# NOTICE OF AN APPLICATION FOR A PLANNING PERMIT

MITCHELL SHIRE COUNCIL

## Details about the application

| | |
|---|---|
| The land affected by the application is located at: | 28 Romano Drive PYALONG VIC 3521 |
| The application is for a permit for: | Development of the land for a dwelling |
| The applicant for the permit is: | Bruce Mactier Building Designers |
| The application reference number is: | **PLP227/22** |

You may look at the application and any supporting documents by either of the following options:

### MITCHELL SHIRE COUNCIL

Via our website https://www.mitchellshire.vic.gov.au/planning-and-building/planning-services/advertised-planning-applications

By contacting the Statutory Planning Department via email statplan@mitchellshire.vic.gov.au

In person during office hours free of charge at:
**Kilmore Customer and Library Service Centre**
12 Sydney Street Kilmore - Monday to Friday, 9am to 5pm

**Any person who may be affected by the granting of the permit may make a written submission to the Responsible Authority**

**A submission must:**

* **be sent to the Responsible Authority in writing**
* **include the reasons for your submission, and**
* **state how you would be affected.**

***Please be aware that copies of submissions received may be made available to any person for the purpose of consideration as part of the planning process.***

The Responsible Authority will not decide on the application before: **22nd August 2022**

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

Form 2

MITCHELL SHIRE COUNCIL

Office Use Only

Application No.: Date Lodged: / /

# Application for
# Planning Permit

Planning Enquiries
Phone: 03 5734 6200
Web: http://www.mitchellshire.vic.gov.au

If you need help to complete this form, read How to complete the Application for Planning Permit form.

⚠ Any material submitted with this application, including plans and personal information, will be made available for public viewing, including electronically, and copies may be made for interested parties for the purpose of enabling consideration and review as part of a planning process under the *Planning and Environment Act 1987*. If you have any concerns, please contact Council's planning department.

⚠ **Questions marked with an asterisk (*) are mandatory and must be completed.**

⚠ **If the space provided on the form is insufficient, attach a separate sheet.**

Clear Form

## The Land

(1) Address of the land. Complete the Street Address and one of the Formal Land Descriptions.

**Street Address ***

| Unit No.: | St. No.: | St. Name: |
|---|---|---|
| | 28 | Romano Drive |

Suburb/Locality: Pyalong Postcode: 3521

**Formal Land Description ***
Complete either A or B.

⚠ This information can be found on the certificate of title.

A Lot No.: 7 ◯ Lodged Plan ◯ Title Plan ◉ Plan of Subdivision No.: 544029Q

**OR**

B Crown Allotment No.: Section No.:

Parish/Township Name:

If this application relates to more than one address, please click this button and enter relevant details. Add Address

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## The Proposal

⚠ You must give full details of your proposal and attach the information required to assess the application. Insufficient or unclear information will delay your application.

(2) **For what use, development or other matter do you require a permit? ***

If you need help about the proposal, read: *How to Complete the Application for Planning Permit Form*

Select the focus of this application and describe below:

Proposed new dwelling in rural living zone

Provide additional information on the proposal, including: plans and elevations; any information required by the planning scheme, requested by Council or outlined in a Council planning permit checklist; and if required, a description of the likely effect of the proposal.

(3) **Estimated cost of development for which the permit is required ***

Cost $ 490,000 ⚠ You may be required to verify this estimate.

Insert '0' if no development is proposed (eg. change of use, subdivision, removal of covenant, liquor licence)

## Existing Conditions

**4 Describe how the land is used and developed now ***

eg. vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

vacant Land

Provide a plan of the existing conditions. Photos are also helpful.

## Title Information

**5 Encumbrances on title ***

If you need help about the title, read: How to complete the Application for Planning Permit form

Does the proposal breach, in any way, an encumbrance on title such as a restrictrive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- ○ Yes. (If 'yes' contact Council for advice on how to proceed before continuing with this application.)
- ◉ No
- ○ Not applicable (no such encumbrance applies).

Provide a full, current copy of the title for each individual parcel of land forming the subject site. (The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', eg. restrictive covenants.)

## Applicant and Owner Details

**6** Provide details of the applicant and the owner of the land.

**Applicant ***

The person who wants the permit.

Name:
Title: Mr | First Name: Bruce | Surname: Mactier

Organisation (if applicable): Bruce Mactier Building Designers

Postal Address: | If it is a P.O. Box, enter the details here:
Unit No.: 2 | St. No.: 4 | St. Name: Welsford Street

Suburb/Locality: Shepparton | State: VIC | Postcode: 3630

*Where the preferred contact person for the application is different from the applicant, provide the details of that person.*

Contact person's details * | Same as applicant (if so, go to 'contact information') ☑

Name:
Title: | First Name: | Surname:

Organisation (if applicable):

Postal Address: | If it is a P.O. Box, enter the details here:
Unit No.: | St. No.: | St. Name:

Suburb/Locality: | State: | Postcode:

*Please provide at least one contact phone number **

**Contact information**

Business Phone: [redacted] | Email [redacted]

Mobile Phone: | Fax:

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**Owner ***

The person or organisation who owns the land

*Where the owner is different from the applicant, provide the details of that person or organisation.*

Same as applicant ☐

Name:

Title: Mr | First Name: Paul | Surname: Dawson

Organisation (if applicable):

Postal Address: | If it is a P.O. Box, enter the details here:

Unit No.: | St. No.: [redacted] | St. Name: [redacted]

Suburb/Locality: [redacted] | State: VIC | Postcode: 3753

Owner's Signature (Optional): | Date: day / month / year

## Declaration

**(7) This form must be signed by the applicant ***

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

I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the permit application.

Signature: | Date: 8/1/22 day / month / year

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## Need help with the Application?

If you need help to complete this form, read How to complete the Application for Planning Permit form
General information about the planning process is available at www.dpcd.vic.gov.au/planning

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist. Insufficient or unclear information may delay your application.

**(8) Has there been a pre-application meeting with a Council planning officer?**

○ No ☑ Yes

If 'yes', with whom?: Hannah Shanks - Colla

Date: 13/05/2022 day / month / year

## Checklist

**(9) Have you:**

☑ Filled in the form completely?

☐ Paid or included the application fee?

⚠ Most applications require a fee to be paid. Contact Council to determine the appropriate fee.

☑ Provided all necessary supporting information and documents?

- ☑ A full, current copy of title information for each individual parcel of land forming the subject site
- ☑ A plan of existing conditions.
- ☑ Plans showing the layout and details of the proposal
- ☑ Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist.
- ☐ If required, a description of the likely effect of the proposal (eg traffic, noise, environmental impacts).

☑ Completed the relevant Council planning permit checklist?

☑ Signed the declaration (section 7)?

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## Lodgement

**Lodge the completed and signed form, the fee payment and all documents with:**

Mitchell Shire Council
113 High Street Broadford VIC 3658

**Contact Information:**
Telephone: 61 03 5734 6200
Email: mitchell@mitchellshire.vic.gov.au
DX: 66003

**Deliver application in person, by fax, or by post:**

Print Form

Make sure you deliver any required supporting information and necessary payment when you deliver this form to the above mentioned address. This is usually your local council but can sometimes be the Minister for Planning or another body.

**Save Form:**

Save Form ToYour

You can save this application form to your computer to complete or review later or email it to others to complete relevant sections.

