purpose of facsimile communication regarding this Agreement.
- 1.6. **Dwelling** has the same meaning as in the Planning Scheme.
- 1.7. **Endorsed Plans** means the plans dated 27 November 2018 and 6 March 2018 (Version 19) and endorsed under the Permit on 15 March 2021, a copy of which form Annexure A to this Agreement.
- 1.8. **Frontage** means the area between a Dwelling and the southern boundary on Lots 19 to 25 and 43 to 46.
- 1.9. **Land** means the land described in Recital R.1 and any reference to the Land includes any lot created by the subdivision of the Land or any part of it.
- 1.10. **Lot** means a lot shown on the Endorsed Plans with the corresponding lot number.
- 1.11. **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 Land or any part of it.
- 1.12. **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 Land or any part of it, and includes a Mortgagee in possession.

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- 1.13. **Owner's Obligations** means the covenants, promises, agreements, indemnities, undertakings and warranties given by the Owner under this Agreement including the specific obligations imposed under clause 3.
- 1.14. **party or parties** means the Owner and the Responsible Authority under this Agreement as appropriate.
- 1.15. **Permit** means the planning permit issued by the Responsible Authority described in Recital R.3 including the Endorsed Plans and as amended from time to time, or any subsequent permit issued by the Responsible Authority.
- 1.16. **Planning Scheme** means the Surf Coast Planning Scheme and any successor instrument or other planning scheme which applies to the Land.
- 1.17. **Register** and **Registrar** have the same meanings as in the *Transfer of Land Act 1958* (Vic).
- 1.18. **Reserve** means the Barwon River Reserve identified on the Endorsed Plans.
- 1.19. **Responsible Authority** means Surf Coast Shire Council in its capacity as:
 - 1.19.1. the authority responsible for administering and enforcing the Planning Scheme; and
 - 1.19.2. a municipal council within the meaning of the *Local Government Act 1989* (Vic),

and includes its agents, officers, employees, servants, workers and contractors and any subsequent person or body which is the responsible authority or municipal council.

2. INTERPRETATION

In the interpretation of this Agreement unless inconsistent with the context or subject matter:

- 2.1. The singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to all other genders.
- 2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- 2.4. A reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law.
- 2.5. A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute.
- 2.6. The Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.
- 2.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
- 2.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.

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- 2.9 Where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 2.10. Where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner agrees with the Responsible Authority that:

- 3.1. Lots 19 to 23 must be developed such that the façade of any Dwelling on Lots 19 to 23 is orientated to front the Reserve;
- 3.2. Fencing along the southern boundary of Lots 19 to 23, and within the Frontage of those Lots, must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;
- 3.3. Fencing along the southern boundary of Lots 24, 25 and 43 to 46, and within the Frontage of those Lots, must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres; and
- 3.4. Fencing along the remaining boundaries of Lots 19 to 23 must be visually permeable (at least 20% transparent) and have a maximum height of 1.8 metres,
- all to the satisfaction of the Responsible Authority.

4. FURTHER COVENANTS OF THE OWNER

The Owner warrants and covenants with the Responsible Authority that:

- 4.1. It is the registered proprietor (or entitled to be so) of the Land.
- 4.2. Save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches.
- 4.3. Neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act 1958* (Vic).
- 4.4. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement.
- 4.5. It will within 28 days of written demand pay to the Responsible Authority the Responsible Authority's reasonable costs (including legal or other professional costs) and expenses of and incidental to the:
- 4.5.1. negotiation, preparation, execution and recording of this Agreement;
- 4.5.2. assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and
- 4.5.3. determination of whether any of the Owner's obligations have been undertaken to the satisfaction of the Responsible Authority or to give consent to anything under this Agreement.

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15-

To the extent that such costs and expenses constitute legal professional costs, the Responsible Authority may at its absolute discretion have these costs assessed by the Law Institute of Victoria and in that event the parties will be bound by the amount of that assessment, with any fee for obtaining such an assessment being borne equally by the Responsible Authority and the Owner. Such costs payable by the Owner will include the costs and disbursements associated with the recording, cancellation or alteration of this Agreement in the Register.

