

# Memorandum of Common Provisions

## Section 91A Transfer of Land Act 1958

**AA3379**

02/08/2017 \$94.60 MCP



Lodged by:

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

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## Provisions

All those provisions are contained in attached pages numbered 1 to 12.

## Recitals

- A. This MCP has been prepared by Burnside North Pty Ltd to regulate the siting, form and design of the residential development known as Modeina, so as to create a high level of amenity for the occupiers of Lots within the Plan of Subdivision.
- B. This MCP imposes restrictions on the siting and design of Buildings, which in some cases may be different to the restrictions set out in the Regulations.
- C. The provisions of this MCP are incorporated into a restriction created by the Plan of Subdivision.
- D. This MCP, in conjunction with the Plan of Subdivision, provides the information necessary to interpret the Approved Building Envelope.
- E. The Developer has the ability to enforce the provisions of this MCP.

## 1. Definitions

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**Approved Building Envelope** has the meaning given to that term in the Regulations;

**Building** has the same meaning as in the Building Act;

**Building Act** means the act of the Victorian Parliament known as the *Building Act 1993* and any re-enactment or replacement of that Act;

**Building Envelope** means the area within each Lot where the construction of a Dwelling is allowed subject to the provisions of the Plan of Subdivision, this MCP and the Scheme;

**Building Envelope Plan** means the plans referred to in and/or form part of the Plan of Subdivision which show the Building Envelopes;

**Control** means a restriction of the *Subdivision Act 1988*, an agreement under section 173 of the *Planning and Environment Act 1987*, a permit issued under the *Planning and Environment Act 1987*, an Act or an order of a Court or tribunal, which relates to the siting of a Building;

**Corner Lot** means a Lot which abuts two or more Streets or as indicated on the Building Envelope Plan, but it does not include a Lot which abuts a Lane;

**Council** means City of Melton;

**Design Review Panel** means the panel appointed by the Developer in accordance with the Modeina Siting and Design Guidelines;

**Development** means the development known as Modeina;

**Developer** means DFC (Project Management) Pty Ltd ACN 161 448 139 or any of its related bodies corporate within the meaning of section 50 of the Corporations Act 2001 (as amended from time to time).

**Dwelling** has the same meaning as in the Scheme;

**Feature Fencing** means a specially designed fence installed by the Developer in locations marked 'FF' in the Plan of Subdivision;

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**Fence** has the meaning given to that term in Part 4 of the Regulations;

**Front Building Line** is defined as the wall of the Dwelling facing the Principal Street Frontage, which does not include bay windows, porticos, porches, balconies and verandahs or any other permitted encroachments;

**Front Fence** means the fence located on the Principal Street Frontage;

**Front Setbacks** means the Setbacks from the Principal Street Frontage;

**Frontage** has the same meaning as in the Scheme;

**Garage** means a domestic enclosed garage constructed primarily for the purpose of storage of motor vehicles, trailers, caravans, campervans, boats and the like;

**Habitable Room** has the same meaning given to that term in the Building Code of Australia;

**Height** has the same meaning as in the Regulations;

**Landmark Lots** means a Lot marked "LL" in the Plan of Subdivision;

**Lane** means a street named as a lane on the Plan of Subdivision;

**Lot** means a lot in the Plan of Subdivision;

**MCP** means this memorandum of common provisions;

**Modeina Siting and Design Guidelines** means the design guidelines prepared by the Developer to and includes such amendments, additions, and variations from time to time;

**Non-Overlooking Zone** means the zone marked as "Non-Overlooking Zone" in the Profile Diagram;

**Plan of Subdivision** means the relevant plan of subdivision for a particular allotment which incorporates this MCP;

**Planning Permit** means the permit no. PA2015/4832 issued by the City of Melton on 25 July 2017 and includes such amendments, additions, variations and extensions from time to time;

**Principal Street Frontage** means either:

- (a) where the Lot abuts one Street, the boundary along the relevant Street;
- (b) where the Lot abuts two or more Streets, the boundary along the Street which is the shortest (disregarding any splay corner) unless determined otherwise by the Design Review Panel;
- (c) where the Lot abuts two or more Streets and the frontages are of equal length, the boundary determined by the Design Review Panel to be the main frontage for the Lot;

