

Summary in support of the Application

PROPERTY: 21 Angela Drive, Hoppers Crossing ("Land")

PROPOSAL: Application to remove a restrictive covenant

DATE: June 2025

SYNOPSIS

The Permit Applicant seeks to remove the restrictive covenant registered on the Certificate of Title.

Restrictive Covenant No. P040890E ("Covenant") provides the following restrictions:

- Construction of a dwelling on the land;¹
- A floor area of not less than 112 square metres for that dwelling (excluding outbuildings); and
- Exterior walls for that dwelling (excluding outbuildings) being substantially of brick or brick veneer and a roof material other than galvanised sheet iron.

The Covenant does not prevent the construction of more than one dwelling on the Land (noting that medium density is already evident in the immediate area), but by removing the restrictions as to the size (sq.m) of a dwelling and building / roofing materials is not inconsistent with the encouragement by successive State governments to achieve consolidation, diversity and affordable medium-density housing.

In effect, the removal of the Covenant would allow a greater flexibility in the use of building materials (consistent with modern, more sustainable materials), while the minimum floor area does little more than limit the opportunity for delivery of housing diversity i.e. a modest sized dwelling or a small second dwelling.

¹ The Covenant's reference to "a *single dwelling*" does not make it a single dwelling covenant because if it was intended to mean one dwelling, the words of the Covenant would have said "*one dwelling*"; refer to *Tonks & Anor v The State of Victoria* [2015] VSC 106.

PROPOSAL

Removal of the Covenant is sought.

The effect of the removal will enable a planning permit application for development to be considered (in future) without limitation on building material selection or dwelling size. The latter would still be subject to the Wyndham Planning Scheme ("Planning Scheme") when two or more dwellings are proposed and site coverage is a consideration.

COVENANT

The Land is comprised in Certificate of Title Volume 09997 Folio 659 and is known as Lot 1014 on Plan of Subdivision No. 209972M. The Covenant was registered in 1989. The Covenant's three restrictions have been summarised earlier in this report.

The Land benefited by the Covenant is described as all the land within the borders highlighted yellow, with the land (i.e. the subject Land) highlighted in blue, being burdened by the Covenant.

For the Council's convenience, as part of the permit application we **enclose** a cadastral map that corresponds with the yellow and blue highlighting described above.

The cadastral map will assist the Council in giving notice pursuant to section 52 of the *Planning and Environment Act 1987*.

ASSESSMENT

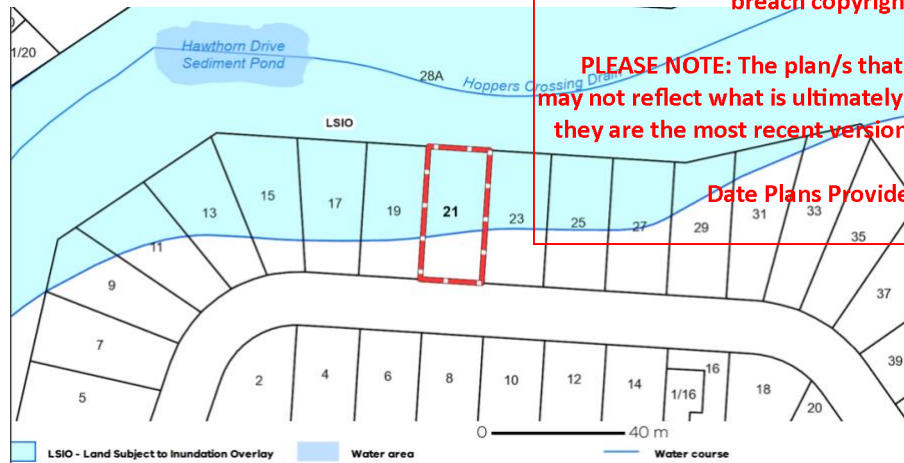
The Land is zoned General Residential, Schedule 1 ("GRZ1").

A Land Subject to Inundation Overlay ("LSIO") covers the rear half of the Land – see next page.

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Date Plans Provided: 10/07/2025



No planning permission is required under the GRZ1 or the LSIO to remove the Covenant.

Pursuant to Clause 52.02 (Easements, restrictions and reserves), a permit **is** required before a person proceeds under section 23 of the *Subdivision Act 1988* to remove a restrictive covenant. The Land is not referenced in the Schedule to Clause 52.02.

The purpose of Clause 52.02 is to enable the removal or variation of an easement or restriction to enable a use or development that complies with the Planning Scheme after the interests of affected people are considered.

The decision guidelines under Clause 52.02 set out that before deciding on an application, in addition to the decision guidelines in Clause 65, the Responsible Authority (Council) must consider the interests of affected people.

Should no objection be received, we understand the Council is likely to be satisfied that beneficiaries of the Covenant will be unlikely to suffer any detriment of any kind (including any perceived detriment)² as a result of the proposed removal of the Covenant.

The purpose of the Covenant (registered in 1989) was arguably: (i) to ensure a pattern of residential development that prevents the construction of a smaller bedsit / studio type accommodation that might have been associated with government housing or generally unit development at the time, while (ii) the limitation

² See section 60(5) of the *Planning and Environment Act 1987*.

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on the type of building and roofing materials was to protect the character and amenity that is consequent to such a setting.

While the size of dual occupancies in the immediate area (No's 1, 3 & 16 Angela Dye) is not clear, there are instances of building materials inconsistent with the Covenant, such as 37 and 41 Angela Drive.

Removal of the words in the Covenant associated with building and roofing materials provides flexibility in the selection of modern, more sustainable materials that are now available to the Permit Applicant that likely did not exist at the time the Covenant was registered. Such a variety in the use of building and/or roofing materials is not unusual in the area or more broadly the municipality.

In light of the foregoing, the restrictions in the Covenant are:

- outdated considering the above; and
- underlined by a misconception that materials other than brick or brick veneer are cheap and might lower the tone of the area (which is not the case today);
- rather, a restriction on materials other than brick or brick veneer does not reflect modern use of building materials or at least the ability to use a wider range of building materials to articulate a dwelling as part of a design response; and
- is not required to ensure either an appropriate character outcome or use of quality materials.

SUMMARY AND CONCLUSION

In summary, removal of the Covenant will not be inconsistent with the character of the area, nor detrimental to it, and should be supported in light of the foregoing assessment.

Date: 25 June 2025



NICKAS LEGAL, for and
on behalf of the Permit Applicant

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