

Appendix 4

Amendment C116 - Removal of Covenants

Removal of covenants
430-436 Blackshaws Road, Altona North
122 Woods Street, Newport

Hobsons Bay Planning Scheme Amendment C116

HOBSONS
BAY CITY
COUNCIL



Executive Summary

430-436 Blackshaws Road, Altona North is the site of the former Altona Gate Primary School which has been the subject of redevelopment consideration for some time. The land was rezoned to Residential Growth Zone and Council has approved a development plan for medium density residential development in accordance with the planning provisions.

122 Woods Street, Newport is the site of the former Hobsons Bay Kindergarten and Toy Library. Council relocated this service to a new site in Maddox Road in 2014.

Both sites comprise a number of property titles, some of which contain restrictive covenants that are no longer relevant or necessary. The Blackshaws Road site comprises 34 parcels, 26 of which are subject to a covenant prohibiting material extraction and manufacture of bricks. Inadvertently this also prohibits earthworks which are required to develop the site in accordance with the approvals. Woods Street comprises three titles, two of which are subject to a covenant restricting use of the land to public recreation, a use to which Council has never proposed nor foreseen. The property was purchased and developed for early years facilities, which are now catered for elsewhere and there is ample open space provided for in the immediate vicinity.

The planning scheme includes a clause designed to allow for the removal and alteration of covenants; Clause 52.02. An amendment to the schedule to this clause is proposed to allow the removal of the covenants on all lots mentioned above. The amendment process incorporates an appropriate public consultation phase to ensure nearby residents are afforded the opportunity to provide input to the amendment process.

The proposal has been assessed against the strategic assessment guidelines outlined in Ministerial Direction 11. In conclusion, it is recommended that Hobsons Bay City Council seek authorisation from the Minister to prepare and exhibit Planning Scheme Amendment C116 to the Hobsons Bay Planning Scheme to remove the covenants currently applying to 430-436 Blackshaws Road, Altona North and 122 Woods Street, Newport.

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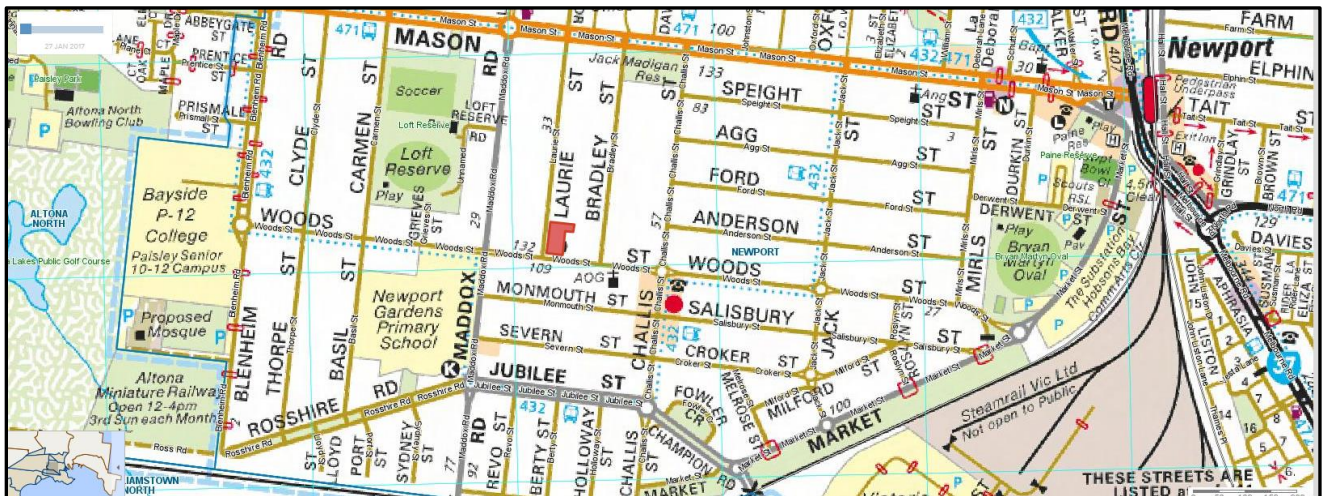
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The Subject Sites and Surrounds

