

## **5 PROPOSED DISCONTINUANCE OF ROADS ENCROACHING PROPERTIES AT PEET STREET, PAKENHAM AND 17 HILL STREET, PAKENHAM**

FILE REFERENCE INT1955590

RESPONSIBLE GENERAL MANAGER Tom McQualter

AUTHOR Fiona Shadforth

### **RECOMMENDATION**

That:

1. Council commence the statutory procedures in accordance with clause 3 schedule 10 of the Local Government Act, 1989, (the Act) to discontinue the portions of road abutting O'Sullivan Street (of the Peet Street property which is bounded by O'Sullivan Street and Hill Street) and 17 Hill Street Pakenham, as shown on the attached locality plan; and
2. Council publish a notice in the local paper for Pakenham in accordance with Sections 207A and 223 of the Act advising of the proposed road discontinuances and such notice state that, if discontinued, that the land may be transferred to the abutting owners; and
3. In the event of no submissions being received, the matter be reported to Council again for resolution on how to proceed; and
4. In the event of submissions being received, a committee comprising of the ward Councillors be appointed and the Chief Executive Officer be authorised to set the day, time and place for the hearing of such.

### **Attachments**

1	Locality Plan	1 Page
2	Plan of Subdivision - Creation of R1 & R2	4 Pages
3	Plan of Subdivision 2 - Removal of R1 & R2	1 Page
4	Proposed Plan of Subdivision	2 Pages

### **EXECUTIVE SUMMARY**

This report recommends that Council, acting under clause 3 of schedule 10 of the Local Government Act 1989 (the Act) and also in accordance with sections 207A and 223 of the Act, commence the statutory procedures to discontinue the portions of road abutting O'Sullivan Street and 17 Hill Street Pakenham, shown hatched on the attached locality plan (Road).

### **BACKGROUND**

In 1991 a large part of the land that now comprises Peet Street Industrial Estate was in the ownership of an individual. The individual continues to hold land parcels in the Estate but a reduced holding. In July 1991 the landowner submitted a Planning Application to subdivide and develop the land held, part of this Permit required widening of roads with a notation that the road widenings and new roads were to vest in Council.

In May 1994 Council negotiated with the landowner to acquire two reserves ('Municipal Reserves 1 and 2') which ran east west between O'Sullivan Street and Hill Street and further east from Hill Street, as shown in attachment 2. This plan also shows the road widenings noted as R1 and R2 ('roads') with allowance for a splay ('splays') on each road where the road connects with the Municipal Reserves 1 and 2. This plan was registered in July 1994. The Permit expired in 1997 and the Estate was not constructed.

A subsequent plan was lodged in September 2004 to remove the reserve status of Municipal Reserves 1 and 2, as shown in attachment 3. The purpose of the removal of the reserve status was to sell the land back to the original land owner. The land had been acquired for the purpose of a bypass arterial road but the location for the arterial road was changed and therefore the land was no longer required by Council for this purpose.

Council removed the reserve status of Municipal Reserves 1 and 2 and sold the land to the individual. The roads remained in Council's ownership.

At the time of the removal of reserve status, Council should also have removed the road status of the splays and transferred these to the individual. As Council did not remove the road status of the splays, the alignment of the roads is unusual with a small encroachment into two privately owned properties, one of which remains in the ownership of the landowner, being the Peet Street property.

As the Peet Street Industrial Estate is currently being constructed, in accordance with the Special Charge Scheme, it would be an appropriate time to rectify the unusual alignment of the roads. The landowner has requested that this be done as it is impacting on the future development and sale of the (proposed) subdivided property, in particular proposed Lot 12 which carries the encroachment, as shown in attachment 4. It would be in Council's best interest to remove the splays as they are not required for the construction of the roads. Removing Council's responsibility and risk of the surplus splays would be beneficial long term.

