

PORT GEOGRAPHE GENERAL CONDITIONS (1995)

The Development Plan

The Vendor is the registered proprietor of certain lands ("the Port Geographe Lands") which it proposes to develop in stages over a period of time. The Vendor has prepared an overall development plan ("the Overall Development Plan") a copy of which is available for inspection from the Vendor or the Vendor's agent. Initially it is the Vendor's intention to complete the subdivision of the Port Geographe Land in accordance with the Overall Development Plan on a staged basis and the land the subject of this contract ("the Land") is a lot forming part of the Port Geographe Land comprised in a plan or plans ("the Development Plan") a copy or copies of which is/are attached.

2. The Development

The Vendor shall construct the subdivision development in accordance with the Development Plan ("the Development") to the satisfaction of the Shire of Busselton and substantially in accordance with the Development Plan in its present form or as amended by the Vendor from time to time. The Purchaser agrees the contract for the sale and purchase of the Land relates only to the Land in the Development Plan and, the Purchaser whilst acknowledging the intention of the Vendor to carry out the subdivision in accordance with the Overall Development Plan agrees that the Vendor may in the Vendor's absolute discretion defer, postpone, abandon (in whole or in part), discontinue, or in any way amend the Overall Development Plan. The Purchaser shall have no claim or entitlement to avoid, terminate or vary this contract or to claim damages or compensation from the Vendor or any other person as the result thereof. This contract and settlement of this sale and purchase is NOT subject to completion of the Overall Development Plan.

3. Zoning and Completion

The contract and the settlement of the sale and purchase is subject to and conditional upon the amendment of the Shire of Busselton Town Planning Scheme 5 ("TPS5") as amended from time to time and the approval of all relevant authorities of the subdivision of the Land substantially in accordance with the Development Plan so the same shall receive its appropriate zoning within twelve (12) months from the date of this contract.

4. Restrictive Covenants

- (a) The land is sold by the Vendor and purchased by the Purchaser free of all encumbrances save from such restrictive covenants as are hereby created and as appear in Paragraph 2 of the Port Geographe Development Guidelines and such easements as may be contained in the terms of the contract or as may be required to be registered in favour of Government instrumentalities in accordance with the requirements of the Development.
- (b) The Purchaser acknowledges and agrees to the creation and registration of restrictive covenants restricting and controlling the Purchaser's use of the land for the benefit of the proprietor or proprietors for the time being of all other Lots it being the intention of the parties hereto the same run with the land and be binding upon the Purchaser and all of the successors in title of the Purchaser.
- (c) The terms and conditions of the restrictive covenants shall be incorporated in the transfer of land required to be prepared by or on behalf of the Purchaser pursuant to the provisions of The 1994 Joint Form of General Conditions for the Sale of Land. Upon the registration of that transfer the restrictive covenants shall be registered as an encumbrance against the land and such restrictive covenants shall be on such terms and conditions as the Vendor's solicitors consider necessary or desirable together with such other amendments as may be required by the Vendor's Solicitors to give proper effect to the restrictive covenant.
- (d) If the Purchaser can establish to the reasonable satisfaction of the Vendor's solicitors that the same protection as would otherwise be provided to owners of other lots can be ensured by operation of law then the Vendor may elect not to require the creation of the said restrictive covenants or any one of them.

5. Variations

- (a) Conditions 8, 11 and 12 of The 1994 Joint Form of General Conditions for the Sale of Land shall be and are hereby deemed to be deleted from this contract.
- (b) The 1994 Joint Form of General Conditions for the Sale of Land ("the 1994 General Conditions") shall be amended by deleting:
 - (i) paragraph 1(d) from Condition 2 and by deleting paragraphs 2, 3 and 4 from Condition 2;
 - (ii) from paragraph 1 in Condition 16(3) the words "21 days" and substituting thereafter the words "1 year";
 - (iii) from Condition 16(4)(a) the words "3 months" and substituting thereafter the words "1 year";

