

6.1.2 T210202 PA - Removal of Restrictive Covenant Contained in Instrument No. T326405K

Responsible GM: Lili Rosic
Author: Mary Rush

Recommendation(s)

That Council refuse to grant Planning Permit T210202 for the removal of restrictive covenant contained in Instrument No. T326405K from L225 PS318023 V10138 F537, 3 McLeish Terrace, Pakenham VIC 3810 on the following grounds:

1. That pursuant to the requirements of section 60(2) of the *Planning and Environment Act 1987*, Council cannot be satisfied that the variation of the covenant will be unlikely to cause any beneficiary of the covenant or any other person any detriment relating to:
 - a. Financial loss; or
 - b. Loss of amenity; or
 - c. Loss arising from change to the character of the neighbourhood; or
 - d. Any other material detriment.
2. The removal of the restriction will detrimentally affect the interests of surrounding landowners under Clause 52.02 of the Cardinia Planning Scheme.
3. The removal of the restriction is inconsistent with the orderly planning of the area.

Attachments

1. Locality Map [6.1.2.1 - 1 page]
2. Application Documents [6.1.2.2 - 14 pages]
3. CONFIDENTIAL REDACTED - Copies of Objections - Circulated to Councillors only [6.1.2.3 - 3 pages]

Executive Summary

APPLICATION NO.:	T210202
APPLICANT:	Ioan Ducas
LAND:	L225 PS318023 V10138 F537, 3 McLeish Terrace, Pakenham VIC 3810
PROPOSAL:	Removal of covenant contained in Instrument No. T326405K
PLANNING CONTROLS:	Clause 52.02 Easements restrictions and reserves Clause 65 Decision guidelines – approval of an application or plan <i>Planning and Environment Act 1987</i> section 60(2)

NOTIFICATION & OBJECTIONS:	<p>Notice of the application was given by way of sending notices to adjoining and near-by land owners/occupiers, by placing a sign on the road frontage, and by publishing a notice in a newspaper generally circulating in the area in which the subject land is situated.</p> <p>Council has received three (3) objections to date.</p>
KEY PLANNING CONSIDERATIONS:	Variation of restrictive covenant, material detriment, interests of affected persons
RECOMMENDATION:	Refusal.

Background

The subject site has no planning history.

Subject Site

The irregular-shaped site has an area of 1821 square metres and is located on the eastern side of McLeish Terrace and western side of Highland Drive, Pakenham

The site contains an existing single dwelling, which is situated within the western half of the site, with frontage to McLeish Terrace. The remainder of the land is generally undeveloped and does not contain any significant vegetation.

The land has a slope of approximately 25 percent.

The site is within the Pakenham Heights estate, which is characterised by single dwellings on lots measuring approximately 800 to 1400 square metres. At 1821 square metres, the subject site is one of the largest lots in the estate.

It is noted that Council has not approved any variation or removal of restrictive covenants on any other lot within this estate.

Relevance to Council Plan

5.1 We practise responsible leadership

5.1.1 Build trust through meaningful community engagement and transparent decision making.

Proposal

An application has been submitted to Council to remove the restrictive covenant in instrument T326405K, which was created on 27 September 1994, and is summarised below:

AND the said Transferees with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on Plan of Subdivision No.31 8023R other than the Lot hereby transferred and that the burden of this Covenant shall be annexed to and run at law and in equity with

the said Lot hereby transferred does hereby for himself his heirs executors administrators and transferees and as separate covenants covenant with the said EDDIE BARRON CONSTRUCTIONS PTY LTD and the registered proprietor or proprietors for the time being of every lot on the said Plan of Subdivision and every part or parts thereof other than the Lot hereby transferred that the said Transferees their heirs executors administrators and transferees in relation to the Lot hereby transferred or any part or parts thereof SHALL NOT:-

- a) Erect or cause to be erected not than one private dwelling house (together with the usual outbuildings)*
- b) Erect or cause to be erected any dwelling with a floor area of less than 120 square metres excluding garage carports and Verandahs.*
- c) Erect or cause to be erected any dwelling and attached garage other than a dwelling and attached garage with external walls constructed substantially of brick veneer or stone.*
- d) Erect or cause to be erected any detached outbuilding other than a detached outbuilding with external walls of brick, stone, timber or metal.*

AND IT is intended that the above Covenant shall appears as an encumbrance on the aforesaid Certificate of Title.

Planning Scheme Provisions

Planning Policy Framework (PPF)

The relevant clauses of the PPF are:

- Clause 15.01-5S Neighbourhood character.

Local Planning Policy Framework (LPPF)

The relevant clauses of the LPPF are:

- 21.06-1 Design and Built Form.

Zone

The land is subject to the General Residential Zone – Schedule 1.

Overlays

The land is subject to the Development Contributions Plan Overlay - Schedule 1.

Relevant Particular/General Provisions and relevant incorporated or background documents

The relevant provisions/ documents are:

- Clause 52.02 - Easements restrictions and reserves
- Clause 65 - Decision guidelines – approval of an application or plan
- Section 60, *Planning and Environment Act 1987*

Planning Permit Triggers

The proposal for the removal of restrictive covenant requires a planning permit under the following clauses of the Cardinia Planning Scheme:

- Pursuant to Clause 52.02 of the Cardinia Planning Scheme, a planning permit is required before a person proceeds under Section 23 of the *Subdivision Act 1988* to remove a restriction.

