

Memorandum of common provisions
Section 91A Transfer of Land Act 1958

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FINAL DRAFT
STAGE 2

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This memorandum contains provisions which are intended for inclusion in instruments and plans to be subsequently lodged for registration.

Provisions:

Recitals:

- A. This MCP has been prepared by Development Victoria in order to regulate the siting, form and design of the residential development in accordance with the Approved Building Envelope Plan (Annexure A) and requirement to ensure a high level of amenity for owners and residents of the allotments within the Plan of Subdivision.
- B. The provisions of this MCP are incorporated into one or more restrictions created by the Plan of Subdivision being PS834235V known as Stage 2 of the Taylors Quarter Estate, Taylors Lakes.
- C. This MCP provides details of Approved Building Envelopes for particular lots.
- D. This MCP provides information necessary to interpret the Approved Building Envelopes.
- E. The MCP imposes restrictions on the design and siting of buildings which in some cases may be different to those in the Building Regulations. In some cases the restrictions in this MCP may be stricter than the Building Regulations, and in other cases, the siting restrictions may be contrary to the Building Regulations.
- F. Where the siting restrictions in this MCP are contrary to regulations 74, 76, 77, 79, 80, 81 and 85 of the Building Regulations 2018, no consent and report of the relevant council is required, as this MCP has been prepared with regard to regulation 71 of the Building Regulations.
- G. For the purposes of Regulation 71, the restriction created by the Plan of Subdivision creating the MCP constitutes an approved building envelope.
- H. Some matters addressed in this MCP are not covered by the Building Regulations.

1 DEFINITIONS

- 1.1 'Approved Building Envelope'** means the plan that is attached as Annexure A to this MCP, which forms part of this MCP, and which specifies the Building Setbacks that apply to each specific lot to which this MCP applies (being lots 201 to 254 inclusive). This may also specify other siting related

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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 and plans.

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matters for a particular lot. In respect of a Building that does not require a Planning Permit, this MCP and the Approved Building Envelope Plan comprise an approved Building Envelope in terms of Regulations 5 and 71 of the Building Regulations.

- 1.2 **'Building'** has the same meaning as in the Building Act.
- 1.3 **'Building Act'** means the Building Act 1993 (Vic) as amended from time to time.
- 1.4 **'Approved Building Envelope Plan'** means the plan that forms part of this MCP and which shows the Approved Building Envelopes, setbacks and other related matters for the lots within the Plan of Subdivision.
- 1.5 **'Building Code of Australia'** means the Building Code of Australia, in the National Construction Code series.
- 1.6 **'Building Permit'** means a building permit in terms of the Building Act.
- 1.7 **'Building Regulations'** means the Building Regulations 2018 or any subsequent regulations made pursuant to the Building Act which regulate the siting of a Building.
- 1.8 **'Double Garage'** means a Garage that can store two motor vehicles side by side, trailers, caravans, campervans, boats and the like.
- 1.9 **'Development Victoria'** means Development Victoria created pursuant to the Development Victoria Act 2003 (Vic).
- 1.10 **'Dwelling'** means a building and any associated outbuildings (including garages and carports) used for the purposes of a single domestic residence.
- 1.11 **'Finished Surface Level'** means the finished surface level of the ground at the time of registration of the Plan of Subdivision.
- 1.12 **'Front Boundary'** means a lots' boundary that abuts the Front Street.
- 1.13 **'Front Street'** means the street or road which forms the frontage to the lot concerned. Where there is more than one road which adjoins a lot or where it may otherwise be unclear, the Front Street will be the one with the greatest Setback dimension from the lot boundary as shown on the Approved Building Envelope Plan.
- 1.14 **'Garage'** means a domestic garage or a domestic carport constructed primarily for the purpose of storage of motor vehicles, trailers, caravans, campervans, boats and the like.
- 1.15 **'Garden Area'** is any area on a lot with a minimum dimension of 1 metre that does not include:
 - (a) a house or residential building, except for:
 - (i) an eave, fascia or gutter that does not exceed a total width of 0.6m;
 - (ii) a pergola;
 - (iii) unroofed terraces, patios, decks, steps or landings less than 0.8m in height;
 - (iv) a basement that does not project above ground level;
 - (v) any outbuilding that does not exceed a gross floor area of 10 square metres; and