**Profile Diagram** means the profile plans of a Dwelling on a Lot, which plans are contained in this MCP;

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**Rear Boundary** means the Lot boundary opposite the Principal Street Frontage, and in cases where a Lot has multiple boundaries, then the Lot boundary determined by the Design Review Panel to be the rear boundary for that Lot;

**Rear Setbacks** means the Setbacks from the Rear Boundary;

**Regulations** means the Building Interim Regulations 2017 or any subsequent regulations made pursuant to the Building Act which relate the siting of a Building;

**Restriction** means the restrictions contained in the Plan of Subdivision and includes this MCP as well as the Building Envelope Plan;

**Scheme** means the planning scheme of the local authority responsible for the land contained within the Plan of Subdivision;

**Secondary Street Frontage** means the boundaries along the other Streets abutting a Corner Lot that are not the Principal Street Frontage;

**Setback** from a Building or boundary means the shortest horizontal distance from that Building or boundary;

**Side Boundary** means the boundary of a Lot that connects the Principal Street Frontage of that Lot to the Rear Boundary of that Lot and where that Lot is a Corner Lot, **Side Boundary** includes the boundary along the Secondary Street Frontage of a Lot;

**Side Setbacks** means the Setbacks from the Side Boundary; and

**Street** means any road other than a Lane, footway, alley or right of way.

## 2. Siting

### 2.1 Exemption from the need for report and consent of council

If a Building, or a Building which is proposed to be constructed, on a Lot on the Plan of Subdivision complies with this MCP in respect of the following:

- (a) maximum street setbacks (Regulation 408);
- (b) minimum street setbacks (Regulation 409);
- (c) car parking (Regulation 413);
- (d) side and rear setbacks (Regulation 414);
- (e) walls and carports on boundaries (Regulation 415);
- (f) daylight to existing habitable room windows (Regulation 416);
- (g) solar access to existing north-facing windows (Regulation 417);

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- (h) overlooking (Regulation 419);
- (i) daylight to habitable room windows (Regulation 420);
- (j) front fence height (Regulation 424);
- (k) fences on or within 150mm of side or rear boundaries (Regulation 426); and
- (l) fences on street alignments (Regulation 427),

the restriction described under "Creation of Restriction No. 1" in the Plan of Subdivision exempts that Building from requiring the consent and report of the Council with regard to a design that does comply with the Regulations (as amended by this MCP) listed above.

### 2.2 Siting of a Building

- (a) Except for the encroachments expressly permitted under this MCP or the Modeina Siting and Design Guidelines, a Building (other than a boundary fence) on a Lot must not be contained outside the Approved Building Envelope for the relevant Lot and must not be defined otherwise than by the associated Building Envelope Plan and the provisions of this MCP. The siting of a Building within the Building Envelope Plan may be subject to any further restriction or modification imposed by this MCP or any other applicable Control.
- (b) Where there is an inconsistency between the Restrictions (except the restriction requiring compliance with this MCP) and the requirements set out in this MCP, the Restrictions (except the restriction requiring compliance with this MCP) shall prevail.

### 2.3 Development of Lot

Only one Dwelling is permitted per Lot and no further subdivision of the Lot is permitted.

### 2.4 Maximum Street Setback (Regulation 408)

The maximum Front Setback is 6 metres unless approved otherwise by the Design Review Panel.

### 2.5 Minimum Street Setbacks (Regulation 409)

- (a) Table 409 in the Regulations does not apply.
- (b) Unless shown otherwise in the Restrictions, the Front Building Line of a Lot must have a minimum Front Setback of 4.0 metres.
- (c) Unless shown otherwise in the Restrictions, a Corner Lot must have a minimum Setback of 2.0 metres from the Secondary Street Frontage.
- (d) The garage must have a minimum Front Setback of 5.5 metres and be at least 0.5 metres behind the Front Building Line unless the Dwelling is 2-storey high and incorporates a substantial balcony or is articulated at the second storey (such articulation may include the construction of a room or rooms over the whole or part of the garage or the elements listed in clauses 2.5(e)(i) and 2.5(e)(viii) to

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2.5(e)(xi) to the satisfaction of the Design Review Panel). In this case, the garage is permitted to be constructed in line with the Front Building Line but no closer than 5.5 metres from the Principal Street Frontage (**5.5 metres Setback**) and only a balcony or verandah is permitted to encroach up to 1.5 metres within the 5.5 metres Setback.