The landowner has recently disputed Council's financial contribution for the roads when the roads were acquired in 1994. Upon checking our records, we have located a Transfer of Land which shows an amount of \$100,000 paid for the acquisition of Municipal Reserves 1 and 2 and Roads 1 and 2. There is also an accompanying Development Agreement in relation to a number of land Developments owned by the individual at that time which also supports the financial contribution to the acquisition of the Municipal Reserves and roads. The individual asserts that the Transfer and Agreement were signed under duress with the threat to delay his land developments if they were not signed. They claimed to have been advised that he would be compensated at the appropriate time.

The individual has recently submitted a claim to Council to compensate him for the roads, however, he has been advised that the documentation supports the financial compensation that was made at the time, and we have no evidence to the contrary. In addition to the compensation sought, they have requested that the splay encroaching his property be transferred to him, as this should have been done at the time of the sale back to him of the Municipal Reserves. We have agreed to pursue this process as it would seem to be in the best interests of all parties. The area of the splays is surplus to Council's need and should have been rectified in 2004 and it seems reasonable for us to now remedy the situation.

## **POLICY IMPLICATIONS**

The proposal to discontinue and sell the Roads has been carried out in accordance with the 'Discontinuance of Roads Policy' (Policy). The Policy provides that Land will sold at market value however it allows for land to be transferred at a

*'lower price if it is considered that the benefits that accrue to the community by the achievement of one or more of the objectives of this policy are not reasonably obtained unless a lower sale price is received'.*

#### **RELEVANCE TO COUNCIL PLAN**

The relevant Council Plan objective is that 'We continue to plan and manage the natural and built environment for future generations'. The objective is to be achieved through balancing the needs of development, the community and the environment.

#### **CONSULTATION/COMMUNICATION**

The roads fall within the Peet Street Industrial Estate Special Charge Scheme and the splays have not been required for any infrastructure and are considered surplus to Council's purposes. In accordance with sections 207A and 223 of the Act it is proposed that Council give public notice of the proposal to discontinue the Road and transfer the land and consider all submissions received within 28 days of the giving of the notice.

