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Memorandum of Common Provisions

Section 91A Transfer of Land Act 1958

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Lodged by:

Name: Russell Kennedy Solicitors
Phone: 03 9609 1555
Address: Level 12, 469 La Trobe Street, Melbourne 3000
Ref: KAE 307808-00338 (S18)
Customer Code: 1513M

This memorandum (containing 13 pages) contains provisions which are intended for inclusion in instruments and plans to be subsequently lodged for registration.

1 GENERAL

- 1.1 This MCP is incorporated in a restriction in the Plan of Subdivision.
- 1.2 This MCP is intended to give effect to the exceptions available under Regulation 71 of the Building Regulations.
- 1.3 Where the siting of a building complies with a particular siting requirement under the applicable Approved Building Envelope and this MCP, the report and consent of the relevant council is not required in respect of a Lot where the design does not comply with a siting requirement in the related Regulation in Division 2 of Part 5 of the Building Regulations.
- 1.4 This MCP also imposes restrictions on the development of a Lot not related to Regulation 71 of the Building Regulations.
- 1.5 In relation to a Small Lot, provided the building on that lot complies with the Small Lot Housing Code, no consent and report of the relevant council is required, as this MCP has been prepared with regard to Regulation 71. For the purposes of Regulation 71, the restriction created by the Plan of Subdivision constitutes an approved building envelope.

2 DEFINITIONS

- 2.1 Unless otherwise defined in this MCP, the words in *italics* below have the meaning attributed to them in the instrument identified:
 - 2.1.1 In the Building Act:
 - (a) *building*;
 - 2.1.2 In the Building Regulations:
 - (a) *height*;

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MCP

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

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ETB 13154008v1 ETB

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- (b) *private open space*;
- (c) *recreational private open space*;
- (d) *raised open space*;
- (e) *secluded private open space*;
- (f) *setback*; and
- (g) *site coverage*.

2.1.3 In the Planning Scheme:

- (a) *frontage* (clause 72 of the Planning Scheme);
- (b) *dwelling* (clause 74 of the Planning Scheme);
- (c) *habitable room* (clause 72 of the Planning Scheme); and
- (d) *storey* (clause 72 of the Planning Scheme).

2.2 In this MCP:

- 2.2.1 **“Approved Building Envelope”** means a building envelope for the purposes of Regulation 71 of the Building Regulations that comprises a Building Envelope Plan and the matters in this MCP, and has the same meaning as the same term in the Regulations.
- 2.2.2 **“BBZ”** means that part of a Lot shown as Building to Boundary Zone in the Building Envelope Plan.
- 2.2.3 **“Building Act”** means the *Building Act 1993* as amended from time to time.
- 2.2.4 **“Building Envelope Plan”** means a building envelope plan shown on the Plan of Subdivision. The Building Envelope Plan forms part of the Approved Building Envelope, prepared for the purposes of Regulation 71.

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- 2.2.5 **“Building Regulations”** means the *Building Regulations 2018* as amended from time to time.
- 2.2.6 **“Front Boundary”** means:
- (a) in the case of any Lot where only one boundary of that Lot abuts a road, the boundary which abuts the road; and
 - (b) in the case of any Lot where two boundaries of that Lot abut a road, the shorter boundary which abuts the road, ignoring any corner boundary created by a splayed corner.
- 2.2.7 **“Lot”** means a lot on the Plan of Subdivision but excludes a Small Lot.
- 2.2.8 **“MCP”** means this memorandum of common provisions and includes all diagrams, plans and annexures attached to this memorandum of common provisions.
- 2.2.9 **“Natural Ground Level”** means the ground level after the engineering works associated with works associated with the subdivision have been completed.
- 2.2.10 **“Overlooking Zone”** means that part of a Lot shown as an overlooking zone in the Building Envelope Plan.
- 2.2.11 **“Planning Scheme”** means the Wyndham Planning Scheme prepared under the *Planning and Environment Act 1987*.
- 2.2.12 **“Plan of Subdivision”** means the plan of subdivision that includes the restriction that incorporates this MCP.
- 2.2.13 **“Regulation”** means a regulation of the Building Regulations, unless specified otherwise.