MITCHELL SHIRE COUNCIL

# LEGAL POINT OF DISCHARGE
# &
# LOCAL DRAINAGE INFORMATION
## REGULATION 133(2)

**Council Ref No:** BP30098/21 **Date:** 1/11/2021 **Property Number:** 124209

**Applicant**: PSI Global Pty Ltd **Address:** Level 4 10 Nexus Court MULGRAVE VIC 3170

| **Property Details:** | | | |
|---|---|---|---|
| ADDRESS | 28 Romano Drive PYALONG VIC 3521 | | |
| LOT | 7 | LP/PS | 544029 |

***BRIEF DESCRIPTION OF PROPOSED BUILDING: Construction of a dwelling***

***The above location is required to:***

- ☐ Connection to underground stormwater network is not currently available at this property therefore stormwater must be contained and disposed of within the property. Disperse over land below building via rock beaching line whilst ensuring that no overland flow is directed towards neighbouring properties.

If you have any questions regarding this matter please contact the Mitchell Shire Council Engineering Department on 5734 6200.

Regards,

**Basir Azizi**
**Development Engineer**
**Mitchell Shire Council**

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## Nicola Enright

**From:** paul dawson <paul_d_dawson@hotmail.com>
**Sent:** Friday, 13 May 2022 3:08 PM
**To:** Nicola Enright
**Cc:** Sam Woodard
**Subject:** Fw: LCA Enquiry - 28 Romano Drive PYALONG

Hi Nicola and Sam.

Upon further investigation with the Environmental health office at Mitchell Shire, we will not require an LCA. Please see below correspondence with Hannah from the Environmental Health Office.

She is happy to discuss anything with you Nicola if you have any questions for her. She isn't sure why Fawaz said we would need one, she has checked with the Planning team who have different staff members in today) and they have said we will not need one. She said that it is the Environmental office that provides us with the actual Septic permit not the Planning team.

Thankyou both for your help on this.

Regards,

Paul Dawson

---

**From:** Hannah Shanks-Colla <Hannah.ShanksColla@mitchellshire.vic.gov.au>
**Sent:** Friday, 13 May 2022 2:53 PM
**To:** paul dawson <paul_d_dawson@hotmail.com>
**Subject:** RE: LCA Enquiry - 28 Romano Drive PYALONG

Hi Paul,

As discussed, Environmental Health do not require a Land Capability Assessment for the purposes of your onsite domestic wastewater system as the property;

- Is larger than 4000-5000m2
- Is not located within an environmentally significant overlay, flood overlay, or inundation overlay
- Does not contain any other constraining features such as trees, dams, waterways

I have communicated with Council's planning team who have advised that their requirements are based on whether environmental health require an LCA.

Should you have any further questions, please let me know.

Regards,

MITCHELL SHIRE COUNCIL

**Hannah Shanks-Colla**
Enivronmental Health Officer - Environmental Health Services
Hannah.ShanksColla@mitchellshire.vic.gov.au

Mitchell Shire Council - 113 High Street, Broadford 3658
T +61 3 5734 6200 | F +61 3 5734 6222 |
Office Hours –Monday to Friday – 8:30am to 5pm

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TTY users phone 133 677 then ask for (03) 5734 6200. TIS users call 13 14 50.

**From:** paul dawson <paul_d_dawson@hotmail.com>
**Sent:** Thursday, 12 May 2022 10:07 AM
**To:** Mitchell Shire Council <Mitchell@mitchellshire.vic.gov.au>
**Subject:**

Hello

I spoke with Jody a few months ago regarding my property 28 Romano Drive, Pyalong not requiring an LCA as it's not near a waterway

Can someone please give me a call regarding this as the company I am employing to do the planning permit for me requires it in writing

Regards,
Paul Dawson
0422 835 874

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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.

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

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VOLUME 12036 FOLIO 585 Security no : 124098217965V
Produced 09/06/2022 01:29 PM

## LAND DESCRIPTION

Lot 7 on Plan of Subdivision 544029Q.
PARENT TITLE Volume 10789 Folio 634
Created by instrument PS544029Q 27/11/2018

## REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors
PAUL DAVID DAWSON
LATOYA CHARLIE DAWSON both of 5 POETS MEWS BEVERIDGE VIC 3753
AS942755L 30/01/2020

## ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AS942756J 30/01/2020
COMMONWEALTH BANK OF AUSTRALIA

COVENANT AS942755L 30/01/2020

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
AC646055G 04/02/2004

AGREEMENT Section 173 Planning and Environment Act 1987
AQ633726K 15/01/2018

## DIAGRAM LOCATION

SEE PS544029Q 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)

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Street Address: 28 ROMANO DRIVE PYALONG VIC 3521

ADMINISTRATIVE NOTICES
---
NIL

eCT Control 15940N COMMONWEALTH BANK OF AUSTRALIA
Effective from 31/01/2020

DOCUMENT END

**The information supplied has been obtained by Dye & Durham Property Pty Ltd who is licensed by the State of Victoria to provide this information via LANDATA® System. Delivered at 09/06/2022, for Order Number 74715011. Your reference: GS 24052.**

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Lodged at the Titles Office by:

AQ633726K
15/01/2018 $94.60 173

Name: BECK LEGAL PTY. LTD.
Phone: (03) 5445 3333
Ref: MBA:CCO-509940-70
Customer Code: 0469S

# FORM 18

Planning and Environment Regulations 2005

## APPLICATION FOR RECORDING OF AN AGREEMENT
## Section 181 (1) Planning and Environment Act 1987

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**

Lot A on Plan of Subdivision 525509H being the whole of the land described in Certificate of Title Volume 10789 Folio 634

**AUTHORITY OR COUNCIL**

MITCHELL SHIRE COUNCIL,
Municipal Offices, 113 High Street Broadford 3658

**SECTION AND ACT UNDER WHICH AGREEMENT MADE:**

Section 173 of *Planning and Environment Act 1987*

A copy of the Agreement is attached to this Application.

DATED the 5 day of January 2018.

.....
Signature for the Responsible Authority

Name of Officer: Niall Sheehy

Office Held: Manager Development Approvals

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AQ633726K
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becklegal Solicitors

# Agreement pursuant to section 173 of the Planning and Environment Act 1987 (Vic)

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**BETWEEN**

**MITCHELL SHIRE COUNCIL**

**and**

**DEEGEE PROPERTY PTY LTD**

177 View St Bendigo Vic 3550
PO Box 628 Bendigo Vic 3552
DX 55011 Bendigo

**Phone** 03 5445 3333
Fax 03 5445 3355

**Email** info@becklegal.com.au
www.becklegal.com.au

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becklegal

Section 173 Agreement – Northern

AQ633726K
15/01/2018 $94.60 173

**THIS AGREEMENT** is made the 5 day of January 2018.

**PARTIES**:

**MITCHELL SHIRE COUNCIL ABN 27 352 592 142** of 113 High Street, Broadford in the State of Victoria

**(the Council)**

**AND**

**DEEGEE PROPERTY PTY LTD ACN 143 917 748** of Suite 105, Level 1, 3-9 Chester Street, Oakleigh in the State of Victoria

**(the Owner)**

**BACKGROUND:**

A. The Owner is the registered proprietor of the Land.

B. The Council is the Responsible Authority for the administration and enforcement of the Act for the Scheme.

C. The Land is within the municipality of the Council and affected by the Scheme.

D. On 20 June 2016 the Council issued the Planning Permit No. PLP210/15 which permits a 14 lot subdivision and variation of easements.