- 4.6. It will do all that is necessary to enable the Responsible Authority to make application to the Registrar of Titles to record this Agreement in the Register in accordance with the Act, including the signing of any further agreement, acknowledgment or other document.
- 4.7. Until such time as this Agreement is recorded in the Register, the Owner must ensure that successors in title will give effect to this Agreement, and do all acts and sign all documents which will require those successors to give effect to this Agreement, including executing a deed agreeing to be bound by the terms of this Agreement.

5. FURTHER ASSURANCE

The parties to this Agreement will do all things necessary (including signing any further agreement, acknowledgement or document) to give full effect to the terms of this Agreement and to enable this Agreement to be recorded in the Register in accordance with the Act.

6. AMENDMENT

This Agreement may be amended only in accordance with the requirements of the Act.

7. NO WAIVER

No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

8. NO FETTERING OF POWERS OF RESPONSIBLE AUTHORITY

The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority 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 Land or relating to any use or development of the Land.

9. INTEREST ON OVERDUE MONEYS

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 227A of the *Local Government Act 1989* (Vic) and any payment made shall be first directed to payment of interest and then principal amount owing.

10. NOTICES

All notices and other communications under this Agreement will be sent by prepaid mail, by hand delivery, email or by facsimile to the Current Addresses for Service, Current Email Address for Service or Current Number for Service of the parties, and may be sent by an agent

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of the party sending the notice. Each notice or communication will be deemed to have been duly received;

- 10.1. not later than two business days after being deposited in the mail with postage prepaid;
- 10.2. when delivered by hand;
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11. COSTS ON DEFAULT

If the Owner defaults in the performance of any obligations under this Agreement it will pay to the Responsible Authority its reasonable costs of action taken to achieve compliance with this Agreement.

12. INVALIDITY OF ANY CLAUSE

Notwithstanding anything to the contrary in this Agreement, if any provision of this Agreement will be invalid and not enforceable in accordance with its terms, all other provisions which are self-sustaining and capable of separate enforcement without regard to the invalid provisions will be and continue to be valid and enforceable in accordance with those terms.

13. AGREEMENT BINDING ON SUCCESSORS OF OWNERS

This Agreement will extend to and bind the Owner's successors, assigns, administrators, transferees and legal personal representatives and the obligations imposed upon them will also be binding on their successors, transferees, purchasers, mortgagees and assigns as if each of them had separately executed this Agreement.

14. JOINT OBLIGATIONS

In the case of each party that consists of more than one person (including in that expression any corporation) each of those persons covenants, agrees and declares that all of the covenants, agreements, declarations and consents contained in this Agreement and made and given by that party have been entered into, made and given and are binding upon that person both severally and also jointly with the other person or persons constituting that party.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

16. COMMENCEMENT AND ENDING OF AGREEMENT

- 16.1. This Agreement will commence:
 - 16.1.1. on the date that it bears; or
 - 16.1.2. if it bears no date, on the date it is recorded in the Register.

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16.2. This Agreement will end by agreement between the parties or otherwise in accordance with the provisions of the Act.

EXECUTED AS A DEED

SIGNED on behalf of the **SURF COAST SHIRE COUNCIL** by the Chief Executive Officer under delegation in the presence of:

witness

EXECUTED by **51 MAINWINCH PTY LTD** in accordance with Section 127 of the Corporations Act 2001:

AU572 32

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. Presenting this content as a document and agree that you will only use the information for the purpose specified above and that any other use, including distribution of this information is strictly prohibited.

The annexure to this agreement has been intentionally removed from this copy for the purpose of effecting registration. A copy of the agreement including the annexure can be inspected at the offices of Council on reasonable notice.

AU572832N

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Department of Environment, Land, Water & Planning

Electronic Instrument Statement

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The Victorian Government acknowledges the Traditional Owners of Victoria and pays respects to their ongoing connection to their Country, History and Culture. The Victorian Government extends this respect to their Elders, past, present and emerging.