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- 2.2.14 **"Side Boundary"** means a boundary of a Lot that runs between and connects the street frontage of the Lot to the rear boundary of the Lot.
- 2.2.15 **"Small Lot"** means a lot on the Plan of Subdivision which has a land area of less than 300 square metres in area, and which may be identified on the Building Envelope Plan as a lot which is either "Type A" or "Type B" for the purposes of the Small Lot Housing Code.
- 2.2.16 **"Small Lot Housing Code"** means the planning initiative of that name designed to apply to lots of less than 300 square metres in area, and which is incorporated into the Planning Scheme.
- 2.2.17 For the purposes of determining street setbacks, **"Street"** means any road other than a lane, footway, alley or right of way.

3 SITING REQUIREMENTS

3.1 Minimum street setback (Regulation 74)

A building must be set back from a street alignment in accordance with Regulation 74 and clause 54.03-1 of the Planning Scheme, except as specified below.

- 3.1.1 Buildings on the Lot must be set back from the Front Boundary by the minimum distance noted on the Building Envelope Plan, or if no front setback dimension is shown on the Building Envelope Plan, then by at least 4.0 metres.
- 3.1.2 Garages must be constructed within the Approved Building Envelope, and setbacks between 5.2 metres and 3.9 metres from the Front Boundary are not permitted.

3.2 Encroachments into front setbacks

- 3.2.1 The following may encroach into the specified front setback distances by not more than 1.5 metre:
- (a) porches, balconies and verandahs of up to 4.0 metres in height for a single storey dwelling and 9.0 metres in height for a two-storey dwelling;
 - (b) masonry chimneys;
 - (c) sunblinds;

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(d) screens referred to in Regulations 84(5)(d) or 84(6) of the Building Regulations; and

(e) decks, steps or landings, less than 800mm in height.

3.2.2 Eaves, fascia and gutters not more than 600mm in total width may encroach into the specified front setback distances.

3.3 Splayed and curved street frontages

3.3.1 Unless noted on the Building Envelope Plan, the minimum front setback on a splayed or curved corner between two street frontages is on an arc connecting the front street setback line to the side street setback line commencing at the points that are perpendicular to the points where the street alignment commences to arc.

3.3.2 Front entrances are to be easily accessible from the Front Boundary.

3.4 Building height (Regulation 75)

A building height must be in accordance with Regulation 75 and clause 54.03-2 of the Planning Scheme.

3.5 Site coverage (Regulation 76)

The site area covered by buildings on an allotment must be in accordance with Regulation 76 and clause 54.03-3 of the Planning Scheme.

3.6 Side and rear setbacks (Regulation 79)

Side and rear setbacks on an allotment must be in accordance with Regulation 79 and clause 54.04-1 of the Planning Scheme, except as specified in clauses 3.6.1, 3.6.2 and 3.6.3, whichever may be applicable.

3.6.1 Side setbacks

(a) A building on a Lot must be set back from a Side Boundary not less than the distance specified in the applicable Approved Building Envelope.

(b) Where the Approved Building Envelope notes a side setback of "0 or 1", the building may be built on either side boundary where noted as "0 or

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1" but must maintain a minimum of 1 metre setback to the opposite boundary.

- (c) If there is no applicable dimension on the Building Envelope Plan, the building must be set back from a Side Boundary in accordance with Regulations 74, 79 or 80 as may be applicable.

3.6.2 Rear setbacks

- (a) A building on a Lot must be setback from a rear boundary not less than the distance specified in the Approved Building Envelope.
- (b) The following minimum rear setbacks apply to any wall of building where a setback is not indicated by an applicable Approved Building Envelope:
 - (1) a rear wall of the building not exceeding 3.6 metres in height must be setback from the rear boundary not less than 3 metres; and
 - (2) a rear wall of the building exceeding 3.6 metres in height must be setback from the rear boundary by 5.0 metres plus a further 0.3 metres for every 1.0 metre of height above 3.6 metres to a height of 6.9 metres plus a further 1.0 metre for every additional 1.0 metre of height above 6.9 metres.
- (c) The maximum height of a building facing a rear boundary must not exceed the maximum building height shown in the Approved Building Envelope.