E. Condition 17 of the Planning Permit provides:

*"Before the issue of a Statement of Compliance under the Subdivision Act 1988, the owner must enter into an agreement with the Responsible Authority made pursuant to Section 173 of the Planning and Environment Act 1987 and the agreement must be registered on the titles of proposed lots 8, 9, 10 and 14 under Section 181 of the Act. The agreement must provide that:*

*a. The construction of any buildings and works (excluding fences and gardening activities) must not be within the building exclusion zone as shown on the endorsed plans of this permit.*

*b. Adequate stock exclusion fencing within 30 metres of Mollisons Creek or along an adjoining property boundary, whichever is greater, is to remain erected and maintained at all times to the satisfaction of the responsible authority.*

*c. No livestock shall be permitted to enter the fenced areas identified as stock exclusion zones*

*d. Fencing must be designed to minimise the impact of free ranging wildlife to the satisfaction of the responsible authority.*

*e. The land may not be further subdivided.*

*The owner must pay the reasonable costs for the preparation, execution and registration of the Section 173 Agreement.*

*Before the issue of the Statement of Compliance, a copy of the Titles Office registration number (dealing number) for the Section 173 Agreement must be provided to Council as proof of registration."*

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F. If the Land is encumbered by a mortgage, the mortgage is identified in the Definitions and the Mortgagee's consent will be affixed to the Agreement.

G. The parties acknowledge that this Agreement provides for:

(a) matters intended to satisfy Condition 17 of the Planning Permit;

(b) matters intended to achieve and advance the objectives of planning in Victoria; and

(c) matters intended to achieve and advance the objectives of planning in the Scheme and is made pursuant to Section 173 of the Act.

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15/01/2018 $94.60 173

## 1. DEFINITIONS

In this Agreement:

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

***Agreement*** means this Agreement, including the Schedule and Annexures and the recitals to this Agreement.

***Business Day*** means Monday to Friday excluding public holidays in Victoria.

***Council*** means the Mitchell Shire Council and includes any of its successors or assigns.

***Endorsed Plans*** means the plan or plans endorsed with the Stamp of Council from time to time attached to the Planning Permit.

***Land*** means all that piece of land being Lot A on Plan of Subdivision 525509H being the whole of the land described in Certificate of Title Volume 10789 Folio 634.

***Lots 8, 9, 10 and 14*** means Lots 8, 9, 10 and 14 on the Plan of Subdivision.

***Owner*** means the person registered or entitled from time to time to be registered by the Registrar of Titles, as proprietor of an estate in fee simple of the Land, or any part of it.

***Planning Permit*** means planning permit PLP210/15 a copy of which can be inspected from Council Offices upon appointment.

***Plan of Subdivision*** means the proposed plan of subdivision of the Land a copy of which can be inspected from Council Offices upon appointment.

***Scheme*** means the Mitchell Planning Scheme or any other planning scheme which applies to the Land from time to time.

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## 2. INTERPRETATION

2.1 The singular includes the plural and the plural includes the singular.

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

2.3 The reference to a person includes a reference to a firm, corporation, association or other entity and their successors in law.

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

2.5 A reference to a statute includes any statute amending, consolidating or replacing that statute and includes any subordinate instruments made under that statute.

2.6 The Background to this Agreement is and will be deemed to form part of this Agreement including any terms defined within the Background.

## 3. COMMENCEMENT

This Agreement came into force on the date it was made and set out above or and if no date is specified on the day in which the Agreement was registered on the relevant Certificate of Title to the Land.


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AQ633726K
15/01/2018 $94.60 173

## 4. TERMINATION OF AGREEMENT

This Agreement may be ended by mutual agreement between the Council and the Owner either wholly or in part or as to any part of the Land. As soon as reasonably practicable after this Agreement has ended, the Council must, at the request and at the cost of the Owner, apply to the Registrar of Titles under Section 183(2) of the Act to cancel the recording of this Agreement on the Register.

## 5. OWNER'S COVENANTS

### 5.1 Specific Obligations on the Owner

5.1.1 The Owner agrees that no buildings and works (excluding fences and gardening activities) will be constructed on Lots 8, 9, 10 and 14 within the building exclusion zone as shown on the Endorsed Plans.

5.1.2 The Owner agrees that adequate stock exclusion fencing within 30 metres of Mollisons Creek or along an adjoining property boundary, whichever is greater, will be erected on Lots 8, 9, 10 and 14 and remain erected and maintained at all times to the satisfaction of the Council.

5.1.3 The Owner shall not permit any livestock to enter the fenced areas identified as stock exclusion zones on Lots 8, 9, 10 and 14.

5.1.4 The Owner agrees that the stock exclusion fencing to be erected on Lots 8, 9, 10 and 14 will be designed to minimise the impact of free ranging wildlife to the satisfaction of the Council.

5.1.5 The Owner agrees not to further subdivide Lots 8, 9, 10 and 14.

5.1.6 The Owner agrees to pay the reasonable costs for the preparation, execution and registration of the Agreement.

5.1.7 The Owner agrees to provide a copy of the Titles Office registration number (dealing number) for the Agreement as proof of registration to the Council before the issue of the Statement of Compliance.

### 5.2 Further Obligations on the Owner

5.2.1 Covenants run with the Land

The Owner's obligations in this Agreement are intended to take effect as covenants which shall be annexed to and run at law and in equity with the Land and every part of it, and bind the Owner and their successors, assignees and transferees, the registered proprietor or proprietors for the time being of the Land and every part of the Land.

5.2.2 Successors in title

Until this Agreement is recorded on the folio of the Register which relates to the Land pursuant to Section 181 of the Act, the Owner must ensure that its successors in title give effect to and do all acts and sign all documents which will require those successors to give effect to this Agreement including

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requiring the successors in title to execute a deed agreeing to be bound by the terms of this Agreement. Until that deed is executed, the Owner, being party to this Agreement, remain liable to perform all of the Owner's obligations contained in this Agreement.

5.2.3 Further assurance

The Owner agrees to do all that is necessary to enable the Council to make an application to the Registrar of Titles to make a recording of this Agreement on the Certificate of Title to the Land in accordance with Section 181 of the Act, including the signing of any further agreement, acknowledgement or other document which relates to the Land.

5.2.4 Mortgagee to be bound

The Owner agrees to obtain the consent of any Mortgagee to be bound by the covenants in this Agreement if the Mortgagee becomes mortgagee in possession of the Land.

5.2.5 Indemnity

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

5.2.6 Non-compliance

If the Owner has not complied with this Agreement within 14 days after the date of service on the Owner by the Council of a notice which specified the Owner's failure to comply with any provision of this Agreement, the Owner agrees:

5.2.6.1 to allow the Council's officers, employees, contractors or agents to enter the Land and rectify the non-compliance;

5.2.6.2 to pay to the Council on demand, the Council's reasonable costs and expenses incurred as a result of the Owner's non-compliance; and

5.2.6.3 to pay interest at the rate of 2% above the rate prescribed under Section 2 of the *Penalty Interest Rates Act 1983* on all monies which are due and payable but remain owing under this Agreement until they are paid in full;

5.2.6.4 if requested to do so by Council, to promptly execute in favour of it a mortgage to secure the Owner's obligations under this Agreement;

And the Owner agrees;

5.2.6.5 to accept a certificate signed by the Chief Executive Officer of the Council (or any nominee of the Chief Executive Officer) as prima facie

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proof of the costs incurred by the Council in rectifying the Owner's non-compliance with this Agreement;

5.2.6.6 that any payments made for the purposes of this Agreement shall be appropriated first in payment of any interest and any unpaid costs of the Council and then applied in repayment of the principal sum;

5.2.6.7 that all costs or other monies which are due and payable under this Agreement but which remain owing shall be a charge on the Land until they are paid in full; and

5.2.6.8 if the Owner executes a mortgage as required by clause 5.2.7.4 any breach of this Agreement is deemed to be a default under that mortgage Council access.

