

AN716206D

05/04/2017 \$185.40 88E



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Application to record covenant

Section 88(1) of the *Transfer of Land Act 1958* (Vic)

Lodged by

Name: Allens
Phone: +61 3 9614 1011
Address: Level 33, 101 Collins Street, Melbourne Vic 3000
Ref: EYJM:MJGM:120168066
Customer Code: 0951R

The Applicant applies for the recording in the Register of the covenant in relation to the burdened land.

Burdened land:	Volume 9860 Folio 018
Applicant:	Bald Hills Wind Farm Pty Ltd (ACN 117 264 712) of Level 15, 120 Collins Street, Melbourne Vic 3000
Benefited land:	Volume 9039 Folio 235
Covenant:	Deed of Restrictive Covenant dated 21 February 2017

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Date: 5 April 2017

Bald Hills Wind Farm Pty Ltd (ACN 117 264 712)
By its Australian legal practitioners under the Legal Profession Uniform Law (Victoria)

Allens

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REC'D 5/2/18

A

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Deed of Restrictive Covenant

Property: 435 Bald Hills Road, Tarwin Lower Victoria 3956

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101 Collins Street
Melbourne VIC 3000
T +61 3 9614 1011
F +61 3 9614 4661
www.allens.com.au

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Deed of Restrictive Covenant

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Deed of Restrictive Covenant

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This Deed is made on 2 February 2018

Parties

- 1 Lindsay Colin Marriott and Susan Elizabeth Marriott of 435 Bald Hills Road, Tarwin Lower, Victoria 3956 (the **Covenantor**)
- 2 Bald Hills Wind Farm Pty Ltd (ACN 117 264 712) of Level 38, 120 Collins Street, Melbourne, Victoria 3000 (the **Covenantee**)

Recitals

- A The Covenantor is the registered proprietor of the Burdened Land.
- B The Covenantee is the registered proprietor of the Benefited Land, part of which is used for native vegetation offsets required in connection with the Bald Hills Wind Farm.
- C The Covenantor has agreed with the Covenantee to grant a restrictive covenant over the Burdened Land on the terms and conditions contained in this Deed.

It is agreed as follows.

1 Definitions and interpretation

1.1 Definitions

The following definitions apply unless the context requires otherwise.

Benefited Land means the land described in Certificate of Title Volume 9033 Folio 235.

Burdened Land means the land described in Certificate of Title Volume 9860 Folio 018.

Dwelling has the meaning given in the South Gippsland Planning Scheme.

Existing Dwelling means any Dwelling located on land neighbouring the Wind Energy Facility, as depicted in the tenement plan dated 10 June 2004 referred to in conditions 28 and 29 of planning permit TRA/03/002.

Native Vegetation Management Plan means the plan of the same name prepared by the Covenantee under Planning Permit 2003/563.

New Dwelling means any Dwelling constructed on the Burdened Land after 19 August 2004.

NZ Standard means the New Zealand Standard NZ6808:1998 'Acoustics – The Assessment and Measurement of Sound from Wind Turbine Generators'.

Planning Permits means the planning permits TRA/03/002 and 2003/563 issued by the Victorian Minister for Planning and dated 19 August 2004, and any amendments to these planning permits authorised from time to time by the Minister for Planning and includes the EPBC approval 2002/730 dated 21 December 2006 issued by the Federal Minister for the Environment and any amendments or variations to this EPBC approval authorised from time to time by the Federal Minister for the Environment.

Wind Energy Facility means the wind energy facility known as the Bald Hills Wind Farm which is the subject of the Planning Permits.

Wind Turbine Generator means a wind turbine which forms part of the Wind Energy Facility.

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1.2 Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise.

- (a) The singular includes the plural, and the converse also applies.
- (b) A gender includes all genders.
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (d) A reference to a *person* includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.
- (e) A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Deed.
- (f) A reference to an agreement or document (including a reference to this Deed) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Deed or that other agreement or document.
- (g) A reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible and tangible form but excludes a communication by electronic mail.
- (h) A reference to a party to this Deed or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (i) A reference to ~~legislation to a provision of legislation~~ includes a modification or re-enactment of it, of legislative provision substituted for it and a regulation or statutory instrument issued under it.
- (j) A reference to ~~conduct includes an omission, statement or~~ undertaking, whether or not in writing.
- (k) A reference to an ~~agreement~~ includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a ~~document~~ includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind.
- (l) A reference to *dollars* and \$ is to Australian currency.
- (m) A reference to a *right* or *obligation* of any two or more people comprising a single party confers that right, or imposes that obligation, as the case may be, on each of them severally and each two or more of them jointly. A reference to that party is a reference to each of those people separately (so that, for example, a representation or warranty by that party is given by each of them separately).
- (n) Mentioning anything after *includes*, *including*, *for example*, or similar expressions, does not limit what else might be included.
- (o) Nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or a relevant part of it.

