

Appendix 14

Building and Design Covenants

RIVEROAKS ESTATE – BALLINA

BUILDING AND DESIGN COVENANTS

1. **ACKNOWLEDGEMENT**

The Buyer acknowledges that the Seller has or is in the process of subdividing and developing a large master planned residential development at Ballina known as 'Riveroaks Estate' ('the Estate'), the object of which is to establish a modern and well designed residential housing estate and that the Property forms part of the Estate. The Buyer further acknowledges that it is desirable for the protection and in the interests of all Buyers of Land situated within the Estate, for this Contract to make provision in relation to the nature and type of construction or improvement that may be erected on all such Land within the Estate. Accordingly the Buyer agrees to the restrictions and obligations set out in these Building and Design Covenants.

2. **OCCUPATION AND USE**

The Buyer shall not:-

- 2.1 Use or permit the Property to be used for any other purpose than as a single family dwelling or long term residential rental Property.
- 2.2 Reside on the Property until a final building certificate has been issued by the Local Authority.
- 2.3 Reside on the Property until curtain rails and functional curtains or vertical blinds are provided to all clear glazed windows of the dwelling visible from any street. The Buyer shall not install any sheets or other material as a temporary measure.
- 2.4 Bring on to or keep on the Property any livestock, poultry or other animal other than domestic pets and in any case the number of domestic pets shall be no greater than two.
- 2.5 Commence any improvements to the Land or excavation on the Land unless plans and designs for those improvements have been approved by the Seller and a building permit has been issued by the Local Government.
- 2.6 Except for a fireplace within the dwelling, no incinerators or burners may be erected or installed on the Property and the Buyer shall not be permitted to burn off any material or rubbish on, in or about the Property.

3. **PLAN SUBMISSION REQUIREMENTS**

- 3.1 Pursuant to Building and Design Covenant Clause 2.5, the Buyer agrees to submit plans and drawings of the dwelling to the Seller for approval. The Seller will endeavour to approve, reject or give notice of amendments to the plans and drawings within two weeks of the plans and drawings being lodged with the Seller. However, the Buyer agrees that time is not of the essence with respect to the Seller approving the plans and drawings.
- 3.2 Any plans and drawings submitted to the Seller must provide for and comply with all the Building and Design Covenants and requirements contained in the Sale Contract. The Seller may reject or request amendments to plans and drawings if they do not comply. The Seller will not have approved any non-compliance with the Building and Design Covenants in the Sale Contract unless the Buyer has specifically noted such non-compliance and the plans or drawings with the non-compliance notations are expressly approved by the Seller.

- 3.3 The plans and drawings for the property are required to be approved by the Seller before they are submitted to the Ballina Shire Council for building approval assessment. The Seller requires the plans and drawings to comply with Building and Design Covenant Clauses 3 and 3A. The improvements constructed on the Land must be according to and comply with the plans and drawings approved by the Seller.
- 3.4 Site plans for the Property shall be prepared which include the following information:-
- a) Location plan indicating the features of adjoining properties, solar orientation, lot size, lot configuration, RP number, special setback requirements;
 - b) Location of dwelling on the site;
 - c) Setbacks to all improvements;
 - d) The location of underground and surface water drainage for the discharge of roof and stormwater;
 - e) The extent and levels of all proposed earthworks in relation to natural surface levels and distance from the site boundaries, including locations and details of any proposed retaining walls; and
 - f) Location of any proposed ancillary structures.
- 3.5 Floor plans for the dwelling shall be prepared which include the following information:-
- a) Calculated square metres of internal living areas, garage and complying roof covered outdoor living areas; and
 - b) Layout of dwelling spaces, room names and sizes and architectural features.
- 3.6 Elevations for each façade of the dwelling shall be prepared including the following information:-
- a) Wall, roof, door, window and trim materials and colours;
 - b) Roofline and pitch;
 - c) Position of fenestration;
 - d) Architectural detailing;
 - e) Relative position of natural surface level and proposed earthworks;
 - f) No asbestos sheeting or panels or similar material shall be used in the construction of any external wall of any building; and
 - g) External walls shall be constructed of brick, brick veneer, stone or concrete or any combination thereof.
- 3.7 A minimum of two cross sections of the dwelling shall be prepared including the following information:-
- a) Internal ceiling heights (minimum 2400 mm);
 - b) Position of slab and/or floors in relation to the natural surface level and proposed earthworks; and
 - c) General construction notes and details.
- 3.8 A landscape plan for the Property shall be prepared which must include the location and specification of the following items:-
- a) The dwelling on the site and the private outdoor open space in relation to the dwelling;
 - b) Driveway and other external hard surface areas;
 - c) Surface stormwater drainage routes;
 - d) Masonry or treated pine dividing fencing;
 - e) Existing trees;