**5.3 Council access**

The Owner agrees to allow the Council and its officers, employees, contractors or agents or any of them to enter the Land (at any reasonable time) to assess compliance with this Agreement.

**5.4 Owner's warranty**

The Owner warrants and covenants that:

5.4.1 the Owner is the registered proprietor (or is entitled to become the registered proprietor) of the Land and is also the beneficial owner of the Land;

5.4.2 there are no mortgages, liens, charges or other encumbrances or leases or any rights inherent in any person other than the Owner affecting the Land which have not been disclosed by the usual searches of the folio of the Register for the Land or notified to the Council;

5.4.3 no part of the Land is subject to any rights obtained by adverse possession or subject to any easements or rights described or referred to in Section 42 of the *Transfer of Land Act 1958*; and

5.4.4 until this Agreement is recorded on the folio of the Register which relates to the Land, the Owner will not sell, transfer, dispose of, assign, mortgage or otherwise part with possession of the Land or any part of the Land without first disclosing to any intended purchaser, transferee, assignee or mortgagee the existence and nature of this Agreement.

**6. GENERAL**

**6.1 Council powers not restricted**

This Agreement does not fetter or restrict the Council's power or discretion in respect of any of the Council's decision making powers including but not limited to an ability to make decisions under the *Local Government Act 1989*, and the Act or to make or impose requirements or conditions in connection with any use or development of the Land or the granting of any planning permit, the approval or

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certification of any plans of subdivision or consolidation relating to the Land or the issue of a statement of compliance in connection with any such plans.

### 6.2 Time of the essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

### 6.3 Governing law and jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts and tribunals of Victoria and waives any right to object to proceedings being brought in those courts or tribunals.

### 6.4 Enforcement and severability

6.4.1 This Agreement shall operate as a contract between the parties and be enforceable as such in a court of competent jurisdiction regardless of whether, for any reason, this Agreement were held to be unenforceable as an Agreement pursuant to Division 2 of Part 9 of the Act.

6.4.2 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 shall be severed and the other provisions of this Agreement shall remain operative.

## 7. NOTICES

### 7.1 Service of notice

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:

7.1.1 by delivering it personally to that party;

7.1.2 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

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

### 7.2 Time of service

A notice or other communication is deemed served

7.2.1 if delivered, on the next following business day;

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

7.2.3 if sent by facsimile, on the next following business day unless the receiving party has requested re-transmission before the end of that business day.

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**IN WITNESS WHEREOF** the parties hereto have hereunto set their hands and seals the day and year first hereinbefore written.

**SIGNED** for and on behalf of **MITCHELL SHIRE COUNCIL** by Niall Sheehy in his capacity as MANGER PLANNING AND COMPLIANCE and pursuant to an instrument of delegation dated 30th June 2014 which it is certified has not been revoked or varied in the presence of:

.....

Signature of delegate

.....

Signature of Witness

James McNulty

Full name of Witness

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**EXECUTED** by **DEEGEE PROPERTY PTY LTD ACN 143 917 748** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director

Salvatore J. DiGiovine

Full name (print)

OLGA KELLER

Full name (print)


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**AC646055G**

04/02/2004 $59 173

OFFICE OF TITLES P.R.T. VICTORIA

**Lodged by:** P. PANDELI

**Ref:** PP. ZIGNET P/L

**Tel. No.** (03) 98419359

**Code:** 1171 P

**APPLICATION BY a RESPONSIBLE AUTHORITY under Section 181 Planning & Environment Act 1987 for the making of a Recording of an agreement under Section 173 Of the Planning & Environment Act 1987**

The responsible Authority under the Planning Scheme having entered into an Agreement with the parties named for the land described requires a recording of the Agreement to be made in the register for the land.

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**LAND** The whole of the land comprised in Certificate of Title Volume 10600 Folio ~~502~~ 602 (

**ADDRESS OF THE LAND** Lot A PS 444700T Parish of Pyalong, Northern Highway, Pyalong, 3521

**RESPONSIBLE AUTHORITY** Mitchell Shire Council of 113 High Street, Broadford, 3658

**PLANNING SCHEME** Mitchell Planning Scheme

**AGREEMENT DATE** 6 JANUARY 2004

**AGREEMENT WITH** The Mitchell Shire Council and Zignet Pty Ltd A.C.N. 065 395 235

A copy of this Agreement is attached to this Application

Signature of Responsible Authority .....

Name of Officer IAN R. HAINES

Office Held ACTING CHIEF EXECUTIVE OFFICER

Date 6 JANUARY 2004

DAC646055G-1-8

PS1 4/2/04

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DATE: 6 JANUARY 2004

**THE MITCHELL SHIRE COUNCIL**

**AND**

**ZIGNET PTY LTD**
**A.C.N. 065 395 235**

---

**AN AGREEMENT MADE PURSUANT TO SECTION 173 OF THE PLANNING & ENVIRONMENT ACT 1987**

---

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**P. PANDELI**
**SOLICTOR**
**1066 DONCASTER ROAD**
**DONCASTER EAST 3109**

**TEL: 9841 9359**
**FAX: 9842 8669**
**DX: 34403 DONCASTER EAST**
**CODE: 1171P**

AC646055G
04/02/2004 $59 173

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# MITCHELL SHIRE COUNCIL

**THIS AGREEMENT** is made the 6th day of January 2004

**BETWEEN**

**THE MITCHELL SHIRE COUNCIL**
**of 113 High Street, Broadford, 3658 (the Council)**

**AND**

DAC646055G-3-4

**ZIGNET PTY LTD A.C.N. 065 395 235**
**of 29A Macedon Road, Lower Templestowe, 3107, (the Owner)**

**WHEREAS**

**A.** The Council is the responsible authority for the administration and enforcement of the Mitchell Planning Scheme ("the Planning Scheme") pursuant to the provisions of the *Planning & Environment Act 1987* ("the Act").

**B.** The Owner is the proprietor of all that piece of land situated at and known as Lot A PS 444700T Parish of Pyalong Northern Highway, Pyalong, 3521, being the land more particularly described and delineated in Certificate of Title Volume 10600 Folio 602 ("the subject land").

**C** On 26 November 2002 the Council issued Planning Permit No. P303041 to allow subdivision of the subject land into 12 lots in accordance with the endorsed plans.

D. Condition 2 of the permit provides as follows :

Prior to the commencement of the subdivision, the applicant shall enter into an agreement pursuant to Section 173 of the Planning and Environment Act 1987:

(1) That any future building permit applications for dwellings on the subdivision must include a Certificate of Compliance, prepared by an acoustic consultant, to conform with AS 3671-1989 "Acoustics – Road Traffic Noise Intrusion – Building Siting and Construction".

(2) For the purposes of contributing an agreed Community Development Levy per each additional lot created by the subdivision. Such an agreement shall, in addition to the formal requirements, contain terms providing :

(i) If the permit lapses or is cancelled, the Responsible Authority shall refund any contribution(s) to the applicant.

(ii) If the permit is amended so that the number of lots is increased or reduced, a corresponding payment or refund shall be made to the Responsible Authority or the applicant, whichever is the case.

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(iii) The contribution is to be paid into a Community Development Levy Reserve account for the future provision of services in the vicinity of the development.