1. Amendment C116 applies to two properties in the Hobsons Bay Local Government Area:
 - 430-436 Blackshaws Road, Altona North, the former Altona Gate Primary School; and
 - 122 Woods Street, Newport, the former Hobsons Bay Kindergarten and Toy Library.
2. Both sites comprise a number of property titles, some of which contain restrictive covenants that are no longer relevant or necessary. The Blackshaws Road site comprises 34 parcels, 26 of which are subject to a covenant and Woods Street comprises three titles, two of which are subject to a covenant.
3. Both sites are located in residential neighbourhoods close to complementary amenities and are zoned for residential use.
4. The former public uses on the sites have been provided for elsewhere to better meet community demands and are therefore no longer needed for school or kindergarten use.
5. The Blackshaws Road site is essentially free of buildings, vacant buildings remain on the Woods Street site.
6. The location and boundaries of the sites are shown on the maps below.



Map 1.1 – Locality Plan, 430-436 Blackshaws Road, Altona North



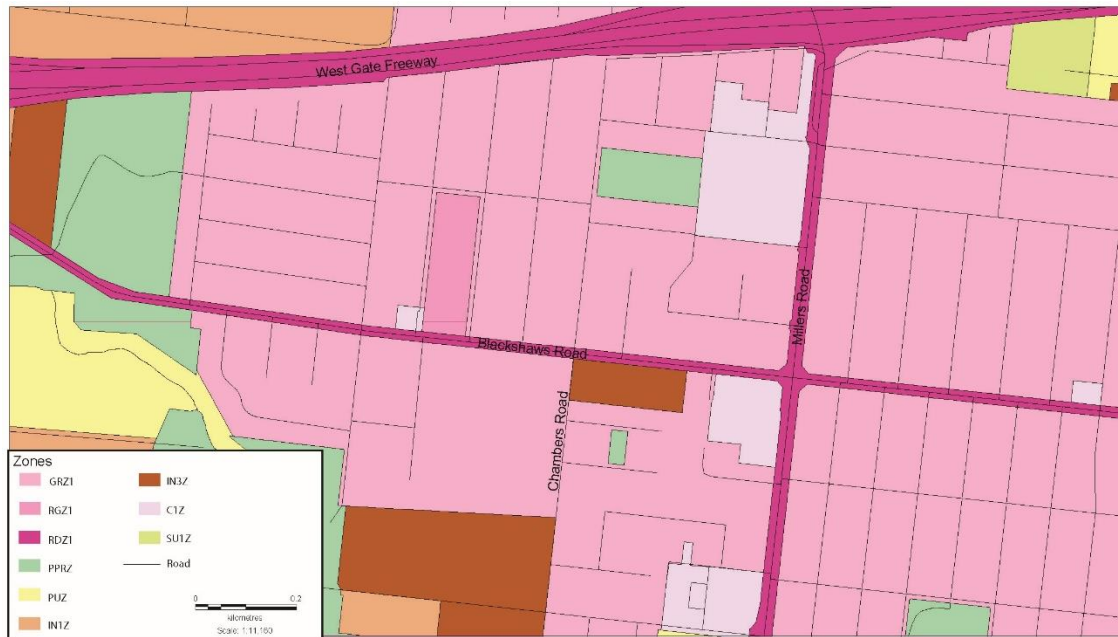
Map 1.2 – Locality Plan, 122 Woods Street, Newport

Existing Planning Controls

430-436 Blackshaws Road, Altona North

- 430-436 Blackshaws Road is included in the Residential Growth Zone Schedule 1 (RGZ1) and Development Plan Overlay Schedule 1 (DPO1) applies pursuant to the Hobsons Bay Planning Scheme, as shown in Maps 2 and 3 on below.