3.6.3 Encroachments

- (a) The following may encroach into the specified, side and rear setback distances by not more than 0.5 metres:
 - (1) porches and verandahs;
 - (2) masonry chimneys;
 - (3) sunblinds;
 - (4) screens, but only to the extent needed to protect a neighbouring property from a direct view;
 - (5) flues and pipes;

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- (6) domestic fuel tanks and water tanks; and
- (7) heating and cooling equipment and other services.
- (b) The following may encroach into the specified setback distances:
 - (1) landings with an area of not more than 2 square metres and less than 1 metre high;
 - (2) unroofed stairways and ramps;
 - (3) pergolas;
 - (4) shade sails;
 - (5) eaves, fascia, gutters not more than 600mm in total width;
 - (6) outbuildings not exceeding 10 square metres in area and 3 metres in height; and
 - (7) swimming pools no higher than 600mm above Natural Ground Level.
- (c) This clause does not apply in relation to a side or rear setback from a Lot which is not on the Plan of Subdivision (Regulation 71(2)).

3.7 Walls on boundaries (Regulation 80)

Walls constructed on a boundary must be in accordance with Regulation 80 and clause 54.04-2 of the Planning Scheme, except as specified below:

- 3.7.1 Walls, parts of a building and carports within 1 metre of a Lot boundary must be within a BBZ. The BBZ spans the length of the Side Boundary between the front and rear setbacks permitted by the building envelope.
- 3.7.2 Within the BBZ, the following apply:
 - (a) Walls and carports within 1 metre of a boundary must not exceed the greater of:
 - (1) 10 metres plus 25% of the remaining length of that boundary; and

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- (2) the length of any abutting wall of a building or carport on the adjoining Lot constructed within 1.0 metre of that boundary.
- (b) Maximum average height of a wall or side of a carport in the BBZ is restricted to 3.2 metres, or 3.6 metres if the total length of wall in the BBZ is 7 metres or less in length;
- (c) Building height within the BBZ must not exceed 3.6 metres;
- (d) A wall on a Lot boundary must be sited less than 200mm from the Lot boundary. No wall may be sited within a setback of between more than 200mm and less than 1000mm from a Lot boundary.; and
- (e) Carports may be built within 1 metre of a Lot boundary if the side of the carport facing the boundary is open.

3.8 Daylight to existing habitable room windows (Regulation 81)

The provision of solar access to existing north-facing habitable room windows must be in accordance with Regulation 81 and clause 54.04-3 of the Planning Scheme.

3.9 Solar access to existing north-facing habitable room windows (Regulation 82)

The provision of solar access to existing north-facing habitable room windows must be in accordance with Regulation 82 and clause 54.04-4 of the Planning Scheme.

3.10 Overshadowing of open space (Regulation 83)

Any overshadowing of recreational private open space must be in accordance with Regulation 83 and clause 54.04-5 of the Planning Scheme.

3.11 Overlooking (Regulation 84)

Any overlooking of a habitable room window or secluded private open space of an existing dwelling on an adjoining allotment must be in accordance with Regulation 84 and clause 54.04-6 of the Planning Scheme, except as varied as a consequence of other restrictions in this MCP or as specified below.

3.11.1 From raised open spaces

- (a) A raised open space within an Overlooking Zone indicated by dimensions on the Building Envelope Plan and with a floor level of more

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than 2 metres above Natural Ground Level must not allow a direct view to an adjoining Lot.

- (b) A direct view is:
- (1) From a habitable room window, any line of sight measured from a height of 1.7 metres above the floor level of the habitable room and contained within the space enclosed by:
 - (A) a vertical plan measured at an angle of 45 degrees from each side of the window; and
 - (B) a horizontal plan 1.7 metres above the floor level of the habitable room; and
 - (C) the ground level below; and
 - (D) a horizontal distance of 9 metres from the window.
 - (c) From a raised open space, any line of sight measured from a height of 1.7 metres above the floor level and along the perimeter of the raised open space to any point within a horizontal distance of 9 metres from the raised open space and extending 45 degrees beyond any point where the perimeter of the raised open space meets a wall of the building.
 - (d) This clause does not apply in relation to the overlooking of a Lot which is not on the Plan of Subdivision (Regulation 71(2)).