- f) Mailbox, clothes drying area and ancillary structures;
- g) Streetfront kerb, gully pits, utilities, street lights and street trees; and
- h) Proposed landscaping including plant species and sizes, ground covers, turf and other landscaping features, ie. Pergolas, screens and trellis, etc.

3A. BUILDING COVENANTS

It is the Buyers responsibility to comply with the requirements of all relevant Statutory Authorities including Ballina Shire Council and in particular is responsible for obtaining a Building Permit for construction works. The Buyers attention is drawn to issues such as set backs, levels, site coverage, plumbing and drainage requirements, etc.

The Property must comply with the following Building Covenants unless the Seller has expressly agreed in writing to vary or relax any of the Building Covenants:-

3A.1 House roofs shall:-

- a) Be designed with an interesting profile incorporating outdoor covered areas, articulated features and overhangs where possible; two storey residences to have 600 mm minimum eaves overhang;
- b) Have a predominant roof slope between 22.5 and 45 degrees;
- c) Wherever possible not have equipment such as plumbing, vents, solar hot water systems, skylights and TV aerials visible to the street;
- d) Be of concrete or terracotta or colorbond and be of a non-reflective nature.

3A.2 a) Floor areas:-

- i) Dwelling dwellings shall have a minimum internal floor area excluding any attached garage and/or connection breezeway of 190 m² and have a minimum of three bedrooms.
- ii) Duplex dwelling houses shall have a minimum floor area of 120 m² excluding any attached garage and/or connection breezeway and must have a minimum of three bedrooms.
- iii) Courtyard dwelling houses shall have a minimum floor area of m² excluding any attached garage and/or connection breezeway and have a minimum of three bedrooms.

b) Two storey dwelling:-

- i) Two storey dwellings shall be designed so as to protect the privacy of neighbouring occupiers, particularly in relation to visibility from second storey balconies, decks and windows.

3A.3 The dwelling shall be articulated with a covered entry porch, visible from the street, which is either recessed or projects from the dominant line of the building façade.

3A.4 The façade or front elevation of the dwelling shall be articulated, present more than one building line to the street, and incorporate detailed design of architectural elements. In addition, the façade shall contain decorative details including at least one of the following:-

- i) Brick columns and capitals
- ii) Shutters
- iii) Flat arches
- iv) Gable vents

- 3A.5 Significant areas of glass and windows are to be provided to eastern and particularly northern elevations of the dwelling to maximise solar access, light and ventilation, and the major areas of glazing shall be protected by a roof overhang or underroof covered area.

In addition, the windows shall be of similar size on the front façade and positioned in a formal or symmetrical arrangement; and be of predominantly a vertical rectangular proportion.

- 3A.6 To create an interesting and acceptable built form which enhances the streetscape, external dwelling walls shall:-

- a) Be predominantly of brick veneer, brick, stone, or 2 mm texture coated concrete block with infills of glass, timber, composition board and other quality building materials; and
- b) Only be of elements which either have a natural, pre-coloured, painted, or otherwise protected finish in a colour consistent with any surrounding dwellings.

- 3A.7 Each dwelling shall have a driveway on the Property. Driveways shall:-

- a) Be one contiguous surface, ie. 'strips' are not acceptable;
- b) Be of exposed aggregate concrete or pavers, stenciled concrete or other approved materials;
- c) Duplex dwellings shall be a maximum of 3 m wide.

- 3A.8 Each dwelling shall have at least a double lock up garage with an area not less than 40 m², which shall be attached to and form part of the dwelling. Duplex and Courtyard dwellings must have at least a double lock up garage with an area not less than 36 m². Garages shall not exceed 6 m in width when viewed from the street.