Map 2 – Zoning Map



Map 3 – Overlay Map

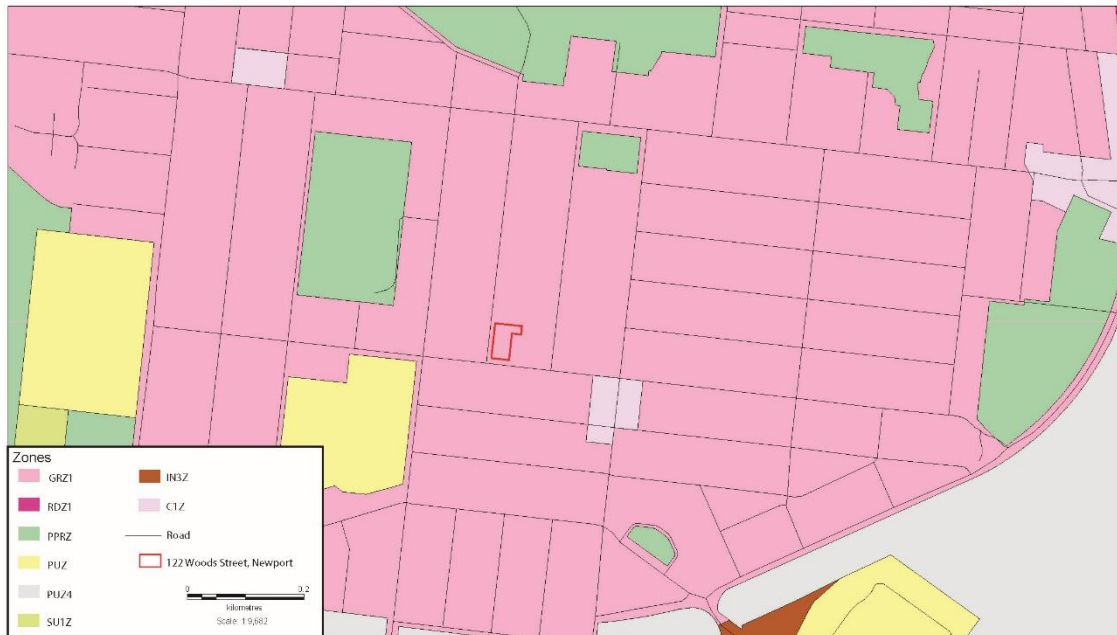


8. These provisions were specifically applied to this site in January 2017 and are designed to provide for a comprehensive, medium density, residential development on the vacant, former primary school site.
9. In accordance with the provisions, Council issued Planning Permit PA1737205 which approves a Development Plan for the site and the plans were endorsed on 2 November 2017. The Development Plan provides for 127 dwellings across the site as follows:
 - 32 x two storey, two-bedroom dwellings
 - 21 x two storey, three-bedroom dwellings
 - 21 x two storey, four-bedroom dwellings
 - 33 x three storey, two-bedroom dwellings
 - 2 x three storey, two-bedroom dwellings with home offices
 - 18 x three storey, three-bedroom dwellings
10. A masterplan has been endorsed showing the locations of each of the typologies on the site. Building footprint and building envelope masterplans have also be endorsed. The approved Development Plan includes three access points with two crossovers to Rosala Ave and one crossover to Misten Ave. The Development Plan also provides for the removal of all trees across the site, with the exception of seven trees located predominately around the boundaries of the site. A landscape masterplan has been endorsed for the site.
11. The property stands ready for development aside from the existence of the restrictive covenants on 26 of the 34 parcels making up the site.

122 Woods Street, Newport

12. 122 Woods Street is zoned General Residential and no overlays apply to the site, pursuant to the Hobsons Bay Planning Scheme, as shown in Map 4 below.

Map 4 – Zoning Map



13. No other site-specific controls nor approvals exist for the site. Provisions applicable to residential development would guide any redevelopment of the site including Clause 22.08 - Hobsons Bay North Neighbourhood Character Policy.

The Proposal

430-436 Blackshaws Road, Altona North

14. The Blackshaws Road site is held in 34 parcels, 26 of which are subject to restrictive covenants. The table at the attachment lists details of the covenant relating to each lot at the site.
15. The Amendment seeks to facilitate the removal of the restrictive covenants from each of the lots to which the Amendment applies, by modifying the Schedule to Clause 52.02 of the Hobsons Bay Planning Scheme. Consequently, it will be possible for the owner of each of the lots to lodge a plan of removal of restriction for certification under Section 23 of the Subdivision Act 1988 showing the restrictive covenants as removed. Upon that plan of subdivision being lodged and registered at the Titles Office, the restrictive covenants affecting each lot will be removed.
16. The covenants in question restrict the landowner from excavating, carrying away or removing, or permitting the excavation or removal of any earth, clay, stone, gravel or sand from the site, except for the purpose of excavating for the foundations of a building. The site has been identified for urban intensification in the order of medium density residential development by the Hobsons Bay Planning Scheme. These covenants restrict what would

be expected for the normal development of a site of this size and in this context, such as excavation for road networks, services, landscaping and pools.