Produced 17/10/2023 01:12:49 PM

Status	Registered	Dealing Number	AU572832N
Date and Time Lodged	14/07/2021 10:14:39 AM		

Lodger Details

Lodger Code	18776H
Name	HARWOOD ANDREWS
Address	
Lodger Box	
Phone	
Email	
Reference	7cmm:21903753

APPLICATION TO RECORD AN INSTRUMENT

Jurisdiction	VICTORIA
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Privacy Collection Statement

The information in this form is collected under statutory authority and used for the purpose of maintaining publicly searchable registers and indexes.

Estate and/or Interest

FEE SIMPLE

Land Title Reference

2607/276
8050/497
8143/288
8831/576

Instrument and/or legislation

RECORD - AGREEMENT - SECTION 173
Planning & Environment Act - section 173

Applicant(s)

Name	SURF COAST SHIRE COUNCIL
Address	
Property Name	SURF COAST SHIRE OFFICE
Street Number	1
Street Name	MERRIJIG
Street Type	DRIVE



Department of Environment, Land, Water & Planning

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Locality TORQUAY
State VIC
Postcode 3228

Additional Details

Refer Image Instrument

The applicant requests the recording of this Instrument in the Register.

Execution

1. The Certifier has taken reasonable steps to verify the identity of the applicant or his, her or its administrator or attorney.
2. The Certifier holds a properly completed Client Authorisation for the Conveyancing Transaction including this Registry Instrument or Document.
3. The Certifier has retained the evidence supporting this Registry Instrument or Document.
4. The Certifier has taken reasonable steps to ensure that this Registry Instrument or Document is correct and compliant with relevant legislation and any Prescribed Requirement.

Executed on behalf of SURF COAST SHIRE COUNCIL

Signer Name

Signer Organisation

Signer Role

Execution Date 14 JULY 2021

File Notes:

NIL

This is a representation of the digitally signed Electronic Instrument or Document certified by Land Use Victoria.

Statement End.



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Document Type	Instrument
Document Identification	AU572832N
Number of Pages (excluding this cover sheet)	9
Document Assembled	

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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 that any dissemination or distribution of this information is strictly prohibited.



SECTION 173 AGREEMENT PLANNING AND ENVIRONMENT ACT 1987

SURF COAST SHIRE COUNCIL

Responsible Authority

- and -

51MAINWINCH PTY LTD

}

Owner

in relation to land at:

51 AND 61 MAIN STREET, WINCHELSEA VIC 3241

5AMC: 21903753

Harwood Andrews
ABN 98 076 868 034
70 Gheringhap Street,
Geelong 3220, Victoria, Australia
DX 22019 Geelong
PO Box 101 Geelong Vic 3220

T 03 5225 5225 F 03 5225 5222

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THIS AGREEMENT is made the

28

day of

June

2021

PARTIES:

- 1. **Surf Coast Shire Council** of 1 Merrijig Drive, Torquay 3228 **(Responsible Authority)**
- 2. **51MAINWINCH PTY LTD**) **(Owner)**

RECITALS:

- R.1. The Owner is the registered proprietor of the land known as 51 and 61 Main Street, Winchelsea, being the land described in Certificates of Titles volume 02607 folio 276, volume 08831 folio 576, volume 08050 folio 497 and volume 08143 folio 288 (**Land**).
- R.2. The Responsible Authority is responsible for the administration and enforcement of the Planning Scheme pursuant to the provisions of the Act.
- R.3. The Responsible Authority issued planning permit number 15/0525-2 on 20 January 2017 (amended 7 March 2017, 21 November 2018, 1 May 2019 and 15 March 2021) allowing "Multi-lot staged subdivision, removal of native vegetation and creation of access to road zone category 1 in accordance with the endorsed plan/s" (**Permit**).
- R.4. Condition 27(a) of the Permit provides:

Prior to Statement of Compliance – Stage 2

27. In addition to the requirements of Condition 26, before a Statement of Compliance is issued for Stage 2 of the subdivision, the subdivider must:

- a) *enter into an agreement with the responsible authority made pursuant to section 173 of the Planning and Environment Act 1987, and make application to the Registrar of Titles to have the agreement registered on title to the land under section 181 of the Act, which provides for the following:*
 - *That Lots 19-23 must be developed with the orientation of the façade of dwellings to front the reserve;*
 - *That fencing along the front shared boundary to the reserve of Lots 19-23 and within the front setback area of the dwellings must be low, visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;*
 - *Any fencing along the front of Lots 24 & 25 and lots 43-46 and within the front setback area of the dwellings must be low, visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;*
 - *Any fencing along the remainder of the lot boundaries for Lots 19-23 must have a maximum height of 1.8 metres and be visually permeable (at least 20% transparent).*

The owner must pay the costs of preparation, review, execution and registration of the agreement.

