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

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

Provisions:

This Memorandum of Common Provisions includes pages 1-11 (both inclusive)

1. Introduction

- 1.1 This Memorandum of Common Provisions ("MCP") sets out the requirements of the Council and PEET Cranbourne (51A Craig Road) Pty Ltd ("PEET") to maintain the quality of development and achieve a suitable neighbourhood character in order to protect the amenity of land subdivided for the benefit of residents and owners. Consent is required from either the Council or PEET or both for the construction of a dwelling and any associated structures on a lot.
- 1.2 The provisions of this MCP are incorporated into the restrictions created by the Plan of Subdivision.
- 1.3 The Plan of Subdivision and this MCP restrict certain lot owners from developing a lot other than in accordance with the Building Envelope Plans. The Building Envelope Plans provide details of approved building envelopes.
- 1.4 This MCP, in conjunction with the Plan of Subdivision, provides the information necessary to interpret the approved building envelopes.
- 1.5 This MCP is retained by the Registrar of Titles pursuant to section 91(A) of the Transfer of Land Act.
- 1.6 The requirements in this MCP apply in addition to the requirements in the Regulations and the Planning Scheme. In the event of conflict or inconsistency, the provisions of this MCP shall prevail, to the extent that such conflict or inconsistency is lawful.
- 1.7 The requirements in this MCP may only be waived or varied by written notice issued by:

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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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- (a) Council in the instance a restriction enforces the Botanic Ridge Precinct Structure Plan, forming part of the Planning Scheme; and
- (b) PEET in all other instances.

2. Definitions and Interpretations

2.1 In this Memorandum:

- (c) **"Building Envelope Plan"** means the building envelope plans which will be included in the MCP, a copy of which is attached to the MCP;
- (d) **"Building Exclusion Zone"** means the building exclusion zone as illustrated in the Building Envelope Plan;
- (e) **"Council"** means City of Casey;
- (f) **"Design Guidelines"** means the set of building and design guidelines named "Summerhill Design Guidelines", as amended from time to time as being applicable to the Property;
- (g) **"Lot"** means any lot contained in the Plan of Subdivision;
- (h) **"Planning Scheme"** means the Casey Planning Scheme;
- (i) **"Plan of Subdivision"** means the unregistered Plan of Subdivision no. PS833852A;
- (j) **"Property"** means the land located at 7S Eldridge Close, Botanic Ridge, Victoria 3977;
- (k) **"Regulations"** means the Building Regulations 2018;

3. Provisions applicable to Lots 629 to 631 (both inclusive)

- 3.1 The following restrictions contained in this clause 3 affect Lots 629, 630 and 631 on the Plan of Subdivision ("Affected Lot").
- 3.2 Except with the written consent of the Council, the registered proprietor or proprietors for the time being an Affected Lot shall not construct any structure that does not comply with the residential design and bushfire management controls in the Botanic Ridge Precinct Structure Plan.
- 3.3 Except with the written consent of the Council in the instance a restriction enforces the residential design controls in the Botanic Ridge Precinct Structure Plan and in all other instances with the written consent of PEET the registered proprietor or proprietors for the time being of any Affected Lot shall not:
 - (a) subdivide or allow a lot to be subdivided;
 - (b) build or allow to be built more than one dwelling on a lot;
 - (c) construct, erect or allow construction or erection of any dwelling or garage or any part of any dwelling or garage encroaching in whole or in part into the Building Exclusion Zones as shown on the Building Envelopes Plan on the Plan of Subdivision unless it is:
 - (i) an encroachment by eaves, balconies, bay windows, open verandas, porticos or pergolas by no more than 2.5 metres into the front setback where that setback is 4 metres or greater;