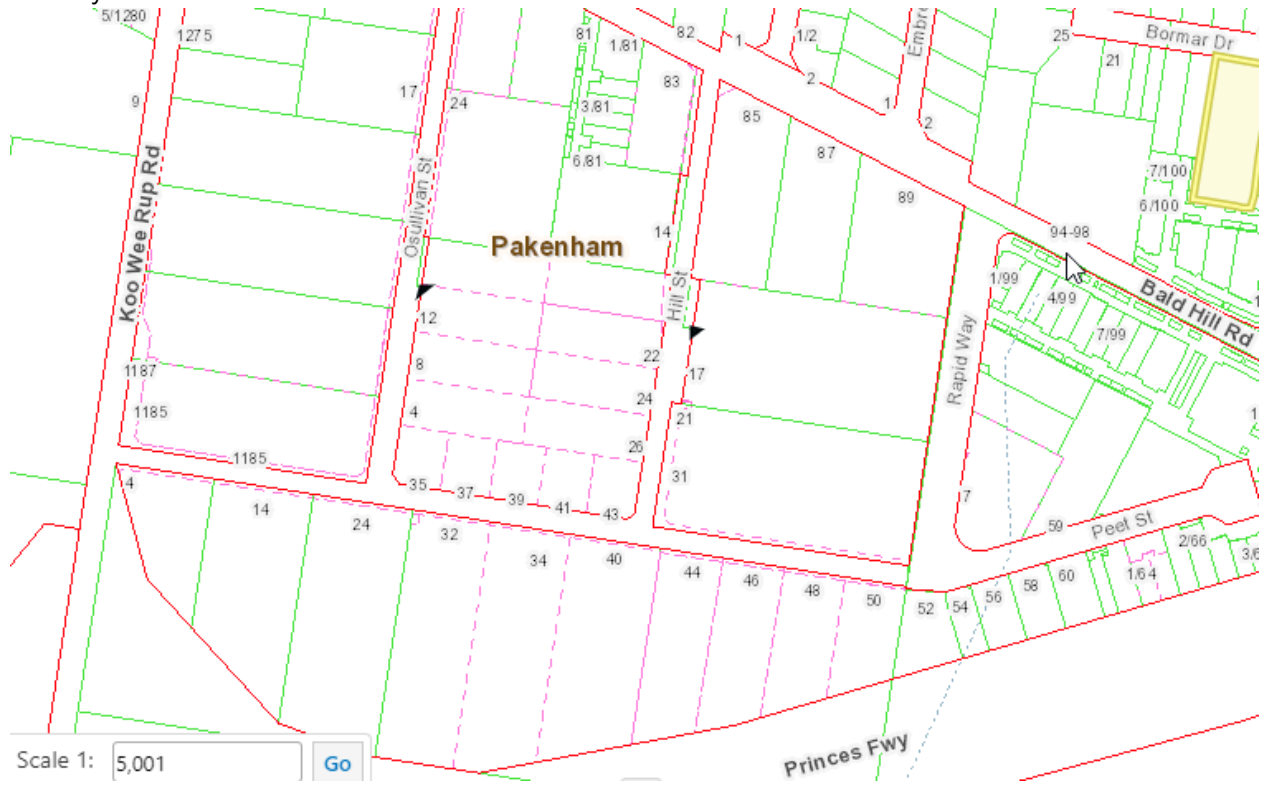
#### **FINANCIAL AND RESOURCE IMPLICATIONS**

If the splays are discontinued Council will meet the costs to rectify the alignment of the roads which will reduce Council's long term ongoing costs to maintain the unused splays which have no benefit to Council.

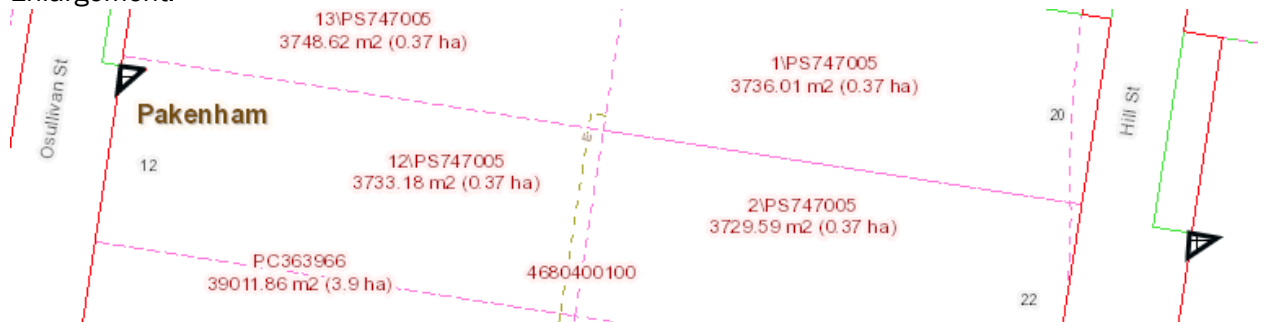
#### **CONCLUSION**

As the proposal to discontinue the splays has no apparent detrimental effect in relation to access or use within this area, the splays are considered to be suitable for discontinuance and transfer.

Locality Plan:



Enlargement:

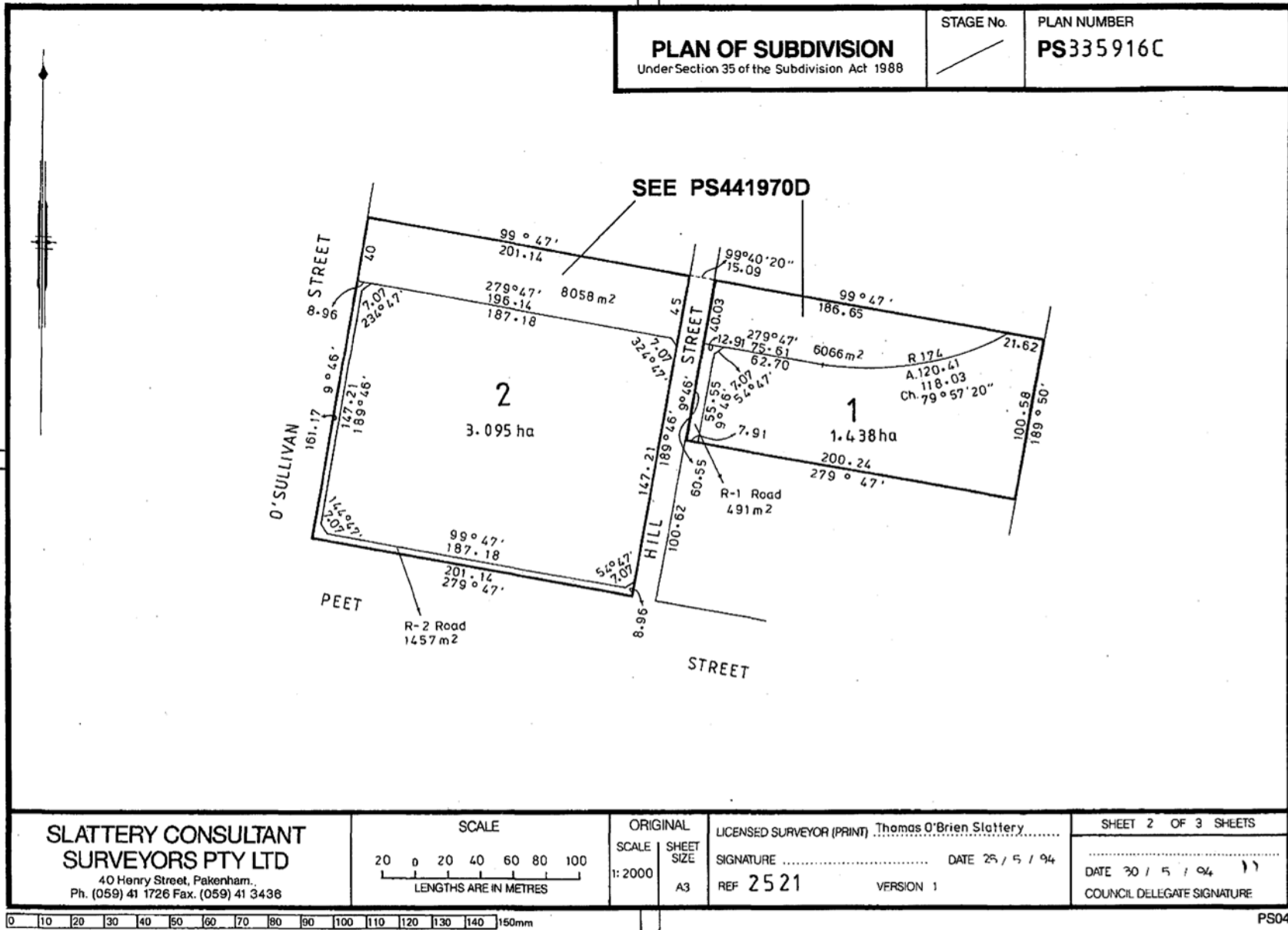


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<b>PLAN OF SUBDIVISION</b> Under Section 35 of the Subdivision Act 1988		<b>STAGE No.</b> <u>          </u>	<b>LTO USE ONLY</b> <b>EDITION</b> <b>3</b>	<b>PLAN NUMBER</b> <b>PS 335916 C</b>
<b>LOCATION OF LAND</b>		<b>COUNCIL CERTIFICATION AND ENDORSEMENT</b>		
<b>PARISH:</b> Nar Nar Goon <b>TOWNSHIP:</b> _____ <b>SECTION:</b> _____ <b>CROWN ALLOTMENT:</b> 32 (Part) <b>CROWN PORTION:</b> _____ <b>LTO BASE RECORD:</b> PARISH SHEET 2 (3272) <b>TITLE REFERENCES:</b> VOL. 10050 FOL. 440 VOL. 10050 FOL. 442 <b>LAST PLAN REFERENCE/S:</b> LP 2003 Lots 12 & 14 BP-199 <b>POSTAL ADDRESS:</b> (At time of subdivision) <b>AMG Co-ordinates</b> (of approx centre of land in plan) E 368000 ZONE: 55 N 5783250		<b>COUNCIL NAME:</b> SHIRE OF PAKENHAM REF: S94/043 1. This plan is certified under Section 6 of the Subdivision Act 1988. <del>2. This plan is certified under Section 11(7) of the Subdivision Act 1988.</del> <del>Date of original certification under Section 6: _____</del> 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. <b>OPEN SPACE</b> (i) A requirement for public open space under Section 18 of the Subdivision Act 1988 <del>has</del> has not been made. (ii) <del>The requirement has been satisfied.</del> (iii) <del>The requirement is to be satisfied in Stage _____</del> Council Delegate <del>Council Seal</del> Date 30 / 5 / 94  <del>Re-certified under Section 11(7) of the Subdivision Act 1988.</del> <del>Council Delegate</del> <del>Council Seal</del> Date / /		
<b>VESTING OF ROADS AND/OR RESERVES</b>		<b>NOTATIONS</b>		