(e) Only one or any combination of the following elements may encroach up to 1.5 metres into the Front Setbacks:

- (i) balconies;
- (ii) awnings;
- (iii) eaves;
- (iv) fascia;
- (v) gutters;
- (vi) sunblinds;
- (vii) sunshades;
- (viii) porticos;
- (ix) verandahs;
- (x) pergolas;
- (xi) porches;
- (xii) decks, steps and landings less than 800mm in height; and
- (xiii) feature architectural elements.

(f) Where the Lot is a Corner Lot:

- (i) the main entry to the Building must face the Principal Street Frontage;
- (ii) the full length of the Building facing the Secondary Street Frontage must contain eaves, and such eaves may encroach no more than 0.5 metres into the Setback from the Secondary Street Frontage, subject at all times to any limitations associated with the easements located within the Lot as well as the requirements of any party gaining the benefit of the easement;
- (iii) architectural elements used in the main façade must be replicated within the first 4 metres of the Secondary Street Frontage.
- (iv) feature elements approved by the Design Review Panel may encroach no more than 1.5 metres into the Setback from the Secondary Street Frontage; and

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- (g) Where the feature architectural elements are connected to the elements contained in clause 2.5(e) and are approved by the Design Review Panel (having regard to design objectives of the Development), then the feature architectural elements may have a height no greater than 9 metres from the natural ground level.
- (h) For avoidance of doubt, the Front Building Line of a Lot may fall between the minimum Front Setback (determined under clause 2.5(b)) and the maximum Front Setback (determined under clause 2.4).

### 2.6 Car parking (Regulation 413)

Each Dwelling must have a Garage. Carports are not permitted to be built on a Lot.

### 2.7 Side and Rear Setbacks (Regulation 414)

- (a) Unless shown otherwise in the Restrictions and subject to clause 2.7(b), a minimum Side Setback of 1.0 metre and a minimum Rear Setback of 2.5 metres apply.
- (b) Where there is two or more Side Boundaries marked with "0 or 1" on the Building Envelope Plan, only one Side Boundary can be built to the boundary. For avoidance of doubt, the Building to Boundary Zone (referred to in Profile Diagram A) is only available for that one Side Boundary on which the Building is to be built to the boundary and is not available for the other Side Boundary on the Lot.
- (c) Sunblinds, shade sails, verandahs, porches, porticos, pergolas, eaves, fascias, gutters, masonry chimneys, flues, pipes, domestic water tanks and heating or cooling equipment or other services (such tanks and heating or cooling equipment are to be concealed in accordance with the Moderna Siting and Design Guidelines), landings with an area of not more than two square metres and less than one metre high and unroofed stairways and ramps may encroach up to 0.5 metres into the Side Setbacks and/or the Rear Setbacks subject at all times to any limitations associated with the easements located within the Lot as well as the requirements of any party gaining the benefit of the easement.

### 2.8 Walls and carports on boundaries (Regulation 415)

Where the Restrictions specify that a Building may be constructed on the boundary of a Lot, the walls on that boundary (such walls to include Garage walls) may have a maximum height of 3.6 metres and must not exceed the total length of 15 metres.

### 2.9 Daylight to existing habitable room windows (Regulation 416)

Provided that the wall complies with the provisions of this MCP, a wall that exceeds 3.0 metres in height can be located opposite a Habitable Room window even though the Setback from the window is not at least half the height of the wall if the wall is within a 55° angle in the horizontal plane about a vertical axis through the centre of the window as shown in the diagram below:

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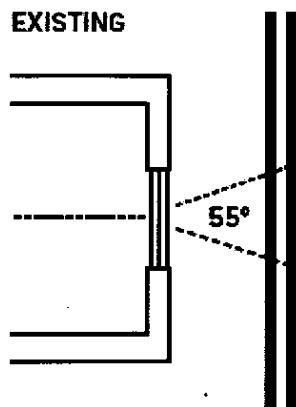
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**EXISTING**



