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# Memorandum of common provisions

## Restrictive covenants in a plan

### Section 91A Transfer of Land Act 1958

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This memorandum contains provisions which are intended for inclusion in plans under the Subdivision Act 1988 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 plan:

**Burdened land:** As set out in the plan.

**Benefited land:** As set out in the plan.

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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 plans.

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# Memorandum of common provisions

## Section 91A Transfer of Land Act 1958

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### Covenants:

#### DEFINITIONS

In this memorandum, unless the context otherwise requires:

**Building** means any permanent or semi-permanent structure on a lot and includes a dwelling.

**Building Design Guidelines** means the *Kingston Haven Building Information & Design Guidelines as revised from time to time by the Design Assessment Panel*. A copy of the current version can be obtained from the Design Assessment Panel.

**Burdened land** means a lot identified in the Plan as burdened by a restriction described in this MCP.

**Corner Lot** means a lot:

- contiguous with:
  - two intersecting streets; or
  - a street whose curvature provides the characteristics of a corner allotment; or
- deemed by the Design Assessment Panel to be a corner lot.

**Design Assessment Panel** means the Kingston Haven Design Assessment Panel described in the Building Design Guidelines.

**Dwelling** has the same meaning as set out in the Land Use Terms of the planning scheme that applies to the land in the Plan but excluding outbuildings, carport/garage, outdoor rooms/alfresco, porches, and verandas.

**ground level** is deemed to be the finished surface level following completion of engineering works associated with the subdivision.

**Lot** has the same meaning as in the *Subdivision Act 1988* (Vic), being a lot created by the Plan and if permitted, includes any lot created by further subdivision

**MCP** means this Memorandum of Common Provisions.

**Plan** means plan of subdivision PS927789G.

**Primary frontage** means for each Lot, unless otherwise determined by the Design Assessment Panel or specifically stipulated in this MCP, the shortest boundary of that lot which abuts a street.

**Public land** means any land under the care or management of a Public Land Manager as that expression is defined in the General Terms of the planning scheme that applies to the land in the Plan.

**Rear boundary** means the Lot boundary which is opposite the Primary frontage, or the appropriate Lot boundary as determined by the Design Assessment Panel.

**Secondary frontage** means the boundary of a Lot (other than the Primary frontage) which abuts a street.

**Setback** means the required distance between the relevant boundary and the building line as outlined in the Building Design Guidelines unless otherwise noted in this MCP or the Plan. A setback of up to 150 millimetres from the lot boundary is deemed to be on the boundary.

**Side boundary** means the boundary of a Lot connecting the Primary frontage to the rear boundary. Where that Lot is a Corner Lot, the side boundary includes the boundary along the Secondary frontage.

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### COVENANTS:

#### Restriction A1 – Development of a Lot

The registered proprietor or proprietors for the time being of the burdened land must not:

1. further subdivide the lot; and
2. construct more than one dwelling on any single lot.

#### Restriction A2 – Minimum dwelling floor

The registered proprietor or proprietors for the time being of the burdened land must not construct on any single lot a dwelling with a floor area less than 135 m<sup>2</sup>.

#### Restriction A3 – Compliance with Building Design Guidelines

1. The registered proprietor or proprietors for the time being of the burdened land must not:
  - 1.1. construct or allow to be constructed or allow to remain on any lot any Building:
    - 1.1.1. that is not in accordance with the Building Design Guidelines unless otherwise approved by the Design Assessment Panel;
    - 1.1.2. without obtaining written approval of the design for that Building from the Design Assessment Panel, which approval must be obtained even if the design for that Building complies with the Building Design Guidelines; and
    - 1.1.3. any building which is more than 9 metres above the ground level (excluding any television antenna, chimney or flue) or an extension to a dwelling where the extension is more than 9 metres above ground level (excluding any television antenna, chimney or flue).
  - 1.2. construct or allow to be constructed:
    - 1.2.1. a dwelling unless 30% of the external walls excluding windows are constructed of brick, brick veneer, stone, render or masonry-like material;
    - 1.2.2. the roof of any building, garage door or outbuilding of galvanised iron or other reflective material; and
    - 1.2.3. a driveway unless constructed of coloured-through concrete, exposed aggregate concrete, stencilled or stamped coloured-through concrete, permi-pavers or brick pavers.
  - 1.3. store or site or permit to be stored or sited on any lot any caravan or boat or any commercial vehicle having a registered carrying capacity of more than one tonne unless within an approved building or screened from view from any road reserve by a structure that is in line with or behind the most forward line of the building abutting any road reserve.
  - 1.4. occupy any dwelling without a driveway.
2. The Design Assessment Panel in its absolute discretion may approve a dwelling that does not strictly comply with this Restriction A3.

#### Restriction A4 – Boundary Fencing

The registered proprietor or proprietors for the time being of the burdened land must not:

1. construct or allow to be constructed any fencing:
  - 1.1. along a primary frontage; or

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- 1.2. on a side or rear boundary of a lot unless the fence:
  - 1.2.1. is constructed of lapped timber palings with a timber capping;
  - 1.2.2. subject to clause 1.2.3, is a height not less than 1.8 metres and not greater than 2.0 metres;
  - 1.2.3. tapers down to 1 metre in height at the primary frontage for the distance of the required setback from the primary frontage; and
  - 1.2.4. is built on the boundary and within acceptable tolerances as prescribed by Victorian law.
- 1.3. on the secondary frontage of a Corner Lot, unless the fence commences a minimum of 10 metres back from the primary frontage;
- 1.4. on a side or rear boundary of a lot abutting public land unless the fence:
  - 1.4.1. is visually permeable on the boundary abutting the public land; and
  - 1.4.2. maximises passive surveillance of the public land both at ground level and upper level/s as appropriate.
2. occupy any dwelling on a lot without fences on the side and rear boundaries.

#### Restriction A5 – Primary Frontage setbacks

1. The registered proprietor or proprietors for the time being of the burdened land must not construct or allow to be constructed a building (excluding any entry porch, verandah, balcony or pergola) on the burdened land unless the building line facing the primary frontage at ground level is sited at least 4.0 metres but no more than 6.5 metres from the primary frontage, and with a garage sited a further 1.0 metre from the building line.
2. The Design Assessment Panel may in its sole discretion approve a dwelling that does not comply with this Restriction A5.

#### Restriction A6 – Corner Lots

1. The registered proprietor or proprietors for the time being of a Corner Lot must not construct or allow to be constructed any Building unless the secondary frontage is setback at least 2.0 metres from the side boundary.
2. The Design Assessment Panel may in its sole discretion approve a dwelling that does not comply with this Restriction A6.

#### Expiry:

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Restrictions A1, A2, A5 and A6 will cease to have effect on 1 January 2045.

Restrictions A3 and A4 will cease to have effect on 1 January 2035.