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- (ii) an encroachment by eaves, balconies, bay windows or porticos by no more than 0.6 metres into the side setback; or
- (iii) an open veranda or pergola affixed to the side or rear of the dwelling;
- (d) build or allow to be built on the Lot any dwelling:
 - (i) where the lot frontage is less than 18 metres wide and the Building Envelope Plan does not permit building to a side boundary, where on side of the dwelling is not setback a minimum of 1 metre from the side boundary;
 - (ii) where the lot frontage is less than 20 metres wide and a minimum of 18 metres wide and the Building Envelope Plan does not permit building to a side boundary, where one side of the dwelling is not setback a minimum of 1 metre from the side boundary;
 - (iii) where the lot frontage is a minimum of 20 metres wide and the Building Envelope Plan does not permit building to a side boundary, where one side of the dwelling is not setback a minimum of 1 metre from the side boundary;
 - (iv) in the instance that the Building Envelope Plan permits building to a side boundary, where the side wall of the dwelling is built on the side lot boundary or at least 1 metre from a side lot boundary;
 - (v) whose height is greater than 8.5 metres from the natural surface level;
 - (vi) with a dwelling size of less than 232.2576 square metres (25 squares) including external walls but excluding verandahs and other partly enclosed areas;
- (e) build or allow to be built on the Lot any dwelling:
 - (i) except a dwelling using complementary base, accent, face brick and roof tile colours;
 - (ii) whose primary frontage does not face and address the road or a laneway or open space;
 - (iii) without a front veranda, portico, porch or other integral entrance feature which is at least 4 square metres in area and has a minimum dimension of 1.5 metres and is clearly visible from the street and consistent with the design of the dwelling;
 - (iv) where the façade is fully constructed in brick;
 - (v) with less than 2 material finishes on the front facade, each of which must cover a minimum of 30% of the facade, unless the dwelling is solely constructed with a natural weatherboard or rendered facade, in which case a single material finish is permitted;
 - (vi) where materials incorporated into the front facade, do not return a minimum of 1 metre to the sides of the dwelling (excluding parapet construction);

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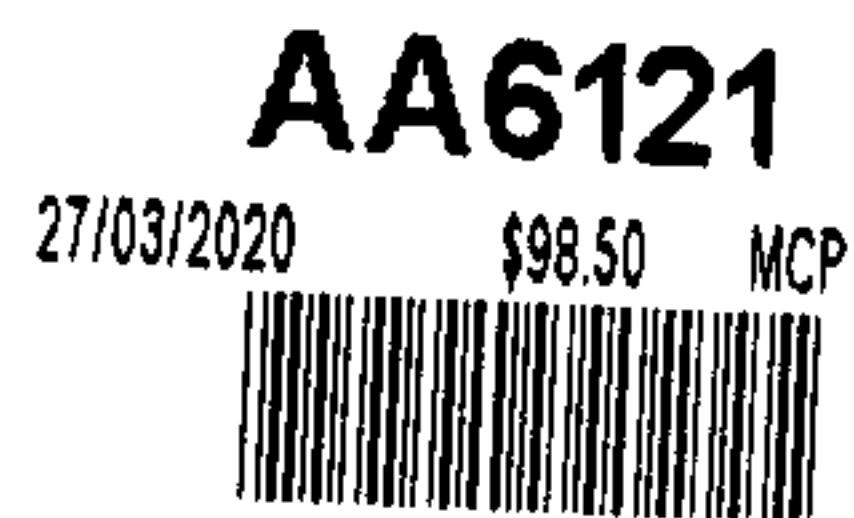
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- (vii) with window frames and glazing that contrast and do not complement the facade colour and the overall colour palette of the dwelling;
 - (viii) without fittings and connections which allow toilets and gardens to be flushed and/or serviced by recycled water;
 - (ix) without being cabled and equipped with fibre cabling in accordance with the specifications nominated by NBN Co;
 - (x) with an identical facade to another dwelling house, unless such dwelling house is separated by a minimum of three dwelling houses in each direction on the same and opposite sides of the street;
- (f) on a corner lot, build or allow to be built any dwelling where:
- (i) the home design does not address both the primary and secondary street frontages and be of a consistent architectural design; and
 - (ii) design elements (such as verandas, detailing, feature windows & materials) used on the primary frontage do not continue on that part of the secondary frontage visible from any public space;
- (g) build or allow to be built a dwelling house which does not, prior to occupation, have constructed a roofed and fully enclosed garage:
- (i) setback a minimum of 1 metre from the main building line of the dwelling;
 - (ii) setback a minimum of 5.5 metres from the front boundary;
 - (iii) where the width of the garage opening occupies 40% or less of the width of the lot frontage;
 - (iv) where a triple garage is constructed, where the front wall of the third car space is setback a further minimum of 1 metre behind the front wall of the primary garage;
 - (v) capable of accommodating a maximum of 3 cars;
 - (vi) with a roofline which is architecturally tied to the main dwelling;
 - (vii) with a door that is either a sectional overhead or tilt panel type;
 - (viii) in the same colour scheme as that of the dwelling, or finished with a wood grain or timber panel;
- (h) build or allow to be built on the Property any outbuildings (including any garage, workshop, garden shed, storage shed, heating and cooling systems, antennae and satellite dishes, washing lines, solar units and hot water services or other outbuilding) which:
- (i) exceed 50 square metres in area;