(iv) from Condition 16(4)(b) the words "4 months" and substituting therefor the words "2 years";

(v) Condition 16(7) and substituting "Settlement in terms of Condition 4 shall be effected at an office specified by the Purchaser or the Purchaser's representative but, being located within the Central Business District of the City of Perth and, which settlement shall be effected within a time specified in any notice or advice provided by the Vendor's representative after the Diagram or Plan of Subdivision is deemed in order for dealing at the Office of Titles, Midland PROVIDED such date shall not be less than 14 days after the date the Diagram or Plan of Subdivision is deemed in order for dealing;

(vi) There shall be a new Condition 16(9) which will read as follows:

"Notwithstanding anything contained in Condition 16(4)(a) and Condition 16(4)(b) the Vendor may if it requires by giving notice in writing at any time before the latest time contained in Clauses 16(4)(a) or (16(4)(b) extend such time for a period of Three (3) months and in such case the time for the Vendor complying with the requirements of Clauses 16(4)(a) or 16(4)(b) shall be extended by such period".

(vii) paragraph 4 from Condition 23.

6. Differentiating Rate

The Vendor hereby notifies the Purchaser (and the Purchaser hereby acknowledges) that the Shire of Busselton may impose in respect of the land a differentiating general rate pursuant to the provisions of Section 548(4)(b) of the Local Government Act 1960 (as amended) for all or any of the land comprising the Port Geographe Lands.

7. Approval of Commencement

This Contract is subject to and conditional upon the Shire of Busselton approving the commencement of Development works in accordance with the Development Plan by the Vendor within 9 months of the date of this contract.

8. Zoning

Unless otherwise specified in the contract all land is sold on the understanding only a single residence is to be constructed thereon and the Vendor shall ensure the correct zoning exists for this purpose.

9. Land Description

The land shall be taken to have been correctly described as to area, description and otherwise as shown on the Development Plan and on the plan attached to the Contract and the Purchaser shall not be entitled to make any objection, requisition or claim for compensation by reason of any minor variation (including but not limited to location and dimensions and size) between the land as so shown and as constructed. Lot numbers on the attached Development Plan may vary on the final Plan of Subdivision and, the lot numbers on the attached Development Plan are for identification purposes and the Vendor reserves the right to vary the lot numbers as the Vendor sees fit.

10. Rates and Taxes

For the purposes of apportionment of rates, taxes and other outgoings unless and until separate assessments thereof are issued in respect of the land by the relevant authorities all necessary adjustments between the purchaser and the Vendor (whether on or after completion) shall be made on the basis that the Purchaser shall be liable to pay the proportion of all such rates taxes and outgoings levied or assessed against or in respect of the Port Geographe Lands which the area of the land bears to the total area of all Lots.

11. Caveat

The Purchaser shall not lodge a caveat in respect of the land or any part thereof howsoever and in the event of a caveat being lodged, the Purchaser irrevocably appoints the Vendor or the Vendor's solicitor as may be nominated by the Vendor in writing, as his attorney for the purpose of executing and registering a Withdrawal of Caveat absolutely. The costs of the Vendor shall be borne and paid by the Purchaser and recoverable therefrom.

12. Mortgage

The Vendor shall be entitled at any time prior to settlement of the land to register a mortgage or mortgages over the land or any part thereof for the purpose of proceeding with the Development in accordance with the Development Plan and/or for any refinancing of any existing mortgage or mortgages registered in respect thereof. The Vendor shall discharge any mortgage registered against the land hereby sold to the Purchaser at or prior to settlement, and at settlement all moneys paid by the Purchaser (including deposit) shall be applied towards discharging any mortgages in respect of the land hereby sold.

PORT GEOGRAPHE DEVELOPMENT GUIDELINES

1. INTRODUCTION

The Port Geographe Development is the subject of a Development Town Planning Scheme 5 as amended from time to time ("TPSS") in which is set out extensive details to ensure the quality of the development. TPSS and its amendments are a public document and prospective purchasers are invited to read them.

