

MALLESONS STEPHEN JAQUES

# Section 136D Deed of Restrictive Covenant - Port Coogee: Stage 2C - DP 71031

Dated

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

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# Section 136D Deed of Restrictive Covenant - Port Coogee: Stage 2C - DP 71031

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# Section 136D Deed of Restrictive Covenant - Port Coogee: Stage 2C - DP 71031 Details

<b>Parties</b>	<b>Registered Proprietor</b>	
<b>Registered Proprietor</b>	Name	<b>Port Catherine Developments Pty Ltd</b>
	ACN	070 096 927
	Address	care of Level 2, 115 Cambridge Street, West Leederville, WA
<b>Deposited Plan</b>	71031	
<b>Land</b>	<p>Part of Lot 9108 on Deposited Plan 71030 being the whole of the land in Certificate of Title Volume _____ Folio _____; and</p> <p>Part of Lot 9109 on Deposited Plan 71030 being the whole of the land in Certificate of Title Volume _____ Folio _____; and</p> <p>Part of Lot 9110 on Deposited Plan 71030 being the whole of the land in Certificate of Title Volume _____ Folio _____ .</p>	
<b>Lots</b>	Lots 591 to 598 (both inclusive), Lots 617 to 623 (both inclusive), Lots 637 to 639 (both inclusive), Lot 949 and Lot 950 on the Deposited Plan.	
<b>Recitals</b>	<b>A</b>	The Registered Proprietor is the registered proprietor of an estate in fee simple of the whole of the Land.
	<b>B</b>	The Registered Proprietor is subdividing the Land by the registration of the Deposited Plan.
	<b>C</b>	Pursuant to section 136D of the Transfer of Land Act 1893 the Registered Proprietor wishes to register restrictive covenants in respect of the Lots so that those covenants will benefit and burden those Lots.
<b>Governing law</b>	Western Australia	
<b>Date of deed</b>	See Signing page	

# Section 136D Deed of Restrictive Covenant - Port Coogee: Stage 2C - DP 71031

## General terms

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### 1 Definitions

In this Deed:

**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;

**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;

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

#### 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.

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## **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:

- (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 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 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);
- (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 on the top of any retaining wall which was constructed by the Registered Proprietor:
  - (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 used in its original construction; or
  - (iii) build any other fence in front of or immediately behind the retaining wall fence;
- (x) subject to covenant 2.2(w) above, 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 louvres;
- (y) subject to covenant 2.2(w) 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 the local authority and any statutory 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.

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### **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 Lot 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 subclause 2.2 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.

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## **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 2C - DP 71031**  
Signing page

DATED: \_\_\_\_\_ 2011

**PORT CATHERINE** )  
**DEVELOPMENTS PTY LTD** by )  
its attorney **JULIAN URQUHART** )  
under power of attorney registered )  
number L342485 dated 8 June 2010 )  
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