Public Notification

The application has been advertised pursuant to Section 52 of the Planning and Environment Act 1987, by:

- Sending notices to the owners and occupiers of adjoining land;
- Placing a sign on site; and
- Placing a notice in the Pakenham Gazette newspaper.

The statutory declaration was submitted to Council on the 16 August, 2021 confirming that the required advertising had been satisfactorily completed.

Council has received three (3) objections to date.

The key issues that were raised in the objections are:

- Breach of covenant (no one can build more than one dwelling);
- Change to single-dwelling neighbourhood character;
- Decrease in property values;
- Creating a precedent for other properties to remove their covenant; and
- Loss of amenity (privacy, increased in noise, traffic, parking of vehicles).

Referrals

The application was not referred to any external authorities.

Discussion

Restrictive covenants occupy a unique position in both common law and planning legislation. The benefit of a covenant has the status of a proprietary interest, which gives the beneficiary an interest over land. As such, the *Planning and Environment Act 1987* (the 'Act') requires the responsible authority to consider the matters under Section 60(2) of the Act in an application to vary or remove a restriction created on or after 25 June 1991. These are threshold issues considered before an assessment of the prescribed matters under the planning scheme. Importantly, as a recognition of the proprietary interest afforded to beneficiaries of a covenant, this section provides broader protection to beneficiaries than the planning scheme itself.

Under section 60(2) of the Act:

The responsible authority must not grant a permit which allows the removal or variation of a restriction (within the meaning of the Subdivision Act 1988) unless it is satisfied that the owner of any land benefited by the restriction . . . will be unlikely to suffer—

- (a) *financial loss; or*
- (b) *loss of amenity; or*
- (c) *loss arising from change to the character of the neighbourhood; or*
- (d) *any other material detriment—*

as a consequence of the removal or variation of the restriction.

The Tribunal has provided guidance in interpreting section 60(2) when considering the removal or variation of a covenant. In *Waterfront Place Pty Ltd v Port Phillip CC* (Red Dot) [2014] VCAT 1558 (*Waterfront Place*), Senior Member H. McM Wright QC and Member Benz summarised several principles relating to how the tests in section 60(2) should be applied. These were further cited by Member Blackburn in *Singh & Kaur v Brimbank CC* [2017] VCAT 1730 (23 October 2017). Whilst not an exhaustive list, they provide guidance in decision making:

- *the provision is designed to protect proprietary interests and therefore should be interpreted as beneficial legislation and given as wide a meaning as the words of the sub-section reasonably allow.*
- *the Tribunal must be persuaded to a 'comfortable level of satisfaction' that the threshold requirements are met, rather than 'only just satisfied'.*
- *the loss referred to in section 60(2) must be 'material' but in this context the term does not have as wide a meaning as it does in section 52 of the P&E Act. In past cases, the Tribunal has explained 'material' in this context as meaning:*
 - *'important detriment, detriment of such consequence viewed on an objective basis. It does not include trivial or inconsequential detriment'; or*
 - *'real and not fanciful detriment'.*
- *it is essential to look at the purpose and effect of the restriction as one of the factors relevant in determining the likelihood of any loss or detriment in the event of removal or variation.*
- *in applying the tests set out in section 60(2), it is not a question of balancing the loss suffered by a benefiting owner in each of the categories set out in paragraphs (a) to (d) against the planning benefits of removal or variation of the covenant. The tests must be applied in absolute terms. Consideration of the planning merits can occur only if the tests are satisfied and the discretion to grant a permit thereby enlivened.*
- *the Tribunal must take into account the circumstances of all owners who enjoy the benefit of the covenant, not just those benefitting owners who have objected to the application.*

The restriction at issue, created in 1994, is in essence a 'single dwelling covenant', i.e. a restriction that does not allow more than one dwelling per lot. The purpose and effect of the restrictions are clear: to maintain the single dwelling character of the neighbourhood. Indeed, as a result of the restrictions in the covenant, a genuine neighbourhood character has been established.

Whilst the current proposal does not include an application for additional dwellings, the variation proposes to remove this single dwelling covenant so that additional dwelling/s can be constructed upon the land. For the reasons below, the proposed variation does not meet the threshold requirements of section 60(2) of the Act.

The Applicant cannot establish that the removal of the covenant is unlikely to result in the beneficiaries suffering financial loss, loss of amenity, loss arising from change of character of the neighbourhood, or any other material detriment.

The proposed removal of covenant fails to satisfy the test of section 60(2) of the Act. It cannot be said that as a result of the removal of the covenant that any beneficiary will be unlikely to suffer financial loss, loss of amenity, loss arising from change to the character of the neighbourhood, or any other material detriment.

The proposed removal of the covenant, if successful, would enable two (or more) dwellings on the subject site. This eventual result would be inconsistent with the single dwelling character of the neighbourhood and potentially create amenity impacts to the other beneficiaries of the covenant.

As the proposal does not include an accompanying subdivision and development application, the nature of the tests under section 60(2) are more difficult to satisfy. As Member Blackburn stated in *Singh & Kaur v Brimbank CC*, '[t]he nature of the tests set out in section 60(2) has... made it difficult for applications to vary or remove a restriction to succeed where they are not accompanied by an application for approval of a specific development. This is because in these circumstances the Tribunal often needs to consider a large number of possible development scenarios and be satisfied that all of those scenarios do not cause material detriment to benefited land owners.'