3.12 Private open space (Regulation 86)

A dwelling on an allotment must provide private open space as specified in Regulation 86 and clause 54.05-2 of the Planning Scheme

3.13 Resolving conflicts

In the case of a conflict between a siting matter in the text of this MCP and a Building Envelope Plan, the Building Envelope Plan prevails.

4 OTHER REQUIREMENTS

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4.1 Fencing

4.1.1 Front fences

- (a) If a front fence is constructed, the design should complement the design of the dwelling and any front fences on adjoining properties.
- (b) A front fence should not exceed 1.2m in height.
- (c) A front fence includes any fence within the front building setback dimension as shown on the Building Envelope Plan, or where no setback is shown, within 4m of the Front Boundary.

4.1.2 Side fencing

A side fence must not have a height of more than 2.0 metres above Natural Ground Level.

4.1.3 Rear fencing

A rear fence of a Lot must not be constructed at a height of more than 2.0 metres above Natural Ground level.

4.1.4 Materials and construction

Fences must be constructed as follows:

- (a) a front fence must be constructed with timber or a combination of timber and masonry or stone materials and include a minimum 20% transparency; and
- (b) side and rear fences must be constructed with exposed posts, timber palings and a timber cap;

unless otherwise specified in writing by the developer of the estate in which the Lot is located.

4.2 Council report and consent

The siting of a building on a Lot that does not comply with this MCP must be subject to the report and consent of the relevant council.

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5 SMALL LOTS

Lots 1801, 1802, 1806, 1807, 1822, 1823, 1826, 1827, 1831, 1832, 1835, 1836, and 1840 to 1844 (both inclusive) are Small Lots under this MCP.

Unless the design and siting of all buildings on a Small Lot are subject to a planning permit issued under the *Planning and Environment Act 1987*, any building on a Small Lot must be designed and sited in accordance with the Small Lot Housing Code.

6 BUILDING ENVELOPE PLAN

The following legend and symbols have been used in the Building Envelope Plan.

LEGEND

Building Envelope



Lots shown thus ▲ are subject to the provisions of the small lot housing code

A building on a lot shown thus * is required to have a one metre setback from at least one side boundary

For lots shown thus D a two storey dwelling is mandatory

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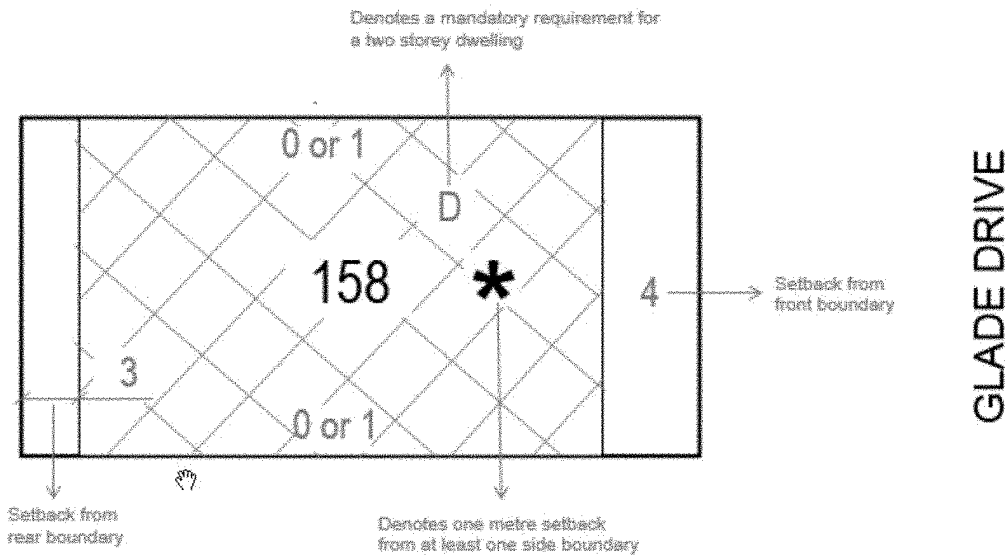
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Interpretation of a Building Envelope Plan