- 3A.9 Unless approved by the Seller no earthworks shall be undertaken on the property whereby excavation or fill will exceed 0.3 metres from the present surface level of the property.

- 3A.10 No buildings of pole dwelling construction shall be permitted.

4. FENCING

- 4.1 No fence or gate shall be erected on any part of the Property fronting a street. However, the Buyer may erect a fence and/or gate extending from the side boundary fence to the exterior of the dwelling provided that the fence shall not extend beyond the front alignment of the dwelling (that is, any alignment of the dwelling which fronts a street).
- 4.2 The Buyer shall at its own cost, complete the construction of all boundary fences on the Property by no later than the completion of construction of the dwelling on the Land.
- 4.3 The boundary fences constructed by the Buyer shall not extend beyond the front alignment of the dwelling (that is, any alignment of the dwelling which fronts a street), and shall not exceed 1.83 metres in height above the natural surface level.
- 4.4 The minimum standard of design and materials used in all boundary fencing (often known as a 'good neighbour' fence) constructed by the Buyer shall be a treated pine dividing fence constructed of treated pine timber palings provided to both sides of the fencing rails in a hit or miss pattern with a minimum capping of 70 mm x 35 mm and be of a similar finish to the dwelling.

NOTE – Fencing extending beyond the property line and facing the street shall be brick or block with coloured render or texture finish to match the dwelling. Brick pier with colour metal tube or matching masonry. Solid fencing shall not exceed more than 60% of the street frontage.

- 4.5 The Buyer will repair and maintain all fencing on the boundary of the Property.
- 4.6 The Buyer will use the same materials or similar materials of no lesser quality for any repairs or replacement of the fencing for the Property and will not later the design or type of fencing without the consent of the Seller.
- 4.7 The Seller shall not under any circumstances, be or become liable for or to contribute to the erection, maintenance or repairing or keeping in repair of any dividing or other fence and the Seller shall not be liable or required at any time by the Buyer to join in or contribute towards the cost or expense of maintaining, repairing, or erecting any fence or fences erected or to be erected or for fencing any of the boundaries between the Property and any neighbouring lands.

5. LANDSCAPING

- 5.1 A minimum of 30% of each property is to be landscaped.
- 5.2 The Buyer shall before entering into occupation of the dwelling, complete all landscaping on the Property including the planting of a substantial quantity of shrubs and trees and the laying of good quality turf to the entire Property up to the street gutter.
- 5.3 The Buyer shall keep and maintain the exterior of the dwelling and the landscaping on the Property. The Buyer will maintain the landscaping by adequately watering the landscaping, mowing the lawn, pruning of trees and shrubs and trimming of garden edges from time to time to ensure the Property is of a neat and tidy appearance. The Buyer shall maintain the gardens at all times, and if deemed inadequate by the Seller, the maintenance shall be completed by the Seller and all costs associated with that maintenance shall become the responsibility of the Buyer.
- 5.4 The Buyer will not store, place or leave on the Land or any adjacent area, any equipment, rubbish or building materials except the Buyer may do so temporarily during any period of construction on the Land.
- 5.5 The Buyer shall comply with Ballina Shire Council's approved tree and plant species list.

6. VEHICLE ACCOMMODATION AND PARKING

- 6.1 A minimum of two car parking spaces per dwelling is to be provided within the boundaries of the property.
- 6.2 No motor vehicle shall be:-
 - a) Permanently or regularly parked on the Land or any part of the Estate. Light commercial vehicles may be parked but only with the Seller's written consent and only if accommodated within the garage.
 - b) Permanently parked on the Land except in a garage or located behind a structure approved by the Seller and upon a sealed driveway.

6.3 The Buyer will ensure that:-

- a) Any motor vehicle driven by the Buyer or its agents or invitees does not cause a nuisance in the Estate by way of noise, smell or any other means;
- b) Any vehicle on the Land is not dismantled, mechanically maintained or repaired on the Land in public view from any street frontage; and
- c) All the Buyer's invitees, agents and tenants comply with the covenants in this Building Covenant.

