

RESTRICTIVE COVENANT

1. Clause 2 of this Annexure is an extract from the Deed of Restrictive Covenant as noted on Deposited Plan 414979 as registered at Landgate and the definition of the following words or phrases are defined in the Deed of Restrictive Covenant: “Lots”, “Subdivision Plan”, “the Owner”, “Owners of the Lots” and “the Land”.
2. Estate Covenants
 - 2.1 As to the Lots the Owner in its capacity as registered proprietor of each of the Lots for itself and all of the Owners of the Lots and each of them pursuant to the provisions of Section 136D of the Act for the purpose of creation of a restrictive covenant on the Subdivision Plan HEREBY COVENANTS and AGREES that none of the Owners of the Lots shall at any time:
 - 2.1.1. construct, erect or install or permit to be constructed, erected or installed on the Lots or any part of them:
 - (a) a residence other than a permanent non-transportable private residence (“a residence”) or any other dwellings in addition to a residence (“other dwelling”) (to which the Restrictive Covenants in paragraphs (f), (h), (i), (j), (k), (o), (p) and (q) shall apply, as if each other dwelling to be constructed on a Lot were a “residence” for the purpose of those paragraphs) unless:
 - (i) additional, group or multiple dwellings are permitted by the local planning scheme;
 - (ii) the number of dwellings (including a residence) do not exceed the maximum number of dwellings for which approval has been given by the relevant authority;
 - (iii) all of the Restrictive Covenants that are applicable to each other dwelling is complied with.
 - (b) a residence, unless a driveway and the cross-over between the road and the parking area on the Lot are constructed and completed prior to occupation of the residence;
 - (c) a residence, unless fences on all rear and side boundaries to the building frontage set back line are constructed or installed prior to occupation of the residence;
 - (d) a residence or other improvement (including but not limited to an alteration or addition to a residence) which does not contain a carport or garage making provision for parking of not less than two motor vehicles, side by side;
 - (e) an improvement to a residence (including but not limited to an alteration or addition to a residence) which, when completed, does not still contain a carport or garage on the Lot making provision for parking of not less than two motor vehicles side by side;
 - (f) any structure with walls and a flat roof, which is visible from public areas and which has a roof area exceeding 9 square metres which does not match the residence in respect of materials used, the design, external appearance, including colour and the quality of construction;
 - (g) a residence, unless all ground areas which are visible from the street or to a neighbouring owner (“visible areas”) are properly landscaped within 3 months after completion of the residence. “Properly landscaped” means that all visible areas must be cleared, grassed and planted;

- (h) a residence unless the external walls of the residence (or in the case of a double storey residence, the first storey of the residence) are constructed with concrete, rammed earth, clay bricks or stone;
- (i) a residence unless all external walls:
 - (i) which are visible from public areas are finished (either in face work or render) in concrete, rammed earth, clay bricks or stone; and
 - (ii) which are not visible from public areas are predominately finished (either in face work or render) in concrete, rammed earth, clay bricks or stone;
- (j) a residence or any other structure with walls and a roof using roof materials which are not concrete or clay tiles, slate, colourbond metal or painted metal;
- (k) a residence or any other structure using zincalume as wall or roof material;
- (l) a carport or garage which is not identical to the residence in respect of materials used, the design, external appearance, including colour and the quality of construction;
- (m) a dividing fence, other than a dividing fence which is constructed:-
 - (i) either:-
 - (A) on the boundary;
 - (B) within 40 centimetres of the edge of any retaining wall constructed on the common boundary;
 - (C) within 10 centimetres of the common boundary if no retaining wall is constructed on the common boundary and for any practical reason the fence cannot be constructed on the boundary; or
 - (D) on top of a retaining wall which is on the common boundary unless the fence posts are drilled into the retaining wall to a minimum depth of at least 600mm and have been constructed in accordance with specifications approved by a qualified engineer; and
 - (ii) using Colourbond with a steel frame and coloured 'Classic Cream' or if that colour is deleted or unavailable then such colour which is substantially the same as Classic Cream or masonry which is designed and constructed in accordance with specifications approved by a qualified engineer;
- (n) a letterbox which is not clearly numbered or is made of materials which do not match or complement the residence;
- (o) a solar hot water system or solar panels unless it fits the roof profile and is not elevated at any angle to the roof profile and otherwise matches or complements the residence;
- (p) an air conditioning unit or an evaporative cooler unless it is hidden from public view from the front of the Lot and is of similar colour to the roof or unless it is contained wholly within the volume of the building including the roof space between the ceiling of the residence and the underside of the roof of the residence; or
- (q) a radio aerial or satellite dish unless it is hidden from public view from the front of the Lot;

