



## ROSENDORFF LAWYERS

Wyndham City Council  
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WERRIBEE VIC 3030

Via e-mail: [mail@wyndham.vic.gov.au](mailto:mail@wyndham.vic.gov.au)

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Our Ref: BS:DW: 13071  
Date: 30/06/2021

Dear Sir/Madam

### VARIATION OF RESTRICTIVE COVENANT 641 TARNEIT ROAD HOPPERS CROSSING 3029

We act for Reji Melechittedathu Daniel, the registered proprietor (**Registered Proprietor**) of 641 Tarneit Road, Hoppers Crossing VIC 3029 (**the Property**).

We have been engaged by our client to make an application pursuant to the *Planning and Environment Act 1988* (**the Act**) to remove the restrictive covenant over the Property so that our client will be entitled to erect more than a single private dwelling house with usual outbuildings on the Property and that these dwellings will not be required to be erected substantially out of brick veneer or stone.

#### The Property

1. The Property is located at 641 Tarneit Road, Hoppers Crossing VIC 3029 and is better described as Lot 119 on Plan of Subdivision No. 139570 being the land contained in Certificate of Title Volume 09583 Folio 504. Please find enclosed as **Annexure 1** a copy of the Certificate of Title and Plan of Subdivision for the Property.
2. The Property is affected by the restrictive covenant contained in Transfer No. L433696N (**the Covenant**) signed on 20 December 1984 and amended on 11 April 1985. Please find enclosed as **Annexure 2** a copy of the Covenant.
3. There are no planning overlays affecting this Property. Please find enclosed as **Annexure 3** a copy of the planning property report for the Property.

#### The Covenant

4. The Covenant in its present form states the following:

*The said transferees GEORGE SAM CARUANA and CARMEN CARUANA with the intent that the benefit of this covenant shall be attached to run at law and in equity with every lot of the said Plan of Subdivision other than the lot hereby transferred and that the burden of the covenant shall be annexed to run to and run at law and in equity with the said land hereby transferred DOES HEREBY for themselves and their transferees executors administrators and*

assigns and as a separate covenant with the said transferee ELSMO PTY LTD and other the registered proprietor or proprietors for the time being of all the lots comprised in the said Plan of Subdivision or any part or parts other than the lots hereby transferred COVENANT that the said transferees GEORGE SAM CARUANA and CARMEN CARUANA shall not at any time erect construct or build or cause to be erected constructed or built on the land hereby transferred of if more than one lot on the said Plan of Subdivision then on any one such lot and building other than one private dwelling house having a minimum area of 148.65 square metres (excluding outbuildings) and no such dwelling house (excluding outbuildings) shall be erected having exterior walls other than substantially of brick veneer or stone.

5. As advised above, our client seeks to remove the Covenant.
6. Our client has engaged professional title searchers, Feigl & Newell Pty Ltd, to produce a report identifying the lots that enjoy the benefits of the Covenant (i.e. the land that comprises the plans of subdivision referred to above). Please find enclosed as **Annexure 4** a copy of Feigl & Newell's report. We note that the lots that enjoy the benefits of the Covenant (**the Benefitting Lots**) are highlighted in yellow.

#### **Proposed Developments and the Applicable Principles**

7. Our client proposes to apply for a subdivision of the Property to allow for the development of numerous medium density dwellings with usual outbuildings.
8. To this end, our client hereby makes an application for Council to remove the Covenant from the Title to the Property.
9. Pursuant to s 60(5) of the Act, the Council:

*"...must not grant a permit which allows the removal or variation of a restriction referred to in subsection (4) unless it is satisfied that—*