6.4 Any recreational vehicles parked on the Land must be located behind the building line and screened from public view. No vehicles shall be parked on the lawns or nature strips.

6.5 The Buyer shall use the dwelling's lock up garage for vehicle accommodation. No carport shall be permitted and all motor vehicles of persons residing at the dwelling house shall be garaged overnight.

6.6 All motor vehicles driven by the Buyer or its agents shall be parked in the garage.

7. BOAT TRAILERS, ETC

Any boat trailer or caravan stored or parked on the Land (if the same is not housed in a garage or outbuilding) shall be stored or parked at the rear of the dwelling house or shall be screened so that the same is not visible from the street.

8. CARAVANS

No caravans or mobile homes shall be used on or about the Land for residential purposes whether with or without the existence of a dwelling house upon the Land.

9. SECOND HAND MATERIALS

No substandard or second hand materials shall be used in the construction of any improvement on the Land.

10. GARDEN SHEDS/OUTBUILDINGS

10.1 Garden sheds shall:-

- a) Be constructed of proprietary 'Colorbond' or equivalent material for garden sheds;
- b) Not be of a size greater than 3 m width, 3 m breadth and 1.83 m in height;
- c) Not be visible from the street or located within the 3 m Special Landscape Setback;
- d) Not be of galvanised iron, unpainted zincalume coated steel, asbestos, cement fibre sheeting or of any reflective material and if it is an outbuilding, the outbuilding will be of similar materials and form to the dwelling;

10.2 No separate garage, outbuilding or similar structures shall be erected.

11. TV ANTENNAE AND SATELLITE DISH

Internal or under the roof antennae will generally only be permitted. Applications for external antennae will be considered on their merits with the following principle applying:-

- To be located on the side (towards the rear) or rear of the dwelling and as low as possible to the roof line to help minimise visual impact.

Satellite dish will only be approved below the roof line.

12. SIGNS AND HOARDINGS

If a dwelling house has not been constructed on the Land, no advertisement, sign or hoarding of a commercial nature, shall be erected on the Land without the prior consent in writing of the Seller. If a dwelling house has been constructed on the land, no advertisement, sign or hoarding of a commercial nature shall be erected on the land without the prior consent in writing of the Seller, except one sign not over one metre square advertising the Land for sale or a sign displayed by a Builder. The Buyer irrevocably authorises the Seller and persons authorised by the Seller to enter upon the Land to remove therefrom any advertisement, hoarding or sign erected on the Land in contravention of this paragraph.

13. RE-SUBDIVISION

The Land shall not be re-subdivided without the consent in writing of the Seller nor shall any application be made without the prior consent in writing of the Seller to change the permitted use of the Land from single private dwelling residential accommodation.

14. LETTERBOXES

The Property shall have a letterbox and the letterbox shall be constructed of a material and in a manner that complies with Australia Post preferred standards and to match the style, colour and material of the Dwelling. All letterboxes shall be constructed in-situ and pre-fabricated items will not be permitted.

15. CLOTHESLINES, HOT WATER SYSTEMS AND BINS

15.1 Any clothesline, hot water system or gas system must be located so as not to be visible from any street. Clotheslines must be located behind an obscure fence, not attached to a dividing fence and be of the 'Extend-a-Line', 'Para-Line' or 'Sunni Products Wall Mounted' type of equivalent. For Lots less than 600 m² a fence mounted clothesline may be permitted by requesting consent in writing of the Seller.

15.2 Rubbish bins shall be kept out of view from any street by an enclosing structure, an obscure fence or the Dwelling.

16. INCINERATORS AND BARBEQUES

Incinerators will not be permitted. Barbeques shall be built of a material that matches the dwelling and be located so that they are not visible from any street or thoroughfare.

17. AIRCONDITIONERS

Airconditioners should be located below the eavesline and screened from public view. Applications for airconditioners above the eavesline will be considered on their merit with the following principles applying:-

- The unit should be low profile;
- Located below the ridge line to the rear of the dwelling or in a location that produces minimal visual impact from public areas; and
- To be installed as low as possible and on the roof and coloured or painted to match the roof.

18. SWIMMING POOLS

The Buyer shall comply with Ballina Shire Council's requirements with respect to the location and construction of swimming pools.

