

Building Covenants



BEACH LINK ESTATE

Building Covenants

Introduction

- A** The Seller and the Buyer entered into the Contract.
- B** The Contract requires the Buyer to enter into this Deed (as the “Building Covenant”) and the Buyer gives the covenants under this Deed to comply with the Contract.

It is agreed

1 Acknowledgments

- 1.1 The Building Covenants have been created to preserve the value of the Property and other lots in the Estate for the benefit of the Buyer and other owners in the Estate.
- 1.2 The Buyer acknowledges that it has made its own enquiries as to the requirements of the Building Covenants prior to entering into the Contract and impacts of the Building Covenants on construction of a Dwelling on the Property.
- 1.3 Any information supplied by or on behalf of the Seller in relation to this Building Covenant or requirements for a Dwelling, in addition to information given under the Contract, is supplied for the convenience of the Buyer and does not form part of the Contract. The accuracy of any information supplied is not warranted by the Seller as being suitable for the Buyer’s purposes and the Buyer acknowledges that it has entered into the Contract solely on the basis of the Buyer’s own investigations and enquiries as to all matters relevant to this Building Covenant and the construction of a Dwelling on the Property.
- 1.4 Without limiting clause 1.3, the Buyer acknowledges information in the Disclosure Statement (including in relation to any fill on the Property) and the Buyer must make its own investigations to satisfy itself concerning any proposed building operation as to the suitability of any footing, foundations or proposed construction given the nature of the Property and as to any requirements of the Council in that regard.
- 1.5 The Seller reserves the right to agree to vary or exclude any of the obligations under the covenants in this Deed provided that such action will only be taken by it in keeping with the aims to establish a modern well designed residential Estate.

1.6 The Buyer releases the Seller from any liability whatsoever for any action taken in the variation or exclusion of any covenant under this Deed or any similar covenant with any other purchaser in the Estate.

2 Construction of Dwellings

2.1 The Buyer must not construct a building other than a Dwelling house erected in accordance with the standards and specifications required by and approved by the local authority.

2.2 In this Deed and for the purposes of the Contract, a Dwelling means a single family dwelling house limited to not more than two floors and does not include a flat or multi-dwelling, the erection of which is prohibited unless the Seller gives its prior consent and approves any plans and specifications for such improvements.

2.3 Dwellings must be built to a high standard. Kit homes and removal homes are not permitted.

2.4 Dwellings must:

- (1) be of not less than 220 square metres of floor area including garage if under same roof - the developer may approve a total floor area less than 220m² with a minimum of 200m² if the design is approved and aesthetically pleasing to the estate;
- (2) enclosed with external walls of clay brick, granesite or similar materials, and Hamptons style linear board as shall be approved in writing by the Seller;
- (3) contain no second-hand or sub-standard material in its erection or of fences or other building structures; and
- (4) have roofs (including as incorporating the garage if applicable) which are tiled or colorbond or of such other materials as the Seller may agree to in writing and a minimum of 80% of the eaves must not be less than 600mm wide.

2.5 Garages are to be designed and constructed to be integrated with the Dwelling design, using the same form as the Dwelling. Garages must incorporate a roller or tilted door and be enclosed on all sides.

2.6 All clotheslines, TV antennas, satellite dishes, water tanks, solar or other hot water systems and air-conditioning units are to be situated so as not to be visible from the street front.

2.7 The mailbox should complement the style and colours of Dwelling.

2.8 The Buyer must use its best endeavours to ensure that construction of a Dwelling on the Property:

- (1) commences as soon as possible after the Settlement Date;
- (2) is completed within 12 months from the commencement of construction, including that landscaping is to be completed within 90 days of practical completion of the dwelling; and
- (3) proceeds on a continuous basis without substantial suspension of works after commencement of construction.

2.9 For the avoidance of doubt and for purposes of clause 2.8, the Buyer acknowledges that the construction of a Dwelling on the Lot is not completed if the landscaping works are incomplete.

3 Approval of Plans

- 3.1 The Buyer must obtain the written approval of the Seller or its authorized agent prior to commencing any building work on the Property and such approval may be given or withheld in accordance with this Deed and compliance with the Building Covenant.
- 3.2 The Seller will have due regard to the building controls described in these Building Covenants but may grant or refuse approval subject to other terms and conditions as it may reasonably determine in the context of any proposal put by the Buyer for construction of a Dwelling and associated improvements.
- 3.3 The Buyer must not submit any plans to the Bundaberg Regional Council or any other authority or certifier for approval prior to obtaining the approval of the Seller under this clause 3.
- 3.4 The Seller or its approved agent will not act unreasonably or capriciously in refusing any application or in imposing terms and conditions pursuant to this clause 3 and will endeavour to process approvals of plans within 7 days of receipt.

