

Section 136D Deed of Restrictive Covenant - Port Coogee: Stages 4B and 6A

Dated

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

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Section 136D Deed of Restrictive Covenant - Port Coogee: Stages 4B and 6A Details

Parties	Registered Proprietor	
Registered Proprietor	Name	Port Catherine Developments Pty Ltd
	ACN	070 096 927
	Address	care of Level 2, 47 Colin Street, West Perth
Deposited Plan	_____	
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 so that those covenants will benefit and burden those Lots.
Governing law	Western Australia	
Date of deed	See Signing page	

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General terms

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 a lot on the Deposited Plan and “Lots” has a corresponding meaning;

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:

- (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) construct a garage other than a garage which is accessible only from the eastern boundary of the Lot;
- (e) 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;
- (f) 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;
- (g) install any solar hot water heater tanks which are visible from outside the Lot;
- (h) 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;
- (i) erect any radio, television, telecommunication or other tower on the Lot;
- (j) 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;
- (k) install a clothes line or rain water tank which is visible from any street;
- (l) 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;
- (m) allow any boundary fence to fall into a state of disrepair;
- (n) 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 for longer than one (1) month after the completion of the dwelling;
- (o) 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;
- (p) 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;
- (q) 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;
- (r) 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;
- (s) 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;
- (t) 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):
- (u) 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;
- (v) 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:
- (w) in respect of any fence on the top of any retaining wall, or an estate boundary fence (which will be constructed on the western boundary of the Lot), which was constructed by the Registered Proprietor:
- (i) fail to maintain the retaining wall fence or the estate boundary fence in good condition;
 - (ii) where the retaining wall fence or estate boundary 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 or the estate boundary fence;
- (x) subject to covenant 2.2(w), construct a fence on the northern or southern boundary of the Lot adjacent to a side street unless 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) construct any fence on any boundary of the Lot using super six or other fibro cement material; or
- (z) construct any residence, or alter the structure, integrity or finish of a completed residence, other than in accordance with the Design Guidelines and Detailed Area Plan and in accordance with the prior approval or consent of Registered Proprietor, the local authority having jurisdiction.

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 in the Land to the intent that the covenants will bind the Registered Proprietor and the registered proprietor from time to time of the Lot and will be for the benefit of the Registered Proprietor and any other registered proprietor from time to time of every other Lot in the Land but not so as to render the Registered Proprietor personally liable after the Registered Proprietor has parted with all interest in the Land.

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.

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: Stages 4B and 6A
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