Permission has been granted to the Vendor to develop the Port Geographe land in accordance with TPSS as is amended from time to time on a staged basis.

The land forms part of the a staged Development as is depicted on an Overall Development Plan and is the subject of a subdivision application in accordance with the Development Plan to enable a certain number of lots to be created out of the Port Geographe land pursuant to TPSS as amended.

It is important to note the contract deals only with land in the Development Plan and the Vendor has a discretion as to whether it continues with or varies the subdivision and construction set out in the Overall Development Plan.

As part of the process to achieve and maintain high design landscape and environmental standards the Vendor may create an association to be controlled by the land owners ("The Association"). The Vendor also proposes to create covenants which attach to the land to ensure that the high standards are adhered to by all owners including future owners of lots in the development. The procedure for implementing those proposals are set out in Clauses 4 and 13 of these Conditions. Some of the matters which the covenants will regulate and/or will be controlled by the Association are now set out for your information.

Advancing technology produces new building products and different ways of using existing products so the Vendor reserves the right to approve other materials or finishes which in their opinion preserve the minimum standards.

2. DWELLINGS

Restrictive Covenants concerning Dwellings

The Purchaser acknowledges and agrees the land is sold subject to the following restrictive covenants which have been imposed by the Vendor for the protection of the Purchaser and for the enhancement and benefit of all Purchasers of land in the development and, the same shall be endorsed on the Transfer of Land as a Restrictive Covenant and shall be in a form acceptable to the Vendor or the Vendor's representative and shall take the following form:

1. NOW THEREFORE the Transferee for himself and his successors in title and registered proprietor or proprietors from time to time and for the time being of the land hereby covenants for the benefit of all the lots in Plan [the actual Plan of Subdivision] of which the Transferor is the Registered Proprietor and for the benefit of the Transferor and its successors in title and the registered proprietor or proprietors from time to time and for the time being of all of the land the subject of Plan [the actual Plan of Subdivision] (except the land hereby transferred), to the intent the following covenants shall run with and bind the land hereinbefore described and benefit the remainder of the Land in Plan [the actual Plan of Subdivision] as follows:

1.1 Type of Dwelling - Not to construct upon the land any buildings or outbuildings for use other than as a single dwelling private residence ("the Residence") having a minimum floor area, where the land is not a canal lot, of 150 square metres excluding areas under soffits porches garages carports and outbuildings and where the land is a canal lot having a minimum floor area of 200 square metres.

1.2 Wall Materials - Dwellings and outbuildings and extensions and renovations to dwellings and outbuildings shall at least have all external walls on the ground floor constructed with bricks finished in face work or render or, limestone or rammed earth or earth blocks.

1.3 Outbuildings - No outbuilding shed or garage being a separate building to the principal dwelling and comprising the Residence shall be constructed of a material different to the materials of the ground floor of the dwelling and if painted shall be of the same colour or colours as the principal dwelling.

1.4 Roof Materials - Dwellings and extensions and renovations to dwellings shall have roofs of clay, concrete tiles or colourbond metal. Gables and Dutch Gables incorporated as part of the roof framing may be constructed of coloured timber and fibro cement.

Control of Development

- (a) The Vendor has caused or may cause to be incorporated formed or established an association company or other body (whether or not the same is in existence at the date of this Contract) ("the Association") the purpose or one of the purposes of which is to regulate and control the Development of the lots by setting out rules regulations and guidelines relating to the type and/or the colour and/or reflectivity of building materials used or incorporated therein insofar as the same relate to any such building structure and/or improvement, and in relation also to all the Development Lands (including the land) the permitted use, the type and extent of landscaping required and the establishment maintenance and/or rules for use or otherwise of common property or facilities whether the same are provided by the Vendor and/or the Association for the use and/or enjoyment by the Purchaser and/or the owners for the time being of the lots.
- (b) The Purchaser shall unless exemption from this requirement is provided in writing by the Vendor join and maintain the Association or subscribe to and comply with such other company or regulatory body constitution rules memorandum of association articles of association or other similar regulations which may now or hereafter be formed by or on behalf of the Vendor pursuant to the provisions of paragraph (a) hereof.
- (c) The Purchaser shall comply with all rules regulations and guidelines set or determined or specified by the Association and/or the Vendor for the purposes of this condition. The Purchaser shall not do or omit to be done any act matter or thing the doing thereof or failure of which to do would constitute a breach thereof. The Purchaser acknowledges and agrees that the terms and conditions of this Condition 13 shall be binding upon the Purchaser and the successors in title of the Purchaser and that the same shall form part of and be incorporated in the restrictive covenants referred to in Condition 4 of the Port Geographe General Conditions.