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- (ii) exceed 3.6 metres in height;
- (iii) are constructed from any materials or finishes or in any style or colours which are inconsistent with the dwelling;
- (iv) are visible from any public open space;
- (i) build or allow to be built any dwelling with a roof:
 - (i) of any material other than non-reflective corrugated metal sheeting (Colourbond) or roof tiles (terracotta, concrete, clay or slate);
 - (ii) of any colour other than muted tones of grey, blue-grey, charcoal or green;
 - (iii) if pitched, at a pitch of less than 20 degrees;
- (j) build or allow to be built a dwelling house without an eave overhang of at least 450 millimetres from the wall to the outer edge of the eave for the entire perimeter of the dwelling;
- (k) build or allow to be built any front fence:
 - (i) more than 1.2 metres in heights;
 - (ii) with less than 50 percent transparency unless the front fence is less than 0.7 metres in height;
 - (iii) that is constructed from wooden palings;
 - (iv) which is inconsistent with the dwelling on the Lot in relation to style, materials and colours;
 - (v) of materials other than timber slats, masonry pillars with metal or timber infill panels, or timber posts with metal infill panels;
 - (vi) with mock Victorian, Edwardian or other heritage detailing;
 - (vii) on the secondary boundary or a corner lot which does not match the fence on the primary boundary;
- (l) build or allow to be built any side or rear fencing:
 - (i) other than 1.89 metres in height;
 - (ii) that is not capped with any material other than exposed timber;
 - (iii) with posts and rails of any material other than exposed timber;
 - (iv) with infill panels of any material other than Colourbond standard sheeting infill panels;

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- (v) with infill panels of any colour other than Grey Ridge;
- (vi) that does not return a minimum of 1 metre behind the main building line;
- (m) build or allow to be built any side fencing which extends in front of the return fencing unless a front fence has been installed, which additional side fencing must be 1.2 metres in height and must match either the front or side fence materials;
- (n) on a corner lot, build or allow to be built any fence to a secondary boundary which is a street or public space:
 - (i) which does not return a minimum of 4 metres behind the front building line;
 - (ii) that is not capped with any material other than exposed timber;
 - (iii) with posts and rails of any material other than exposed timber;
 - (iv) with infill panels of any material other than Colourbond Lysaght MINISCREEN infill panels (or the closest available product if Colourbond Lysaght MINISCREEN is no longer manufactured);
 - (v) with infill panels of any colour other than Grey Ridge or the closest available product if panels of Grey Ridge colour are no longer manufactured;
 - (vi) other than 1.89 metres in height (other than a front fence);
- (o) build or allow to be built any gate in a fence that does not match or complement the fence in terms of materials and finishes;
- (p) build or allow to be built:
 - (i) more than one vehicle crossover to the Lot; unless it is a corner lot in which case a second vehicle crossover on the secondary frontage is permitted subject to council approval;
 - (ii) a driveway exceeding 4 metres in width except where they form part of a turning or reserving area required for access from a garage;
 - (iii) a driveway that is offset less than 500 millimetres from the side boundary to allow for a landscape strip along the side of the lot;
 - (iv) a driveway built from any material other than pavers, exposed aggregate or coloured concrete;
 - (v) a driveway of a colour that does not complement the building;
- (q) build or allow to be built:
 - (i) any retaining structures greater than 1 metre in height between a dwelling and a street or public space;

