

Our ref: **RAH:20191740**

Direct dial: 03 9321 7889  
Direct email: rhofmann@rigbycooke.com.au  
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14 March 2024

William Bromhead  
Ratio  
8 Gwynne Street  
CREMORNE VIC 3121

**By Email only**      **williamb@ratio.com.au**

Dear William

**321 Lower Heidelberg Road & 1 Maltravers Road, Ivanhoe East  
Planning permit application no. P4/2024**

We are instructed that a planning permit application has been lodged for the use and development of land at 321 Lower Heidelberg Road & 1 Maltravers Road, Ivanhoe East (**Land**) for an integrated community facility (**Proposal**).

On 16 February 2024, Banyule City Council issued a request for further information (**RFI**) as follows:

*Council remains concerned that the proposed development is not consistent with the covenants applying to this site. A legal opinion on this matter is requested.*

You have asked us for an opinion to be provided in response to Council's RFI.

**Covenants**

1 Subsection 61(4) of the *Planning and Environment Act 1987* provides—

If the grant of a permit would authorise anything which would result in a breach of a registered restrictive covenant, the responsible authority must refuse to grant the permit unless a permit has been issued, or a decision made to grant a permit, to allow the removal or variation of the covenant.

2 The Land comprises seven separate titles. The titles are burdened by various covenants contained in instruments of transfers 1350689, 1101301, 1127466, 1394247, 1532483 and 1408211 (the **Covenants**).

3 The Covenants are expressed in similar terms. For example, the covenant in instrument of transfer 1127466 states:

*I JAMES ATHELSTAN KING ..... DO HEREBY TRANSFER to the said George James Dight all my estate and interest in ALL THAT piece of land being Lot 47 on Plan of Subdivision Number 8311 .... and being part of the land particularly described in the Certificate of Title Volume 3198 Folio 639578 AND in consideration of the transfer hereby made and executed ... the said George James Dight ..... doth hereby for himself his heirs executors administrators and transferees covenant with the said James Athelstan King his heirs executors administrators and*

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*transferees registered proprietor or proprietors for the time being of the land now comprised in the said Certificate of Title that he or they will not erect or cause to be erected more than one dwelling house (with the usual outbuildings) on the said land hereby transferred such house to have a roof of slate or tiles or any other material approved by the said James Athelstan King his heirs executors administrators or transferees and to cost not less than Five hundred pounds exclusive of outbuildings and that the said George James Dight his heirs executors administrators or transferees will not carry on or cause to be carried on upon the said land hereby transferred any brick making or quarrying operations nor remove any sand or gravel therefrom except for the purpose of building thereon nor carry on nor cause to be carried on any fell-mongery, butchering, poultry farming or other offensive operations or manufactures thereon.*

(emphasis added)

4 In summary, the Covenants seek to restrict:

- (a) more than one dwelling house being erected on each lot making up the Land (with the usual outbuildings) (**Dwelling Restriction**);
- (b) the use of each lot for the purposes of any fellmongery, butchering, poultry farming or other offensive operations or manufactures (**Use Restriction**).

5 The Covenants also require that a dwelling house erected on each lot is to have a roof of slate or tiles and any other material approved by the said James Athelstan King his heirs executors administrators or transferees and to cost not less than five hundred (**Roof Material Covenant**). As there is no dwelling proposed this restriction is not relevant.

## Proposal

6 The Proposal is for an integrated community facility, to be contained within a new multi-storey building and the existing 1941 church. The proposed uses of the Land are:

- Childcare centre;
- Medical centre;
- Restricted recreation facility (health club- incorporating gym, pool, wellness);
- Food and drink premises (café);
- Place of assembly (gallery – within the existing Church building).

## Consistency with the Covenants

7 In our opinion, the Proposal is consistent with the Covenants on the basis that:

- (a) the Proposal does not propose the erection of more than one dwelling house, and therefore on its face, is consistent with the Dwelling Restriction; and
- (b) the Proposal does not include fellmongery, butchering, poultry farming or other offensive operations or manufactures and therefore is consistent with the Use Restriction.

If you have any questions, please contact Reto Hofmann on 9321 7889 or Gemma Robinson on 9321 7848.

# RIGBY COOKE LAWYERS

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Yours faithfully



Rigby Cooke  
Lawyers

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