4. Sporting Facilities

The Purchaser is aware the Vendor intends to construct as part of the overall Development various facilities including but not necessarily limited to tennis courts, parklands, sporting grounds and playing fields and other recreation facilities. The Purchaser in acquiring the Land has no proprietary interest or entitlement to the facilities or the right to control or exclude others from using the same. The Purchaser acknowledges the facilities may remain as the property of the Developer or, may be vested in the Shire of Busselton or be made subject to control of an Association of proprietors as determined by the Developer in the Developer's absolute discretion.

5. Signs

The Purchaser agrees he nor his agents or representatives shall not, before completing construction of a dwelling house upon the land erect on the land or display a "For Sale" sign. Nothing contained in this covenant shall restrict the Purchaser from selling or otherwise disposing of the land but at all times without the need to display such a sign.

16. Covenants to Survive Settlement

Wherever appropriate the various covenants on the part of the Purchaser contained in these conditions shall unless otherwise specified in writing survive settlement of the purchase of the Land.

17. Dividing Fences

The Purchaser indemnifies and shall keep indemnified the Vendor against any claim suit or demand brought by the Purchaser, or any other person as the owner or prospective owner of the land adjoining or abutting the Land hereby sold in respect for claims under the Dividing Fences Act or for the contribution or compensation for the construction of a dividing fence.

18. Interpretation

- (a) In the event of any inconsistency between The 1994 Joint Form of General Conditions for the Sale of Land and the Port Geographe General Conditions then the provisions of the Port Geographe General Conditions shall prevail.
- (b) Words or expressions used in the Port Geographe General Conditions which are not otherwise herein defined shall if the same are defined in The 1994 Joint Form of General Conditions for the Sale of Land unless the context otherwise requires have the same meanings as those ascribed therein.
- (c) Headings used in these Conditions are as a guide only and shall not affect the construction hereof.

19. Citation

These conditions may be cited as the Port Geographe General Conditions.

1.5 Carports and Verandahs

1.5.1 Supports – All supports to carports and verandahs are to be of timber, masonry or concrete construction using a colour to match the dwelling.

1.5.2 Roofing – Carports and verandahs should be located under the main roof but if not under the main roof, the material, colour and pitch of the roofing must be similar to the main dwelling.

1.5.3 Floors – Carport floors shall be brick paved or concrete to match the dwelling.

1.6 Vehicle Accommodation

Off-street parking shall be provided only by means of a roofed carport or garage (subject to the restriction as to building and building materials) for a minimum of two vehicles.

1.7 Driveways and Crossovers

A minimum of one single driveway and crossover must be provided to each allotment.

Driveways and crossovers shall be no wider than 6 metres at the street boundary of an allotment and no closer than 0.6 metres to any side boundary.

1.8 Television Antennas

If the Vendor installs a large television antenna for the use by all owners of lots in the development no external antennas will be permitted, but if external television are required they must be situated in an inconspicuous position and be of a height being not more than 2 metres above the highest point of any dwelling properly constructed on the land.

1.9 Landscaping

Not to do or fail to do anything which may result in the land or areas in public view not being landscaped within Six (6) months from construction of the residences on the Land.

1.10 Caravans

No caravans are to be parked on a lot forward of the building line and where the lot shall comprise a canal lot shall not be parked in any manner where such is visible from the canal.