- a. *the owner of any land benefited by the restriction (other than an owner who, before or after the making of the application for the permit but not more than three months before its making, has consented in writing to the grant of the permit) will be unlikely to suffer any detriment of any kind (including any perceived detriment) as a consequence of the removal or variation of the restriction; and*
  - b. *if that owner has objected to the grant of the permit, the objection is vexatious or not made in good faith."*
10. It is our client's submission that the proposed removal of the Covenant would not cause the owners of the Benefitting Lots to suffer any detriment (including any perceived detriment) as:
    - a. there are already a number of lots within close proximity to the subject Property that have been subdivided and developed with medium density dwellings, including the property located at 617 Tarneit Road, Hoppers Crossing on which more than ten (10) dwellings have been built. Please find enclosed as **Annexure 5** photographs of the property located at 617 Tarneit Road Hoppers Crossing as well as photographs of other nearby properties that have been developed in a manner similar to our client's proposed use of the land;

- b. the intended purpose of the one dwelling restriction envisaged by the authors of the Covenant was presumably to protect the visual amenity and composition of the neighbourhood. As the neighbourhood already contains multiple properties that have been subdivided and developed with multiple medium-density dwellings, it is difficult to see how the removal of the Covenant would negatively affect either the composition or the visual amenity of the neighbourhood;
  - c. at the time that the Covenant was drafted, 20 December 1984, brick veneer and stone were two of the most prominent materials used in construction of dwellings due largely to their structural integrity. Consideration of this factor was presumably the intention of the drafter of the Covenant. However, the building industry has since developed a multiplicity of materials that are excellent substitutes for brick veneer and stone. Given that a number of neighbouring dwellings are also constructed from materials other than exclusively brick veneer or stone, it is difficult to see any negative effect this could have on the neighbourhood; and
  - d. the continued existence of the Covenant in its current form impedes our client's reasonable use of the Property by preventing him from using the Property for a purpose that is well-suited to it due to its location and the neighbourhood composition.
11. For the above reasons, it is our view that, subject to any objections to be received by the owners of the Benefitting Lots, s 60(5) would not prevent the Council from granting a permit which allows for our client's proposed removal of the Covenant.

Should you have any questions, please contact our office at 03 8320 2955.

Regards  
**ROSENDORFF LAWYERS**

**Brett Samuel**  
Encl.

*Consultant for:*  
SEMI & LOCAL GOVERNMENT  
SURVEYORS  
PLANNERS  
VALUERS  
SOLICITORS  
ESTATE AGENTS

*Searchers of:*  
T.L.A. TITLES  
GENERAL LAW  
CROWN LANDS  
SURVEY INFORMATION  
CORPORATE AFFAIRS  
ELECTORAL ROLLS

21/04/2021

**TO WHOM IT MAY CONCERN**

**RE PROPERTY: 641 TARNEIT ROAD, HOPPERS CROSSING**

My name is Peter O'Loughlin, I am a Partner of the firm Feigl & Newell Pty Ltd, Title Searchers.

Our firm is considered to be experts in the field of Covenant Beneficiaries and we are retained by Barristers to brief them in these matters.

After careful perusal of the Covenant in Instrument of Transfer No.L433696N it would appear that the beneficiaries are all of the land highlighted yellow on the attached digital map base. The land highlighted green has the burden of said Covenant.

I came to this conclusion as the Instrument of Transfer No.L433696N states that the beneficiaries are the Registered Proprietor or Proprietors for the time being of all the lots comprised in the said Plan of Subdivision, being LP139570, or any part or parts other than the land hereby transferred.

See attached table of transfers and dates from original subdividers to first proprietors.

Please advise if any further information is required.

Yours faithfully,

Peter O'Loughlin

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**Plan: 4 of 10**

641 TARNEIT RD HOPPERS CROSSING

LOT/PLAN	VOL/FOL	TRANSFER NO.	DATE
127/LP139570	9583/512	L447439G	4/01/1985
129/LP139570	9583/514	L492956A	4/02/1985
130/LP139570	9583/515	L495660M	5/02/1985
124/LP139570	9583/509	L497573Q	6/02/1985
126/LP139570	9583/511	L499893C	7/02/1985
123/LP139570	9583/508	L502491L	8/02/1985
128/LP139570	9583/513	L517698M	18/02/1985
125/LP139570	9583/510	L538474X	1/03/1985
122/LP139570	9583/507	L569237M	20/03/1985
120/LP139570	9583/505	L632425W	24/04/1985
121/LP139570	9583/506	L661345C	10/05/1985



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Data Source: Vicmap Property

0 10 20 30 40 50 60 70 80 90 100m  
Scale of Metres (1:1,500)

**WARNING:** No warranty is given as to the accuracy or completeness of this map. Dimensions are approximate. For property dimensions, undertake a Title search.