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- (ii) any cut and fill deeper than 1 metre without utilization of planted and landscaped embankments with a maximum 1:3 embankments or terracing;
- (r) modify:
 - (i) the existing slope of a lot in a way which affects the structural integrity of an adjoining lot(s) or any structure erected on an adjoining lot(s);
 - (ii) the existing batters and retaining walls or install additional retaining walls that will structurally affect the existing walls, building platforms and associated batters without first obtaining advice from a structural engineer and seeking the required approvals and providing a copy of such advice and approvals to Peet;
- (s) allow the front yard of a Lot to remain without landscaping for more than 3 months after the date of issue of the occupancy permit for the dwelling house;
- (t) landscape the front yard of a Lot other than with a majority in excess of 50 percent of native plant species;
- (u) landscape the front yard of a Lot without including installation of at least one tree of a species with a minimum installation height of 1 metre and a canopy diameter at maturity of at least 5 metres;
- (v) build or allow to be built any swimming pool or spa in the front yard or in the back yard if visible from any public space;
- (w) build or allow to be built a letterbox which is not:
 - (i) located and constructed to Australian Post standards in a purpose built low structure;
 - (ii) complementary to the design of the dwelling house in respect of its materials, colour and style;
- (x) allow any rubbish to accumulate or remain unsecured on the Lot unless stored in an appropriately sized skip or bin;
- (y) allow any grass or weeds on the Lot to grow excessively;
- (z) during construction:
 - (i) allow construction rubbish or other rubbish to move from the Lot to other lots;
 - (ii) allow any trade or delivery vehicles to be parked on footpaths, verges, nature strips of park reserves or in any location which hinders overall development construction;
 - (iii) allow any building materials to be delivered or stored on the nature strip or anywhere else outside the title boundary of the Lot upon which the dwelling house is being constructed;

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- (aa) allow any plant or machinery or any recreation vehicle or commercial vehicle, (including without limitation a caravan, boat, box trailer, boat trailer, and car trailer but excluding any motor cycle, motor car, motor station wagon or utility or four wheel drive car registered for use on a highway) to be left or parked on the street or on the Lot between the building line and the front boundary (unless either of those occurs during the normal course of business by a visiting trades person) or on the nature strip or footpath;
 - (bb) erect, permit or allow to be erected or to remain erected on the Lot any advertisement, hoarding, sign or similar structure and will not permit the Lot or any building or buildings constructed thereon to be used for the display of any advertisement, sign or notice provided that this restriction shall not prevent the erection of a signboard that the Lot is for sale and shall not prevent the display of the nameplate or light of any medical practitioner, dentist, legal practitioner or other professional trade or business nameplate;
 - (cc) do anything in respect of the Lot in contravention of the planning requirements set out in the Botanic Ridge Precinct Structure Plan forming part of the Planning Scheme.
- 3.4 The registered proprietor or proprietors for the time being of any Affected Lot shall comply with and observe the restrictions in clause 3.3 except:
- (a) For the restrictions that are enforced by PEET ("PEET Restrictions"):
 - (i) PEET gives written consent to the registered proprietor or proprietors to not comply with or observe the PEET Restrictions, which consent may be given or withheld at the absolute discretion of PEET; or
 - (ii) after 31 December 2026, when the PEET Restrictions shall cease and be of no effect.
 - (b) For the restrictions that are included within the Botanic Ridge Structure Plan and forming part of the Planning Scheme, where Council gives written consent to the registered proprietor or proprietors to not comply with or observe the relevant restrictions, which consent may be given or withheld at the absolute discretion of the Council.
- 3.5 For the purposes of clause 3.4, PEET restrictions are clauses 3.3(a), 3.3(b), 3.3(c)(ii), 3.3(c)(iii), 3.3(d)(i) to 3.3(d)(iii) (both inclusive), 3.3(d)(vi), 3.3(e)(i) to 3.3(e)(viii) (both inclusive), 3.3(e)(x), 3.3(f), 3.3(g)(iv) to 3.3(g)(vi) (both inclusive), 3.3(g)(viii), 3.3(h)(iii) to 3.3(h)(iv) (both inclusive), 3.3(i)(iii), 3.3(k)(i), 3.3(k)(iv) to 3.3(k)(vii), 3.3(l)(i), 3.3(l)(iii) to 3.3(l)(vi) (both inclusive), 3.3(m), 3.3(n)(i), 3.3(n)(iii) to 3.3(n)(vi) (both inclusive), 3.3(o), 3.3(p)(iii) to 3.3(p)(v) (both inclusive), 3.3(r) to 3.3(z) (both inclusive). All other restrictions contained in clause 3.3 are restrictions within the Botanic Ridge Structure Plan and forming part of the Planning Scheme.