1.11 Transportable Homes

No transportable dwelling houses or mobile homes shall be erected sited or located on the land.

1.12 Clothes Drying

No external clothing lines are to be constructed unless they are entirely screened from the public view.

1.13 Use of Property

The carrying out of any repairs or restorations of any motor vehicle, boat, trailers, aircraft or any other vehicle is prohibited on any lot unless screened from public view.

1.14 Proprietors' Association

When and as requested not to omit to join or fail to join any association of proprietors as hereafter described in this Clause 1.13 or do any other matter or thing which shall be deemed a breach of the regulations and guidelines determined and specified by any association created or to be created and comprising the Transferee and all Transferees of the lots the subject of the aforementioned Plan for the purpose of making and setting out rules regulations and guidelines relating to the type and/or colour and/or reflectability of building materials used or incorporated in buildings the subject hereof and in relation to the type and extent of landscaping required and the maintenance controlling and regulating and use of other or any common property or facilities for the benefit of the Transferee and the Transferee's successors in title and/or any other proprietors of the Land the subject of the Development Plan or the overall Development Plan.

1.15 Validity of Covenants and Restrictions

In case any of the covenants or restrictions herein contained shall be found by law to be invalid or void or unenforceable such shall not in any way affect or prejudice any of the other covenants restrictions or provisions aforesaid which shall then and thereafter remain of full force and effect.

1.16 Canal Lots

Where the land shall comprise a canal lot not to construct on any canal wall any structure improvement building or other erection.

1.17 Definition

For the purpose of these restrictive covenants "lot" or "land" shall include any lots in the Plan or Plans of Subdivision referred to herein.

"Canal lot" or "Canal lots" shall mean any lot depicted on the Development Plan or Plan of Subdivision as a canal lot or, being any lot having one or more boundaries which abut or adjoin those areas depicted on the Development Plan or Plan of Subdivision as waterways or canals.

"Public View" shall mean the view from any road adjacent to or abutting the front or sides of the land and where the land is a Canal lot reference to "Public view" shall include views from the canal or canals as the case may be or any part thereof and from any other Canal lot.

2. GENERAL

2.1 The Vendor reserves the right to create further restrictive covenants and to provide for further regulations or controls of the development by the Vendor or the Association to ensure the quality of the Development.

2.2 The restrictive covenants contained in these General Conditions are for information purposes only and the Vendor reserves the right to vary alter or amend the wording thereof as the Vendor thinks fit.

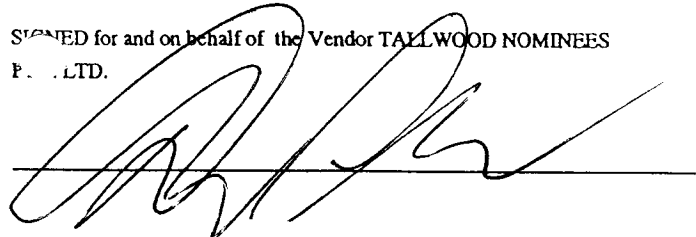
2.3 The benefit of the covenants and the rules and regulations will be for the benefit of every other lot in the plans of subdivision relating to the development, and the burden of the covenants shall also be attached to each lot sold.

2.4 The Vendor may assign its obligations and benefits described in these guidelines and in the Port Geographe Conditions to the Association.

2.5 The Vendor will incorporate the restrictive covenants to be given by the Purchaser as Transferee into a covenant by the Vendor on its behalf as the owner of the remaining land in the Development Plan which shall also be binding on the Vendor's successors in title in order to provide assurances to the Purchaser all land within the Development Plan shall be subject to similar covenants.

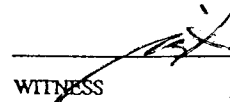
DATED the 28th day of January 1996

SIGNED for and on behalf of the Vendor TALLWOOD NOMINEES P. LTD.



SIGNED by the said Purch

in the presence of:


WITNESS

SIGNED by the said Purchaser

in the presence of: