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planning, development & covenant consultants

Beneficiary Report

**38-42 Cityview Drive
Wandana Heights**

Greater Geelong Council

April 2026

REF: 11918

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1. INTRODUCTION

- 1.1 The purpose of this report is to set out land benefited by the restrictive covenant applying to No. 38-42 Cityview Drive Wandana Heights.
- 1.2 We regularly prepare reports and conduct beneficiary searches for covenant applications to be used in the Supreme Court and by Councils. Since December 2000 we have prepared over 500 reports for applications in the Supreme Court.
- 1.3 No. 38-42 Cityview Drive Wandana Heights is also known as Lot 2 on Plan of Subdivision No LP218593U and being the land contained in Certificate of Title Vol. 10035 Fol. 464. The land is burdened by restrictive covenant No. T322301E.

2. THE COVENANT

- 2.1 The covenant was created on 26 June 1994 when the land in 10035/464 was transferred by McQuat & Singleton Pty Ltd to Anthony Hetherington Dinning. It was registered on title on 26 September 1994 as the covenant contained in transfer No. T322301E.
- 2.2 The subject land is the only lot burdened by this particular covenant.
- 2.3 The date the covenant was created is very significant in planning permit applications as indicated in various Tribunal decisions. For example, in Appeal P1862/2012 Mr Byard referred to this as "*the magic date*". As such the more onerous Section 60(5) of the Planning and Environment Act does not apply but rather the more easily satisfied section 60(2) applying to any covenant created after 25 June 1991.

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3. DETERMINING THE BENEFICIARIES

3.1 The covenant purports to give the benefit *for the time being of each and every lot on the the said Plan of Subdivision or any part thereof other than the Lot hereby transferred*. However the Supreme Court has ruled that this statement cannot be interpreted literally.

3.2 The meaning of benefit underpins all applications for covenants in both the Supreme Court and municipal councils. The basic principle is that the person making a covenant (the vendor) can only give the benefit to land still owned by the vendor on the day the covenant is signed by both the vendor and the purchaser.

3.3 The above principal has been confirmed in several recent Supreme Court decisions. In *Randell V Uhl* (S ECI 2018 02202) Associate Justice Derham noted at paragraph 57, in regard to a covenant that purported to give the benefit to all lots on the subdivision:

57. Thus, a vendor of land in respect of which he takes the benefit of a restrictive covenant cannot, by the covenant, annex the restriction to land which he does not own at the time of the covenant...

3.4 His Honour also confirmed in the same paragraph that the relevant date from which beneficiaries must be determined is the date the covenant is signed rather than registered.

The date of the execution of the transfer is selected as the relevant date because it is only in equity that the burden and benefit of the Covenants run with the Land, and in equity the date on which the transfers were executed is the relevant date, not registration.

3.5 The table below has been prepared using the same technique used in the above case. It details the list of transfers from the parent subdivision as each lot was

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sold off progressively by the Transferor, in chronological order. It is only those lots, the transfers of which were signed after the subject land which have the benefit of the covenant. Any lots transferred prior to the subject land are considered not to have the benefit .

Transfer table of lots on LP218593U arranged by date covenant signed

Title	Covenant/ Transfer	Lot	<i>Date Signed</i>	<i>Date Registered</i>
10035/477	Cancelled by PS304101B	15	30/08/1990	11/10/1991
10035/481	PS304101B	A	30/08/1991 Certified	11/10/1991
10035/470	R605062F	8	14/10/1991	23/10/1991
10035/479	R619852H	17	02/10/1991	illegible
10035/478	R621928Q	16	01/10/1991	04/11/1991
10035/474	R713479D	12	20/11/1991	03/01/1992
10035/473	R880255T No cov	11	10/04/1992	27/04/1992
10035/471	R908026P	9	18/02/1992	13/05/1992
10035/463	S532638M	1	16/03/1993	11/06/1993
10035/465	S816910T No cov	3	12/11/1993	30/11/1993
10035/480	S867759N	18	23/12/1993	31/12/1993
10035/482	PS337248H	B	03/08/1994 certified	22/05/1995
10035/464	T322301E	2 Subject land	26/06/1994	26/09/1994
10035/468	T195499D	6	28/06/1994	15/07/1994
10035/475	T425649R	13	14/11/1994	22/11/1994
10035/476	T723526C	14	08/05/1995	14/06/1995
10035/472	T697718T	10	09/05/1995	25/05/1995

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10035/469	T852120T	7	31/08/1995	05/09/195
10035/467	T955287L	5	03/11/1995	14/11/1995
10035/466	U277959C	4	12/06/1996	25/06/1996
10035/483	X490803H PS809692H	C Now contains 67 lots	15/03/2001	23/05/2001

Must have been signed and registered prior to 8/07/1998 as transfers are recorded in chronological order based on Date Registered

- 3.6** Based on the above table there 7 original lots and the large balance Lot C that have the benefit of the covenant. Balance Lot C has been further subdivided by several subdivision and now includes 67 new lots. The benefit also extends to the new lots.
- 3.7** Balance Lot A was further subdivided in 1991 meaning that at the time the covenant was created it was no longer a Lot on the said subdivision.\)
- 3.8** Balance Lot B was further subdivided by a plan certified by the surveyor in August 1994. It has since been subdivided into approximately 80 new lots. However I have considered that in equity the Transferor would have no longer recognised Lot B as a lot on the said plan of subdivision

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Figure 1: Base map showing land in parent subdivision contained within thick black line. Subject land is Lot 2. Lots coloured blue have the benefit of the covenant. All remaining lots do not have the benefit of the covenant.

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3.7 The lots having the benefit of the covenant are clearly shown on the base plan above. The addresses for those properties are set out below:.

Lot No.	Address
4	48 Cityview Drive
5	52 Cityview Drive
6	56 Cityview Drive
7	60 Cityview Drive
10	72 Cityview Drive
13	82 Cityview Drive
14	86 Cityview Drive
C	All 67 lots in former area of Lot C

4. CONCLUSION

4.1 There are 74 present day lots having the benefit of the subject covenant as detailed above.

4.2 It should also be noted that as 60 (5) of the Planning and Environment Act does not apply any objection can be considered on its merits under Section 60 (2).

Robert Easton
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Attachments

- A. 10035/464 Title Subject Land**
- B. T322301E Covenant Subject Land**
- C. LP218593U Parent Subdivision**
- D. 87560/019 parent 1**
- E. 87560/020 parent 2**
- F. Other lot transfers/titles to confirm date history**