(iv) The payment of the contribution may be staggered in accordance with the approved staging plan provided that payment for each stage is made prior to the issuing of a Statement of Compliance for that stage.

(v) That the applicant shall be liable to pay the full cost of preparing and registering the agreement.

**E.** The parties have agreed that, without restricting or limiting their respective powers to enter into this agreement and insofar as it can be so treated, this agreement shall be treated as being an agreement under Section 173 of the Act.

**IT IS AGREED**

**1. DEFINITIONS**

DRC646055G-4-2

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

1.1 **"Owner"** means any person or persons entitled from time to time to be registered by the Registrar of Titles as proprietor or proprietors of an estate in fee simple of the subject land or any part of the subject land;

1.2 **"the subject land"** means the land referred to and described in the recitals of this agreement

1.3 **"the Responsible Authority"** means the Mitchell Shire Council of 113 High Street, Broadford, 3658.

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**INTERPRETATION**

**2.1** A reference to one gender includes a reference to the other genders.

**2.2** A reference to a person includes a reference to a firm, corporation or other Corporate body as the case may be.

**2.3** Unless the context indicates otherwise, the singular includes the plural and the Plural includes the singular.

**2.4** If the Owner is more than one person this agreement binds them jointly and each of them severally.

**RECITALS CORRECT**

**3.** The Owner and the Council acknowledge and agree that the recitals to this agreement are correct.

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## OWNERS COVENANTS

4. The Owner with the intent that the covenants in this agreement shall run with the subject land covenants and agrees as follows :

4.1 That any future building permit applications for dwellings on the subdivision must include a Certificate of Compliance prepared by an acoustic consultant, to conform with AS 3671 – 1989 "Acoustics" – Road Traffic Noise Intrusion – Building Siting and Construction".

4.2 To contribute an agreed Community Development Levy per each additional lot created by the subdivision. Such an agreement shall, in addition to the formal requirements, contain terms providing :

4.2.1 If the permit lapses or is cancelled, the Responsible Authority shall refund any contribution(s) to the applicant.

4.2.2 If the permit is amended so that the number of lots is increased or reduced, a corresponding payment or refund shall be made to the Responsible Authority or the applicant, whichever is the case.

4.2.3 The contribution is to be paid into a Community Development Levy Reserve account for the future provision of services in the vicinity of the development.

4.2.4 The payment of the contribution may be staggered in accordance with the approved staging plan provided that payment for each stage is made prior to the issuing of a Statement of Compliance for that stage.

4.2.5 That the applicant shall be liable to pay the full cost of preparing and registering the agreement.

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## AGREEMENT AS COVENANT TO RUN WITH SUBJECT LAND

5. The obligations of the Owner under this agreement, being obligations to be performed by Owner as conditions subject to which the subject land may be used or developed for specified purposes and being intended to achieve or advance the objectives of the Planning Scheme, will take effect as separate and severable covenants which shall be annexed to and run at law and in equity with the subject land to bind the Owner and each successor, assign or transferee of the Owner the registered proprietor or proprietors for the time being of the subject land and every part of the subject land.

## NO TRANSFER WITHOUT CONSENT

6. The Owner shall not execute any instrument of transfer or conveyance of the subject land or any part of the subject land prior to the registration of a memorandum of this

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agreement on the title of the subject land without the specific consent of the Responsible Authority in writing such consent to refer to this clause of the agreement.

**REGISTRATION OF AGREEMENT**

7. The Owner agrees to do all things necessary to enable the Council to enter a memorandum of this Agreement on the Certificate of Title to the subject land in accordance with Section 181 of the Act, including signing any further agreement, acknowledgment or document to enable the said memorandum to be registered under that Section.

**FURTHER ACTIONS**

8. The Owner covenants and agrees to do all things necessary including the signing of such further agreements or other documents that may be required to ensure that covenants and agreements in this agreement are carried out and effected.

**COSTS**

9. The Owner covenants and agrees to pay the Council's costs of and incidental to the preparation and execution of this agreement and the registration of the memorandum of this agreement at the Land Titles Office pursuant to Section 181 of the Act and any duties or fees payable in connection with either the agreement or the registration of the memorandum at the Land Titles Office.

**NO INDULGENCES**

10. Any time or indulgence granted by the Council to the Owner or any of them or any variation of the terms and conditions of this agreement will not in any way amount to a waiver of the rights or remedies of the Council in relation to the terms of this agreement.

**SEVERANCE**

11. If any provision of this agreement is not valid it shall not affect the validity of the other provisions of this agreement but shall be read down or severed so as to leave the other provisions of this agreement in effect.

**NOTICES**

12. Any notice, consent or other communication that any of the parties may be required or wish to give to any other party pursuant to the provisions of this agreement must be in writing and may be given by :

12.1 delivering such notice by hand to a party at its address appearing hereon or to such other address as that party may from time to time by notice in writing to the other parties nominate as its new or alternative address for the giving of notices;

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12.2 being sent by facsimile to the facsimile number of the recipient party; or

12.3 being sent by pre-paid mail to the address of the recipient party appearing in this agreement or to such other address as that party may from time to time by notice to the other parties nominate as its new or alternative address for the giving of notices;

12.4 Such notice will be deemed to have been given :

12.4.1 if delivered personally on the date on which the notice was personally delivered;

12.4.2 if sent by facsimile, on the date on which the sending party's facsimile machine records that the facsimile has been despatched; and

12.4.3 if sent by pre-paid mail, on the date being two days after the date of posting.

**NO WAIVER**

**13.** No waiver of any right under this agreement or forebearance or delay in the enforcement thereof or any other indulgence including but not only an indulgence of time granted by any party to any other party will affect the strict rights of that party under this agreement and all the rights and powers of that party will remain in full force and effect notwithstanding any such waiver, forbearance, delay or other indulgence on the party of that party.

**STATUS OF AGREEMENT**

**14.**

14.1 This agreement constitutes the whole and entire agreement between the parties in respect of all the matters contained in this agreement and supersedes any representation, understanding or arrangement given or made orally or in writing by any party to any other party prior to the effective date.

14.2. Save as expressly provided herein, this agreement may not be altered or modified save by subsequent agreement in writing executed by each of the parties.

**IN WITNESS OF THIS AGREEMENT** the parties have set their hands and seals the day and year first herein written.

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Signed for and on behalf of the **Mitchell Shire Council**
Pursuant to the **Instrument of Delegation** issued to the
Position of Chief Excutive Officer by resolution of Council
On 16 November, 1998

**Ian R Haines**
**Acting Chief Executive Officer**

THE COMMON SEAL OF THE MITCHELL SHIRE COUNCIL ★ CONSTITUTED 19TH NOVEMBER 1994 ★ MITCHELL SHIRE COUNCIL

**THE COMMON SEAL** of **ZIGNET PTY LTD** )
was affixed in the presence of authorised persons: )

Director.....

Full name.....ROMANO LIVIO CELLANTE

Usual address.....29A MACEDON ROAD LOWER TEMPLESTOWE 3107

ZIGNET PTY. LTD. A.C.N. 065 395 235 The Common Seal Of

Director.....