**PROPOSED**

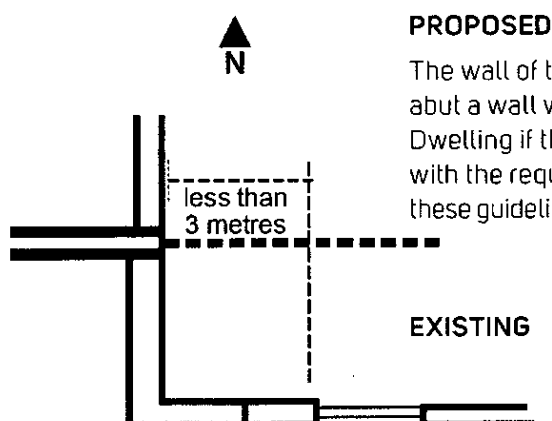
No additional setback applies to a wall with a height of more than 3m within a 55° arc from the centre of the window if the wall complies with the requirements of these guidelines and the MCP.

Wall setback from the window is not at least half the height of the wall.

### 2.10 Solar access to existing north-facing windows (Regulation 417)

- (a) Table 417 in the Regulations and Regulation 417(2) do not apply to that part of the Building that is proposed to be constructed on the boundary where:
- (i) the Restrictions permit the proposed Building to be constructed on the boundary;
  - (ii) the wall of that part of the proposed Building abuts a wall with the existing Dwelling,

even if a north-facing Habitable Room window of an existing Dwelling is located within 3 metres of that boundary.



**PROPOSED**

The wall of the building may abut a wall with an existing Dwelling if the wall complies with the requirements of these guidelines and the MCP.

**EXISTING**

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(b) Where the Dwelling to be built on a Lot has two or more storeys:

- (i) the Profile Diagram (applicable to that Lot) replaces the setbacks and diagram contained in Regulation 417; and
- (ii) the Habitable Room windows for that Dwelling may be located within the Non-Overlooking Zone of the respective Profile Diagram (applicable to that Lot).

### 2.11 Overlooking (Regulation 419)

Where the Dwelling to be built on a Lot has two or more storeys, the Habitable Room windows for that Dwelling may be located within the Non-Overlooking Zone of the Profile Diagram (applicable to that Lot) despite the requirements of Regulation 419.

### 2.12 Daylight to habitable room windows (Regulation 420)

Where the eaves of the Dwelling on the Lot encroach into the Side Setback in accordance with clause 2.7(c) of this MCP, the dimensions of the area of the outdoor space or light court that is clear to the sky as referred to in Regulation 420 is to be measured from the external surface of the Habitable Room window of the Dwelling facing the outdoor space or light court (instead of from the end of the eaves on the Dwelling that overhang that Habitable Room Window).

### 2.13 Front Fence height (Regulation 424)

No Front Fence is permitted.

### 2.14 Fences on or within 150mm of side or rear boundaries (Regulation 426)

- (a) With the exception of Feature Fencing or where otherwise approved by the Design Review Panel or where otherwise permitted under the Restrictions, fences built on the Side Boundary and the Rear Boundary of a Lot must be a timber paling fence with expressed posts that is capped and lapped and:
  - (i) the height of those fences must not exceed a height of 1.98 metres as shown in the Moderna Siting and Design Guidelines; and
  - (ii) the length of those fences on the Side Boundary must not exceed the length calculated from the Rear Boundary to a point that is:
    - (A) 4 metres behind the Front Building Line where a Lot is a Corner Lot; and
    - (B) 1 metre behind the Front Building Line for all other Lots; and
  - (iii) the length of those fences on the Rear Boundary can equal the length of the Rear Boundary.
- (b) Unless approved otherwise by the Design Review Panel, fences built on the Side Boundary and the Rear Boundary of a Lot must be built on the boundary.

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- (c) Where a boundary of a Lot has been marked with "FF" on the Building Envelope Plan:
  - (i) the fences erected on that boundary must be Feature Fencing;
  - (ii) the owner of that Lot cannot remove or change the appearance of the Feature Fencing without the written approval of the Design Review Panel; and
  - (iii) the owner of the Lot is responsible for maintaining the Feature Fencing in good repair.