Roads & reserves vest in the council/body/person named when the appropriate vesting date is recorded or transfer registered. Only roads & reserves marked thus (%) vest upon registration of this plan.		<b>STAGING</b> This is/ is not a staged subdivision. Planning permit No. _____		
<b>IDENTIFIER</b>	<b>COUNCIL/BODY/PERSON</b>	<b>DEPTH LIMITATION</b>		
R-1 Road R-2 Road	Shire of Pakenham Shire of Pakenham	<b>Land to be acquired by agreement:</b> Road R-1 & R-2 Land to be acquired by compulsory process: _____  All the land is to be acquired free from all encumbrances other than easements specified on this plan.		
<b>SURVEY.</b> THIS PLAN IS <del>IS NOT</del> BASED ON SURVEY THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No.(s) IN PROCLAIMED SURVEY AREA No.				
<b>EASEMENT INFORMATION</b>				<b>LTO USE ONLY</b>
<b>LEGEND</b> A - Appurtenant Easement    E - Encumbering Easement    R - Encumbering Easement (Road) Easements marked (*) are created when the appropriate vesting date is recorded or transfer registered				<b>STATEMENT OF COMPLIANCE/ EXEMPTION STATEMENT</b>  RECEIVED <input checked="checked" type="checkbox"/> DATE 31 / 5 / 94
<b>Easement Reference</b>	<b>Purpose</b>	<b>Width (Metres)</b>	<b>Origin</b>	<b>Land Benefited/In Favour Of</b>
* R-1	Way, drainage, sewerage & the supply of water, gas, electricity and telephone.	See sheet 2	This plan	Lots in this plan
* R-2	Way, drainage, sewerage & the supply of water, gas, electricity and telephone.	See sheet 2	This plan	Lots in this plan
<b>SLATTERY CONSULTANT SURVEYORS PTY LTD</b> 40 Henry Street, Pakenham. Ph. (059) 41 1726 Fax. (059) 41 3436				<b>LICENSED SURVEYOR (PRINT)</b> Thomas O'Brien Slattery ..... <b>SIGNATURE</b> ..... <b>DATE</b> 25 / 5 / 94 <b>REF</b> 2521 <b>VERSION</b> 1 <b>DATE</b> 30 / 5 / 94 <b>COJNL DELEGATE SIGNATURE</b> ORIGINAL SHEET SIZE    A3