17. The covenants also restrict the landowner from using or permitting the use of the site for the manufacture or winning of bricks, tiles or pottery ware. The subject sites context has changed significantly since the start of these restrictions on each title. The site is located within a residential zone identified for growth and a Development Plan has been approved for 127 dwellings across the site. The zoning of the site prohibits the manufacture or winning of bricks, tiles or pottery ware and the approved Development Plan clearly considers a development that would preclude any such activities.
18. The old-fashioned covenants were imposed on the Titles prior to the advent of the modern planning system which is able to more appropriately deal with uses and activities that have off-site amenity impacts. More specifically the Residential Growth Zone prohibits stone extraction and the winning of clay, gravel, rock, sand or soil, while Clause 52.09 (Stone extraction and extractive industry interest areas) and Clause 52.10 (Uses with adverse amenity potential) control such uses and their off-site amenity impacts.
19. The covenants were originally responding to an issue of quarrying and brick and tile manufacture that no longer exist in this area. The covenants are of no relevance to the context of the site.
20. The removal of the covenants will precipitate the development of the land as envisaged by the planning scheme and approved by Council.

122 Woods Street, Newport

21. The Woods Street site is held in three parcels (Lots 81-83), two of which (Lots 82 and 83) are subject to restrictive covenants. The covenant reserves this part of the property for the purposes of public recreation.
22. The Amendment seeks to facilitate the removal of the restrictive covenants from both of the lots, by modifying the Schedule to Clause 52.02 of the Hobsons Bay Planning Scheme. Consequently, it will be possible to lodge a plan of removal of restriction for certification under Section 23 of the *Subdivision Act 1988* showing the restrictive covenants as removed. Upon that plan of subdivision being lodged and registered at the Titles Office, the restrictive covenants affecting both lots will be removed.
23. Lots 82 and 83 were purchased by the former City of Williamstown from the Commonwealth of Australia in 1954 with the intention of constructing a baby health centre, kindergarten and public hall. The buildings were constructed in approximately 1954 contravening the covenant. At that point in time this commonly occurred as it was not until the introduction of the Restrictive Covenants Bill 2000 that the restrictions on covenants were legally enforced.
24. In 2014 the property was vacated following the completion of the Newport Gardens Early Years Centre located at 51 Maddox Road Newport and the transition of services to that facility.
25. Lot 81 was purchased by Council in 1961 and formed part of the kindergarten property. Lot 81 is on a separate title, free of any encumbrances. Therefore Lot 81 would not be affected by the amendment.
26. The removal of the covenant reflects the use of the land over at least the past 64 years.

Analysis

27. In relation to the Blackshaws Road site, the removal of the covenants is essentially a technically required process in order to achieve the expected development outcomes on the site. The matter for consideration is not whether the land should be reused, rezoned, or approved for development; these matters have been through their own processes and the results are as stated in sections above. The only matter for consideration in this proposed planning scheme amendment is whether it is reasonable to remove old-fashioned covenants that apply to 26 of 34 parcels making up the property, which prevent efficient development of the site, as approved.
28. There appears to be no good reason to oppose such an action.
29. In relation to the Woods Street site, the property has been used for community facilities since its purchase in 1954. There appears to have been no intention nor expectation by the Council nor local community that it should be re-purposed to public recreation. No person currently benefits from the existence of the covenant, it is therefore ineffective and has been since Council purchased the site.

30. The local community had, however benefitted from the use of the land for early years services. Those services have now been relocated and to a newer and improved facility nearby, therefore there is no net loss of public provisions in the neighbourhood.
31. Council open space and recreation policies and plans identify that sufficient open space is available in the area for the current and expected population. Therefore, there is no justification to maintain a restrictive covenant on the property that has not been necessary nor effective for over 60 years.
32. The modification of the Schedule to Clause 52.02 is a clear and simple method of achieving the removal of the covenants and the draft amended clause is included as an attachment.