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Document**

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**Advertised Documents**



Land Release Applications for Tarneit Views Estate - Hoppers Crossing

Land release	Land report	Number of lots	Plan number	Land surveyor	Lodged date	Intended use	Settlement tracking
Tarneit Views	<a href="#">617 Tarneit Road Hoppers Crossing VIC 3029</a>	18	PS835093J, 10484, WYP12090/20, WYS5343/20	<a href="#">Peyton Waite Pty Ltd</a>	28/02/2020	Multi lot staged subdivision	<a href="#">Registered at Land Use Victoria</a>
	<a href="#">617 Tarneit Road Hoppers Crossing VIC 3029</a>	16	422043D, WYP8797/15	<a href="#">Urban Design and Management Pty Ltd</a>	09/11/2015	16 lot subdivision in accordance with WYP7648/14 which approved the construction of 16 x dwellings	<a href="#">Planning Permit</a>

617 Tarneit Road Hoppers Crossing



547 Tarneit Road Hoppers Crossing





#### Application Details

Application ID	WYP9885/17
SPEAR Ref. No.	N/A
Date Received	22/03/2017
Description	Development of the land for sixteen single storey dwellings
Address	595 Tarneit Road HOPPERS CROSSING VIC 3029
Estimated Cost	\$2,000,000.00

#### Application Status

Advertising Letters Sent	22/05/2017
Number of Objections received	2

#### Property Details

Property Address	595 Tarneit Road HOPPERS CROSSING VIC 3029
Property Legal Description	No related land

#### Officer Details

Officer	Jeannie Mehmet
Title	Team Leader Established

#### Application Documents

Title	File Type	File Size
WYP9885_17 - Advertising Documents - Application Form and Certificate of Title - 595 Tarneit Road HOPPERS CROSSING VIC 3029.pdf	PDF	4.66 MB
WYP9885_17 - Advertising Documents - Plans - 595 Tarneit Road HOPPERS CROSSING VIC 3029.pdf	PDF	1.83 MB
WYP9885_17 - Advertising Documents - Reports - 595 Tarneit Road HOPPERS CROSSING VIC 3029.pdf	PDF	162.15 KB

595 Tarneit Road Hoppers Crossing

Application Details

Application ID	WYP11935/19
SPEAR Ref. No.	N/A
Date Received	12/11/2019
Description	Development of the land by the construction of sixteen (16) dwellings
Address	613 Tarneit Road HOPPERS CROSSING VIC 3029
Estimated Cost	\$3,000,000.00

Application Status

Advertising Letters Sent	19/03/2020
Number of Objections received	1

Property Details

Property Address	613 Tarneit Road HOPPERS CROSSING VIC 3029
Property Legal Description	V 9583 F 511 L 126 LP 139570 Tarneit Parish

Officer Details

Officer	Danielle Kearney
Title	Senior Town Planner

Application Documents

Title	File Type	File Size
WYP11935_19 - Advertising Documents - Application Form & Title - 613 Tarneit Road Hoppers Crossing - 2020-03-18.PDF	PDF	755.18 KB
WYP11935_19 - Advertising Documents - Plans - 613 Tarneit Road Hoppers Crossing - 2020-03-18.PDF	PDF	14.79 MB
WYP11935_19 - Advertising Documents - Reports & Other Documents - 613 Tarneit Road Hoppers Crossing - 2020-03-18.PDF	PDF	34.01 MB

613 Tarneit Road Hoppers Crossing