4 During construction

- 4.1 The Buyer must not, and ensure its contractors do not cause damage to the road, verge, kerb, streetscape and landscaping. The Buyer must make good any damage.
- 4.2 The Buyer must ensure that any contractor carrying out works on the property ensures the roadways within the estate are kept clean.
- 4.3 The Buyer agrees that if mud is placed on the roadway by any person working on the property that the Buyer is responsible for all costs incurred by the Seller in cleaning the roadways and such costs are payable on demand made by the Seller and may be recovered from the Buyer by the Seller as a liquidated sum..
- 4.4 The Buyer must keep the Property clean and tidy, maintain erosion and suitable erosion measures at all times. Any soil leaving the site must be cleaned by the builder or Buyer.

5 Use and residency conditions

- 5.1 The Buyer must not:
- (1) apply to the relevant local authority to survey or subdivide the Property into additional lots or parcels;
 - (2) apply to the relevant local authority for consent to erect a multiple dwelling or any application for approval for a material change of use or reconfiguration to establish a or community titles scheme; or
 - (3) construct or erect or cause to be constructed or erected on the Property a multi-dwelling of the type and nature usually known as a duplex dwelling or multi-dwelling or a maisonette dwelling or similar structures whether or not for the personal use of the Buyer.
- 5.2 The Buyer must not:
- (1) park or place any caravan or mobile home on the Property for the purpose of a residence; or
 - (2) erect, place, store or leave on the Property temporary structures, storage containers, boats, caravans, cars, motorhomes or the like or any materials or equipment (other

than during the period of construction of a Dwelling on the Property) or carry out on the Property, repairs to or maintenance of any vehicle or equipment, in such a way as, in the Seller's opinion, may cause nuisance or annoyance or detract from the amenity of the Estate.

- 5.3 The Buyer must at all times keep the Property properly mown and well maintained and free of weeds and rubbish to ensure the high standard of landscaping set by the Seller is maintained throughout the Estate.
- 5.4 No temporary dwelling, privy, tent or sub-standard dwelling shall be brought onto the Property except workshops to be used for the purpose of building the Dwelling and for the purpose of building such other permanent structure on the Property as may be permitted by the Seller. No person may reside in any portion of the Dwelling prior to completion of the Dwelling, and no person can reside in the workshops at any time.
- 5.5 Refuse bins must be kept to the side of the Dwelling and placed behind a fence or screen constructed between the Dwelling and a side boundary. Refuse bins must not be kept in front of the Dwelling or within the area of its setback from the street or otherwise unnecessarily in public view.

6 Building materials

- 6.1 No improvements previously erected on other land, or previously used building materials, shall be erected on the Property or used in the construction of any Dwelling or improvements on the Property.

7 Sheds

- 7.1 The Buyer shall not allow any carport, garage or other detached structure to be constructed on the Property unless:
 - (1) such structures are constructed of the same or similar materials as the Dwelling;
 - (2) proposals and plans for any metal sheds, carports and garages must be submitted to the Seller for approval prior to construction and must be constructed of pre-coloured metal panels that match the existing Dwelling;
 - (3) such structures are appropriately screened if erected between either side of the Dwelling and the side boundary;
 - (4) such structures are not erected between the front of the Dwelling and the front boundary; and
 - (5) such structures are not to be constructed prior to the construction of the Dwelling upon the Property.
- 7.2 The Buyer must ensure any shed is constructed of colorbond or materials consistent with the Dwelling. Galvanized iron, zinc or aluminium steel are not permitted. If colorbond is used, the colour shall be as close as possible to the colour of the Dwelling roof.
- 7.3 Sheds, pergolas or other structures must be positioned between the rear of the Dwelling and the back boundary.
- 7.4 Sheds with a floor area greater than 55m² must have plans submitted to the Seller for approval to confirm sufficient screening from neighbouring properties, however approval will not be unreasonably withheld.

8 Driveways

- 8.1 Driveways from garage to street must be constructed of stamped concrete, concrete aggregate or paved clay and construction must be completed within 90 days of the date of completion of construction of the Dwelling.
- 8.2 The kerb must not be cut to accommodate driveways without the Seller's and Council's consent.
- 8.3 Driveway tracks are not permitted, and the driveway must be full width.

9 Fences

- 9.1 The Buyer agrees that it is responsible, together with the owner (being an owner other than the Seller) of adjoining land to the Property for the erection, maintenance, or repair of any dividing or other dividing fence within the meaning of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)* and will not seek contribution from the Seller for the costs of carrying out fencing work for a sufficient dividing fence.
- 9.2 No fencing is to be placed on the road frontage, or on the side boundary forward of the front building line of the Dwelling unless agreed by the Seller at its discretion.
- 9.3 Unless otherwise consented to by the Seller in writing all fences will be a minimum of 1.2 metres to a maximum of 1.8 metres high and be constructed of timber CCA treated vertical paling, clay brick or rendered block or powder coated steel / aluminium.
- 9.4 A maximum of 10mm gaps shall be permitted between any vertical palings of fences.