...

to the satisfaction of the Responsible Authority.

- R.5. This Agreement is entered into between the Responsible Authority and the Owner pursuant to section 173 of the Act in order to meet the requirements of condition 27(a) of the Permit and to achieve the objectives of planning in Victoria.

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IT IS AGREED AS FOLLOWS:

1. DEFINITIONS

In this Agreement unless inconsistent with the context or subject matter:

- 1.1. **Act** means the *Planning and Environment Act 1987* (Vic).
- 1.2. **Agreement** means this Agreement and any agreement executed by the parties varying or expressed to be supplemental to this Agreement.
- 1.3. **Current Address for Service**
 - 1.3.1. for the Responsible Authority means the address shown under the heading "Parties" in this Agreement, or any other principal office address listed on the website of the Responsible Authority; and
 - 1.3.2. for the Owner means the address shown under the heading "Parties" in this Agreement or any other address provided by the Owner to the Responsible Authority for any purpose or purposes relating to the Land.
- 1.4. **Current Email Address for Service**
 - 1.4.1. for the Responsible Authority means info@surfcoast.vic.gov.au, or any other email address listed on the website of the Responsible Authority; and
 - 1.4.2. for the Owner means any email address provided by the Owner to the Responsible Authority for the express purpose of electronic communication regarding this Agreement.
- 1.5. **Current Number for Service**
 - 1.5.1. for the Responsible Authority means 03 5261 0525, or any other facsimile number listed on the website of the Responsible Authority; and
 - 1.5.2. for the Owner means any facsimile number provided by the Owner to the Responsible Authority for the express purpose of facsimile communication regarding this Agreement.
- 1.6. **Dwelling** has the same meaning as in the Planning Scheme.
- 1.7. **Endorsed Plans** means the plans dated 27 November 2018 and 6 March 2018 (Version 19) and endorsed under the Permit on 15 March 2021, a copy of which form Annexure A to this Agreement.
- 1.8. **Frontage** means the area between a Dwelling and the southern boundary on Lots 19 to 25 and 43 to 46.
- 1.9. **Land** means the land described in Recital R.1 and any reference to the Land includes any lot created by the subdivision of the Land or any part of it.
- 1.10. **Lot** means a lot shown on the Endorsed Plans with the corresponding lot number.
- 1.11. **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 Land or any part of it.
- 1.12. **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 Land or any part of it, and includes a Mortgagee in possession.

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- 1.13. **Owner's Obligations** means the covenants, promises, agreements, indemnities, undertakings and warranties given by the Owner under this Agreement including the specific obligations imposed under clause 3.
- 1.14. **party or parties** means the Owner and the Responsible Authority under this Agreement as appropriate.
- 1.15. **Permit** means the planning permit issued by the Responsible Authority described in Recital R.3 including the Endorsed Plans and as amended from time to time, or any subsequent permit issued by the Responsible Authority.
- 1.16. **Planning Scheme** means the Surf Coast Planning Scheme and any successor instrument or other planning scheme which applies to the Land.
- 1.17. **Register** and **Registrar** have the same meanings as in the *Transfer of Land Act 1958* (Vic).
- 1.18. **Reserve** means the Barwon River Reserve identified on the Endorsed Plans.
- 1.19. **Responsible Authority** means Surf Coast Shire Council in its capacity as:
 - 1.19.1. the authority responsible for administering and enforcing the Planning Scheme; and
 - 1.19.2. a municipal council within the meaning of the *Local Government Act 1989* (Vic),

and includes its agents, officers, employees, servants, workers and contractors and any subsequent person or body which is the responsible authority or municipal council.

