



Application by Responsible Authority, Relevant Authority, Referral Authority or Council for the making of a recording of an agreement

AG106722W

26/09/2008 \$99.90 173


Section 181(1) Planning and Environment Act 1987

Lodged by:

Name: 
Phone:
Address:
Ref:
Customer Code: 

The authority or council having made an agreement requires a recording to be made in the Register for the land.

Land:

The land described in Certificates of Title Volume 3884 Folio 742, Volume 7487 Folio 192 and Volume 10579 Folio 725 being land at 229 Illowa Road, Illowa.

Authority or council

MOYNE SHIRE COUNCIL

Section and Act under which agreement made:

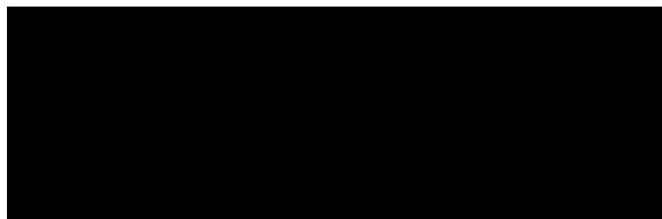
Section 173 of the Planning and Environment Act 1987

A copy of the agreement is attached to this application

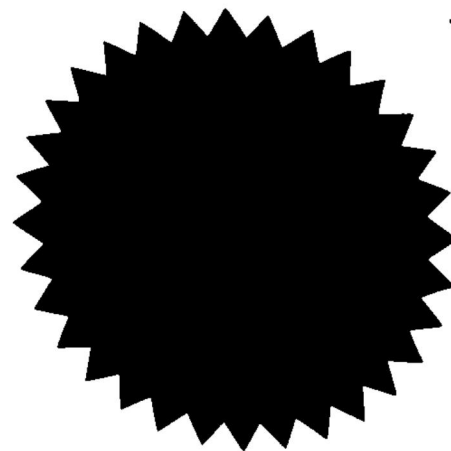
Dated:

Signed:

THE Common Seal of the **MOYNE SHIRE COUNCIL**)
was hereunto affixed this 22ndday)
of September2008....in the presence of:)



Chief Executive Officer



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RESPONSIBLE AUTHORITY MOYNE SHIRE COUNCIL

THE OWNER



LAND AFFECTED 229 ILLOWA ROAD, ILLOWA

DATED 22nd September 2008

**AGREEMENT PURSUANT TO SECTION 173
PLANNING & ENVIRONMENT ACT**

REGISTRATION PARTICULARS

A Memorandum of this agreement was lodged in the Office of Titles pursuant to Section 181 of the Planning & Environment Act 1987 on _
/___/20___

DEALING NO.

WARRNAMBOOL

121 Kepler Street,
(P.O. Box 311)
Warrnambool, 3280

Tel: (03) 5560 2100
Fax: (03) 5561 4567

E-Mail: taits@taits.com.au
Internet: www.taits.com.au

MORTLAKE

118 Dunlop Street,
(P.O. Box 1)
Mortlake, 3272

Tel: (03) 5599 2504
Fax: (03) 5599 2036

PORT FAIRY

38 Bank Street,
(P.O. Box 114)
Port Fairy, 3284

Tel: (03) 5568 1402
Fax: (03) 5568 2498

TERANG

99 High Street,
(P.O. Box 114)
Terang, 3264

Tel: (03) 5592 1666
Fax: (03) 5592 1811

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MOYNE SHIRE COUNCIL

26/09/2008 \$99.90 173

PLANNING & ENVIRONMENT ACT

- and -



AGREEMENT PURSUANT TO SECTION 173



AFFECTED LAND:

229 Illowa Road, Illowa

Land in the Parish of Yangery being the land described in Certificates of Title Volume 10579 Folio 725, Volume 3884 Folio 742 and Volume 7487 Folio 192.