4. Provisions applicable to Lot 629 only

- 4.1 The following restrictions contained in this clause 4 affect Lot 629 on the Plan of Subdivision ("Affected Lot").

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- 4.2 Except with the written consent of the Council, the registered proprietor or proprietors for the time being of the Affected Lot shall not:
- (a) Construct any structure that does not comply with the BAL 12.5 Construction Standards as identified in the Botanic Ridge Precinct Structure Plan, as amended from time to time.
 - (b) Construct any dwelling which does not simultaneously have a non-combustible static water supply for fire fighting purposes installed and operational containing a minimum of:
 - (i) 2,000 litres where the area of the Lot is less than 500 square metres; or
 - (ii) 5,000 litres where the area of the Lot is 500 square metres or greater.
- 4.3 Except with the written consent of the Council, the registered proprietor or proprietors for the time being of any Affected Lot shall not construct any structure that does not comply with the residential design and bushfire management controls in the Botanic Ridge Precinct Structure Plan.
- 4.4 Except with the written consent of the Council in the instance a restriction enforces the residential design controls in the Botanic Ridge Precinct Structure Plan and in all other instances with the written consent of PEET the registered proprietor or proprietors for the time being of any Affected Lot shall not:
- (a) construct a facade facing Tanglewood Lane unless such facade includes an entrance covered by a portico, porch verandah or other integral design feature;
 - (b) construct windows on the rear facade unless such windows have matching head and sill heights on each storey;
 - (c) construct a facade facing Tanglewood Lane unless facade includes no less than two separate material finishes, both of which must cover a minimum of 30% of the facade, unless:
 - (i) the facade is solely constructed of natural timber weatherboard (imitation weatherboard not permitted);
 - (ii) the facade is solely finished with a rendered material, in which case a single material finish is permitted);
 - (d) include mouldings other than mouldings which are rectangular in shape;
 - (e) use materials on the facade facing Tanglewood Lane unless such materials have a return with a minimum length of 1 metre to the sides of the dwelling (excluding parapet construction);
 - (f) contain roller shutters or metal bars on the facade facing Tanglewood Lane;
 - (g) build or allow to be built any rear fence along Tanglewood Lane unless such fence is installed by the PEET or carry out any modifications (including gates) or replacements which do not match the following fencing specifications:

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- (i) Solid Areas of fence are to be constructed using COLORBOND Neetascreen infill panels in Grey Ridge.
- (ii) Permeable Areas of fence are to be constructed using COLORBOND 70 X 16mm Slatscreen in Grey Ridge.
- (iii) Posts are to be 125 x 125mm cypress stained in Grey Ridge.
- (iv) The fencing must be 1.89 metres in height.