Conclusion

33. At both the Blackshaws Road and Woods Street site the removal of the restrictive covenants is reasonable as neither property has had need for, nor therefore benefitted from the existence of the encumbrances. The removal will allow the properties to be developed and used in accordance with the planning scheme and approvals issued. The proposed method of removal via amending the Scheduled to Clause 52.02 is appropriate and provides for an open and transparent public consultation process.

HOBSONS BAY PLANNING SCHEME

AMENDMENT C116

EXPLANATORY REPORT

Who is the planning authority?

This amendment has been prepared by Hobsons Bay City Council, which is the planning authority for this amendment.

The Amendment has been made, in part, at the request of Development Victoria.

Land affected by the Amendment

The Amendment applies to 430-436 Blackshaws Road, Altona North (formerly Altona Gate Primary School) and 122 Woods Street, Newport (formerly Hobsons Bay Kindergarten and Toy Library).

What the amendment does

The Amendment would change the Schedule to Clause 52.02 to include all restrictive covenants that apply to 430-436 Blackshaws Road, Altona North and 122 Woods Street, Newport.

Strategic assessment of the Amendment

Why is the Amendment required?

430 - 436 Blackshaws Road, Altona North

Twenty six (26) of the lots to which the Amendment applies are subject to a restrictive covenant which restricts any excavation on site, except for the purposes of a buildings foundation, and prohibits the use of the site for the manufacture or winning of bricks, tiles or pottery ware.

For a site of this scale, limiting excavation to only that required for a buildings footprint unduly restricts the sites orderly and sustainable development. The restrictive covenants constrain the development of the site as anticipated by the Hobsons Bay Planning Scheme by restricting excavation related to an internal road and pedestrian network, services and landscaping areas.

The covenants were originally applied to respond to an issue of quarrying and brick and tile manufacture that no longer exist in this area. The site is located within the Residential Growth Zone and a Development Plan has been approved for 127 dwellings across the site. The zoning of the site prohibits the manufacture or winning of bricks, tiles or pottery ware and the approved Development Plan clearly considers a development that would preclude any such activities.

The old-fashioned covenants were imposed on the titles prior to the start of the modern planning system which is able to more appropriately deal with uses and activities that have off-site amenity impacts. More specifically the Residential Growth Zone prohibits stone extraction and the winning of clay, gravel, rock, sand or soil, while Clause 52.09 (Stone extraction and extractive industry interest areas) and Clause 52.10 (Uses with adverse amenity potential) control such uses and their off-site amenity impacts. The covenants are of no relevance to the context of the site.

122 Woods Street, Newport

In 2014 this property was vacated following the completion of the Newport Gardens Early Years Centre located at 51 Maddox Road Newport and the transition of services to that facility.

Two of the lots that comprised the property housing the former kindergarten, are subject to a covenant that restricts the use of the land to public recreation. Despite this, the land has been occupied by the kindergarten since it was purchased specifically for that, and related, purposes in 1954. Since that time, there has never been any expectation that the land would be used for public recreation. Adequate open space is located within short walking distance from the site in Loft Reserve and Jack Madigan Reserve. The removal of the covenant will better reflect the current status of the land.

How does the Amendment implement the objectives of planning in Victoria?

The amendment implements the objectives of Planning in Victoria by addressing the following objectives set out in Section 4 of the *Planning and Environment Act 1987*.

- To provide for the fair, orderly, economic and sustainable use, and development of land.
- To secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria.
- To facilitate development in accordance with the objectives.
- To balance the present and future interests of all Victorians.

The proposal satisfies the objectives of the Act.

How does the Amendment address any environmental, social and economic effects?

The Amendment will have positive environmental, social and economic effects by enabling the efficient and sustainable use and development of the sites as anticipated by the Hobsons Bay Planning Scheme, and in the case of the Blackshaws Road site, the approved Development Plan.

Does the Amendment address relevant bushfire risk?

The sites have not been identified as being subject to bushfire risk. The proposed removal of covenants on the sites will have no impact on the bushfire risk on the sites or surroundings.

Does the Amendment comply with the requirements of any Minister's Direction applicable to the amendment?

The amendment complies with the Ministerial Direction on the Form and Content of Planning Schemes under Section 7(5) of the *Planning and Environment Act 1987*, by using the appropriate planning tools available through the Victoria Planning Provisions.

