

Section 136D Deed of
Restrictive Covenant -
Port Coogee:
Stage 4C - Seaspray

Dated

Port Catherine Developments Pty Ltd (ACN 070 096 927) (Registered
Proprietor)

Mallesons Stephen Jaques

Level 10
Central Park
152 St George's Terrace
Perth WA 6000
Australia
T +61 8 9269 7000
F +61 8 9269 7999
DX 210 Perth
www.mallesons.com
RNK:LMI: 09-0055-6793
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Section 136D Deed of Restrictive Covenant - Port Coogee: Stage 4C - Seaspray Details

Parties	Registered Proprietor	
Registered Proprietor	Name	Port Catherine Developments Pty Ltd
	ACN	070 096 927
	Address	Level 3, 1C Homebush Bay Drive, Rhodes, New South Wales
Deposited Plan	[to be inserted]	
Land	Lot ____ on deposited plan _____ being the whole of the land comprised in certificate of title volume ____ folio ____.	
Lots	Lots ____ to ____ (both inclusive) on the Deposited Plan.	
Recitals	A	The Registered Proprietor is the registered proprietor of an estate in fee simple of the whole of the Land.
	B	The Registered Proprietor is subdividing the Land by the registration of the Deposited Plan.
	C	Pursuant to section 136D of the Transfer of Land Act 1893 the Registered Proprietor wishes to register restrictive covenants in respect of all of the Lots within the Deposited Plan so that those covenants will benefit and burden those Lots.
Governing law	Western Australia	
Date of deed	See Signing page	

Section 136D Deed of Restrictive Covenant - Port Coogee: Stage 4C - Seaspray General terms

1 Definitions

In this Deed:

commercial vessel means any vessel that is not licensed or registered as a private pleasure craft;

Deposited Plan means the deposited plan referred to in the Details of this deed;

Detailed Area Plan means the plan entitled “Detailed Area Plan” that is in the form approved or adopted by the City of Cockburn from time to time;

Design Guidelines means the document and appendices described as “Design Guidelines” that are in the form approved or adopted by Port Catherine Developments Pty Ltd from time to time;

Jetty Design Guidelines means the document and appendices described as “Jetty Design Guidelines” that are in the form approved or adopted by the City of Cockburn from time to time;

Land means the land described in the Details of this deed;

Lot means the lots referred to in the Details of this deed and “Lots” has a corresponding meaning;

Mooring Envelope means that area of the Lot designated for the mooring of vessels as marked “D” on the Deposited Plan;

Revetment Wall means the wall separating the land filled part of a Lot from the submerged part of a Lot;

vessel includes any waterborne thing;

Waterway means any area of water outside the Mooring Envelope;

Waterways Manager means the party charged with the obligation to meet the objectives of the Waterways Environmental Management Program, identified as Report No. G04058 bearing date December 2004.

1.2 General interpretation

Unless the contrary intention appears a reference in this deed to:

- (a) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this deed;

- (b) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (c) **(meaning not limited)** the words “include”, “including”, “for example” or “such as” are not used as, nor is it to be interpreted as, a word of limitation and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Headings

Headings are inserted for convenience and do not affect the interpretation of this deed.

2 Covenants

2.1 Creation of Restrictive Covenants under s 136D

The Registered Proprietor pursuant to section 136D of the Transfer of Land Act 1893 creates the covenants set out in clause 2.2 in respect of the Lots and the covenants will be registered against the Certificate of Title to each Lot.

2.2 Restrictive Covenants

The Registered Proprietor (which expression includes the transferees, assigns and successors of the Registered Proprietor) covenants that the Registered Proprietor will not:

Dwelling covenants

- (a) construct a dwelling on a 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 zincalume 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, metal or aluminium battens 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, public open space or waterway for longer than one (1) month after the dwelling has become available for occupation by residents;
- (n) leave any vacant area or 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 condition” 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 before a dwelling has been constructed on the Lot prior to the third anniversary of the date of registration of the application for new certificates of title for the land in the Deposited Plan;
- (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 when it will be removed as soon as possible after collection) or waterway:
- (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 450mm 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 which was constructed by the Registered Proprietor on the top of any retaining wall:
 - (i) fail to maintain the fence in good condition;
 - (ii) where the fence requires repair or replacement, use materials other than those which are substantially identical with those used in its original construction; or
 - (iii) build any other fence in front of or immediately behind the fence;
- (x) subject to covenant 2.2(w) above, not construct any fence other than a fence located:
 - (i) on or adjacent to the water edge wall, and then only so long as the fence is not higher than 1.2 metres above RL 1.25 AHD and is visually permeable and constructed using glass panels, aluminium battens, screens, shutters or louvres; or
 - (ii) on that part of the side boundary of a Lot within 4 metres of the top of the water edge wall, and then only so long as the

fence is not higher than 1.2 metres above RL 1.25 AHD and is constructed from masonry or having a rendered finish; or

- (iii) on the side boundary of a Lot separating that Lot from an adjacent Lot this is not within 4 metres of the top of the revetment wall, and then only so long as the fence is 1.8 metres in height and is constructed from masonry or having a rendered finish; or
- (iv) on the side boundary of a Lot adjacent to a side street or public park, and then only so long as the fence is a 1.8 metre high semi permeable screen fence which is at least 70% permeable using timber or aluminium battens or louvres;
- (y) subject to covenant 2.2(w) and (x) above, 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 Detailed Area Plan and have received the prior approval or consent of Registered Proprietor, the local authority and any statutory authority having jurisdiction; or
- (aa) construct a bore or otherwise extract ground water from the Lot.

Revetment Wall covenants and submerged area

- (bb) where the Lot contains a Revetment Wall:
 - (i) allow the Revetment Wall to be damaged or to fall into disrepair;
 - (ii) impose any structural loading on the Revetment Wall or alter the structure, integrity or finish of the Revetment Wall other than in accordance with the prior approval of the Waterways Manager and any approvals required to be obtained under the Jetty Design Guidelines and Detailed Area Plan and in accordance with the prior approval or consent of the local authority and any statutory authority having jurisdiction;
 - (iii) prevent the Waterways Manager from carrying out inspections of the Revetment Wall;
 - (iv) fail to maintain the Revetment Wall in accordance with any order of the Waterways Manager;
- (cc) allow runoff or discharge into the submerged part of the Lot (including, but not limited to, allowing nutrient or pollutant discharge into the submerged part of the Lot);

Mooring and boat related covenants

- (dd) fuel, refuel, paint, repair or service boats or other vessels or marine equipment on the Lot;
- (ee) dispose of boat waste on the Lot or into the Waterway;
- (ff) introduce land fill into any part of the Lot which is submerged;
- (gg) do anything on the Lot which may interfere with navigation of the Waterway;
- (hh) moor a boat or vessel on the Lot which exceeds the length or width of the Mooring Envelope when normally moored alongside a jetty;
- (ii) moor a boat or vessel on the Lot which protrudes beyond the Mooring Envelope;
- (jj) allow any construction of any structure within or over any submerged part of the Lot, except for a jetty or mooring pole;
- (kk) construct a jetty, mooring pole or any other structure except in accordance with plans and specifications that comply with the Jetty Design Guidelines and Detailed Area Plan and have received the prior approval or consent of the local authority and any statutory authority having jurisdiction;
- (ll) construct a jetty outside the Mooring Envelope;
- (mm) build or leave in place any temporary or permanent structure on any jetty on the Lot;
- (nn) construct any boat lifting equipment or fuelling equipment (including a fuel bowser) on the Lot;
- (oo) construct a mooring pole on the Lot which exceeds 2.5m AHD;
- (pp) moor a commercial vessel on the Lot; or
- (qq) construct a mooring pole unless that mooring pole is within the Mooring Envelope and is located at least 0.3m in from the side boundary and at least 0.3m from the waterway edge of the Mooring Envelope.

3 Benefit and Burden

3.1 Binding of Registered Proprietor and successors etc

The burden of the covenants in clause 2 is appurtenant to and will run with the Lots for the benefit of every other Lot to the intent that the covenants will bind the Registered Proprietor and the registered proprietor from time to time of the Lots and will be for the benefit of the Registered Proprietor and any other registered proprietor from time to time of every other Lot but not so as

to render the Registered Proprietor personally liable in respect of any Lot after the Registered Proprietor has parted with all interest in that Lot.

3.2 **Expiry of certain Restrictive Covenants**

The covenants in subclauses 2.2(a) to (aa) inclusive expire on a date 10 years from the date of registration of the application for new certificates of title for the land in the Deposited Plan.

4 Consents under s136E of the Transfer of Land Act

The Registered Proprietor will obtain any consents required under section 136E of the Transfer of Land Act to the creation of this deed and the creation of the restrictive covenants over the Lots pursuant to Section 136D of the Transfer of Land Act.

EXECUTED as a deed

**Section 136D Deed of Restrictive Covenant -
Port Coogee:
Stage 4C - Seaspray
Signing page**

DATED: _____ 2008

PORT CATHERINE)
DEVELOPMENTS PTY LTD by)
its attorney **RICHARD FULCHER**)
under power of attorney registered)
number J928127 dated 21 September)
2006 in the presence of:)

.....)
Signature of witness)

.....)
Full name of witness (block letters))

.....)
Address of witness)

.....)
Occupation of witness)

.....
By executing this deed the attorney
states that the attorney has received
no notice of revocation of the power
of attorney