Like the situation in *Singh & Kaur*, a large range of scenarios would need to be contemplated here. We do not know how many lots the owner wishes to create via future subdivision, nor how many dwellings would be constructed on those lots. The removal of the single dwelling covenant would extinguish all of the protections of the restrictive covenant in one fell swoop. There would be no planning consideration of those dwellings (other than the mandatory garden area) if constructed after subdivision.

Concerns raised by the objectors addressed disapproval with the effect of the proposed removal of covenant on a change of character to the area, loss of amenity, and material detriment.

Two objections primarily focussed on the single-dwelling character of the neighbourhood, and a desire to maintain that character. One objection specifically noted,

the covenant was put in place for a reason
-there would be a loss of character of the area with large single dwelling family homes and substantial gardens. The construction of two, double story dwellings (TOWNHOUSES) and construction of two new crossovers is not in line with large single dwelling family homes with substantial gardens in the area"

One objection noted a particular concern with a decrease in property values.

As stated in *Waterfront Place*, the responsible authority must be persuaded to a 'comfortable level of satisfaction' that the threshold requirements in section 60(2) of the Act are met. Based on the objections submitted and the potential development scenarios, it cannot be determined that that the threshold of section 60(2) can be met.

The removal of covenant will result in material detriment to the beneficiaries of the covenant by removing the heightened considerations provided by 60(2) in removal of a covenant.

Nonetheless, it could be argued that the actual change in character, loss of amenity, and other detriment would not occur in this situation by the removal itself, but only upon the 'triggering event' of the issuance of a planning permit for subdivision or development of a second dwelling.

However, if this is considered to be the case, that argument fails to recognise that the proposed removal of the restrictive covenant will cause material detriment to beneficiaries by removing the heightened consideration that Section 60(2) of the Act affords proprietary interests.

Restrictive covenants are private property controls by nature; they allow beneficiaries to enforce a restriction by granting standing to challenge a violation of the covenant. The existence of the covenant also provides the beneficiaries a degree of control and certainty over preferred neighbourhood character that extends beyond the planning scheme. They enjoy elevated protection under the Act in recognition of the unique rights in property they create in beneficiaries.

If the proposed removal of covenant is approved, a successful application for a subdivision permit would unwind the covenant. In the consideration of that subdivision application, Council could only consider the matters under the planning scheme relating to the potential subdivision. Matters in section 60(2) of the Act like 'financial loss', specific examples of 'loss of amenity' (other than the considerations required in Clauses 56 and 65 of the planning scheme), and a broad consideration of 'any other material detriment' would not be contemplated. Approving the removal of the covenant would cause material detriment to beneficiaries of the covenant by removing the protection section 60(2) of the Act affords their proprietary interests.

The removal of the covenant will detrimentally affect the interests of affected persons

For the reasons stated above, the proposed removal of covenant will detrimentally affect the interests of affected persons under Clause 52.02 of the planning scheme. The removal would enable an application to subdivide the land, which would consequentially result in two or more dwellings. This would be inconsistent with the predominant single-dwelling neighbourhood character.

Response to objections

Breach of covenant (no one can build more than one dwelling).

As discussed above, the proposed removal of the restrictive covenant will cause material detriment to beneficiaries by removing the heightened consideration that Section 60(2) of the Act affords those who benefit from the covenant.

Change to the single-dwelling neighbourhood character.

Council agrees with the objectors that the removal of the covenant would allow the construction of more dwellings and therefore impact on the existing dwelling density which is characterised by single dwellings on larger allotments. All objections have raised the concern that the removal of the covenant would impact the existing single dwelling character of the area to be altered by allowing the construction of more dwellings and increasing the density.

As no development/subdivision proposal has been included in the current application, Council cannot be satisfied that any future scenarios will not cause material detriment to benefited land owners.

Decrease in property values.

Council cannot be certain that the beneficiaries of the covenant will not suffer a loss of property value. In *Castles v Bayside CC* [2004] VCAT 864 at paragraph 33 the Tribunal stated: "Property value is not, in itself, a planning consideration. Amenity questions are, and if values are affected by adverse amenity effects, then it is the amenity

questions that must be considered, not their ramifications in terms of property values”. As above, Clause 52.02 does not require any consideration of economic interests and property values are not a planning consideration. A common argument regarding the increasing population of Melbourne driving housing demand and property prices upward could be relied upon to justify multi-dwelling development however, this argument also supports the retention of single dwelling covenants that are “a property law right that limits development and so contributes to people’s expectations as to what level or extent of density and development will occur in this area” and this contributes to creating neighbourhood character and is highly valued by residents, as observed in paragraph 43, *Bulalino v Darebin CC* [2019] VCAT 237. It is just as likely therefore that multi-unit development contributes to the erosion of property values in the area.

Creating a precedent for other properties to remove their covenant.

The approval of the current application could not be considered to create a precedent as every application is considered on merit.

Loss of amenity (increased noise, traffic, parking of vehicles, privacy).