Full name.....MASSIMO LIVIO CELLANTE

Usual address.....29A MACEDON ROAD LOWER TEMPLESTOWE 3107

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# PLAN OF SUBDIVISION

EDITION 1

PS 544029Q

## LOCATION OF LAND

PARISH: PYALONG

TOWNSHIP: -

SECTION: -

CROWN ALLOTMENT: 2(PT), 3(PT), 3B(PT), 4(PT), 5(PT) & 6(PT)

CROWN PORTION: -

TITLE REFERENCES: VOL. 10789 FOL. 634

LAST PLAN REFERENCE/S: LOT A on PS525509H

POSTAL ADDRESS: ROMANO DRIVE
(At time of subdivision) PYALONG, 3521

MGA94 Co-ordinates
(of approx centre of land in plan) E 310 900 ZONE: 55
N 5 889 185 GDA94

Council Name: Mitchell Shire Council

Council Reference Number: PLS048/16
Planning Permit Reference: PLP210/15
SPEAR Reference Number: S088324P

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 at Statement of Compliance
(Document updated 24/10/2018)

Digitally signed by: James Peter McNulty for Mitchell Shire Council on 15/03/2018

Statement Of Compliance issued: 24/10/2018

## VESTING OF ROADS AND/OR RESERVES

| IDENTIFIER | COUNCIL/BODY/PERSON |
|---|---|
| ROAD R-1 | MITCHELL SHIRE COUNCIL |

## NOTATIONS

DEPTH LIMITATION 15.24m APPLIES TO CROWN ALLOTMENT 3B ONLY

SURVEY: THIS PLAN IS BASED ON SURVEY

STAGING: THIS IS NOT A STAGED SUBDIVISION

Planning Permit No. PLP210/15

THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No.(s), 18 & 28

IN PROCLAIMED SURVEY AREA No. 178

## NOTATIONS

OTHER PURPOSE OF THE PLAN:

REMOVAL OF CARRIAGEWAY EASEMENT E-1 AS SHOWN ON THE TITLE DIAGRAM PS525509H AS CREATED IN PS409942R TO BENEFIT MITCHELL SHIRE COUNCIL.

GROUNDS FOR REMOVAL:

BY DIRECTION OF PLANNING PERMIT PLP210/15

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## 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 | CARRIAGEWAY | 20 | AK042090C | LOT 1 on TP761891A |
| E-3,E-7 E-8,E-9 | CARRIAGEWAY | SEE DIAG. | THIS PLAN | MITCHELL SHIRE COUNCIL |
| E-4,E-6 E-8,E-9 | POWERLINE | SEE DIAG. | THIS PLAN SECTION 88 OF THE ELECTRICITY INDUSTRY ACT 2000. | POWERCOR AUSTRALIA LTD. |
| E-5,E-6 E-7,E-8 | DRAINAGE | SEE DIAG. | THIS PLAN | MITCHELL SHIRE COUNCIL |

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CONSULTING LAND SURVEYORS
52A. SYDNEY STREET KILMORE 3764
TEL.5782 1414 FAX.5782 2416
125 ROBERTS STREET ESSENDON 3040
TEL.9374 3008

SURVEYOR FILE REF: 9771

PLAN No.: BAN9771PS.DWG

ORIGINAL SHEET SIZE: A3

SHEET 1 OF 6

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PLAN REGISTERED
TIME: 3:44pm DATE: 27 / 11 / 2018
Rod Speer
Assistant Registrar of Titles

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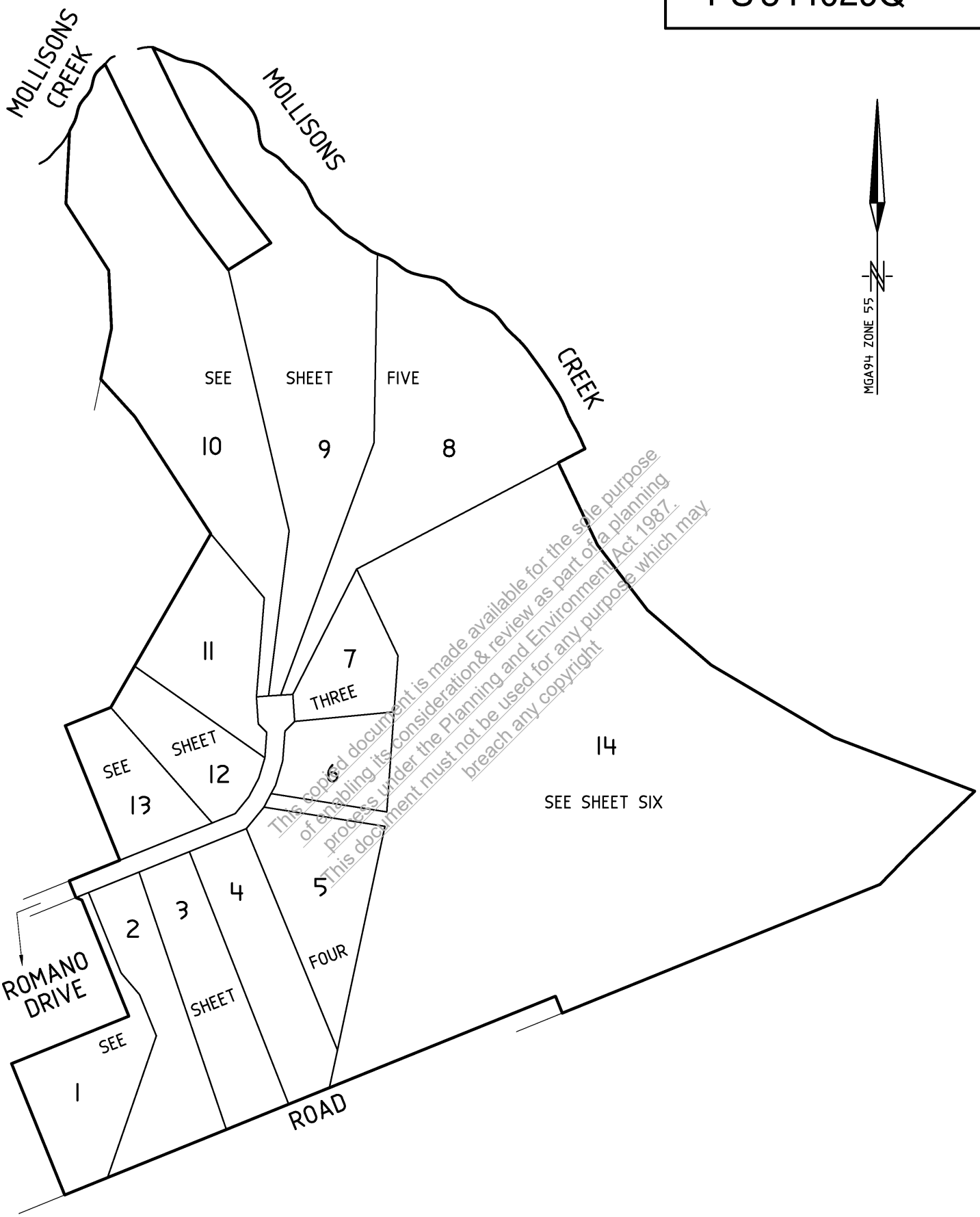