Diagram illustrating the interpretation of a building envelope plan



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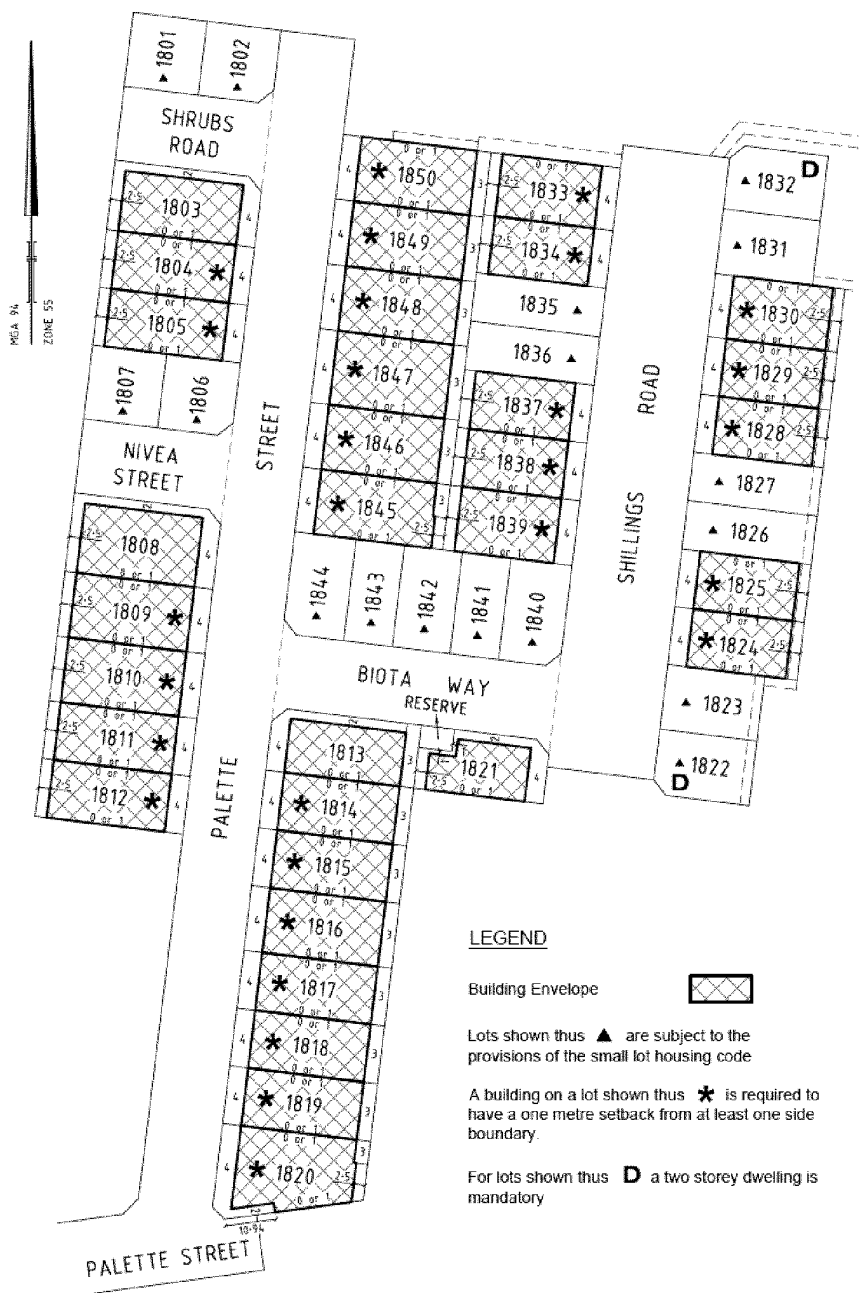
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6.1 Building Envelope Plan



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