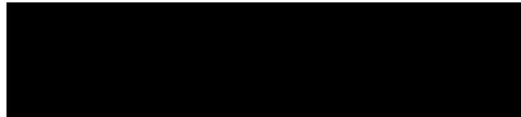
THIS AGREEMENT is made on the 22nd day of September 2008

BETWEEN:

The Responsible Authority:

MOYNE SHIRE COUNCIL ("the Council")
of Princes Street, Port Fairy

The Owner:



of 229 Illowa Road, Illowa ("the Owner")

WHEREAS:

1. The Owner owns the land being Lots 1, 2 and 3 on the subdivision plan being part of Crown Allotment 11 Section B and Crown Allotment 1 Section C Parish of Yangery being the land described in Certificates of Title Volume 3884 Folio 742, Volume 7487 Folio 192 and Volume 10579 Folio 725 situated at 229 Illowa Road, Illowa ("the land").
2. The land is affected by the provisions of the Moyne Planning Scheme ("the Scheme").
3. The Council is the responsible authority under the Planning & Environment Act 1987 ("the Act") for the purposes of the Scheme.
4. The Owner applied to the Council for a planning permit to subdivide the land in accordance with the Proposed Plan of Subdivision Reference 1965 by Foster Land Surveying Pty Ltd dated April 2007 ("the subdivision plan") a copy of which is attached hereto.
5. The Council on 10th October, 2007 resolved to issue a permit for the subdivision of the land ("the subdivision permit") in accordance with the subdivision plan.
6. The subdivision permit is subject to conditions including the following:
 - "Prior to the certification of the plan of subdivision, the Owner of the land must enter into and execute an agreement with the responsible authority pursuant to Section 173 of the Planning & Environment Act 1987. This agreement must provide for:
 - a) That the land must not be further subdivided to create any additional lots.
 - b) That no dwelling shall be allowed to be constructed on Lot 2 of the plan of subdivision.
 - c) That any use and future development of Lot 3 for the purpose of a dwelling meet the following requirements-
 - i. *The dwelling be located within the designated building envelope as shown on the certified plan of subdivision and be constructed to a height no greater than 5 metres in height above natural ground level.*

- ii. *The dwelling be clad in appropriate building materials and colours such as timber, render, masonry or colour bound iron and be clad in muted tones such as pastel blue-green or pale yellow or cream.*
- iii. *That the Glenelg Hopkins Catchment Management Authority be consulted with prior to the commencement of the use and development of Lot 3 for the purpose of a dwelling.*

It is further required that this agreement must be registered at the Office of Titles pursuant to Section 181 of the Planning and Environment Act 1987. This agreement must be prepared and executed at the Owner's expense."

- 7. The parties enter this agreement in satisfaction of this condition of the subdivision permit.

BY THIS AGREEMENT IT IS AGREED AND COVENANTED:

1. OPERATION

- 1.1. This agreement is made pursuant to Section 173 of the Act.
- 1.2. This agreement shall come into force on execution by both parties.
- 1.3. The covenants of this agreement shall run with the land.

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2. INTERPRETATION

2.1. LOT

In this agreement "lot" means any and each lot shown on the subdivision plan.

2.2. OWNER

In this agreement the word "Owner" unless the contrary intention appears shall be deemed to include [REDACTED] and [REDACTED] their successors assigns and transferees and the obligations imposed on and assumed by them shall be binding on their successors transferees purchasers mortgagees assigns of and any person obtaining possession of the whole or part of the land as if each of those successors separately executed this agreement; and

If the Owner holds the land in a trust capacity, "Owner" shall include the beneficiaries of the trust in relation to which it holds such land. Where such trust relationship exists the Owner in executing this agreement does so intending to assume not only personal liability, but also to bind the trust for which it acts as trustee.

If the Owner is constituted by more than one person any obligation imposed by this agreement on the Owner shall be imposed on those persons jointly and severally.

2.3. COUNCIL

In this agreement the word "Council" shall include the Council's successors and its successors as responsible authority for Planning control in the area in which the land is situate.

2.4. In this agreement, unless the context otherwise requires:

- 2.4.1. Words denoting the singular number shall include the plural and vice versa.
- 2.4.2. Words denoting any gender shall include all genders.
- 2.4.3. Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase shall have corresponding meanings.
- 2.4.4. Words denoting natural persons shall include corporations and vice versa.
- 2.4.5. References to clauses and schedules are to clauses of and schedules to this agreement.
- 2.4.6. Headings are for convenience only and do not affect interpretation.
- 2.4.7. References to any party to this agreement or any other agreement or instrument shall include the party's successors and permitted assigns.

- 2.4.8. Reference to any agreement or instrument shall be also to such agreement or instrument as amended, novated, supplemented, varied or replaced from time to time.
- 2.4.9. References to any legislation or to any provision of any legislation shall include any modification or re-enactment of that legislation and any legislative provision substituted for, and all regulations and statutory instruments issued under such legislation or provision.
- 2.4.10. References to dollars and "\$" shall be taken as referring to amounts in Australian currency.
- 2.4.11. As the case may be, a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, jointly and severally.

3. NO FURTHER SUBDIVISION

The Owner agrees and covenants that the land must not be further subdivided to create any additional lots.