2. INTERPRETATION

In the interpretation of this Agreement unless inconsistent with the context or subject matter:

- 2.1. The singular includes the plural and the plural includes the singular.
- 2.2. A reference to a gender includes a reference to all other genders.
- 2.3. Words (including defined expressions) denoting persons will be deemed to include all trusts, bodies and associations, corporate or unincorporated, and vice versa.
- 2.4. A reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law.
- 2.5. A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute.
- 2.6. The Recitals to this Agreement are and will be deemed to form part of this Agreement including any terms defined within the Recitals.
- 2.7. References to the parties will include their transferees, heirs, assigns, and liquidators, executors and legal personal representatives as the case may be.
- 2.8. Reference to a document or agreement includes reference to that document or agreement as changed, novated or replaced from time to time.

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- 2.9 Where a word or phrase is given a definite meaning in this Agreement, a part of speech or other grammatical form for that word or phrase has a corresponding meaning.
- 2.10. Where a word or phrase is not defined in this Agreement, it has the meaning as defined in the Act, or, if it is not defined in the Act, it has its ordinary meaning.

3. SPECIFIC OBLIGATIONS OF THE OWNER

The Owner agrees with the Responsible Authority that:

- 3.1. Lots 19 to 23 must be developed such that the façade of any Dwelling on Lots 19 to 23 is orientated to front the Reserve;
- 3.2. Fencing along the southern boundary of Lots 19 to 23, and within the Frontage of those Lots, must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres;
- 3.3. Fencing along the southern boundary of Lots 24, 25 and 43 to 46, and within the Frontage of those Lots, must be visually permeable (at least 25% transparent) and have a maximum height of 1.2 metres; and
- 3.4. Fencing along the remaining boundaries of Lots 19 to 23 must be visually permeable (at least 20% transparent) and have a maximum height of 1.8 metres,
- all to the satisfaction of the Responsible Authority.

4. FURTHER COVENANTS OF THE OWNER

The Owner warrants and covenants with the Responsible Authority that:

- 4.1. It is the registered proprietor (or entitled to be so) of the Land.
- 4.2. Save as shown in the certificate of title to the Land, there are no mortgages, liens, charges, easements or other encumbrances or any rights inherent in any person affecting the Land or any part of it and not disclosed by the usual searches.
- 4.3. Neither the Land nor any part of it is subject to any right obtained by adverse possession or subject to any easements, rights or encumbrances mentioned in section 42 of the *Transfer of Land Act 1958* (Vic).
- 4.4. It will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of it without first providing to its successors a copy of this Agreement.
- 4.5. It will within 28 days of written demand pay to the Responsible Authority the Responsible Authority's reasonable costs (including legal or other professional costs) and expenses of and incidental to the:
- 4.5.1. negotiation, preparation, execution and recording of this Agreement;
- 4.5.2. assessment, negotiation, preparation, execution and recording of any proposed amendment to this Agreement; and
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6. AMENDMENT

This Agreement may be amended only in accordance with the requirements of the Act.

7. NO WAIVER

No waiver by any party of any default in the strict and literal performance of or compliance with any provision, condition or requirement in this Agreement will be deemed to be a waiver of strict and literal performance of and compliance with any other provision, condition or requirement of this Agreement nor to be a waiver of or in any way release any party from compliance with any provision, condition or requirement in the future nor will any delay or omission of any party to exercise any right under this Agreement in any manner impair the exercise of such right accruing to it thereafter.

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The parties acknowledge and agree that this Agreement does not fetter or restrict the power or discretion of the Responsible Authority 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 Land or relating to any use or development of the Land.

9. INTEREST ON OVERDUE MONEYS

Any amount due under this Agreement but unpaid by the due date incurs interest at the rate prescribed under section 227A of the *Local Government Act 1989* (Vic) and any payment made shall be first directed to payment of interest and then principal amount owing.

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This Agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

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EXECUTED AS A DEED

SIGNED on behalf of the **SURF COAST SHIRE COUNCIL** by the Chief Executive Officer under delegation in the presence of:

Witness _____

EXECUTED by **51 MAINWINCH PTY LTD** in accordance with Section 127 of the Corporations Act 2001:

AU57'2
32N

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