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- (vi) domestic services normal to a house or residential building;
 - (b) a driveway; or
 - (c) an area set aside for car parking.
- 1.16** 'Habitable Room' has the same meaning as in the Building Code of Australia.
- 1.17** 'MCP' means this Memorandum of Common Provisions.
- 1.18** 'Plan of Subdivision' means the relevant plan of subdivision for a particular allotment which incorporates this MCP.
- 1.19** 'Private Open Space' – an unroofed area of land; or a deck, terrace, patio, balcony, pergola, veranda, gazebo or swimming pool with a total area of 40 square metres, with one part of the private open space to consist of secluded private open space with a minimum area of 25 square metres and a minimum dimension of 4 metres. Secluded private open space must be located at the rear of a dwelling or residential building and should have convenient access from a living room.
- 1.20** 'Rear Boundary' means a lot's boundary that is opposite the Front Boundary.
- 1.21** 'Setback' means the shortest horizontal distance from a particular boundary or building to another boundary or building (excepting matters specifically referred to in this MCP).
- 1.22** 'Side Boundary' means a lot's boundary which is not a Front Boundary or Rear Boundary.
- 1.23** 'Side Street' means a street or road which abuts an allotment other than a Front Street.
- 1.24** 'Single Garage' means a Garage that can store only one motor vehicle, trailer, caravan, campervan, boat and the like.
- 1.25** 'Small Lot' means a lot which has a land area of 300 square metres or less.
- 1.26** 'Tandem Garage' means a Garage that can store two or more motor vehicles in front of each other, trailers, caravans, campervans, boats and the like.
- 1.27** 'Taylors Quarter Design Standards' means the Taylors Quarter Design Standards document (and associated referenced documents) prepared by Development Victoria, as amended from time to time.

2 SITING AND DESIGN

2.1 Exemption from the need for the Consent and Report of the relevant Council.

The restriction in the Plan of Subdivision which incorporates this MCP exempts a design from requiring the consent and report of the relevant council for a building design that does not comply with the following Building Regulations:

- (a) Minimum Street Setback (regulation 74);
- (b) Site Coverage (regulation 76);
- (c) Permeability (regulation 77);
- (d) Side and rear Setback (regulation 79);
- (e) Walls on boundaries (regulation 80);

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- (f) Daylight to existing Habitable Room windows (regulation 81);
- (g) Daylight to Habitable Room windows (regulation 85).

2.2 Approved Building Envelopes

A Building (other than a boundary fence or other specific tolerable encroachments pursuant to this MCP) must be sited within the Approved Building Envelope. The siting of a building within the Approved Building Envelope is subject to any further restriction or modification imposed by this MCP or any other applicable control.

2.3 Minimum *Street Setbacks (Regulation 74)*

2.3.1 No Building shall be sited on a lot so that it has a Setback from the Front Street which is less than the minimum Setback indicated on the Approved Building Envelope Plan.

2.3.2 On lots with more than one street frontage, the Building must have a Setback of at least 2 metres from any street frontage other than the Front Boundary.

2.3.3 Double Garages must have a Setback of at least 5.0 metres from the Front Boundary.

2.3.4 Single Garages must have a Setback of at least 5.5 metres from the Front Boundary.

2.3.5 The following may extend beyond the Approved Building Envelope and encroach in to a Front Boundary by not more than 1.50 metres or 0.5 metre for a Side Boundary:

- (a) an eave (including fascias & gutter);
- (b) a porch;
- (c) a veranda;
- (d) a portico;
- (e) a pergola;
- (f) a masonry chimney;
- (g) a sunblind;
- (h) a flue or pipe; and
- (i) decks, steps or landings less than 800 millimetres in height.

None of the above structures may be greater than 9.0 metres above the Finished Surface Level.

2.4 Side and Rear Setbacks (Regulation 79)

2.4.1 Unless clause 2.7 of this MCP applies, a Building must not have a Setback from a Side Boundary or a Rear boundary of less than 1.0 metre unless it is shown in the Approved Building Envelope Plan as an area with a '0m Setback', in which case, the Building must be constructed on or within 200 millimetres of the boundary.

2.4.2 Notwithstanding the Approved Building Envelope, the following items may encroach into a Side Boundary or Rear Boundary Setback but not more than 500 millimetres:

- (a) a porch or veranda;

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- (b) a masonry chimney;
- (c) a sunblind;
- (d) a screen which prevents direct overlooking;
- (e) a flue or pipe;
- (f) a domestic fuel tank;
- (g) heating and cooling equipment or other services; and
- (h) an eave (including fascias and gutter).

2.4.3 Notwithstanding the Approved Building Envelope, the following items may encroach into a Side Boundary or Rear Boundary Setback:

- (a) a landing with an area of not more than 2.0 metres squared and which is less than 800 millimetres in height above the Finished Surface Level;
- (b) an unroofed stairway or ramp;
- (c) a pergola;
- (d) shade sails; and
- (e) a domestic water tank.

