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AA9308

**Memorandum of common provisions  
Restrictive covenants in a transfer  
Section 91A Transfer of Land Act 1958**

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This memorandum contains provisions which are intended for inclusion in transfers of land under the Transfer of Land Act 1958 to be subsequently lodged for registration.

**Operative words including words to bind the burdened land and words of annexation must not be included.**

Provisions to apply to the transfer:

**Burdened land:** THE LAND BEING TRANSFERRED

**Benefited land:** EVERY OTHER LOT, ROAD OR STREET SHOWN ON PLAN OF SUBDIVISION PS901705M, WITH THE EXCEPTION OF LOT B

**Covenants:** Definitions:

**Main street frontage**

The street frontage that allows the most direct access to the front door.

**Side boundary**

A boundary of a lot that runs between and connects the street frontage of the lot to the rear boundary of the lot.

**Reserve**

The public land abutting lots 16, 17, 18, 19 and 20.

**Front Building Line**

Means the front wall of any room of the dwelling (excluding an entry way up to 2.0 metres in width). For the purposes of this definition, nib walls, porticos, verandahs and other architectural features are not defined as a wall.

**Facade**

Means a wall of a building running parallel (or mostly parallel) to the street boundary and comprising floor to ceiling or full-length windows in at least one Habitable Living Area allowing active surveillance of the public realm, and designed to front the street.

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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.

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**Primary Facade**

Means the facade which is parallel (or mostly parallel) to the street boundary which Council defines as the street address of the lot.

**Secondary Facade**

Means the facade on a corner lot which is located parallel (or mostly parallel) to a secondary street (i.e. not the street address for the lot).

**Battle Axe Block**

Means a block of land behind another, with access from the street through a narrow drive.

**Covenants:**

**1. Architectural & Landscape Design Guidelines**

- 1.1 No structure shall be erected or permitted to be erected on the lot unless the proposed plans, specifications and design of that building: -
  - 1.1.1 describes clearly the form, size, layout, materials, colour and proposed siting of the building on the lot (including provision for the orientation of any dwelling) and
  - 1.1.2 have been previously submitted to and approved in writing by: -
    - 1.1.2.1 the Transferor or its nominee, provided that such approval is not unreasonably withheld, and
    - 1.1.2.2 Benalla Rural City Council (as the relevant Planning Authority), where applicable.
- 1.2 No building may be erected or permitted to remain on the lot, except a single, private, residential dwelling.
- 1.3 No building may be erected or permitted to remain on the lot, unless it is constructed entirely of new materials and not from pre-existing or formerly occupied residential buildings or structures, whether in whole or in part, and moved onto the lot from a former location.
- 1.4 No building may be erected or permitted to remain on the lot, except one single occupancy dwelling which has a minimum floor area of 160sqm (meaning the internal habitable area, excluding the floor area of garages, verandas, eaves and any outbuildings).
- 1.5 The external walls of any main residence must not be constructed of any materials other than brick, stone, cement, coloured or painted concrete brick or clay, providing that timber or metal of a non-reflective nature, may be used in external walls as infill panels provided that it does not exceed 50% of the total area of the external walls, unless otherwise approved by the Transferor in its absolute and unfettered discretion.
- 1.6 No building erected on the lot may be roofed or clad with any material having a metallic lustre or appearance or a highly reflective surface.
- 1.7 No rooms in the main residence may have a ceiling height of less than 2.4 metres above the finished floor level.
- 1.8 No garage may be erected or permitted to remain on the lot, unless:
  - 1.8.1 Such garage is attached to the main residence and built with the same colour and type of material as the main residence.
  - 1.8.2 Such garage must be situated at least 500mm behind the front building line of the main residence.
  - 1.8.3 Such garage must be fully enclosed and able to accommodate at least two cars.
  - 1.8.4 All garage doors must be a panel or sectional opening door and not a roller door.

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Should a secondary garage be required it must be set back 500mm from the primary garage and attached to the main residence. Garages on battle axe blocks may be exempted from being attached to the house subject to receipt of approval from the Transferor.

- 1.9 No outbuilding, other than a garden shed, which has a floor area no greater than three metres by three metres (9sqm) may be erected or permitted to remain on the lot. Such garden shed must be built of the same colours and materials as the perimeter fence, being Colourbond, colour "Grey Ridge" or "Woodland Grey". If a larger shed is required, approval in writing must be sought from the Transferor.
- 1.10 The main residence (including the garage) on a lot, must not be erected or permitted to remain unless it has the following minimum setbacks from the title boundary:
  - 1.10.1 Front building line - Set back from the title boundary of the main street frontage - 6.0 metres.
  - 1.10.2 Set back from the rear boundary abutting another residential lot - 3.0 metres.
  - 1.10.3 Set back from the side boundary abutting another residential lot - 1.0 metre.
- 1.11 The owner of any lot shall not be able to make any claim for contribution toward the erection or maintenance of any dividing fence if the adjoining lot is owned by the Transferor or abuts reserves and/or reserve areas.
- 1.12 No fence shall be erected forward of the main residence's front building line.
- 1.13 Side and rear fences must not be erected or permitted to remain on a lot unless:
  - 1.13.1 Such fence has a height of 1.8 metres.
  - 1.13.2 Such fence is constructed of a non-reflective metal infill panel known as Colourbond colour "Grey Ridge" or "Woodland Grey".
  - 1.13.3 Such fence has a level finish with no protruding caps.
  - 1.13.4 Such fence is of an identical colour and finish on both sides.
- 1.14 No fences connecting to the main residence and running parallel to the main street frontage, may be built of colours and materials other than those of the perimeter fence, being Colorbond, colour "Grey Ridge" or "Woodland Grey".
- 1.15 The following restrictions apply to lots 16 to 28 and prevail to the extent of any inconsistencies herein:
  - 1.15.1 Benalla Rural City Council, as the relevant planning authority, requires minimum floor levels, which are as follows:

Lot No.	Minimum Floor Level (AHD)
16	168.95 m
17	168.9 m
18	168.85 m
19	168.8 m
20	168.7 m
21	168.8 m
22	168.8 m
23	168.75 m
24	168.7 m
25	168.65 m
26	168.6 m
27	168.55 m
28	168.5 m

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- 1.16 The following fencing requirements are to apply to lots which adjoin the reserve being lots 16 to 20 and prevail to the extent of any inconsistencies with other restrictions herein:
    - 1.16.1 No fence shall be erected or permitted to remain on the rear boundary adjoining the reserve unless:
      - 1.16.1.1 Such fence has a brick pillar at the intersection on the side boundaries and tubular fencing (powder coated steel or aluminium, coloured black) between, to a height of not less than 1.2 metres and not more than 1.5 metres high.
      - 1.16.1.2 Such brick pillars must be a minimum of 1.5 bricks square (standard house brick) in diameter from top to bottom with either a flat finish on top of with a capped pier on top.
      - 1.16.1.3 The finish of the pillars must be of colours consistent with that of the main residence.
      - 1.16.1.4 As long as the above requirements are complied with, such fence can have a combination of brick pillars and tubular fencing (powder coated steel or aluminium, coloured black) spaced between 2 to 3 metres apart.
      - 1.16.1.5 Such fence can also have a brick border at the base of the fence.
      - 1.16.1.6 Such fence is not permitted to have vehicular access to the reserve but is permitted to have a personal access gate of a type to match the rear fence.
    - 1.16.2 Side fences must have a height of 1.8 metres and graduate evenly to between 1.2 metres and 1.5 metres (depending on the rear fence height) and join the pillars on the fence adjoining the reserve.
  - 1.17 The following restrictions apply to lots 21 to 28 and prevail to the extent of any inconsistencies with other restrictions herein:
    - 1.17.1 Fencing to the rear boundaries of these lots may be constructed in accordance with clause 1.13 or alternatively may be constructed of farm fencing.
  - 1.18 Letterboxes must not be constructed of materials inconsistent with that of the main residence.
  - 1.19 The owner of a lot, except with the written consent of the Transferor, must not allow the property to remain vacant or the construction of a dwelling to remain incomplete for more than twenty-four (24) months from the date of the Transfer.
  - 1.20 The owner of a lot, except with the written consent of the Transferor, must not allow the area of the lot facing a street, reserve or park to remain without landscaping for more than seven (7) months from the date of receiving a certificate of occupancy.
- 2. Maintenance of lot prior to construction of residence and during the construction period**
- For any period of time during which an owner’s lot remains vacant, the owner must maintain the lot in a clean and tidy condition, and:
- 2.1 Not allow any vegetation on the lot to exceed a height of 15 centimetres.
  - 2.2 Not park or allow others to park any cars, trailers, caravans, or such similar items on the lot.
  - 2.3 Not allow a shipping container to be installed or remain on the lot, irrespective of the purpose.
  - 2.4 Not allow the lot to become untidy and for rubbish to remain on the lot.
- 3. Use of lot after construction of residence**
- 3.1 Owners and occupiers, but excluding the Transferor, must not:

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- 3.1.1 House vehicles on the lot other than in a garage or driveway, and
- 3.1.2 Allow boats, trailers, caravans or such similar items to be visible from the street frontage. Such items must be screened from public view.
- 3.1.3 allow a shipping container to be installed or remain on the lot, irrespective of the purpose.
  
- 3.2 Owners or occupiers must not allow garbage and/or recycling bins to be unsecured on their lot.
  
- 3.3 The owner or occupier of a lot must not, except with the prior written consent of the Transferor, allow the following to be visible from the street frontage:
  - 3.3.1 Any television, radio or other aerial, antenna, satellite dish or tower or any other transmitting or receiving device, or
  - 3.3.2 Any energy conservation equipment,
  - 3.3.3 Air conditioners and/or evaporative coolers,
  - 3.3.4 Water systems,
  - 3.3.5 Rainwater tanks,
  - 3.3.6 Any clotheslines or hoist (or hang any washing, towels, bedding, clothing or other articles or a similar nature from any clothesline, hoist or railing),
  - 3.3.7 Swimming pool and/or sauna related heating equipment, and
  - 3.3.8 Solar hot water tanks.
  - 3.3.9 Garbage and/or recycling bins.

Only solar power panels which are required in connection with items 3.3.2 and 3.3.8 may be erected on the front roof line if necessary.

**Expiry:**

15 May 2033

*Optional.*

*Specify the date the covenants are to expire or if the covenants are to expire on the happening of a particular event, specify the event. If the expiry only applies to particular covenants or specific lots/folios, this must be clearly specified.*