4. NO DWELLING ON LOT 2

The Owner agrees and covenants that no dwelling shall be allowed to be constructed on Lot 2 of the plan of subdivision.

5. USE AND DEVELOPMENT OF LOT 3

The Owner agrees and covenants that any use and future development of Lot 3 for the purpose of a dwelling meet the following requirements:

- 5.1. The dwelling shall be located within the designated building envelope as shown on the certified plan of subdivision and be constructed to a height no greater than 5 metres in height above natural ground level.
- 5.2. The dwelling shall be clad in appropriate building materials and colours such as timber, render, masonry or colour bond iron and be clad in muted tones such as pastel blue-green or pale yellow or cream.
- 5.3. Glenelg Hopkins Catchment Management Authority shall be consulted before the commencement of the use and development of Lot 3 for the purpose of a dwelling.

6. REGISTRATION

The parties shall do all things necessary to enable the Council to register this agreement pursuant to Section 181 of the Act.

7. DISCLOSURE

The Owner shall not sell mortgage or part with possession of the land or any part of it without first disclosing to its successors the existence and the nature of this agreement.

8. COSTS OF AGREEMENT

The Owner forthwith on demand shall pay to the Council the Council's costs and expenses (as between the solicitor and own client) of and incidental to this agreement and of anything consequent on it or in furtherance of it.

9. NOTICES

Any notice required under this agreement may be served by delivering it to the Owner at its last known address within the rating records of the Council. Any notice posted shall be deemed to have been served at the expiration of twenty-four hours from the time of posting.

10. SUCCESSORS BOUND

Without limiting the operation or effect which this agreement has apart from this sub-clause, the Owner shall ensure that its successors:-

10.1. Give effect to and do all acts and sign all documents which are required of them to give effect to this agreement; and

10.2. Execute under seal a deed agreeing to be bound by the terms of this agreement.

The obligation imposed on the Owner by sub-clause 1 of this clause shall cease for such time as there appears in the register book at the office of the Registrar of Titles a memorandum of this agreement.

11. RELEASE

On a person ceasing to own any part of the land that person shall be released from the obligations of that person as an owner under this agreement, save to the extent that any right has arisen against such owner prior to such cessation.

12. FURTHER DOCUMENTATION AND ACTION

Each of the parties shall sign and execute all such further documents and deeds and do all acts and things as the other party reasonably shall require for giving effect to this agreement.

13. DISPUTE

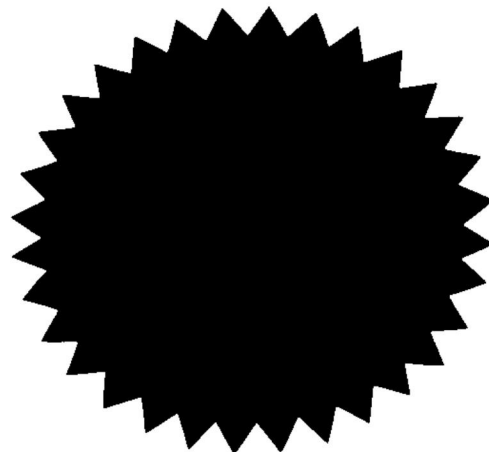
If any dispute or difference arises between the parties with respect to the interpretation of this agreement, or its application, such dispute or difference shall be determined by a person appointed by the parties by agreement, or failing agreement, by a person qualified in the area of the dispute or difference and appointed by the Secretary as defined in the Act.

EXECUTED AS A DEED.

THE Common Seal of the **MOYNE SHIRE COUNCIL**)
was hereunto affixed this twenty second day)
of September 2008 in the presence of:)



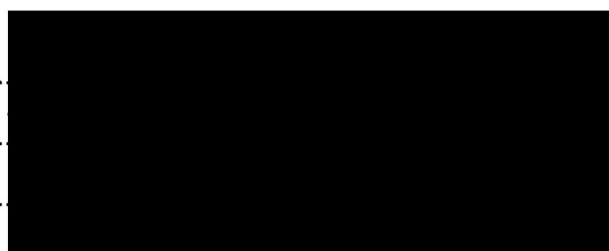
Chief Executive Officer



SIGNED by [redacted])

in the presence of: [redacted])

Witness: [redacted]