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2 Acknowledgment

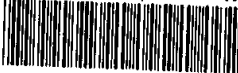
The Covenantor:

- (a) acknowledges and agrees that:

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- (i) the Benefited Land comprises part of the Wind Energy Facility as contemplated by the Planning Permits; and
 - (ii) the Planning Permits and the Native Vegetation Management Plan apply to the Benefited Land; and
- (b) accepts that in relation to the Existing Dwelling and any New Dwelling constructed on the Burdened Land the predicted noise levels from the Wind Energy Facility in relation to that dwelling:
- (i) may not comply with the NZ Standard; and
 - (ii) may not comply with condition 19 of Planning Permit TRA/03/002.

3 Restrictive Covenant

The Covenantor in consideration of the sum of \$50,000 paid by the Covenantee to the Covenantor (which payment is acknowledged by the Covenantor), covenants with the Covenantee and its successors and transferees that with respect to any Existing Dwelling on the Burdened Land, it will not build, erect or construct or allow to be built, erected or constructed any works, modifications or renovations in relation to that Existing Dwelling, replace that Existing Dwelling or relocate that Existing Dwelling if the works, modifications, renovations or relocation are likely to have a detrimental effect on the existing level of acoustic amenity in relation to the indoor habitable areas of that Existing Dwelling.

4 Release

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- (a) The Covenantor releases to the full extent permitted by Law the Covenantee from, and covenants that it will not bring any action or claim against the Covenantee for, any losses, damages, liabilities, claims, demands, costs and expenses of every kind which relate to:
 - (i) any impact on the amenity of the Existing Dwelling located on the Burdened Land arising from the Wind Energy Facility and any impact on the amenity of any New Dwelling constructed on the Burdened Land arising from the Wind Energy Facility;
 - (ii) any noise or other form of nuisance arising from the Wind Energy Facility and experienced by people at the Existing Dwelling located on the Burdened Land and at any New Dwelling constructed on the Burdened Land; or
 - (iii) any works, modifications or renovations to the Existing Dwelling on the Burdened Land, including any works, modifications or renovations to the Existing Dwellings on the Burdened Land in breach of this Deed.
 - (b) The Covenantor agrees that the release provided in clause 4(a)(i) is a continuing obligation separate and independent of the Covenantor's other obligations and survives the termination of this Deed.

5 Covenants run with the land

The parties agree that the covenants referred to in this Deed will take effect as separate and several covenants with the intent that:

- (a) the benefit of those covenants will attach to and run at law and in equity with the Benefited Land and every part of the Benefited Land for the benefit of the Covenantee, its successors and transferees; and

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(b) the burden of those covenants will attach to and run at law and in equity with the Burdened Land and every part of the Burdened Land for the Covenantor, its successors and transferees.

6 Covenantor warranty

The Covenantor warrants to the Covenantee that the Covenantor is registered for GST.

7 GST

7.1 Recovery of GST

If GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable, or notionally payable, on that supply (the **GST Amount**). Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time that the other consideration for the supply is provided. If a tax invoice is not received prior to the provision of that other consideration, the GST Amount is payable within 10 days of the receipt of a tax invoice. This clause does not apply to the extent that the consideration for the supply is expressly stated to be GST inclusive or the supply is subject to reverse charge.

7.2 Liability net of GST

Where any indemnity, reimbursement or similar payment under this Deed is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.

7.3 Adjustment events

If an adjustment event occurs in relation to a supply made under or in connection with this Deed, the GST Amount will be reduced by the amount of the adjustment and an appropriate payment will be made between the parties.

7.4 Survival

This clause will not merge upon completion and will continue to apply after expiration or termination of this Deed.

7.5 Definitions

Unless the context requires otherwise, words and phrases used in this clause that have a specific meaning in the GST law (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) shall have the same meaning in this clause.