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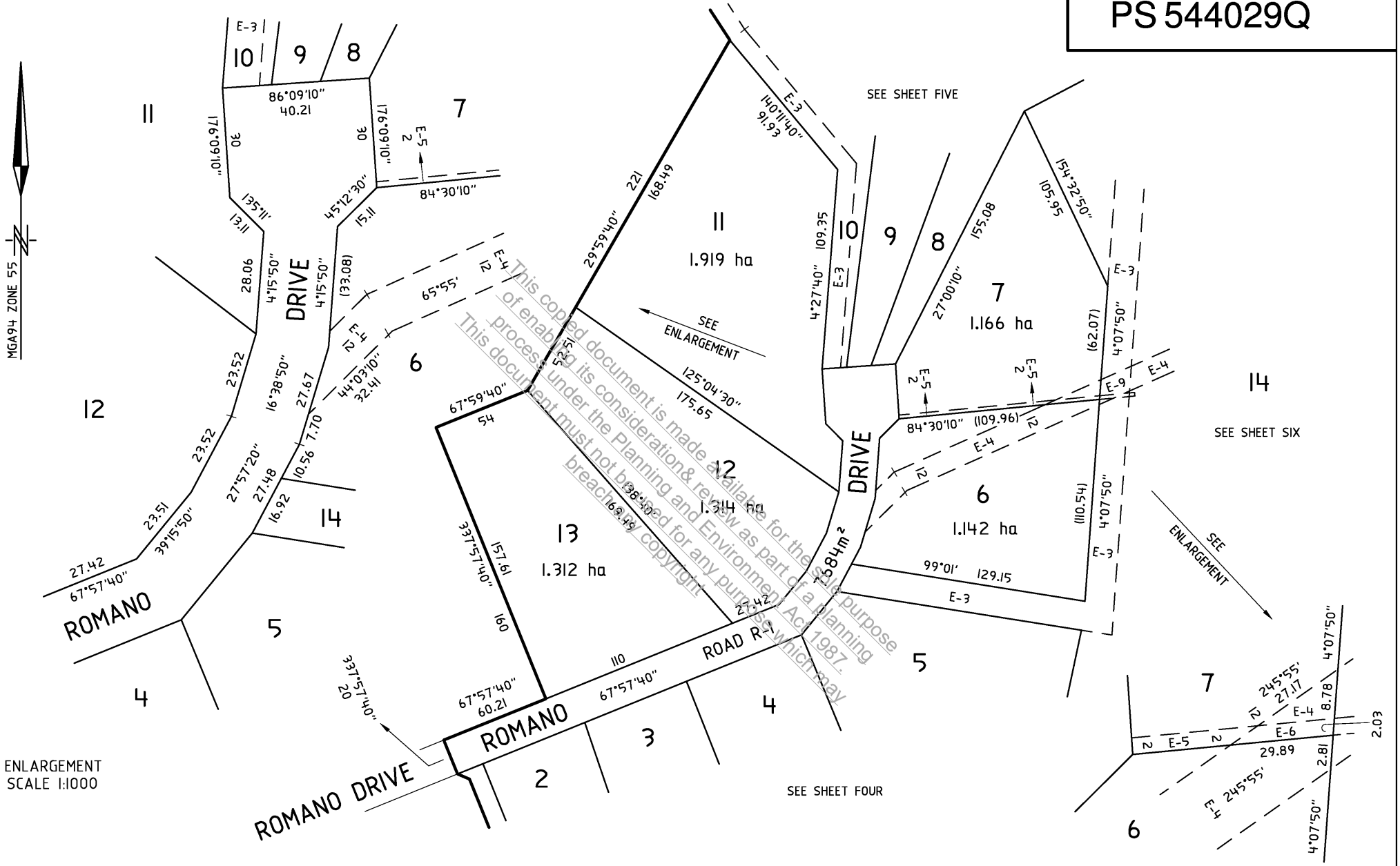


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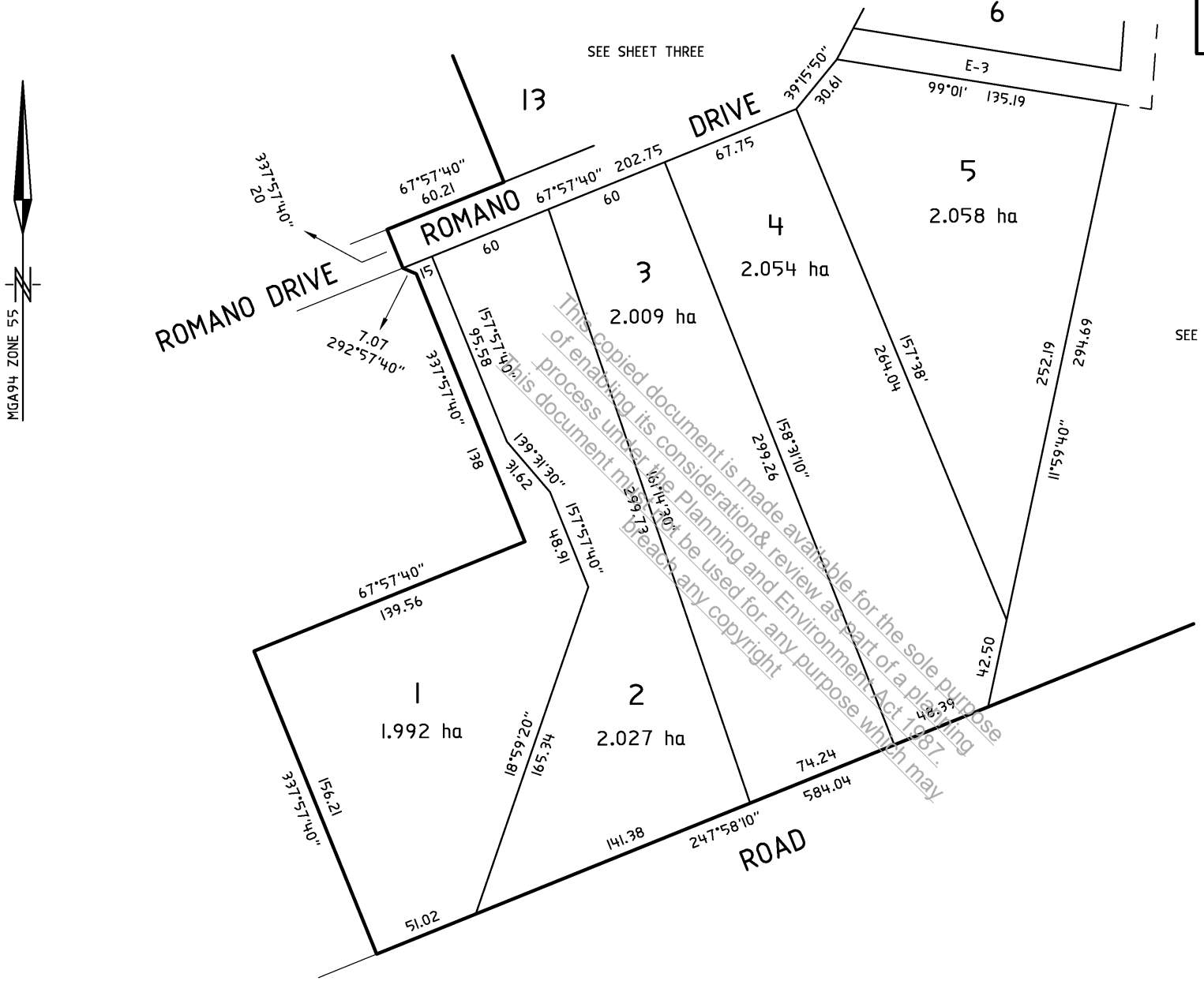