ANNEXURE 1B Proposed Plan of Subdivision

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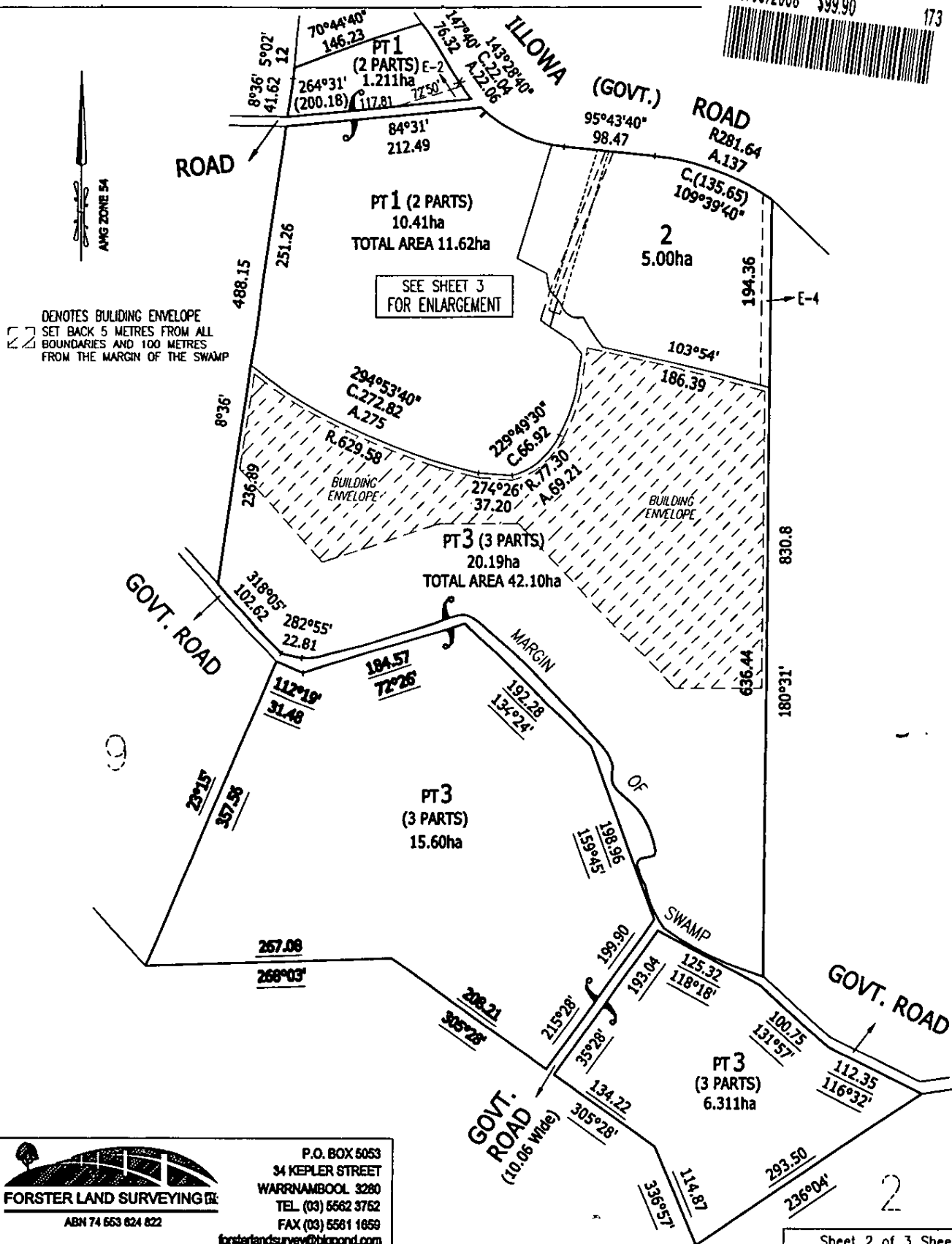
PROPOSED PLAN OF SUBDIVISION

AG106722W

26/09/2008 \$99.90

\$99.90

173



ABN 74 653 624 822

**P.O. BOX 5053
34 KEPLER STREET
WARRNAMBOOL 3280
TEL (03) 5562 3762
FAX (03) 5581 1659
forsterlandsurvey@bigpond.com**

ORIGINAL

SCALE

SCALE

**SIZE
A3**

40 0 80 160

LENGTHS ARE IN METRES

LICENSED SURVEYOR (PRINT)

GEOFFREY IAN FORSTER

SIGNATURE

DATE 19/12/2007

REF: 1965

VERSION: 01

Sheet 2 of 3 Sheets

DATE / /

COUNCIL DELEGATE SIGNATURE

Original sheet size A3

2

196501S2.DWG