PS01



<b>PLAN OF SUBDIVISION</b> Under Section 35 of the Subdivision Act 1988		STAGE No.	PLAN NUMBER <b>PS 335916C</b>	
<b>VESTING DATES &amp; TRANSFER REGISTRATION DATES OF ACQUIRED LAND</b>	Assistant Registrar of Titles Signature			
	LTO reference of transfers or notifications of vesting dates	<b>T 245389S</b>		
	Land acquired by agreement	Date of registration of transfer	<b>10-8-94</b>	
	Land acquired by compulsory process after registration of plan	Govt. Gaz.	Page	Year
		Vesting date		
		Date of recording of vesting date		
	Land acquired by compulsory process prior to certification	Govt. Gaz.	Page	Year
		Vesting date		
		Land affected	<b>R1 &amp; R2</b>	
	<b>SLATTERY CONSULTANT SURVEYORS PTY LTD</b> 40 Henry Street, Pakenham. Ph. (059) 41 1726 Fax. (059) 41 3438			
PLAN NUMBER <b>PS 335916C</b>	ORIGINAL SCALE SHEET SIZE A3	LICENSED SURVEYOR (PRINT) Thomas O'Brien Slattery SIGNATURE ..... DATE 25 / 5 / 94 HEF <b>2521</b> VERSION 1	SHEET 3 OF 3 SHEETS DATE 30 / 5 / 94 COUNCIL DELEGATE SIGNATURE	

0 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150mm

PS03

<p style="text-align: center;">MODIFICATION TABLE                      RECORD OF ALL ADDITIONS OR CHANGES                      TO THE PLAN</p>						
<div style="border: 1px solid black; border-radius: 15px; padding: 5px; display: inline-block;">                         PLAN NUMBER  <span style="font-size: 1.2em; font-weight: bold;">PS 335916C</span> </div>						
LAND	MODIFICATION	DEALING REFERENCE	DATE AND TIME REGISTERED & RECORDED		NEW EDITION NUMBER	SIGNATURE OF ASSISTANT REGISTRAR OF TITLES
			DATE	TIME		
RES 1 & 2	VESTING	T 245389 S	10-8-94		2	<i>lwb</i>
R-1 & R-2	VESTING	T 245389 S	10-8-94		2	<i>lwb</i>
RES 1&2	REMOVAL OF RESERVE STATUS (24A)	PS441970D	24/9/04		3	RH