Ministerial Direction 9: Metropolitan Planning Strategy has been considered during the preparation of this amendment and it is considered to comply, particularly as it removes unnecessary and burdensome requirements on the land.

The amendment complies with Ministerial Direction 11: Strategic Assessment of Amendments through the preparation of this Explanatory Report.

As the amendment progresses, work will be completed within the timeframes set out in Ministerial Direction 15: the Planning Scheme Amendment Process.

How does the Amendment support or implement the State Planning Policy Framework and any adopted State policy?

The State Planning Policy Framework (SPPF) identifies principles of land use and development planning relevant to the current Amendment. The Amendment and subsequent covenant removal would enable the efficient and sustainable development of the subject sites which is consistent with the following State Planning Policies:

Clause 11 (Settlement) states planning is to anticipate and respond to the needs of existing and future communities through provision of zoned and serviced land for housing, employment, recreation and open space, commercial and community facilities and infrastructure. Planning is also to facilitate sustainable development that takes full advantage of existing settlement patterns, and investment in transport and communication, water and sewerage and social facilities.

Clause 11.02-1 (Supply of Urban Land) includes a strategy of planning for urban growth which considers opportunities for the consolidation, redevelopment and intensification of existing urban areas.

Clause 16.01-1 (Integrated Housing) includes the strategy of increasing the supply of housing in existing urban areas by facilitating increased housing yield in appropriate locations, including under-utilised urban land.

Clause 16.01-2 (Location of Residential Development) includes the objective of locating new housing in or close to activity centres and in urban renewal precincts and sites that offer good access to jobs, services and transport.

How does the Amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?

The Amendment is consistent with the LPPF by enabling the efficient and sustainable development of an under-utilised site for housing diversity in an existing urban area with access to employment, services, transport options, community facilities, recreation and open space. In addition, the community needs for the social infrastructure previously provided on both sites is adequately provided for elsewhere.

Does the Amendment make proper use of the Victoria Planning Provisions?

The Schedule to Clause 52.02 is the most appropriate planning tool to achieve the removal of the covenants. The application of this control does not conflict with the zoning and overlay provisions of the subject sites or surrounds. There is no duplication of controls which apply to the land. Furthermore, the amendment complies with all the relevant Practice Notes.

How does the Amendment address the views of any relevant agency?

The Hobsons Bay City Council is the Responsible Authority for the area, and the amendment is being undertaken with its support. The views of relevant agencies will be sought and considered during the amendment process. Additionally, all interested parties will have the opportunity to comment and make submissions through the statutory exhibition process.

Does the Amendment address relevant requirements of the Transport Integration Act 2010?

The proposal will not impact on any components of the transport system as defined in Section 3 of the *Transport Integration Act 2010*. Accordingly, a full assessment of the proposal against the requirements of Section 25 of the *Transport Integration Act 2010* is not required.

Resource and administrative costs

There will be no substantive impact on the resources of the Responsible Authority.

Where you may inspect this Amendment

The Amendment is available for public inspection, free of charge, during office hours at the following places:

Hobsons Bay City Council Civic Centre
115 Civic Parade
Altona VIC 3018

Altona Library
123 Queen Street
Altona VIC 3018

Altona North Community Library
180 Millers Rd
Altona North VIC 3025

Altona Meadows Library
1-23 Central Avenue
Altona Meadows VIC 3028

Newport Community Hub
13-15 Mason Street
Newport VIC 3015

Williamstown Library
104 Ferguson Street,
Williamstown VIC 3016

The Amendment can also be inspected free of charge at the Department of Environment, Land, Water and Planning website at www.delwp.vic.gov.au/public-inspection.

Submissions

Any person who may be affected by the Amendment may make a submission to the planning authority. Submissions about the Amendment must be received by [insert submissions due date].

A submission must be sent to:

Kathleen McClusky
Manager Strategy and Advocacy
PO Box 21
Altona Vic 2018

Panel hearing dates

In accordance with clause 4(2) of Ministerial Direction No.15 the following panel hearing dates have been set for this amendment:

- directions hearing: [insert directions hearing date]
- panel hearing: [insert panel hearing date]]

Planning and Environment Act 1987

HOBSONS BAY PLANNING SCHEME

AMENDMENT C116

INSTRUCTION SHEET

The planning authority for this amendment is the Hobsons Bay City Council.