- (h) Build or allow to be built any fence other than a rear fence along Tanglewood Lane unless such a fence is constructed in accordance with the Design Guidelines;
- (i) Build or allow to be built any outbuildings not attached to the dwelling including garages, workshops, garden sheds and storage sheds which are located within 8 metres of the rear boundary along Tanglewood Lane;
- (j) Allow the back yard facing Tanglewood Lane to remain unlandscaped after 3 months of moving into the dwelling;
- (k) Allow the back yard facing Tanglewood Lane to be kept in a state which is not neat and tidy;
- (l) Allow excessive weed growth within the back yard facing Tanglewood Lane at all times;
- (m) Allow ancillary items such as clothes lines, hot water services, satellite dishes, boats, trailers, caravans and bins to be visible from Tanglewood Lane and the reserve which is located south of Tanglewood Lane;
- (n) Install or allow to be installed any solar water heaters or solar panels to the front or rear facade.

5. Provisions applicable to Lots 630 and 631

- 5.1 The following restrictions contained in this clause 5 affect Lot 630 and 631 on the Plan of Subdivision ("Affected Lot").
- 5.2 Except with the written consent of the Council, the registered proprietors for the time being of any Affected Lot shall not:
 - (a) Construct any structure that does not comply with the BAL 19 Construction Standards as identified in the Botanic Ridge Precinct Structure Plan, as amended from time to time.
 - (b) Construct any dwelling which does not simultaneously have a non-combustible static water supply for fire fighting purposes installed and operational containing a minimum of:
 - (i) 2,000 litres where the area of the Lot is less than 500 square metres; or
 - (ii) 5,000 litres where the area of the Lot is 500 square metres or greater.

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- 5.3 Except with the written consent of the Council in the instance a restriction enforces the residential design and bushfire management controls in the Botanic Ridge Precinct Structure Plan the registered proprietor or proprietors for the time being of any Affected Lot shall not build or allow to be built on the Affected Lot a dwelling other than a single storey dwelling.

6. Provisions applicable to Lot 631 only

- 6.1 The following restrictions contained in this clause 6 affect Lot 631 on the Plan of Subdivision ("Affected Lot").
- 6.2 Except with the written consent of the Council the registered proprietor or proprietors for the time being of any Affected Lot shall not construct any structure that does not comply with the residential design and bushfire management controls in the Botanic Ridge Precinct Structure Plan.
- 6.3 Except with the written consent of the Council in the instance a restriction enforces the residential design controls in the Botanic Ridge Precinct Structure Plan and in all other instances with the written consent of Peet the registered proprietors for the time being of any Affect Lot shall not:
- (a) build or allow to be built any side fence along Tanglewood Lane unless such fence is installed by PEET or carry out any modifications (including gates) or replacements which do not match the following fencing specifications:
 - (i) Solid Areas of fence are to be constructed using COLORBOND Neetascreen infill panels in Grey Ridge.
 - (ii) Permeable Areas of fence are to be constructed using COLORBOND 70 X 16mm Slatscreen in Grey Ridge.
 - (iii) Posts are to be 125 x 125mm cypress stained in Grey Ridge.
 - (iv) The fencing must be 1.89 metres in height.
 - (b) Build or allow to be built any fence other than a side fence along Tanglewood Lane unless such a fence is constructed in accordance with Design Guildlines.

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2.4. Diagram showing building envelopes

MINIMUM SETBACK TO GARAGE FROM THE MAIN STREET FRONTAGE MUST BE 5.50 METRES

FOR ENVELOPE INTERPRETATION SEE EXPLANATION & DIAGRAMS (PAGES 7-8), APPROPRIATE PROFILE DIAGRAM (PAGES 9-11) & RESTRICTION MATTERS (PAGES 2-6). EXTENT OF BUILDING ENVELOPE SHOWN BY THICK CONTINUOUS LINE.