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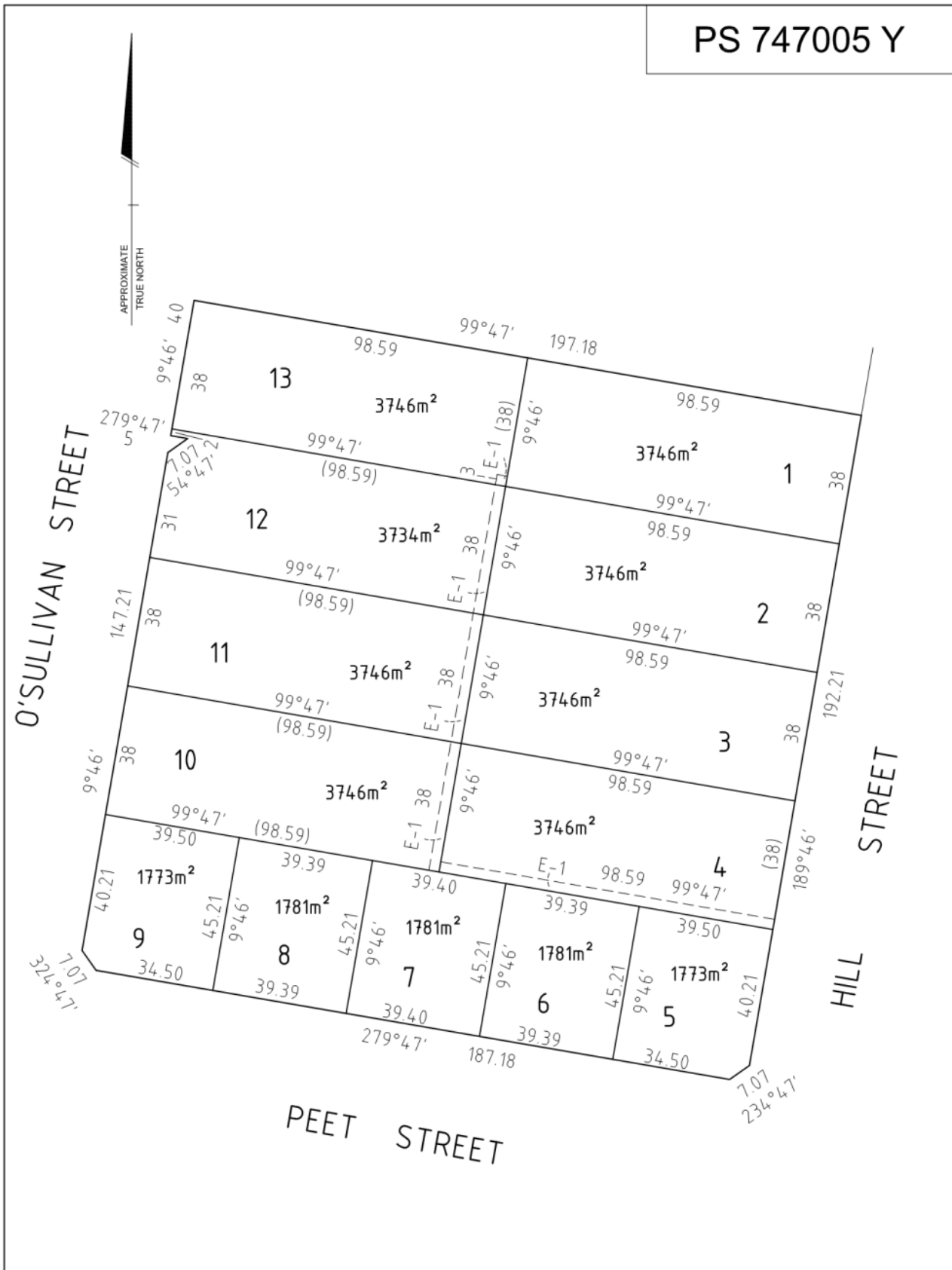
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PLAN UNDER SECTION 24A OF THE SUBDIVISION ACT 1988.		STAGE No  EDITION 1	LTO USE ONLY	PLAN NUMBER <b>PS441970D*</b>										
<b>LOCATION OF LAND</b> PARISH: Nar Nar Goon TOWNSHIP: — SECTION: — CROWN ALLOTMENT: 32 (Part) CROWN PORTION: —  LTO BASE RECORD: Parish Sheet 2 (3272) TITLE REFERENCES: Vol. 10197 Fol 890 Vol. 10197 Fol 891 <b>LAST PLAN REFERENCE: PS 335916C</b>  POSTAL ADDRESS: Hill Street AMG Co-ordinates Pakenham 3510 N 37573.00 ZONE 55 (of approx centre of plan) E 368.000		<b>COUNCIL CERTIFICATION AND ENDORSEMENT</b> COUNCIL NAME: <b>CARDINIA</b> REF: 5100/198 1. This plan is certified under section 6 of the Subdivision Act 1988 2. This plan is certified under section 11(7) of the Subdivision Act 1988 Date of original certification under section 6: .....		LTO USE ONLY STATEMENT OF COMPLIANCE/ EXEMPTION STATEMENT RECEIVED <input checked="" type="checkbox"/> DATE 23/9/04  LTO USE ONLY PLAN REGISTERED TIME 2 PM DATE 24/9/2004 Assistant Registrar of Titles										
<b>VESTING OF ROADS OR RESERVES</b> IDENTIFIER      COUNCIL/BODY/PERSON Nil.                      Nil.		OPEN SPACE (i) A requirement for public open space under section 18 of the Subdivision Act 1988 has not been made.  (ii) The requirement has been satisfied.  (iii) The requirement is to be satisfied in Stage: .....  Council Delegate Council Seal Date 12 / 1 / 01  Re-certified under section 11(7) of the Subdivision Act 1988. Council Delegate Council Seal Date / /		<b>NOTATIONS</b> DEPTH LIMITATION Nil STAGING This is not a staged subdivision. Planning Permit No T000972 SURVEY This plan is not based on survey.										
<b>EASEMENT INFORMATION</b>														
LEGEND    A - Appurtenant Easement                      E - Encumbering Easement                      R - Encumbering Easement (Road)														
<table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Easement Reference</th> <th>Purpose</th> <th>Width (Metres)</th> <th>Orign</th> <th>Land Benefited In Favour Of</th> </tr> </thead> <tbody> <tr> <td> </td> <td> </td> <td> </td> <td> </td> <td> </td> </tr> </tbody> </table>					Easement Reference	Purpose	Width (Metres)	Orign	Land Benefited In Favour Of					
Easement Reference	Purpose	Width (Metres)	Orign	Land Benefited In Favour Of										
<b>PURPOSE OF PLAN</b> Removal by the Cardinia Shire Council of the reservation of the reserves shown on PS 335916C (Reserves No 1 & 2) shown as lots 1 & 2 hereon.														
<b>GROUNDS FOR REMOVAL</b> Cardinia Shire Council Planning Permit No. TP000972														
NOBELIUS LAND SURVEYOR'S P/L P O Box 461 PAKENHAM 3510 PHONE 59414112 FAX 59414330		ORIGINAL SCALE      SHEET SIZE 1:2000      A3		Sheet 1 of 1 Sheet										
SCALE 0    20    40    60    80    100 LENGTHS ARE IN METRES		LICENSED SURVEYOR (PRINT) R.P NOBELIUS SIGNATURE                      DATE 14/12/00 REF: P 2747                      VERSION		DATE 12/1/01 COUNCIL DELEGATE SIGNATURE										