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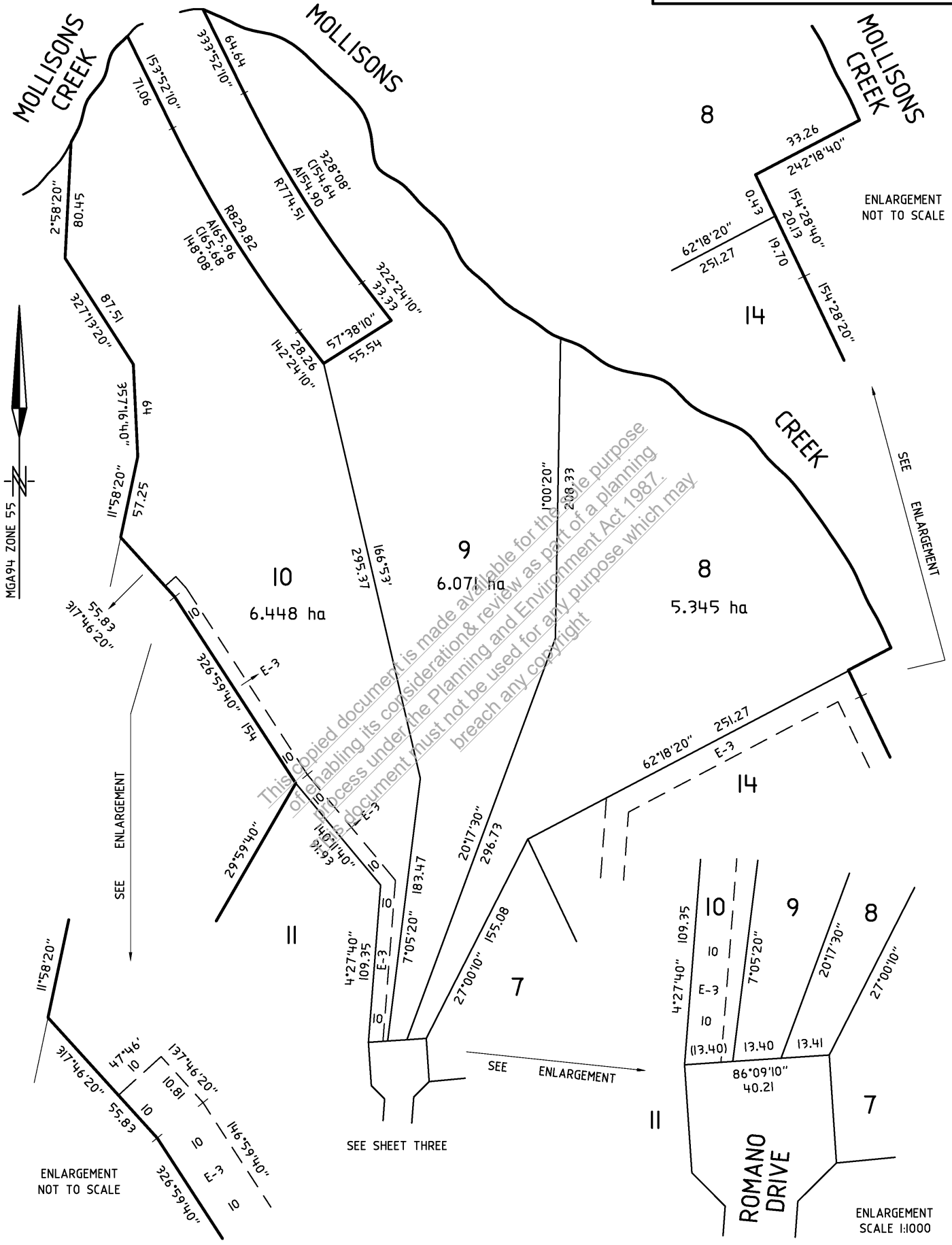


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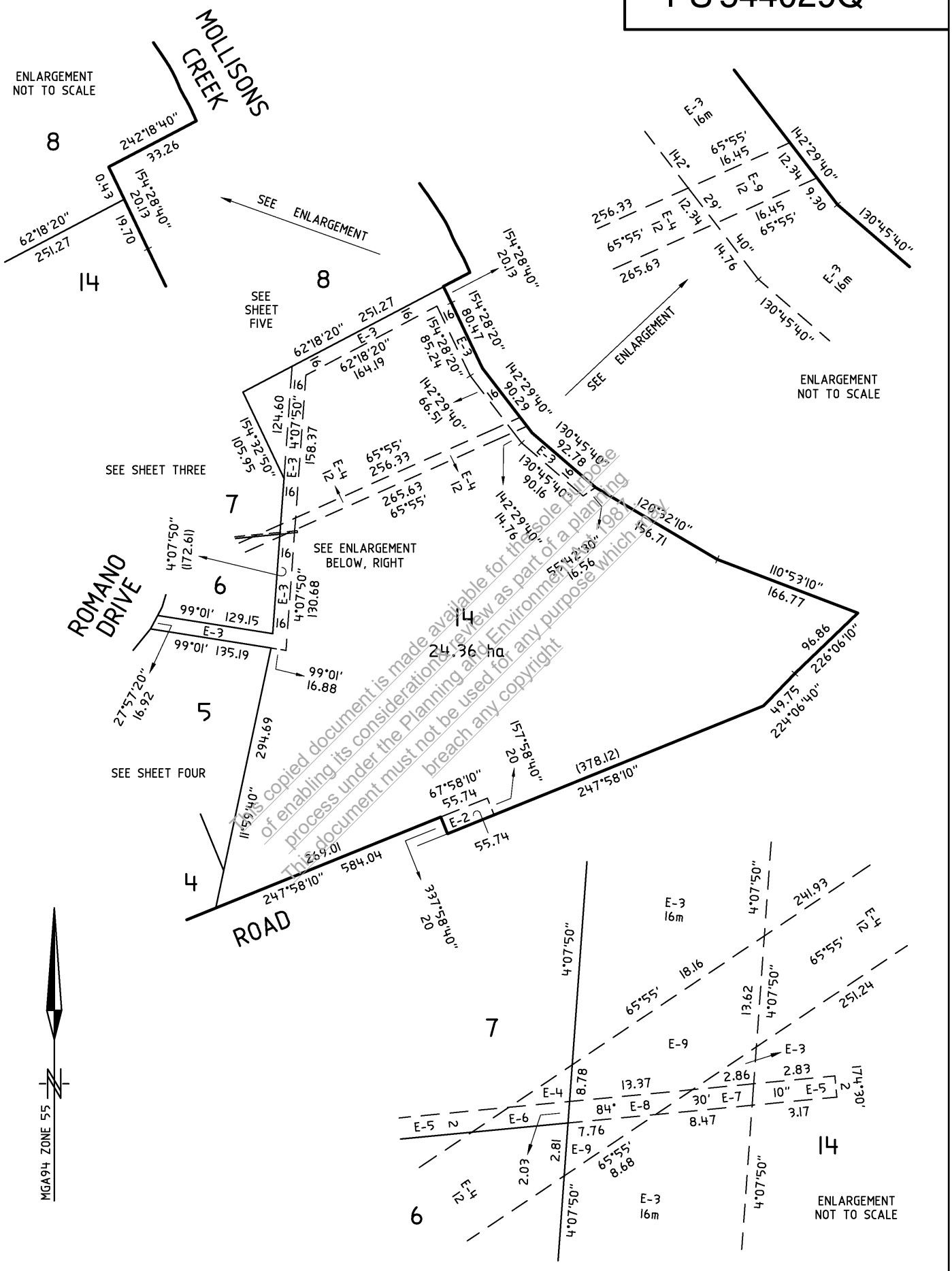
# PS 544029Q

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| SCALE | LENGTHS ARE IN METRES | ORIGINAL SHEET SIZE: A3 | REF. No. | SHEET 6 |
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