### 2.15 Fences on street alignments (Regulation 427)

- (a) No Front Fence is permitted.
- (b) With the exception of Feature Fencing or where otherwise approved by the Design Review Panel, fences built on the Side Boundary and the Rear Boundary of a Lot must be a timber paling fence with expressed posts that is capped and lapped and must not exceed a height of 1.98 metres as shown in the Modeina Siting and Design Guidelines.
- (c) Unless the fence is Feature Fencing or a fence approved by the Design Review Panel, fences on the Side Boundaries are not permitted to be built beyond 1 metre behind the Front Building Line.
- (d) Despite any provisions to the contrary, the fence along the Secondary Street Frontage of a Corner Lot must be Setback from the Front Building Line by 4 metres unless the fence is Feature Fencing (in which case the Feature Fencing may be built beyond the Front Building Line at the discretion of the Developer).
- (e) Where a boundary of a Lot has been marked with "FF" on the Building Envelope Plan:
  - (i) the owner of that Lot cannot remove or change the appearance of the Feature Fencing without the written approval of the Design Review Panel; and
  - (ii) the owner of the Lot is responsible for maintaining the Feature Fencing in good repair.

### 2.16 Variation to siting and design

- (a) The siting and design of all Buildings must be approved by the Design Review Panel prior to the making of an application for a building permit.
- (b) The Design Review Panel may in its absolute discretion:
  - (i) authorise in writing the siting and design of a Building which does not comply with the restrictions created by the Plan of Subdivision or this MCP provided that:
    - (A) such siting and design enhance the urban design outcome of the Development; and
    - (B) the siting and design does not extend outside the Building Envelope (unless permitted by Council and the Design Review Panel having regard to the Modeina Siting and Design Guidelines); or

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- (ii) withhold approval to the siting and design of a Building, even if the Building complies with the Restrictions and/or this MCP, if the Design Review Panel considers that the design and/or siting of a Building does not enhance the urban design outcome of the Development.

### 3. Approval of Building Design

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Subject to clause 2.16, the siting and design of a Building or fence on any Lot on the Plan of Subdivision and the change to any existing Building on any Lot on the Plan of Subdivision (where such change requires a building permit) must be in accordance with the Modeina Siting and Design Guidelines and must be approved in writing by the Design Review Panel and must also comply with any minimum garden requirements set out in the Scheme (as amended from time to time) applicable to the Lot prior to the making of any application for a building permit or the undertaking of any works.

### 4. Interpretation

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In this MCP, unless the contrary intention appears:

- 4.1 The singular includes the plural and vice versa;
- 4.2 A reference to an individual or person includes a partnership, body corporate, government authority or agency and vice versa;
- 4.3 A reference to any party includes that party's successors, substitutes, permitted assigns, executors and administrators;
- 4.4 Words importing one gender include other genders;
- 4.5 Other grammatical forms of defined words or expressions have corresponding meanings;
- 4.6 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; and
- 4.7 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 a reference to the entity that most closely serves the purposes or objects of the original entity.

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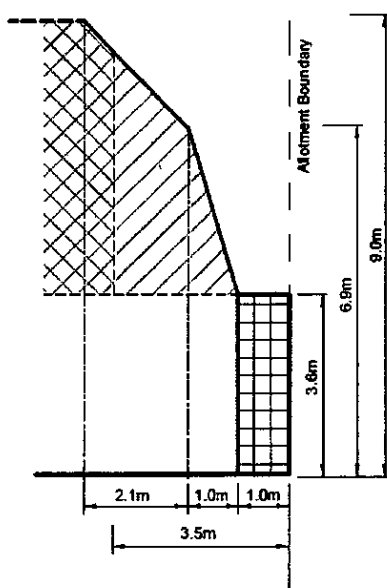
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## PROFILE DIAGRAMS

① Profile



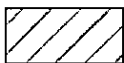
## LEGEND



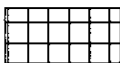
Single Storey Building Envelope



Non Overlooking Zone  
Habitable room windows/Raised open spaces are not a source of overlooking.



Overlooking Zone  
Habitable room windows/Raised open spaces are a source of overlooking.



Building to Boundary Zone

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