Crefield PS07

PLAN OF SUBDIVISION		EDITION 1	PS 747005 Y	
<b>LOCATION OF LAND</b> PARISH: Nar Nar Goon TOWNSHIP: --- SECTION: --- CROWN ALLOTMENT: 32 (pt) CROWN PORTION: --- TITLE REFERENCE: Vol. 10891 Fol. 733  LAST PLAN REFERENCE: PC 363966 R POSTAL ADDRESS: Hill Street, Pakenham 3810 (at time of subdivision)  MGA CO-ORDINATES: E: 368 000      ZONE: 55 (of approx centre of land      N: 5 783 150      GDA 94 in plan)		Council Name: Cardinia Shire Council SPEAR Reference Number: S104979S		
VESTING OF ROADS AND/OR RESERVES		NOTATIONS		
IDENTIFIER	COUNCIL/BODY/PERSON			
Nil	Nil			
NOTATIONS		This is a Spear Plan		
DEPTH LIMITATION: DOES NOT APPLY				
SURVEY: This plan is based on survey.  STAGING: This is not a staged subdivision. Planning Permit No.				
This survey has been connected to permanent marks No(s). In Proclaimed Survey Area No. ---				
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	Drainage & Sewerage	3.00	This Plan	All lots on this Plan
<b>NOBELIUS LAND SURVEYORS</b>  P.O. BOX 461 PAKENHAM 3810 Ph 03 5941 4112 mail@nobelius.com.au		SURVEYORS FILE REF: 14159  Digitally signed by: Robin Peter Nobelius (Nobelius Land Surveyors Pty Ltd), Surveyor's Plan Version (Version A), 08/06/2017		ORIGINAL SHEET SIZE: A3  SHEET 1 OF 2

PS 747005 Y

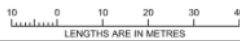


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mail@nobelius.com.au

SCALE  
1:1000



ORIGINAL SHEET  
SIZE: A3

SHEET 2

Digitally signed by: Robin Peter Nobelius (Nobelius Land Surveyors Pty Ltd),  
Surveyor's Plan Version (Version A),  
08/06/2017