

WESTERN AUSTRALIA  
TRANSFER OF LAND ACT 1893 AS AMENDED

**BLANK INSTRUMENT FORM**

DEED OF RESTRICTIVE COVENANT – Port Coogee Marina  
Village (Deposited Plan 421729)

(Note 1)

Page 1 of 6 pages  
Date:

**DEED** dated 20

BY **PORT CATHERINE DEVELOPMENTS PTY LTD ACN 070 096 927** of Level 3 1C Homebush Bay Drive  
RHODES NSW 2138 (**Owner**)

**RECITALS**

- A. The Owner is the registered proprietors of the Land.
- B. The Owners intends to subdivide the Land.
- C. Pursuant to section 136D of the *Transfer of Land Act 1893* the Owners requires the Lots to be encumbered by the Restrictive Covenant so that the Restrictive Covenant will be noted on the Plan and when individual certificates of title issue for the Lots, the burden of the Restrictive Covenant is to be registered as an encumbrance on the certificates of title.

**OPERATIVE PART**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

In this deed, unless the context otherwise requires or a contrary intention appears:

**Land** means the land described in item 1 of the Schedule;

**Lots** means the lots specified in item 2 of the Schedule and shown on the Plan;

**Outbuilding** means any building constructed on the Lot other than a house, including but not limited to any workshop, garden shed or storage shed;

**Plan** means Deposited Plan 421729;

**Quiet House Design Guidelines** means the document and appendices described as "Quiet House Design Guidelines" that are in the form approved or adopted by the Owner from time to time.

**Restrictive Covenant** means the restrictive covenants specified in item 3 of the Schedule;

**Schedule** means the Schedule to this deed; and

**Settlement** means the date of registration of the transfer of the Lot from the Owner to the proprietor of the Lot.

**1.2 Interpretation**

- (a) A reference to a person includes a reference to the person's personal representatives, executors, administrators, successors and assigns and a reference to a corporation includes a reference to a corporation's successors and assigns.
- (b) A reference to any person if that person ceases to exist or is reconstituted, renamed or replaced or its powers or functions are transferred to any other person, refers respectively to the person established or constituted in its place or succeeding to its powers or functions.

- (c) An obligation, covenant, representation, or warranty on the part of 2 or more persons is for the benefit of them jointly and each of them severally.
- (d) An obligation, covenant, representation or warranty on the part of 2 or more persons binds them jointly and each of them severally.
- (e) A reference to any thing includes the whole or any part of that thing and a reference to a group of things or persons includes each thing or person in that group.
- (f) A reference to a clause or paragraph, the Schedule or an annexure is a reference to a clause or paragraph in this deed and the Schedule and the relevant annexure to this deed respectively.
- (g) The index and all headings have been included for ease of reference only and they are not to be used to construe or interpret any part of this deed.

**2. SECTION 136D OF THE TRANSFER OF LAND ACT 1893**

Pursuant section 136D of the *Transfer of Land Act 1893*, the Owner requires each certificate of title which issues for the Lots to be encumbered by the Restrictive Covenant.

**3. LAND TO BE BURDENED BY THE RESTRICTIVE COVENANT**

The Owner intends the burden of the Restrictive Covenant to:

- (a) run with the land described in the certificates of title for the Lots; and
- (b) be enforceable by the Owner and each and every subsequent registered proprietor of the Lots.

**4. LAND TO BE BENEFITED BY THE RESTRICTIVE COVENANT**

The Owner intends the benefit of the Restrictive Covenant to be for the Lots.

**5. VALIDITY AND ENFORCEABILITY**

Each of the restrictive covenants specified in item 3 of the Schedule is a separate and distinct covenant and if any covenant or its application to any person or circumstances is or becomes invalid or unenforceable then the remaining covenants will not be affected and each remaining covenant will be valid and enforceable to the fullest extent permitted by law.

**6. TERM OF THE RESTRICTIVE COVENANT**

The Restrictive Covenant shall expire and cease to have effect from and including 10 years from the date of registration of the application for new certificates of title for the Lots.

## SCHEDULE

**1. Land**

Lot 9153 on Deposited Plan 410557, being the whole of the land in Certificate of Title Volume 2921 Folio 271

**2. Lots**

All Lots on the Plan except Lot 9162.

**3. Restrictive Covenant**

The proprietors of each of the Lots will not:

- (a) construct a dwelling on the Lot which is transportable or otherwise not of a permanent nature;
- (b) construct a car port;
- (c) construct a garage with a roof of any material other than the material used for the roof of the dwelling;
- (d) use any roof materials in connection with any dwelling on the Lot other than concrete tiles, clay tiles, slate, Colorbond or zinalume which has been painted or otherwise coated with a non-reflective surface;
- (e) install any solar hot water heater which does not fit the roof profile of the dwelling or which is elevated at an angle to the roof profile or which does not otherwise match or complement the dwelling;
- (f) install any solar hot water heater tanks which are visible from outside the Lot;
- (g) erect any satellite dishes or antennas of any kind on the front facades of any building on the Lot or forward of the building line;
- (h) erect any radio, television, telecommunication or other tower on the Lot;
- (i) construct any Outbuilding on the Lot between a dwelling and primary street unless it is not visible from the street in front of the dwelling or unless, if visible from any other street, it is constructed of material predominantly brick or Colorbond and in the same colour scheme as the dwelling constructed on the Lot;
- (j) install a clothes line or rain water tank which is visible from any street;
- (k) construct any fence or wall from the dwelling on the Lot to the boundary of an adjoining lot unless:
  - (i) the wall or fence is not visible from any street and is behind the building line; or
  - (ii) the fence or wall is constructed from materials predominantly rendered brick or Colorbond material;
- (l) allow any boundary fence to fall into a state of disrepair;
- (m) allow any building materials or rubbish to remain at the front of the dwelling constructed on the Lot or otherwise in a place visible from the street or public open space for longer than one (1) month after the dwelling has become available for occupation by residents;
- (n) leave any vacant area on the front of the Lot in an unlandscaped condition for longer than three (3) months after the dwelling has become available for occupation by residents. For the purpose of this covenant, 'unlandscaped position' means that the unlandscaped portion of the Lot is not grassed, planted with vegetation or otherwise beautified by natural or artificial means;
- (o) display any advertising or business sign on the Lot or in any window of or on the walls of the dwelling on the Lot except for a temporarily placed professionally produced real estate sign associated with the proposed sale of the Lot;

- (p) erect a "For Sale" sign on the Lot prior to the first anniversary of the date of Settlement;
- (q) carry out or allow the carrying out of repairs to any vehicle, motorcycle, trailer, boat or caravan on the Lot unless in a position not visible from any street, waterway or any lot adjacent to the Lot;
- (r) park or store (or allow to be parked or stored) any vehicle of a commercial nature, such as a truck or utility, or any caravan, trailer, boat or any mobile machinery (except for commercial vehicles in use by non-resident tradesperson during the normal course of business) unless any such vehicle or item is housed or contained wholly within a garage or other fully enclosed storage area on the Lot;
- (s) store any rubbish disposal container in any place within the Lot which is visible from any street (other than at times when the container is put out for street collection and where it will be removed as soon as possible after collection);
- (t) construct any dwelling on the Lot without, at the same time, constructing a letter box at the street frontage in the same material and finish as the walls of the dwelling;
- (u) construct any dwelling on the Lot:
  - (i) without two (2) or more clearly defined wall materials neither of which is greater than 80% of the front elevation (not including windows);
  - (ii) which has eaves, except where nil lot boundaries with less than 450 mm overhang; and
  - (iii) with air conditioning units visible from the primary street;
- (v) construct on the front boundary of the Lot a wall or fence other than a masonry or rendered finish wall not greater in height than 0.5 metres above the natural ground surface (except for any vertical support pillars, which may be not greater in height than 1.8 metres above the natural ground surface) which masonry or rendered finish wall must return along the side boundary of the Lot to the building set back and incorporate any letterbox and home number;
- (w) in respect of any fence on the top of any retaining wall which was constructed by the Seller:
  - (i) fail to maintain the retaining wall fence in good condition;
  - (ii) where the retaining wall fence requires repair or replacement, use materials other than those which are substantially identical with those use in its original construction; or
  - (iii) build any other fence in front of or immediately behind the retaining wall fence;
- (x) subject to covenant 3(w), construct a fence on the boundary of the Lot adjacent to a side street or public park space side of an adjacent lot unless the fence is a 1.8 metre high semi permeable screen fence which is at least 70% permeable using timber or aluminium horizontal battens or louveres;
- (y) subject to covenant 3(w), construct any fence on any boundary of the Lot unless the fence is constructed from masonry or has a rendered finish;
- (z) construct any residence, or alter the structure, integrity or finish of a completed residence, except in accordance with plans and specifications that comply with the Design Guidelines and Local Development Plan and have received the prior approval or consent of the Local Government and any Relevant Authority having jurisdiction; or
- (aa) construct any residence, or alter the structure, integrity or finish of a completed residence, except in accordance with plans and specifications that comply with the Quiet House Design Guidelines.

#### **4. Encumbrances**

Nil.

EXECUTED as a Deed

Executed on behalf of **PORT CATHERINE  
DEVELOPMENTS PTY LTD**  
**ACN 070 096 927**

by its Attorney .....  
under Power of Attorney No.O368269 dated 7 February 2020  
in the presence of:

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Attorney

\_\_\_\_\_  
Name of witness (print)

\_\_\_\_\_  
Address

\_\_\_\_\_  
Occupation

**INSTRUCTIONS**

1. This form may be used only when a "Box Type" form is not provided or is unsuitable. It may be completed in narrative style.
2. If there is insufficient space Additional Sheet, Approval No B1191, should be used.
3. Additional Sheets shall be numbered consecutively and bound to this document by staples along the left margin prior to execution by the parties.
4. No alteration should be made by erasure. The words rejected should be scored through and those substituted typed or written above them, the alteration being initialled by the persons signing this document and their witnesses.

**NOTES**

1. Insert document type.
2. A separate attestation is required for every person signing this document. Each signature should be separately witnessed by an Adult Person. The full name, address and occupation of the witness must be stated.

**EXAMINED**

OFFICE USE ONLY

LODGED BY

ADDRESS

PHONE NO.

FAX NO.

REFERENCE

ISSUING BOX NO.

PREPARED BY Minter Ellison

ADDRESS Allendale Square, 77 St Georges Tce  
PERTH WA 6000

PHONE NO. (08) 6189 7800 FAX NO. (08) 6189 7999

REF: MYN:LJR 1348841

INSTRUCT IF ANY DOCUMENTS ARE TO ISSUE TO OTHER THAN LODGING PARTY

TITLES, LEASES, DECLARATIONS ETC LODGED HEREWITH

- |    |       |                 |
|----|-------|-----------------|
| 1. | _____ | Received items  |
| 2. | _____ |                 |
| 3. | _____ | Nos.            |
| 4. | _____ |                 |
| 5. | _____ | Receiving Clerk |
| 6. | _____ |                 |

Registered pursuant to the provisions of the TRANSFER OF LAND ACT 1893 as amended on the day and time shown above and particulars entered in the Register.