10 Signs

- 10.1 The only signage permitted is real estate signage advertising the Property for sale and limited to one sign per property.

11 Default

- 11.1 If the Buyer fails to comply with this Deed the Seller may give the Buyer a notice (**Default Notice**) requiring the Buyer to rectify that failure within 7 days of receipt of the Default Notice and specifying what cations the Seller requires the Buyer to take to do so.
- 11.2 If the Buyer does not comply with a Default Notice, the Seller may take such actions as the Seller deems necessary to rectify the Buyer's failure or mitigate loss caused by the Buyer's failure and recover from the Buyer any costs (including its legal costs on a full indemnity basis) incurred by the Seller in doing so as a liquidated sum.
- 11.3 The Buyer indemnifies and must keep indemnified the Seller against any loss, cost, damage or expense (including legal expenses an indemnity basis) incurred by the Seller in connection with the Buyer's failure to comply with this Deed.

12 Estate fence or wall

- 12.1 In the event that there is any fence or wall proposed to be erected on or partly erected on the on the Project Land as at the date of the Contract the Buyer acknowledges that such fence or wall has been constructed for and on behalf of the Seller or its predecessor/s in title for the purposes of enhancing the value of the Property and also the Estate generally.
- 12.2 The Buyer agrees that if adjoining the Property, it will not remove, damage or disfigure the fence or wall.

13 Expiry

- 13.1 This Deed will expire automatically upon the expiration of 5 years from the Settlement Date under the Contract.

14 Assignment and benefit of covenants

- 14.1 The Buyer will not sell, transfer or otherwise dispose of the Property without first delivering to the Seller a Deed of Covenant executed by the buyer, transferee or disponent of the Property in favour of the Seller, containing covenants on the same terms (*mutatis mutandis*) as are set out in this Deed, where the buyer, transferee or disponent agrees to be bound by and comply with this Deed including the requirement to obtain such Deed of Covenant from any further buyer, transferee or disponent of the Property.
- 14.2 The Buyer acknowledges that the conditions of this Deed are not intended to be covenants for the benefit of, or capable of acceptance by, a third party under section 55 of the *Property Law Act 1974 (Qld)*.

15 Variation

- 15.1 An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

16 Execution of counterparts

- 16.1 This Deed may be executed in any number of counterparts and electronically.
- 16.2 All counterparts together constitute one agreement.
- 16.3 A party may execute this Deed by signing any counterpart.

17 Governing law and exclusive jurisdiction

- 17.1 This Deed is governed by the law in force in Queensland.
- 17.2 The Parties submit to the exclusive jurisdiction of the courts of Queensland or any competent Federal court exercising jurisdiction in Queensland. The dispute must be determined in accordance with the law and practice applicable in the court.

18 Definitions and interpretation

18.1 Definitions

In this Deed terms that have a defined meaning in the Contract have the same meaning and unless the contrary intention appears:

- (1) **Building Covenants** means the covenants provided in this Deed in respect of building and construction on the Property, Dwellings and other stated matters relevant to the use and occupation of the Property;
- (2) **Contract** means between the Buyer and the Seller to purchase the Property from the Seller;
- (3) **Council** means Bundaberg Regional Council;

- (4) **Deed** means this document, including any schedule or annexure to it;
- (5) **Disclosure Statement** means a disclosure statement and disclosure plan given under the Act in respect of the Lot and which accompanies the Contract;
- (6) **Estate** means the development known as “Beach Link Estate”; and
- (7) **Property** means Lot 45 on the Survey Plan.

18.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the Buyer’s executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
- (2) “Including” and similar expressions are not words of limitation.
- (3) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.
- (7) Terms that have a defined meaning in the Contract have the same meaning in this Deed.

18.3 Parties

- (1) If the Buyer consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) If the Buyer is a trustee it is bound both personally and in its capacity as a trustee.

Executed as a deed

Signed sealed and delivered by

in the presence of:

.....
Signature of witness

.....
Name of witness (BLOCK LETTERS)

.....
Address of witness

.....
Signature of director/ sole director

.....
Signature of director/company secretary

.....
Name of director/sole director
(BLOCK LETTERS)

.....
Name of director/company secretary
(BLOCK LETTERS)

Executed by **Buildland Bargara Pty Ltd**
ACN 648 512 896 as trustee under
Instrument 720717309 in accordance
with section 126 or 127 of the
Corporations Act 2001:

.....
Signature of director/ sole director

.....
Signature of director/company secretary

.....
Name of director/sole director
(BLOCK LETTERS)

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Signature of witness

.....
Name of witness (BLOCK LETTERS)

Signed for and on behalf of **Buildland Bargara Pty Ltd ACN 648 512 896 as trustee under Instrument 720717309** by its attorney

Partner / Special Counsel / Senior Associate of Norton Rose Fulbright Australia under power of attorney dated 19 May 2021 in the presence of:

.....
Signature of witness

.....
Name of witness (BLOCK LETTERS)