- 2.1.2. object to the adjoining owner constructing, or arranging for the construction of a dividing fence, or refuse or fail to contribute one-half of the lowest quoted cost of constructing or erecting a dividing fence proposed by the adjoining owner, which complies with these Restrictive Covenants;
- 2.1.3. where retaining walls or fences (including any gate in such retaining walls or fences) have been erected on the boundaries of the Lots:
- (a) cut, drill, deface or otherwise damage any of the retaining walls, fences or gates;
 - (b) construct, install, lay, support, suspend, extend or add any pipes, conduits or cables over, through or around the retaining walls unless such pipes, conduits or cables are under the retaining wall(s) and are completely buried so that no part is visible and the installation, use, repair and maintenance of such pipes, conduits or cables do not result in a breach of clause 2.1.3(a);
 - (c) allow or permit the retaining walls, fences or gates to fall into a state of disrepair;
 - (d) repair or renew such retaining walls, fences or gates except in the same style and colour as the existing retaining walls, fences and gates (unless a different style or colour of such repair or renewal has been approved by the City of Mandurah and all conditions and requirements imposed thereon by the City of Mandurah have been complied with); or
 - (e) alter or remove such retaining walls unless the approval of the City of Mandurah has first been obtained to such alteration or removal and all conditions and requirements imposed thereon by the City of Mandurah have been complied with;
- 2.1.4. allow the verge abutting the Lots to become overgrown or invaded by weeds or to fall into a state of disrepair;
- 2.1.5. commence construction of a residence on the Lot (or any part thereof) unless it has first obtained the consent of the Owner to the proposed plans and specifications of the residence to be constructed. The Owner acknowledges that it shall automatically approve the plans and specifications of the proposed residence if they comply with these Restrictive Covenants; or
- 2.1.6. erect or display or cause to be erected or displayed on the Lot or any part thereof, a "For Sale" sign unless a residence has been constructed and completed on the Lot in accordance with the plans and specifications approved by the Owner under clause 2.1.5.

3. Burden of Restrictive Covenants

The land to be burdened by the Restrictive Covenants contained in clause 2.1 is each of the Lots.

4. Benefit of Restrictive Covenant

The land to be benefited by the Restrictive Covenants contained in clause 2.1 is each of the Lots.

5. Term of Restrictive Covenants

The Restrictive Covenants are intended to run with each of the Lots until 31 DECEMBER 2023 after which date they will expire and be of no further force and effect.

6. Modification of Restrictive Covenants

The Restrictive Covenants will not be modified, surrendered, released or abandoned either wholly or partially except with the prior written consent of the registered proprietors of all of the Lots, from time to time. The registered proprietor of any Lot, from time to time, will not make an application to any Court, Landgate or any other government or statutory authority for the partial or total modification, removal or extinguishment of the Restrictive Covenants prior to 31 DECEMBER 2023 except with the prior written consent of the registered proprietors for the time being of all of the other Lots.

7. Arbitration

In the event of any difference or dispute arising regarding the interpretation of the restrictive covenant created pursuant to clause 2 then the dispute shall be referred to a single arbitrator nominated by the President for the time being of the Royal Australian Institute of Architects (Western Australia Division) pursuant to the provisions of the *Commercial Arbitration Act 2012* and whose decision shall take into account any guidelines which the Owner may issue from time to time in respect of the Subdivision Plan and which decision shall be final and binding on the Owners of the Lots.

8. Encumbrances

- 8.1 All of the Lots are encumbered by notifications created under s.165 of the Planning and Development Act 2005 noting that the Lots are in close proximity to mosquito breeding areas and that the mosquito species is known to carry Ross River Virus and other diseases; and
- 8.2 Lots 243 and 244 on the Subdivision Plan are encumbered by a notification created under s.70A of the *Transfer of Land Act 1893* noting that each of these lots may be affected by transport noise.