The Hobsons Bay Planning Scheme is amended as follows:

Planning Scheme Ordinance

The Planning Scheme Ordinance is amended as follows:

1. In Particular Provisions – Clause 52.02, replace the Schedule with a new Schedule in the form of the attached document.

End of document

--/20--
C116**SCHEDULE TO CLAUSE 52.02****1.0****Under Section 23 of the Subdivision Act 1988**--/20--
C116

Land	Easement or restriction	Requirement
Lots 196 and 197 on PS011502 and further being described in Certificate of Title Volume 05285 Folio 848 None specified	Covenant 1319212	The whole of the restriction is authorised for removal
Lot 198 on PS011502 and further being described in Certificate of Title Volume 08165 Folio 105	Covenant 1904468	The whole of the restriction is authorised for removal
Lots 199 and 200 on PS011502 and further being described in Certificate of Title Volume 06372 Folio 208	Covenant 1763961	The whole of the restriction is authorised for removal
Lot 201 on PS011502 and further being described in Certificate of Title Volume 05647 Folio 212	Covenant 1453022	The whole of the restriction is authorised for removal
Lot 202 on PS011502 and further being described in Certificate of Title Volume 05683 Folio 510	Covenant 1463040	The whole of the restriction is authorised for removal
Lot 203 on PS011502 and further being described in Certificate of Title Volume 05806 Folio 085	Covenant 1508823	The whole of the restriction is authorised for removal
Lots 205 and 206 on PS011502 and further being described in Certificate of Title Volume 07194 Folio 603	Covenant 2184914	The whole of the restriction is authorised for removal
Lot 209 on PS011502 and further being described in Certificate of Title Volume 05683 Folio 508	Covenant 1461864	The whole of the restriction is authorised for removal
Lot 210 on PS011502 and further being described in Certificate of Title Volume 05683 Folio 509	Covenant 1461864	The whole of the restriction is authorised for removal
Lot 211 on PS011502 and further being described in Certificate of Title Volume 08220 Folio 850	Covenant 1923222	The whole of the restriction is authorised for removal

Lots 212 and 213 on PS011502 and further being described in Certificate of Title Volume 06778 Folio 568	Covenant 1944146	The whole of the restriction is authorised for removal
Lot 214 on PS011502 and further being described in Certificate of Title Volume 06712 Folio 338	Covenant 1923223	The whole of the restriction is authorised for removal
Lot 215 on PS011502 and further being described in Certificate of Title Volume 05893 Folio 587	Covenant 1546524	The whole of the restriction is authorised for removal
Lot 216 on PS011502 and further being described in Certificate of Title Volume 05479 Folio 777	Covenant 1389998	The whole of the restriction is authorised for removal
Lot 217 on PS011502 and further being described in Certificate of Title Volume 07623 Folio 011	Covenant 2428949	The whole of the restriction is authorised for removal
Lot 220 on PS011502 and further being described in Certificate of Title Volume 05900 Folio 805	Covenant 1549148	The whole of the restriction is authorised for removal
Lot 221 on PS011502 and further being described in Certificate of Title Volume 06099 Folio 638	Covenant 1640973	The whole of the restriction is authorised for removal
Lot 222 on PS011502 and further being described in Certificate of Title Volume 07156 Folio 177	Covenant 2140931	The whole of the restriction is authorised for removal
Lot 223 on PS011502 and further being described in Certificate of Title Volume 07156 Folio 178	Covenant 2143296	The whole of the restriction is authorised for removal
Lots 227, 228, 229 on PS011502 and further being described in Certificate of Title Volume 05772 Folio 234	Covenant 1495473	The whole of the restriction is authorised for removal
Lots 82, 83 on PS 006394 and further being described in Certificate of Title Volume 08046 Folio 558	Covenant 2642396	The whole of the restriction is authorised for removal

2.019/01/2006
VC37**Under Section 24A of the Subdivision Act 1988**

Land	Person	Action
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None specified

3.0

19/01/2006
VC37

Under Section 36 of the Subdivision Act 1988

Land	Easement or right of way	Requirement
None specified		