19. WATER TANKS

The Buyer shall provide a 3,000 litre water tank and pump to each home, duplex and/or courtyard dwelling in a location which is screened from adjacent property owners.

20. PRIVATE OPEN SPACE

- 20.1 Provision of usable private open space of a minimum of 25% site area for each dwelling
- 20.2 The major portion of the private open space is to be capable of containing a rectangle of 6 m x 4 m exclusive of service areas, driveways and the like. This area is to be generally located as shown on the plan so as not to be overlooked by living areas of the adjacent dwelling. In the alternative, it may be provided with privacy screening to ensure visual privacy. It is to be located so as to be accessible from living areas of the dwelling. This area shall generally be located away from street frontage, unless adequately screened from the street.
- 20.3 Open space less than the 2.5 m in minimum dimension shall be excluded from the usable open space calculations.
- 20.4 Usable private open space shall not exceed an average slope of 10%.
- 20.5 For duplex dwellings private open space shall be located approximately equally between the two dwellings.

21. TREES

The Buyer acknowledges that the Seller may plant numerous trees on the Estate in and around the various public areas including the footpaths in an endeavour to enhance the environment and by way of general beautification and the Buyer agrees not to damage or remove any of these trees. Should such damage or removal be caused either by the Buyer or his/her/its Builder or subcontractors, the same are to be replaced immediately by the Buyer at the Buyer's expense.

22. PETS AND ANIMALS

All pets will need to be housed so as not to create a nuisance. The Seller or its agents may request the removal of any pets deemed to be a nuisance. No pet breeding will be allowed.

23. PERMISSIONS AND RIGHTS OF SELLER

- 23.1 The Buyer agrees to permit all Authorities, the Seller and all of their contractors, employees, agents or workmen to enter upon the Property or any lands within the Estate over which the Buyer exercises dominion or control, to enable the installation of services in the nature of electrical power, water, sewerage, telephone connections and other services such as normally would be made available to an Estate of this standard. This covenant extends to permitting any reasonable and necessary works to be carried out upon the Property or the lands within the Estate as may be required to enable the provision of such services.

- 23.2 The Buyer agrees that the Property shall not be re-subdivided without the consent in writing of the Seller nor shall any application be made without the prior consent in writing of the Seller to change the permitted use of the Property from single private dwelling residential accommodation.
- 23.3 The Buyer acknowledges and agrees that the Seller shall have the right in any other sale of any part of the Estate to waive, vary or relax the covenants set out in the Contract and in that event, the Buyer agrees that it shall have no claim whatsoever against the Seller.
- 23.4 The Buyer acknowledges that the Seller may enforce its rights against the Buyer, his/her/its agents, employees, contractors or workmen under this or any other term of condition contained in this Contract by way of an injunction issued by any Court of competent jurisdiction on the application of the Seller in respect of any breach thereof or any attempt so to do by the Buyer, his/her/its agents, employees, contractors or workmen.
- 23.5 The Buyer acknowledges that no subleasing of any part of the dwelling will be permitted.
- 23.6 The Seller or its agents may come onto the Property after reasonable notice and remedy any breach of these Special Conditions by the Buyer and the costs (including legal costs) of remedying that breach may be recovered from the Buyer as a liquidated debt.
- 23.7 If the Buyer breaches the terms of these Building and Design Covenants, the Seller will suffer loss and the Buyer acknowledges that the Seller may enforce its rights against him, the Buyer's agents, servants, contractors or workmen under this or any other clause in addition to any other rights at law or under this Contract by way of either:-
- a) An injunction issued by any Court of competent jurisdiction on the application of the Seller in respect of any breach thereof or any attempt to do so by the Buyer or the Buyer's agents, employees, contractors or workmen and in addition to or alternatively;
 - b) Sue the Buyer for breach of Contract and claim not less than \$10,000.00 by way of liquidated damages that the parties agree is a reasonable estimate of the Seller's loss and damages.

24. NSW DEPARTMENT OF HOUSING

- 24.1 The Buyer covenants, warrants and agrees that the Buyer has not and will not enter into a contract, agreement, arrangement or understanding whether formal or informal to sell or lease the Property to the NSW Department of Housing.