8 No Waiver

A failure to exercise or a delay in exercising any right, power or remedy under this Deed does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

9 Further Assurances

Each party must do anything necessary (including executing agreements and documents) to give full effect to this Deed and the transactions contemplated by it. In particular, the Covenantor will provide all necessary assistance to enable the registration of this Deed on title to the Burdened Land, including making the Certificate of Title for the Burdened Land available at the Land Registry of Victoria.

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10 Severability of provisions

Any provision of this Deed that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

11 Governing Law and Jurisdiction

This Deed is governed by the laws of Victoria. In relation to it and related non-contractual matters each party irrevocably submits to the non-exclusive jurisdiction of courts with jurisdiction there, and waives any right to object to the venue on any ground.



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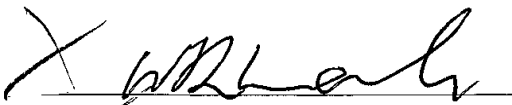


Deed of Restrictive Covenant

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Executed and delivered as a deed in Victoria

**Signed Sealed and Delivered by Lindsay
Colin Marriott in the presence of:**

X 

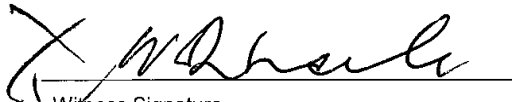
Witness Signature
X **WESLEY RHODES**

Print Name

X 

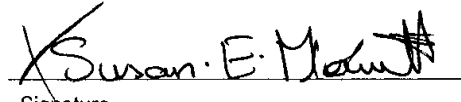
Signature

**Signed Sealed and Delivered by Susan
Elizabeth Marriott in the presence of:**

X 

Witness Signature
X **WESLEY RHODES**


Print Name

X 

Signature

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Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Bald Hills Wind Farm Pty Ltd:



Director Signature
James Arthur

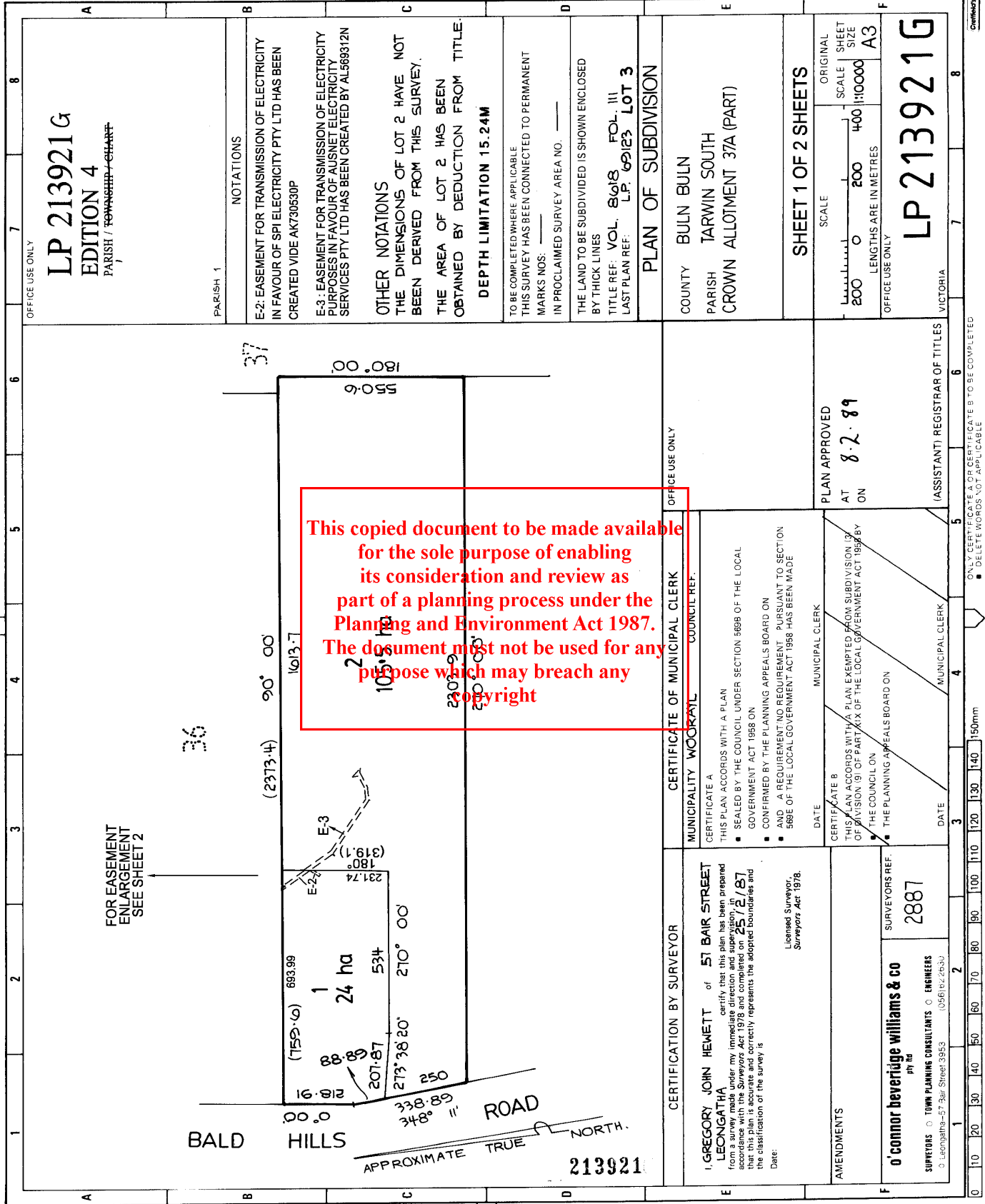
Print Name



Director/Secretary Signature
Daniel W Beaver

Print Name

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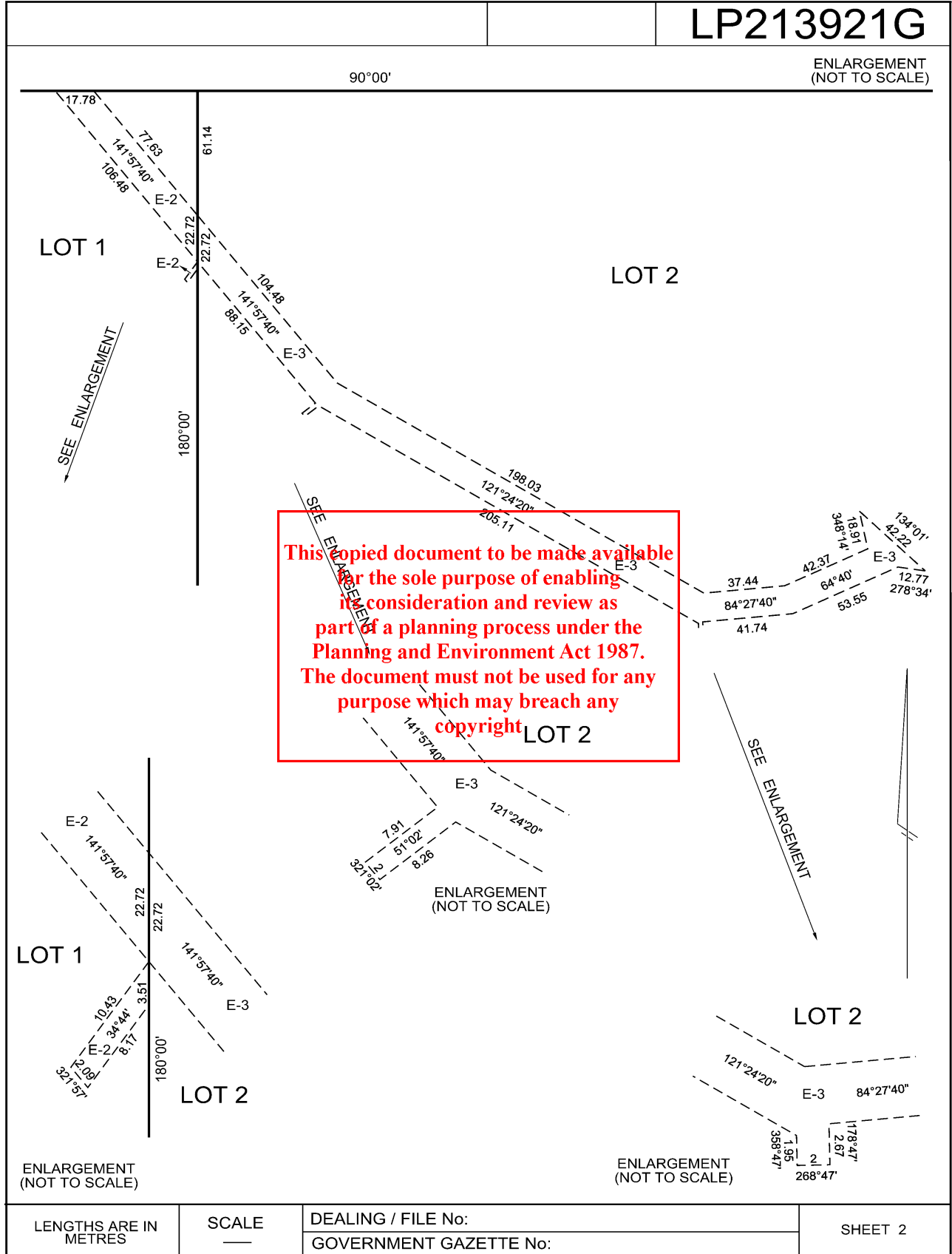
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MODIFICATION TABLE
RECORD OF ALL ADDITIONS OR CHANGES TO THE PLAN