Council agrees with objectors concerns that the removal of the covenant could impact their amenity. Whilst future occupiers are not a planning consideration, if we cite those benefits intended to be conferred by a single dwelling covenant expressed by Associate Justice Mukhtar in *Re Morihovitis* ([2016] VSC 684, ‘the peace and tranquillity or ambience of an area’ is likely to be eroded by ‘more people (maybe tenants), more cars, more movement...more noise or general hustle and bustle, more rubbish and waste collection, so on and so forth’, and is a detrimental consequence of the proposal.

Although it should also be noted that a single dwelling covenant does not protect against the development of a large multi -storey dwelling that is perceived to compromise privacy.

Conclusion

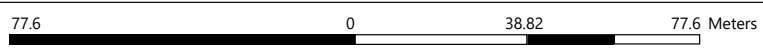
The Application has been assessed against the decision guidelines of all relevant clauses of the Cardinia Planning Scheme and the *Planning and Environment Act 1987* and the proposed removal of restrictive covenant is determined to be inconsistent with these requirements.

It is recommended that Council refuse to grant Planning Permit T210202 for the removal of restrictive covenant contained in Instrument No. T326405K from L225 PS318023 V10138 F537, 3 McLeish Terrace, Pakenham VIC 3810 on the following grounds:

1. That pursuant to the requirements of section 60(2) of the *Planning and Environment Act 1987*, Council cannot be satisfied that the variation of the covenant will be unlikely to cause any beneficiary of the covenant or any other person any detriment relating to:
 - a. Financial loss; or
 - b. Loss of amenity; or
 - c. Loss arising from change to the character of the neighbourhood; or
 - d. Any other material detriment;
2. The removal of the restriction will detrimentally affect the interests of surrounding landowners under Clause 52.02 of the Cardinia Planning Scheme.

3. The removal of the restriction is inconsistent with the orderly planning of the area.

Locality Map



14-Oct-2021

Notes

1: 1,528

Data Source: State & Local Government. © CARDINIA SHIRE COUNCIL



Existing Conditions ◀ ▶

Describe how the land is used and developed now*

For example, vacant, three dwellings, medical centre with two practitioners, licensed restaurant with 80 seats, grazing.

SINGLE RESIDENTIAL DWELLING

Provide a plan of the existing conditions. Photos are also helpful.

Title Information ◀ ▶

Encumbrances on title*

Does the proposal breach, in any way, an encumbrance on title such as a restrictive covenant, section 173 agreement or other obligation such as an easement or building envelope?

- Yes (If 'yes' contact Council for advice on how to proceed before continuing with this application.)
- No
- Not applicable (no such encumbrance applies).

Provide a full, current copy of the title for each individual parcel of land forming the subject site. The title includes: the covering 'register search statement', the title diagram and the associated title documents, known as 'instruments', for example, restrictive covenants.

Applicant and Owner Details ◀ ▶

Provide details of the applicant and the owner of the land.

Applicant*

The person who wants the permit.

Name: Title First Name Surname:

Organisation (if applicable):

Postal Address: If it is a P.O. Box, enter the details here:

Unit No.: St. No.: 3 St. Name: MCLEISH TERRACE

Suburb/Locality: PAKENHAM State: VIC Postcode: 3810

Please provide at least one contact phone number*

Contact information for applicant OR contact person below

Business phone: Email:

Mobile phone: Fax:

Where the preferred contact person for the application is different from the applicant, provide the details of that person.

Contact person's details*

Name: Title: First Name: Surname: Same as applicant

Organisation (if applicable):

Postal Address: If it is a P.O. Box, enter the details here:

Unit No.: St. No.: 3 St. Name: MCLEISH TERRACE

Suburb/Locality: PAKENHAM State: VIC Postcode: 3810

Owner*

The person or organisation who owns the land

Where the owner is different from the applicant, provide the details of that person or organisation.

Name: Title: First Name: Surname: Same as applicant

Organisation (if applicable):

Postal Address: If it is a P.O. Box, enter the details here:

Unit No.: St. No.: St. Name:


Suburb/Locality: State: Postcode:

Owner's Signature (Optional): Date:

day / month / year

Declaration

This form must be signed by the applicant *

 Remember it is against the law to provide false or misleading information, which could result in a heavy fine and cancellation of the permit.

I declare that I am the applicant; and that all the information in this application is true and correct; and the owner (if not myself) has been notified of the permit application.

Signature: 

Date: 13-01-2021
day / month / year

Need help with the Application?

General information about the planning process is available at planning.vic.gov.au

Contact Council's planning department to discuss the specific requirements for this application and obtain a planning permit checklist. Insufficient or unclear information may delay your application.

Has there been a pre-application meeting with a council planning officer?

No Yes

If 'Yes', with whom?:

Date:


day / month / year


Checklist

Have you:

Filled in the form completely?

Paid or included the application fee?

 Most applications require a fee to be paid. Contact Council to determine the appropriate fee.

 Provided all necessary supporting information and documents?

A full, current copy of title information for each individual parcel of land forming the subject site.

A plan of existing conditions.

Plans showing the layout and details of the proposal.

Any information required by the planning scheme, requested by council or outlined in a council planning permit checklist.

If required, a description of the likely effect of the proposal (for example, traffic, noise, environmental impacts).

If applicable, a current Metropolitan Planning Levy certificate (a levy certificate expires 90 days after the day on which it is issued by the State Revenue Office and then cannot be used). Failure to comply means the application is void.

Completed the relevant council planning permit checklist?

Signed the declaration?

Lodgement

Lodge the completed and signed form, the fee and all documents with:

Cardinia Shire Council
PO Box 7
Pakenham VIC 3810

Contact information:

Telephone: 1300 787 624

Fax: (03) 5941 3784

Email: mail@cardinia.vic.gov.au

DX: 81006

Deliver application in person, by post or by electronic lodgement.



12 March 2021

Your Ref:
Our Ref: 069074
Enquiries: Omar El-Hissi
Email: omar@nohgroup.com.au

BY EMAIL ONLY: mail@cardinia.vic.gov.au

Planning Department
Cardinia Shire Council
PO Box 7
Pakenham, Victoria 3810

Dear Sir/Madam,

RE: Covenant T326405K ('Covenant')
3 McLeish Terrace, Pakenham, Victoria 3810 ('Property')

We refer to the above matter in which we are instructed on behalf of the registered proprietors of the Property.

We are instructed to make an application to have the Covenant removed from our clients' Title.

Please find **enclosed** as follows and our further advice below:

1. Signed Application for Planning Permit;
 2. Registered Title Search Extract for the Property;
 3. Copy of Plan of Subdivision PS318023R;
 4. Copy of the Covenant contained in Instrument No. T326405K.
1. Statement of Advice – Council's regard to Section 60(5) of Planning and Environment Act 1987 (Vic)
 - (a) We note that the Covenant subject to this Application was created after 25 June 1991 and therefore the provisions set out in Section 60(2) of the Planning and Environment Act 1987 (Vic) ('Act') apply. Accordingly, Council may have regard to any of the following with respect to the beneficiaries, as a result of removal of the Covenant:
 - (i) financial loss; or
 - (ii) loss of amenity; or
 - (iii) loss arising from change to the character of the neighbourhood; or
 - (iv) any other material detriment.

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(b) We submit that Council's regard as to the factors contemplated by section 60(2) of the Act ought to be minimal in consideration of our client's Application. Given the consistent growth of the surrounding area, the removal of the Covenant and any subsequent development thereafter is unlikely to create an undesirable or unforeseen precedent in the area.

(c) We further submit that due to the age of the Covenant, the character of the neighbourhood has evidently changed to the extent that the Covenant is no longer relevant nor serves its purpose as formerly intended. Accordingly, the Covenant and its initial intentions are now rendered obsolete and of limited value to its beneficiaries.

2. Beneficiaries affected by the Covenant

(a) We note that all properties contained in the Plan of Subdivision PS318023R are considered beneficiaries of the Restrictive Covenant, save for Lot 225 being the burdened Property as the subject of this Application. The particulars of such Lots are set out in the enclosed index search and title search extracts.

Please consider this correspondence as supporting documentation to our clients' Application for Planning Permit, enclosed herein. We otherwise note that our advice and position is as per our clients' and/or their representative's instructions to date, and subject to change accordingly. We further note that any advice pertaining to our clients' planning objectives are general in nature, and should not be taken as a representation of any material plans.

We look forward to hearing from you.

If you require anything further, please do not hesitate to contact our office.

Yours faithfully,

NOH Legal

A handwritten signature in black ink, appearing to read 'Omar El-Hissi', written over a horizontal line.

Omar El-Hissi
Director
Encl.

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

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VOLUME 10138 FOLIO 537

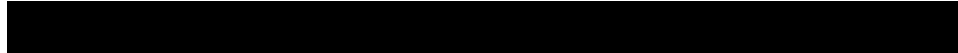
Security no : 124084561954L
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LAND DESCRIPTION

Lot 225 on Plan of Subdivision 318023R.
PARENT TITLE Volume 10101 Folio 311
Created by instrument PS318023R 22/10/1993

REGISTERED PROPRIETOR

Estate Fee Simple
Joint Proprietors


AK053607D 29/11/2012

ENCUMBRANCES, CAVEATS AND NOTICES

MORTGAGE AK053608B 29/11/2012
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD

COVENANT (as to whole or part of the land) in instrument T326405K 27/09/1994

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 set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE PS318023R 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)

Street Address: 3 MCLEISH TERRACE PAKENHAM VIC 3810

ADMINISTRATIVE NOTICES

NIL

eCT Control 16165A ANZ RETAIL AND SMALL BUSINESS
Effective from 23/10/2016

DOCUMENT END



Imaged Document Cover Sheet

The document following this cover sheet is an imaged document supplied by LANDATA®, Victorian Land Registry Services.

Document Type	Instrument
Document Identification	T326405K
Number of Pages (excluding this cover sheet)	2
Document Assembled	27/07/2020 16:56

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VICTORIAN LAND TITLES OFFICE

Transfer of Land Containing a Covenant and/or Easement

Section 45 Transfer of Land Act 1958

Lodged at the Land Titles Office by:

Name: VERNONS

Phone: 3172B

Ref: _____ Customer Code _____

Land Titles Office Use Only

The Transferor at the direction of the directing party (if any) transfers to the transferee the estate and interest specified in the land described for the consideration expressed-

- together with any easement created by this transfer;
- subject to the encumbrances affecting the land including any created by dealings lodged for registration before the lodging of this transfer; and
- subject to any easement reserved by this transfer or restrictive covenant contained or covenant created pursuant to statute and included in this transfer.

Land (Title)

Lot 225 on Plan of Subdivision No 318023R
Certificate of Title Volume 10138 Folio 537

Estate and Interest (e.g. "all my estate in fee simple")

All the estate in fee simple

Consideration

\$62,500.00

Transferor (Full name)

EDDIE BARRON CONSTRUCTIONS PTY LTD A C N 005 249 294

Transferee (Full name and address for future notices including postcode)

RAY ALEXANDER PURKISS and CHRISTINE PURKISS
22 Balmain Drive, Berwick 3806 as Joint Tenants

Directing Party (Full name)

Creation and/or Reservation of Easement and/or Covenant

AND the said Transferees with the intention that the benefit of this Covenant shall be attached to and run at law and in equity with every Lot on the Plan of Subdivision No. 318023R other than the land hereby transferred and that the burden of this Covenant shall be annexed to and run at law and in equity with the land hereby transferred DOES HEREBY for themselves their heirs executors administrators and transferees and as separate covenants COVENANT with the said EDDIE BARRON CONSTRUCTIONS PTY. LTD. and the registered proprietor or proprietors for the time being of every Lot on the said Plan of Subdivision and every part or parts thereof other than the Lot hereby transferred that the said Transferees their heirs executors administrators and transferees in relation to the Lot hereby transferred or any part or parts thereof SHALL NOT:-

(see reverse)

Land Titles Office Use Only

T2



Licence No. 2926L

+ \$ 1300
Trn 070712825 Cde 52 26/09/94
Ref F221E Amt \$ 1,300.00
Stamp Duty, Victoria
266771396330146

ALTS / ASGP

ORDER TO REGISTER

To the Registrar of Titles

Please register this dealing and upon completion issue the documents as follows :-

Signed.....

Firm's Name.....

Customer code.....

Creation and/or Reservation of Easement and/or Covenant (continuation if necessary)

- (a) erect or cause to be erected more than one private dwelling house (together with the usual outbuildings).
- (b) erect or cause to be erected any dwelling with a floor area of less than 120 square metres excluding garage carports and verandahs.
- (c) erect or cause to be erected any dwelling and attached garage other than a dwelling and attached garage with external walls constructed substantially of brick, brick veneer or stone.
- (d) erect or cause to be erected any detached outbuilding other than a detached outbuilding with external walls of brick, stone, timber or colourbond metal.

AND IT is intended that the above Covenant shall appear as an encumbrance on the aforesaid Certificate of Title.

Dated: 12/9/19 94

Execution and Attestation

THE COMMON SEAL of EDDIE BARRON)
 CONSTRUCTIONS PTY. LTD. A.C.N. 005 249 294)
 was hereunto affixed in accordance with)
 its Articles of Association in the)
 presence of:)



Director

Secretary

SIGNED by the Transferees in)
the presence of:)

.....
 b. Purkis...

Witness:

See Annexure Sheet marked.....



Imaged Document Cover Sheet


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Document Type	Plan
Document Identification	PS318023R
Number of Pages (excluding this cover sheet)	4
Document Assembled	27/07/2020 16:57

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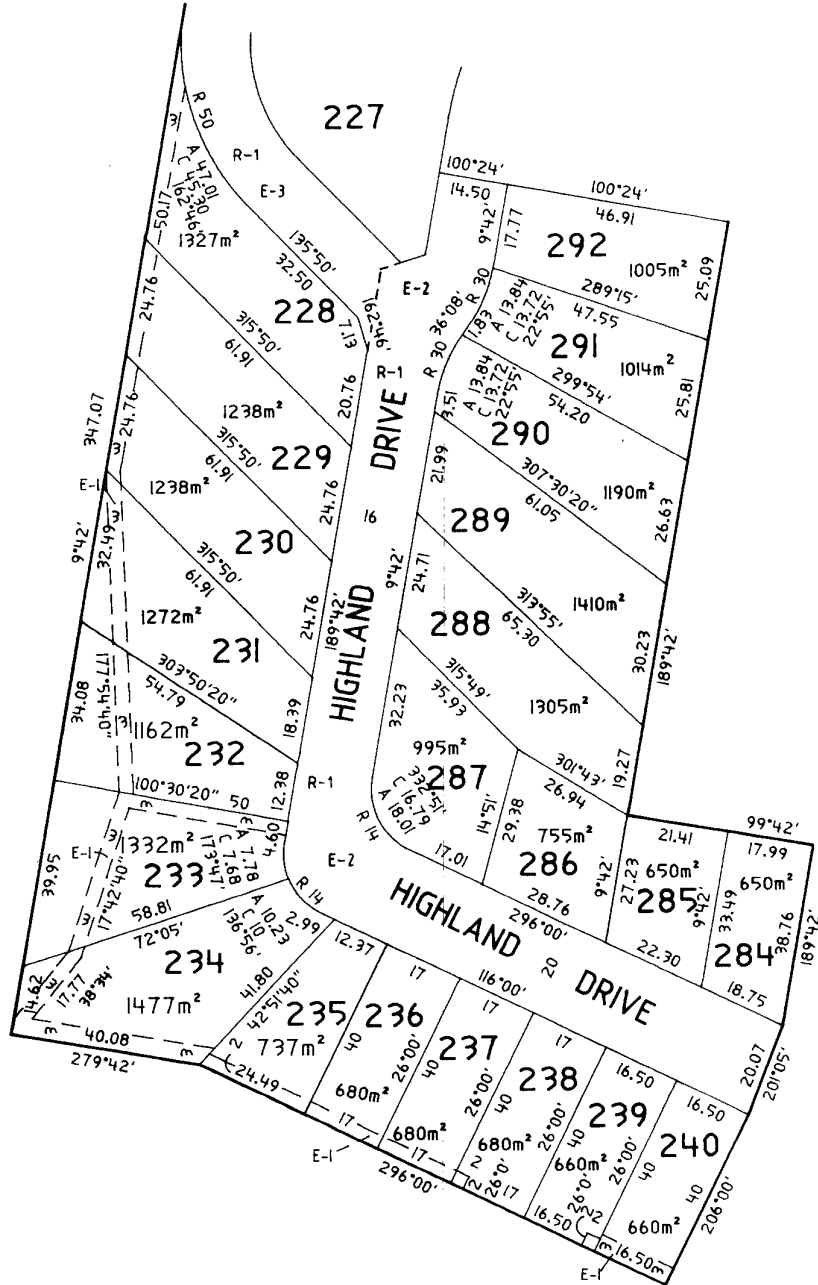
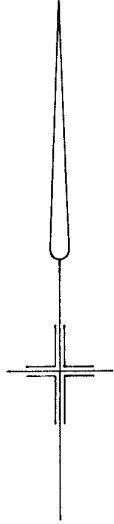
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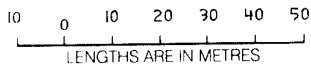
PLAN OF SUBDIVISION		STAGE No.	LTO USE ONLY EDITION 1	PLAN NUMBER PS 318023 R
LOCATION OF LAND PARISH: NAR NAR GOON TOWNSHIP: - SECTION: - CROWN ALLOTMENT: - CROWN PORTION: 9 (PART) LTO BASE RECORD: Chart 3 (3272) TITLE REFERENCES: VOL. FOL. LAST PLAN REFERENCE/S: PS 318030 LOT J POSTAL ADDRESS: HIGHLAND DRIVE (At time of subdivision) PAKENHAM AMG Co-ordinates (of approx centre of land in plan) E 367000 ZONE: 55 N 5786000		COUNCIL CERTIFICATION AND ENDORSEMENT COUNCIL NAME: SHIRE OF PAKENHAM REF P 4485C-5 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 9 / 9 / 1992 3. This is a statement of compliance issued under Section 21 of the Subdivision Act 1988. OPEN SPACE (i) A requirement for public open space under Section 18 of the Subdivision Act 1988 has has not been made. (ii) The requirement has been satisfied. (iii) The requirement is to be satisfied in Stage Council Delegate Council Seal Date / / Re-certified under Section 11(7) of the Subdivision Act 1988 Council Delegate Council Seal Date 1 / 4 / 1993		
VESTING OF ROADS AND/OR RESERVES				
IDENTIFIER	COUNCIL/BODY/PERSON			
R-1	SHIRE OF PAKENHAM			
RESERVE NO.1	SHIRE OF PAKENHAM			
NOTATIONS				
STAGING This is/is not a staged subdivision. Planning permit No				
DEPTH LIMITATION DOES NOT APPLY				
FOR REMOVAL OF EASEMENT SEE SHEET 4.				
SURVEY THIS PLAN IS/IS NOT BASED ON SURVEY THIS SURVEY HAS BEEN CONNECTED TO PERMANENT MARKS No(s) IN PROCLAIMED SURVEY AREA No.				
EASEMENT INFORMATION				LTO USE ONLY
LEGEND A Appurtenant Easement E - Encumbering Easement R - Encumbering Easement (Road)				STATEMENT OF COMPLIANCE EXEMPTION STATEMENT
				RECEIVED <input checked="" type="checkbox"/>
				DATE 7 / 10 / 93
				LTO USE ONLY
				PLAN REGISTERED
				TIME 12.30 pm
				DATE 22 / 10 / 93
				<i>J. Marks</i> Assistant Registrar of Titles.
				SHEET 1 OF 4 SHEETS
 KLM DEVELOPMENT CONSULTANTS 4/50 THOMAS STREET. DANDENONG, 3175 PH. (03) 794-9438		LICENSED SURVEYOR (PRINT) James A. Dea SIGNATURE DATE / / REF 88180/5 VERSION 7		DATE COUNCIL DELEGATE SIGNATURE ORIGINAL SHEET SIZE A3

PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER
		PS 318023 R

SEE SHEET 3



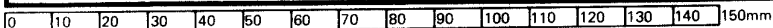
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 4/50 THOMAS STREET,
 DANDENONG, 3175
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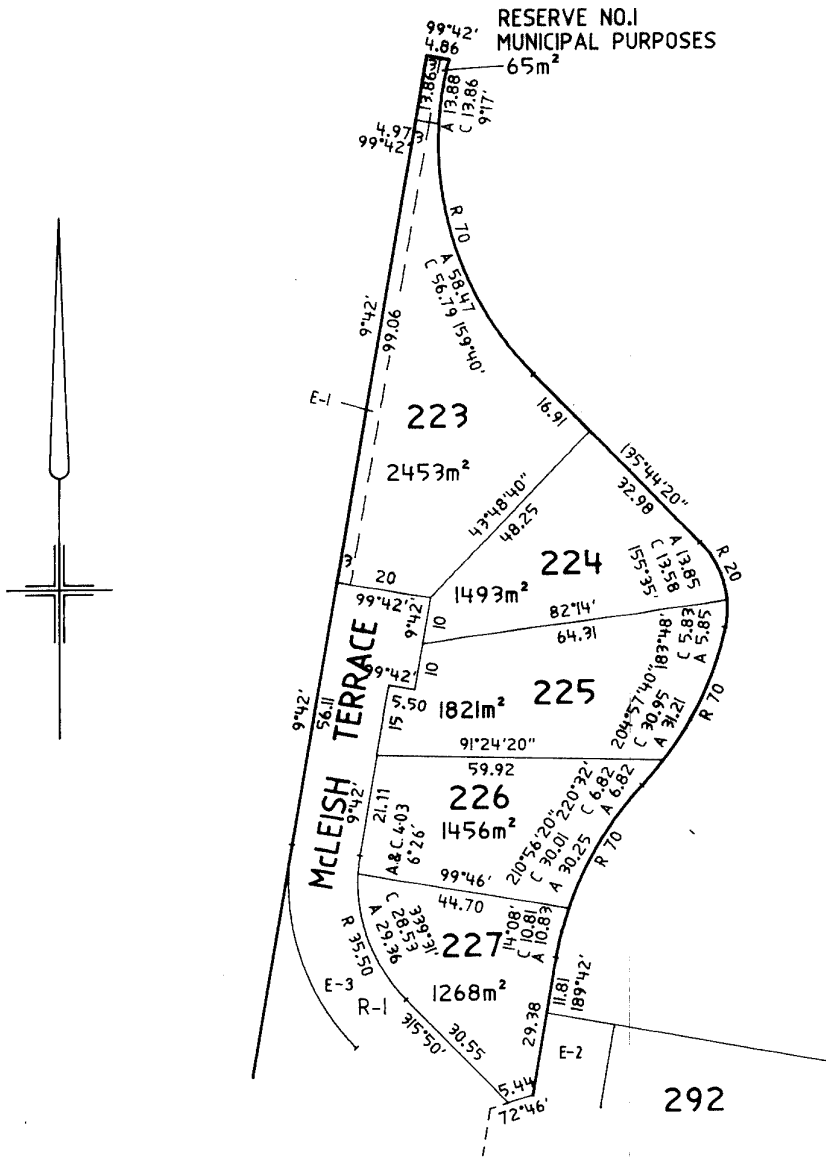
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 SIGNATURE DATE / /
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SHEET 2 OF 4 SHEETS
 DATE
 COUNCIL DELEGATE SIGNATURE



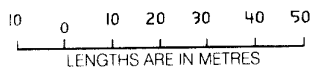
Gridlinks PS03

PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER PS 318023 R
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SEE SHEET 2

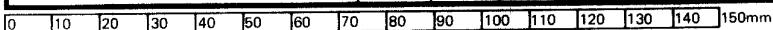
KLM DEVELOPMENT CONSULTANTS
 7, 50 THOMAS STREET.
 DANDENONG, 3175
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 SIGNATURE DATE / /
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SHEET 3 OF 4 SHEETS
 DATE
 COUNCIL DELEGATE SIGNATURE

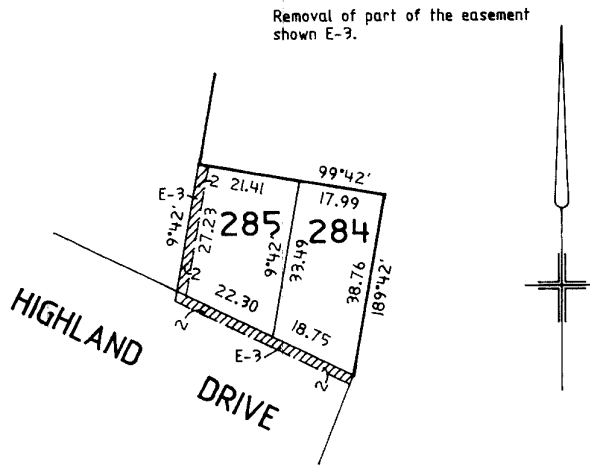


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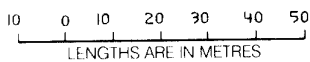
PLAN OF SUBDIVISION	STAGE No.	PLAN NUMBER PS 318023 R
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Reg.16 Subdivision (Procedures) Regulations 1989
 Information in support of Plan No.318023 R
 Removal of Easement.
 Part of the easement shown E-3 on PS.222225 is to be removed.
 Grounds for Removal.
 By direction in Planning Permit No. P10876

DIAGRAM



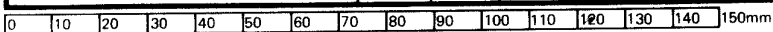
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 SIGNATURE DATE / /
 REF 88180/5 VERSION 7

SHEET 4 OF 4 SHEETS
 DATE
 COUNCIL DELEGATE SIGNATURE



Gridfile: PS03