25. WARRANTIES AND AGREEMENTS

- 25.1 The Buyer acknowledges that the covenants, warranties and agreements contained in Building Covenant 23.1 have been inserted to protect the interests of all Buyers of Land within the Estate and to facilitate the establishment of a modern and well designed residential housing estate. Accordingly, the Buyer further acknowledges and agrees that such covenants, warranties and agreements are of fundamental importance to the Seller and form essential and fundamental conditions of this Contract and, in the event of there being a breach of Building and Design Covenant the Seller shall be entitled to terminate this Contract and/or sue the Buyer for damages for breach.

26. OBJECTION TO DEVELOPMENT

- 26.1 The Buyer acknowledges and agrees that it will not lodge or make or assist any person or corporation in lodging or making any objection against any proposal by the Seller (or any related Body Corporate) to lodge with the Local Government (or any other Authority) any of the following:-
- a) Any subdivision or rezoning of all or part of the Estate (other than the Property); and
 - b) Any development, consent or approval application lodged by the Seller in connection with all or part of the Estate (other than the Property).
- 26.2 The Seller may enter upon the Property at any time before or after the Date of Completion to ensure compliance by the Buyer with its obligations under this Contract.
- 26.3 Neither the Buyer nor the Buyer's financier or any other person on behalf of the Buyer shall lodge a caveat affecting the Land.

27. DEED ON RESALE

The Buyer agrees that the Buyer will not sell, transfer or otherwise dispose of the Property without first delivering to the Seller a Deed of Covenant duly executed by such Buyer, transferee or donee in favour of the Seller containing covenants and provisions in the same terms (mutatis mutandis) as are set forth in the preceding Building and Design Covenants including an obligation for each such further Buyer, transferee or donee to obtain a further such Deed of Covenant from any subsequent Buyer, transferee or donee.

28. FURTHER IMPROVEMENTS

- 28.1 Any proposed improvements to the Property, whether they be in conjunction with construction of the dwelling house or separate to the dwelling house, shall be in accordance with the Building and Design Covenants and the Buyer will submit plans of any such improvements to the Seller for approval prior to starting construction. All improvements must be made in accordance with plans approved by the Seller including improvements such as:-
- a) Fencing, landscaping and site works including swimming pools and other ancillary structures;
 - b) Building additions, alterations and extensions.
- 28.2 The Seller will not unreasonably refuse consent to plans for improvements where the improvements are complimentary to and not inconsistent with the style and colour scheme of the dwelling and are aesthetically consistent with the dwelling.

29. CONSTRUCTION TIME

- 29.1 The construction of the dwelling shall be completed by no later than twenty-six (26) weeks after the commencement of construction.

NOTE – Should the Buyer wish to vary the times stipulated, the Buyer shall submit a written request to the Seller. The Seller shall approve or reject the request within seven days of receipt of the request.

29.2 Notwithstanding anything else contained in these Building and Design Covenants, the Buyer agrees to commence construction of the dwelling on the Property by no later than twelve (12) months after the Settlement Date.

29.3 The Seller may enter upon the Property at any time whether before, during or after construction of any building work and whether before or after the completion of this transaction to ensure compliance by the Buyer with its obligations under this Contract.

29.4 During construction, the Buyer shall at all times keep the building site clean and position a bin on the site commencing when the ground slab has been cast until the dwelling is complete.

NOTE – All construction traffic shall enter the development site only from the areas designated by the Seller.

29.5 During construction, the Buyer shall comply with requirements of Ballina Shire Council. The Buyer indemnifies and agrees to keep indemnified the Seller against any claims which are made against the Seller for damages, costs and expenses suffered or incurred by the Seller as a result of the Buyer not complying with the requirements of this document.

30. EASEMENTS

The Buyer shall comply with the requirement of easements over the Property.

31. MANUFACTURING

No part of the Property shall be used for any industrial manufacturing or retailing purposes and no offensive or noisy trade activity shall be carried out on the Property.

32. INTERPRETATION

Any term or expression used in these Building and Design Covenants, which is defined in the Contract to which these Building Covenants are annexed, shall have the same meaning when used in these Building Covenants.

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Signed by the Buyer

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Signed by the Seller