2.5 Site Coverage (Regulation 76)

2.5.1 A Building on a Small Lot and lots numbered 224, 225, 243, 248, 249 and 254 must not occupy more than 80% of the area of that lot

2.5.2 A Building on lots that are larger than 300 square metres, must not occupy more than 60% of the area of that lot.

2.6 Permeability (Regulation 77)

For Small Lots, not more than 85% of the area of the lot on which a Building is to be built may be covered by impermeable surfaces.

2.7 Walls on boundaries (Regulation 80)

2.7.1 A Building (including eaves, fascias and gutter) may only be constructed on or within 200 millimetres of the boundary if the Approved Building Envelope identifies the Setback from a boundary as a '0m Setback'. Windows must not be constructed on a wall on or within 200 millimetres of the boundary.

2.7.2 For Small Lots and lots numbered 243, 248, 249 and 254, the maximum height of a building on and within 1.0m of a Side Boundary must not exceed 3.6m unless:

- (a) it abuts an existing Building; or
- (b) will abut a simultaneously approved Building on that boundary; and
- (c) does not adversely impact the adjoining property.
- (d) If clauses 2.7.2(a), (b) and (c) apply, the maximum height of a building on and within 1.0m of a Side Boundary must not exceed 10m.

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2.7.3 For remaining lots that are larger than 300 square metres, where the Approved Building Envelope allows construction of a Building on the boundary of the lot, a wall or Garage on the boundary must not exceed the greater of the following lengths:

- (a) 50% of the length of the boundary; or
- (b) 15 metres per boundary (subject to the Building providing an adequate Garage Setback as required by clause 2.3).
- (c) The height of a wall or carport must not exceed a maximum height of 3.6 metres.

2.8 Daylight to Habitable Room windows (Regulation 85)

A Habitable Room window of a Building on an allotment must face an outdoor space or light court with a minimum area of 3.0 square metres and a minimum dimension of 1.0 metre clear to the sky (not encroached by eaves, fascias and gutters). The 1.0 metre clear to the sky distance can be achieved by including land on the adjoining lot.

2.9 Daylight to existing Habitable Room windows (Regulation 81)

A Building must be set back from a Habitable Room window in an existing dwelling on an adjoining lot to provide for a light court to the window that has a minimum area of 3.0 square metres and a minimum dimension of 1.0 metre clear to the sky (not encroached by eaves, fascias and gutters). The 1.0 metre clear to the sky distance can be achieved by including land on the adjoining lot.

2.10 Location of Crossovers

The locations of the crossovers are fixed and must not be altered unless explicit consent is granted by Development Victoria or proxy.

3 APPROVAL OF HOUSE DESIGN

The explicit approval of the design and siting of a Dwelling to be built on any lot on the Plan of Subdivision PS834235V must be granted by Development Victoria (or proxy) prior to making a formal application for a Building Permit for any lot or planning permit for Small Lots. The design and siting of a Dwelling must be in accordance with and meet the requirements of the approved "Taylors Quarter Design Standards" and Approved Building Envelope unless agreed otherwise in writing.

4 COMPLIANCE AND DISCRETION

Development Victoria may in its absolute discretion authorize in writing the siting of a Building which does not comply with the restriction created by the Plan of Subdivision which incorporates this MCP, provided that such siting complies with the requirements of the Building Regulations and / or is subject to the report and consent of the relevant reporting authority in terms of the Building Regulations. Approval by Development Victoria pursuant to this clause shall only be provided in circumstances where Development Victoria in its absolute discretion considers that the siting is desirable in terms of achieving a better planning outcome in terms of the Taylors Quarter Design Standards than may otherwise be achieved and will not result in any significant detriment to abutting owners or occupiers.

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5 INTERPRETATION

In this MCP, unless the contrary intention appears:

- 5.1 The singular includes the plural and vice versa;
- 5.2 A reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 5.3 Words importing one gender include other genders;
- 5.4 Other grammatical forms of defined words or expressions have corresponding meanings;
- 5.5 A reference to a statute, code or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- 5.6 A reference to the Taylors Quarter Design Standards is reference to that document or subsequent or amended documents (whether they are named as such) that are prepared to guide and control the development of land within the Plan of Subdivision;
- 5.7 A reference to an authority, institution, association or body ('original entity') that has ceased to exist or been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is reference to the entity that most closely serves the purposes or objects of the original entity;
- 5.8 Headings and the provision of a table of contents are for convenience only and do not affect the interpretation of this MCP.