PLAN NUMBER
LP213921G

WARNING: THE IMAGE OF THIS DOCUMENT OF THE REGISTER HAS BEEN DIGITALLY AMENDED.
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AFFECTED LAND/PARCEL	LAND/PARCEL IDENTIFIER CREATED	MODIFICATION	DEALING NUMBER	DATE	EDITION NUMBER	ASSISTANT REGISTRAR OF TITLES
LOT 2	E-1	CREATION OF EASEMENT	AK730514M	21/11/13	2	C.G.
LOT 1	E-2	CREATION OF EASEMENT	AK730530P	21/11/13	2	H.Y.
LOT 2		SURRENDER OF EASEMENT	AL569311Q	17/12/14	4	C.G.
LOT 2	E-3	CREATION OF EASEMENT	AL569312N	17/12/14	4	C.G.

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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

VOLUME 09860 FOLIO 018

Security no : 124119294158Q

Produced 24/10/2024 12:54 PM

LAND DESCRIPTION

Lot 1 on Plan of Subdivision 213921G.
PARENT TITLE Volume 08618 Folio 111

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors

LINDSAY COLIN MARRIOTT
SUSAN ELIZABETH MARRIOTT both of BALD HILLS ROAD TARWIN LOWER VIC 3956
AH301900C 17/06/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AH301901A 17/06/2010
NATIONAL AUSTRALIA BANK LTD

COVENANT AN716206D 05/04/2017

CAVEAT AF871673U 28/05/2008
Caveator

BALD HILLS WIND FARM PTY LTD
Grounds of Claim

LEASE WITH THE FOLLOWING PARTIES AND SPAN

Parties
STEPHEN CHARLES BUCKLE, PHILIP ANDREW NEWBOLD

Date
17/02/2008

Estate or Interest

LEASEHOLD ESTATE

Prohibition

UNLESS AN INSTRUMENT IS EXPRESSED TO BE SUBJECT TO MY/OUR CLAIM

Lodged by

HERBERT SMITH FREEHILLS (68)

Notices to

BALD HILLS WIND FARM PTY LTD of LEVEL 2 765 GLENFERRIE ROAD HAWTHORN VIC
3122

AMENDMENT OF ADDRESS ON CAVEAT AF892226D 06/06/2008

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 or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE LP213921G FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

ADMINISTRATIVE NOTICES

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eCT Control 16089P NATIONAL AUSTRALIA BANK LTD
Effective from 08/03/2018

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

VOLUME 09860 FOLIO 019

Security no : 124119294186K

Produced 24/10/2024 12:55 PM

LAND DESCRIPTION

Lot 2 on Plan of Subdivision 213921G.
PARENT TITLE Volume 08618 Folio 111

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors

LINDSAY COLIN MARRIOTT
SUSAN ELIZABETH MARRIOTT both of BALD HILLS ROAD TARWIN LOWER VIC 3956
AH301900C 17/06/2010

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AH301901A 17/06/2010
NATIONAL AUSTRALIA BANK LTD

CAVEAT AF871673U 28/05/2008
Caveator

BALD HILLS WIND FARM PTY LTD
Grounds of Claim
LEASE WITH THE FOLLOWING PARTIES AND DATE.

Parties
STEPHEN CHARLES BUCKLE, PHILIP AND DENISE WOOD
Date
17/02/2008

Estate or Interest
LEASEHOLD ESTATE
Prohibition

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Lodged by
HERBERT SMITH FREEHILLS (68)

Notices to
BALD HILLS WIND FARM PTY LTD of LEVEL 2 765 GLENFERRIE ROAD HAWTHORN VIC
3122
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ACTIVITY IN THE LAST 125 DAYS

NIL

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

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

ADMINISTRATIVE NOTICES

NIL

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